



**T H E**  
**Arizona Department of Real Estate**  
**B U L L E T I N**

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*Arizona -Mexico Commission  
Summer Plenary Session  
COMING SOON!  
(See Commissioner's Corner  
for further details!!)*

**AFFIDAVITS OF VALUE AND THE FRAUDULENT OWNER-OCCUPANT CHECKBOX**  
by Amy Bjelland

No one likes to pay taxes, and we all want to save a few dollars whenever possible, however, fair is fair and we all must play by the rules. In Arizona, the rules require that when purchasing real property, an Affidavit of Value must be completed. Included in the Affidavit of Value is whether the property will be owner-occupied or rented to non-family members.

In today's real estate market, one factor recognized by buyers and sellers is that the median price of a residential home continues to rise, seemingly without limit. In the regulatory world, the Department hears anecdotal evidence of the various factors contributing to this rise, including an astonishing rate of population growth in Arizona over the last several years. In addition we have the so-called "California investors" seeking choice investment properties to purchase and "flip" in this hot market.

Of increasing concern to the Department is the proliferation of reports that real estate salespersons and brokers are advising their investor clients to misrepresent themselves as the owner-occupant of many of these residential homes, when the licensees are well aware that the home is in fact an investment property. Failure to accurately complete the Affidavit of Value in this manner constitutes a Class 2 misdemeanor and the Department is prepared to take action against licensees who condone or advise their clients to check the owner-occupant box in spite

knowing or having reason to know that the real property purchase is an investment.

When the Department becomes aware of a licensee who advises a client to mark the owner-occupant checkbox of the Affidavit of Property Value rather than the appropriate box indicating that the property will be rented to someone other than "family members," this will be considered a breach of the licensee's fiduciary duty and a failure to deal fairly with all parties. It will also be considered substantial misrepresentation and fraud. This activity is becoming of increasing concern to local and state governments alike, as it affects the tax base at its most fundamental level.

The main message for licensees is to keep your clients honest by being honest with them about property taxes for residential rental properties. If you know of any person, licensed or not, engaging in this form of misrepresentation, please notify the Department. After all, you are paying the taxes they are avoiding. ☐

Editor's Note: Amy Bjelland is an attorney, the Director for Administrative Actions and has been with ADRE for nearly 1 year.



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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



## ADRE Law Book

In the April 2005 Brodsky School of Real Estate newsletter, the headline read, "REAL ESTATE DEPARTMENT HITS ANOTHER HOME RUN." What was being acknowledged was the Department's new handy-sized Real Estate Law Book. The book is more user friendly than the previous seven-ringed binder. Brodsky gave ADRE a pat on the back by saying, "Our congratulations to ADRE. This administration is really responsive not only to the Arizona public, which it is charged to protect, but also to the licensees, who it regulates."

## Consumer Guide continues to be well received!

A licensee wrote us stating, "I read the book from cover to cover, and I think it's fantastic! For a person that doesn't know anything about buying or selling real estate, it is very easy to understand, practical and helpful. The reader does not feel like a 'dummy' and yet is written in such simple language that a child could understand it (or a young person!) This is a REAL SERVICE AND BENEFIT for the public in my opinion. Very down to earth, extremely helpful, practical, useful and interesting."☐



## Late Breaking News

Do you want to be on the list of people who receive up-to-the minute news from the Department? We receive numerous emails saying how much they appreciate receiving the information and how useful the information is. The Department uses the *Late Breaking News* as a venue to provide a variety of information to the public and the licensees.

To subscribe or unsubscribe, go to the Department's web site: [www.re.state.az.us](http://www.re.state.az.us) and click on the *Late Breaking News*.



**Ken Lamb**  
Customer Assistance Team (C.A.T.)

How do you get licensees to use the Online License Renewal System (OLRS)? One way is to keep bringing OLRs to their attention on a regular basis. The OLRs Project Team decided on March 15<sup>th</sup> that one method would be to develop an "eye catching" poster to place in the lobbies of both Phoenix and Tucson offices.

Easier said than done! The Team thought of the untapped talent among ADRE employees and decided that it would be a terrific manner to utilize that talent as well as reward the employees. It was decided that a contest would be held and the "best" poster would be chosen. The employee who created the best poster would receive two movie tickets as well as a day off. Entries were submitted and the OLRs Project Team reviewed the entries and decided on a winner. **The winner was Ken Lamb!** (The poster can be seen at either the Phoenix or Tucson offices.) There was another winning creative submission, however, it did not meet the poster criteria. Joann Medina received movie tickets for her banner which can also be seen at the ADRE offices.☐





## VIGNETTES AND HAPPENINGS AT ADRE

I realize most of you have busy days working and handling this very active real estate market. I also realize that the day-to-day operations at ADRE may be of interest. This was sharply brought to my attention a week or so ago when I received a call from a licensee who had a complaint about the wait time he experienced when renewing his license. I asked if he considered renewing on-line and he did not know what I was talking about. After my initial surprise at his not knowing about on-line licensing after all the different communiqués the Department has broadcast, I realized perhaps he and other licensees were just not aware of some issues that go on at the Department that could impact their day.

## LICENSING

There will be two kiosks set up in the inner lobby at ADRE for renewing on-line. Help will be available from one of our professional staff members. The kiosks are now in place.

In April, 519 licensees renewed their licenses on-line; this number is 21.6% of all of April renewals. In May, 739 licensees renewed on-line.

Applications received via mail currently have a turn-around time of 4 weeks (down from 6 to 8 weeks).

## EDUCATION

The new Education Advisory Committee had its first meeting on May 4<sup>th</sup>. It is an exciting new Committee; watch for news of the progress. Cindy Wilkinson has been named the new Director of Education (effective 6/6/05) to replace David Jankofsky, who accepted a position with the Department of Transportation.

## INVESTIGATIONS

There were 101 new complaints filed with ADRE in April.

## AUDITING

There were 329 Broker Audit Declarations received in April. Of that number, 241 were complete and accepted; 114 were incomplete and not accepted.

## CONSUMER ASSISTANCE TEAM

Consumer Assistance Team (CAT) received 6,341 calls in April.

## ADMINISTRATIVE ACTIONS

The largest number of cases involves new applicant denials for prior felony or other convictions. That is followed by cases involving subdivisions, unlicensed activity and false applications. There are 186 open Compliance cases.

## SUBDIVISIONS

170 Applications for Public Reports were received in April.

## LEGISLATURE

The Department received a 10.4% increase for FY 2005-06 over the Department's prior appropriation for FY 2004-05. What this means is that it will enable the Department to fund some of the vacant positions, particularly in Licensing and Subdivisions. Kudos to Tom Farley of AAR and other stakeholders who assisted the Department in the legislative and budgetary process.

HB2184, the Department's bill, passed both the House and Senate and was signed into law by the Governor on April 13th. Details of the bill are on the Department's website.

## ARIZONA MEXICO COMMISSION

How exciting is this? As a Co-chair on the Real Estate Ad Hoc Committee for the Arizona Mexico Commission (AMC), one of our tasks was to identify Action Items. All 14 committees of the AMC have the same task for their respective issues. That's a lot of Action Items. These Action Items then set the tone for the work that the respective committees intend to accomplish. The Governors of both Arizona and Sonora select certain of the Items and make them a priority for the entire Annual Plenary Session.

Now comes the exciting part. The Real Estate Ad Hoc Committee's Action Item 2, "To coordinate with Sonora developers to create a process of subdivision authorizations and the issuance the Arizona Public Report for said subdivisions", was selected as a priority Item for the upcoming plenary. What does this mean? It means that we will not have to reinvent the wheel whenever we receive an application for a Public Report for a subdivision approval in Sonora.

The AMC Summer Plenary Session will be held June 16-18th at the JW Marriott Starr Pass Resort. I have been honored to be chosen by the AMC to receive the *Tony Certosimo* Award on Saturday, June 18th at the Plenary Session.

## NEW:

A new Stakeholder Committee has been formed called Cross Border Transactions. Look for updates as they unfold.

All in all each day seems busier than the day before at ADRE, but I know that each and every one of you can probably relate. ☺

## INTRODUCING THE AAR 2005 RESIDENTIAL RESALE REAL ESTATE PURCHASE CONTRACT

By  
**Michelle Lind**



The Arizona Association of REALTORS® (“AAR”) Residential Resale Real Estate Purchase Contract (“Contract”) has been revised by several workgroups led by Chairperson Laura Mance. Several specialized groups, including the Lenders Group, the Title/Escrow Group, the Home Inspectors Group, and the Attorneys Group provided recommendations to the Forms Steering Group concerning the areas of the Contract affecting those industries. The following is a summary of some of the major changes from the 5/00 contract.

### **FORMAT**

The Contract format was changed in an attempt to make the form more “readable.” The Receipt section was omitted and the Offer section is now entitled Property. The Warranty section was separated from the Inspection section. The Inspection section is now called Due Diligence to reflect the fact that investigations are performed in addition to physical inspections of the property.

### **CURE PERIOD**

If a party fails to comply with any provision of the Contract, the other party must deliver a notice to the non-complying party specifying the non-compliance. If the non-compliance is not cured within three days after delivery of the notice (“Cure Period”), the failure to comply becomes a breach of Contract. In some cases, if the cure notice is not immediately delivered, the Cure Period may delay Close of Escrow (COE) for up to three days.

### **FINANCING SECTION**

The Financing section was revised to obligate the buyer to take specific steps to obtain a loan and to clarify the financing contingency.

The Contract is contingent upon the buyer obtaining loan approval for the loan described in the AAR Loan Status Report without conditions no later than the COE Date. If the loan contingency is unfulfilled, the Contract is terminated. The buyer is obligated to deliver a notice of the inability to obtain loan approval to the seller or the escrow company no later than the COE Date. If the buyer fails to deliver this notice by the COE Date, the seller must give the buyer cure notice and a three-day opportunity to deliver the notice of the unfulfilled contingency. If the buyer fails to deliver the notice, the buyer is in breach for failure to deliver the notice, and the seller agrees to accept the earnest money as damages.

The Contract is cancelled for an unfulfilled contingency if, after diligent and good faith effort, the buyer is unable to obtain loan

approval without conditions by the COE Date. The inability to obtain loan approval by the COE Date is not a breach of contract; therefore, the Cure Period does not apply to extend COE.

The Contract is contingent upon an appraisal of the Premises for at least the sales price. If the Premises fails to appraise for the sales price, buyer has five days after notice of the appraised value to cancel the Contract or the appraisal contingency is waived. If the buyer is unable to obtain the loan and close escrow after waiving the appraisal contingency, the seller should deliver the Cure Notice to the buyer. If the buyer fails to close within the Cure Period, the buyer has breached the Contract and the seller agrees to accept the earnest money as damages.

The AAR Loan Status Report (“LSR”) must be attached to every offer and must have, at a minimum, the Buyer’s Loan Information section completed, describing the current status of the buyer’s proposed loan. The requirement that the LSR be attached to every offer does not necessitate that the buyer obtain pre-qualification from a lender prior to submitting an offer; the buyer can simply indicate on the LSR that the buyer has not yet had the opportunity to visit a lender.

Unless the buyer has previously completed the loan application and related actions, the buyer is obligated to complete a loan application, grant the lender permission to access buyer’s credit report, and pay all loan application fees within five days after Contract acceptance.

The buyer is required to sign all loan documents three days prior to the COE Date to allow the funds to be ordered and escrow to close as agreed. If documents are not available for signature by the COE Date because the buyer has not obtained loan approval, the loan contingency is unfulfilled and the Contract is cancelled. If the buyer has obtained loan approval but does not sign the loan documents within three days after receiving the Cure Notice, the buyer is in breach of Contract and the seller may pursue the remedies for breach.

### **DISCLOSURES SECTION**

The Disclosures section has been reduced and simplified.

The seller is obligated to deliver a written insurance claims history from the seller’s insurance company, an insurance support organization (such as the Comprehensive Loss Underwriting Exchange “C.L.U.E.”), a consumer reporting



within five days after Contract acceptance.

The seller agrees to immediately notify the buyer of any changes in any of the seller's disclosures. Unless the seller is already obligated to correct or repair the changed item, the buyer has five days to provide notice of disapproval.

In addition to the warranties in the 5/00 contract, the seller warrants that, at the earlier of possession or COE, all agreed upon repairs and corrections will be completed and all personal property not included in the sale and all debris will be removed from the Premises.

### **DUE DILIGENCE SECTION**

The Inspections section is now entitled "Due Diligence" to reflect the fact that both inspections and investigations of the home should be performed.

The "laundry list" of possible inspections and investigations has been omitted and replaced with general categories of inspection and investigation items. The buyer is advised to consult the *Buyer Advisory* to assist in the due diligence inspections and investigations.

Prior to expiration of the Inspection Period, the buyer may deliver notice of any items disapproved. The disapproval process is essentially unchanged from the 5/00 contract, but the language was clarified and several issues that had caused disputes are specifically addressed. Notably, the buyer's disapproval no longer must be reasonable.

AAR's Buyer's Inspection Notice and Seller's Response form ("BINSR"), which was revised in conjunction with the Contract, is available for the disapproval notice. The BINSR now contains provisions for the buyer's notice, the seller's response, and the buyer's election, as well as a space for notice of non-working warranted items. All desired inspections and investigations must be conducted prior to delivering the notice and all due diligence items disapproved are to be provided in a single notice.

If the seller agrees in writing to correct any items disapproved, the corrections must be made, any repairs completed in a workmanlike manner, and any paid receipts evidencing the corrections and repairs delivered to buyer three days prior to the COE date. If the seller fails to complete the repairs three days prior to the COE Date and the buyer immediately delivers the cure notice, the seller will be liable for breach of contract and breach of warranty if the repairs are not complete by COE.

### **REMEDIES SECTION**

The remedies provisions have been revised in two primary respects. First, as previously discussed, the parties are given an opportunity to correct or "cure" potential breaches of the Contract. Secondly, the Contract defaults to binding arbitration to settle disputes not resolved in mediation, unless one of the parties opts out.

**Breach:** If after receiving the notice of non-compliance the party does not perform the specified obligation during the Cure Period, the non-complying party is in breach of Contract. In the event of buyer's breach arising from the failure to deliver the notice of the inability to obtain loan approval or the inability to obtain loan approval due to the waiver of the appraisal contingency, the seller agrees to accept the earnest money as the sole right to damages.

**Alternative Dispute Resolution ("ADR"):** The buyer and seller agree to mediate disputes. If mediation does not resolve the dispute, the unresolved dispute must be submitted to binding arbitration unless either party opts out within thirty days after the conclusion of the mediation conference by notice to the other. If a party opts out of arbitration, either party has the right to resort to court action.

### **ADDITIONAL TERMS AND CONDITIONS SECTION**

**Calculating Time Periods:** This provision explains how time periods in the Contract are to be calculated. The day of the act or event from which the time period begins to run is not included (i.e., the date of Contract acceptance), and the last day of the time period is included. Acts that must be performed three days prior to the COE Date must be performed three full days prior; for example, if the COE Date is Friday, the act must be performed by 11:59 p.m. on Monday.

**Notice:** Unless otherwise provided, delivery of all notices and documentation required or permitted in the Contract must be in writing, addressed as indicated in the referenced sections, and are deemed delivered and received when hand-delivered, faxed, emailed if email addresses are provided, or sent by overnight courier.

**Broker on Behalf of Buyer or Seller:** The broker and salesperson contact information is included in these paragraphs for addressing notice to the buyer or seller and for agency confirmation.

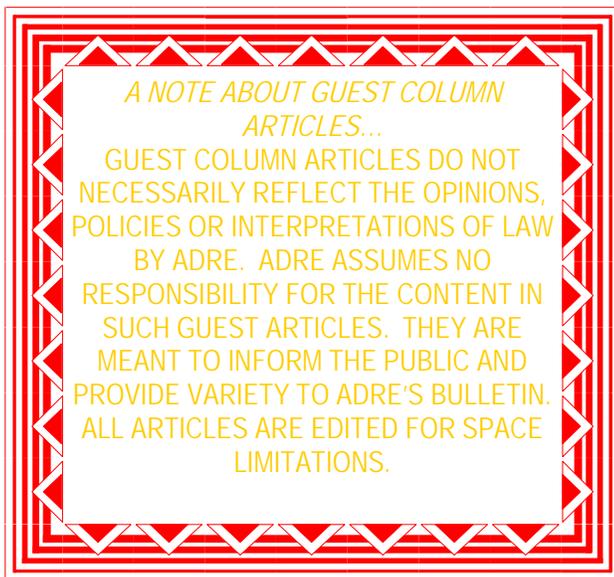
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**CONCLUSION**

The new AAR Contract attempts to address many of the issues in the 5/00 contract that caused confusion and disputes. The revisions in this Contract should make transactions proceed more smoothly and reduce liability for the parties and the brokers. Sample copies of the Contract and related addenda, along with tools to assist in learning and using the Contract are available on AARonline.com.

*Michelle is General Counsel to the Arizona Association of REALTORS® 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 author, is not intended as definitive legal advice and you should not act upon it without seeking independent legal counsel.*



Do you have an article idea?\*

If you would like to submit an article to be considered for inclusion in *The Bulletin*, please send your article to the Editor via email at: [mutley@re.state.az.us](mailto:mutley@re.state.az.us).

Submissions must be in MS Word format and less than 500 words.

**Information from ADRE on Continuing Education and The Residential Resale Purchase Contract**  
By David Jankofsky

The Arizona Department of Real Estate recently issued **Substantive Policy Statement (SPS) 2005.12: Continuing Education and the Residential Resale Purchase Contract**. This SPS is available on the ADRE Website at [www.re.state.az.us](http://www.re.state.az.us).

Transactions involving the resale of residential real estate make up the bulk of real estate sales in Arizona. Accordingly, licensees need to be current on the changes within their industry, laws, and be knowledgeable about other tools at their disposal to complete these transactions.

One change is an updated Residential Resale Purchase Contract developed by The Arizona Association of REALTORS® (AAR).

ADRE has the authority to approve courses and their instructors. Pursuant to this authority the Commissioner on April 1 issued the new SPS. It states in part:

1. Schools intending to teach a course concerning the provisions of the new 2005 AAR Contract must apply for a Certificate of Course Approval at least thirty days prior to holding the course. A course on this subject approved by ADRE prior to this SPS is not considered a currently approved course due to the significant changes in this Contract.

2. Schools wishing to present this new course (in addition to getting the course approved) must submit documentation that the instructor(s) proposed to teach it, in addition to having the other qualifications necessary to be an instructor, have attended one of AAR's "Train-the-Trainer" Instructor Development Workshops (IDW) or must have attended a course on this subject taught by an instructor who had previously attended an AAR-IDW on the 2005 Contract.

The IDW course may be offered for Continuing Education Credit under the Contract Law category

While the AAR has developed this form and uses it as a model for its members to use in their transactions, there is nothing in statute or rule that requires this particular form of contract to be used in a residential resale transaction. However, if schools and/or instructors choose to fulfill the requirement for Contract Law in another manner, they are free to do so.

(Continued on page 7)



The SPS establishing this procedure will be in effect for one year from its issuance.

In the past few weeks there have been many "conversations" over the Internet and other media on who would be authorized to teach the new course. However, there has been little attempt to contact ADRE to ask for an official interpretation. While the input and comments of ADRE's stakeholder community are important, ultimately, the approval of courses and their instructors are the province of the Commissioner.

To add a professional focus to ADRE's service in the area of education, the Commissioner has, effective March 1, separated education from the Licensing and Education Division; creating a stand-alone Education Division. The mission of this new division is to raise the quality of real estate education in the State of Arizona so that the public interest is protected.

ADRE urges all those with questions regarding education in particular and ADRE in general to contact the appropriate ADRE Division. It is there that authoritative information will be found.

The General Information Line for the Education Division is: 602-468-1414, Extension 100. ☐

Director  
31, 2005.  
zonia Department of

Editor's Note: David Jankofsky was the  
for the Education Division for ADRE until May  
He accepted a position with the Ari-  
zonia Department of



## NEWS FROM THE AMC

Gary Brasher was recently appointed by Governor Janet Napolitano to serve on the Real Estate Ad Hoc Committee. He will be serving as Co-Chair along with Commissioner Elaine Richardson.

Mr. Brasher is President of Brasher Real Estate, Incorporated, based in Santa Cruz County. He was first licensed as a real estate salesperson in 1981 and became a real estate broker in 1984.

Mr. Brasher obtained a B.A. from Arizona State University and is also a licensed pilot. He has been responsible for developing the master-planned community of Barrio de Tubac. He and his family live in Tubac and are active in their community.

In 2003 Mr. Brasher was appointed by Governor Napolitano to serve on the ADRE Advisory Board. His term expires in January 2009.

Mr. Brasher is actively working with the Real Estate Ad Hoc Committee members on recruiting individuals to join the Arizona-Mexico Commission (AMC) as well as preparing for the Committee meeting that will take place at the AMC Plenary Session in Tucson in June, 2005.

For further information regarding the AMC Summer Plenary Session, you may go to the Arizona-Mexico Commission web site: [www.azmc.org](http://www.azmc.org)☐



FSBOs, Lenders, and Limited Representation Brokers  
by Tom Adams and K. Michelle Lind, Esq.

Real estate, as everyone knows, is a very hot market in Arizona these days, and there are any number of people looking for ways to "get a piece of the action." Sometimes the procedures used are legal and sometimes they are not. One recent trend involves lenders who target "for sale by owner" (FSBO) properties for the purpose of holding open houses (where lender signage is displayed at the property and prospective buyers are met by the loan officer/non-owner). This is promoted as a marketing assist for the owners and the lender hopes to finance the purchaser.

The Department of Real Estate's position is that a lender who is holding open houses and meeting prospective buyers for FSBOs is engaged in conduct that constitutes the practice of real estate and requires a real estate license. A.R.S. § 32-2122(D) states "[a]ny act, in consideration or expectation of compensation, which is included in the definition of a real estate... broker, whether the act is an incidental part of a transaction or the entire transaction, constitutes the person offering or attempting to perform the act of a real estate broker... within the meaning of this chapter." A.R.S. § 32-2101(47) defines real estate broker as "... a person, other than a salesperson, who, for another and for compensation: (i) [a]ssists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate or timeshare interests." There may be other applicable portions of A.R.S. § 32-2101(47), as well, but in any event the lender is performing a service to facilitate the sale of the property of another in anticipation of compensation, which is real estate activity and requires licensure.

Another issue concerns brokerages that approach FSBOs for a "listing" that amounts to charging a flat fee to place the property on the Multiple Listing Service ("MLS"). The owners/sellers agree to pay the MLS-offered co-broke and agree that the "listing" brokerage does not represent the owners. The owners/sellers are "on their own" unless they agree to pay additional fees for additional services. Arizona statutes do not prohibit "limited service listings," where the seller pays the listing broker a flat fee to place the property in the MLS and agrees that the listing broker will perform no other services.

Although there are no statutes or rules that prohibit a real

estate broker from limiting the service that the broker provides to a buyer or seller, A.A.C. R4-28-1101(A) states that "[a] licensee owes a fiduciary duty to the client and shall protect and promote the client's interests." Assuming that the seller in a limited service listing is in fact a "client" as that term is used in the Rule, the Rule can be interpreted to apply only to the extent of any written agreement between the broker and client on the services to be provided. Further, although A.A.C. R4-28-802(B) requires a broker to promptly submit all offers to the broker's client, the broker may be released from this duty if otherwise provided in the listing agreement.

In regards to the buyer's broker who wants to submit an offer to the seller, A.A.C. R4-28-1102, which states: "[e]xcept for owner listed properties, negotiations shall be conducted exclusively through the principal's broker or the broker's representative unless: 1. [t]he principal waives this requirement in writing, and 2. [n]o licensed representative of the broker is available for 24 hours" is an issue. However, the sellers and the limited service broker can satisfy this Rule by providing a written waiver (preferably in the listing agreement) and indicating (preferably in the MLS) that no licensed representative is available to present/negotiate the offer. If the waiver and indication that no licensed representative is available is not stated in the MLS, the buyer's broker should ask the seller or listing agent for written confirmation prior to commencing negotiations.

Although a broker can limit the services the broker provides to a client, a broker cannot limit the regulatory authority of the Department of Real Estate. Therefore, a "limited service broker" is required to comply with all real estate statutes and rules, including A.R.S. § 32-2151.01 (A), which requires that "[e]ach licensed employing broker shall keep records of all real estate... transactions handled by or through the broker."

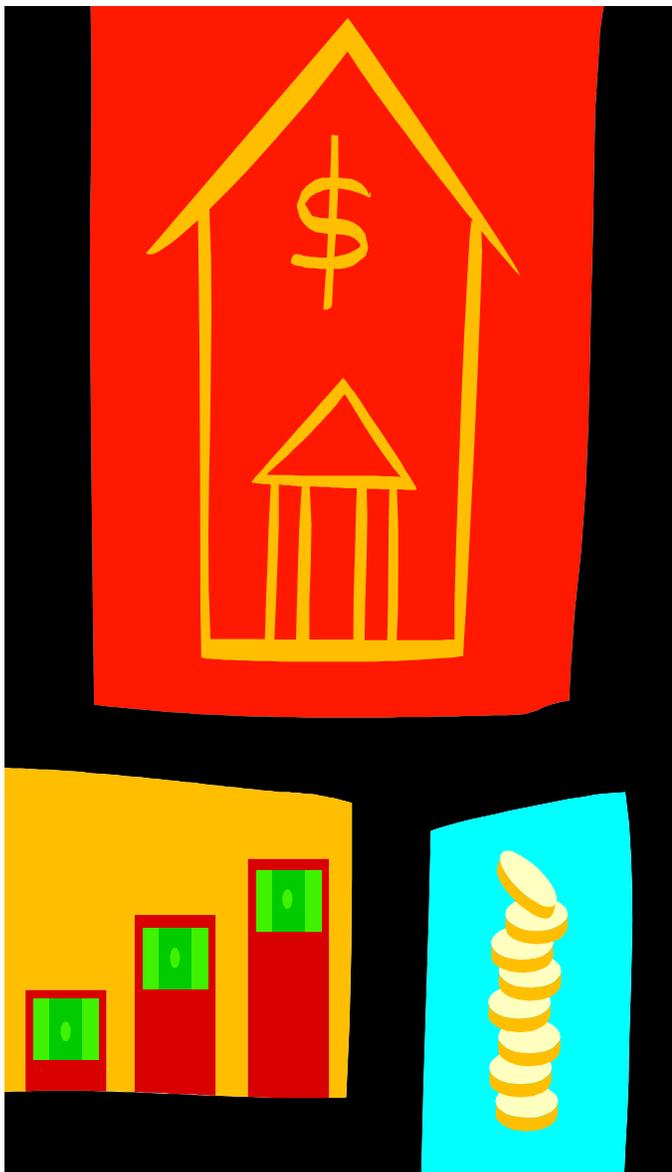
Although lenders and brokers are licensed to perform certain functions, there are limitations and requirements governing their activities, and these limitations must be considered while developing new and innovative

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approaches to service the growing real estate market. A general rule to consider is, if in doubt, check it out. Contacting the Department of Real Estate for advice prior to implementing a new process may avoid problems and ease transitioning into untested waters.▣

Editor's Note: Tom Adams is the Director of Investigations and Auditing for ADRE. K. Michelle Lind is General Counsel for the Arizona Association of **REALTORS®**.



## I HAVE A LICENSE – NOW WHAT?

By Cec Daniels, e-PRO, GRI

Where is that line drawn between success and failure in real estate? As a trainer in real estate, I am passionate with the opinion that your greatest asset is knowledge and that failure begins when a licensee feels they know everything. Stop learning and you will stop earning.

Let's start drawing that line. Real Estate commissioned sales is the highest paid hard work and the lowest paid easy work of anything available to you. In realty, we start each day being unemployed. Accept that fact, and you have begun to draw that line.

You are a business within a business and you have to think like a business person. You need a business plan that will establish your objectives and chart the path of success. These plans are available in Software, publications and training programs like the **REALTOR®** Institute (GRI).

In my opinion, one of the biggest mistakes out there is the majority of agents who get their required 24 hours of continuing education in the 24<sup>th</sup> month. Such a work ethic can do more harm than good. Major changes occur in this industry on a daily basis. Waiting two years puts you on the wrong side of the line. I said earlier that knowledge is the key. Here is a tip: "When you go to classes, keep the certificates in your resource material so potential clients can see the steps you take in order to be of benefit to them." The prices in real estate today have brought a very sophisticated buyer and seller to us. At a minimum, we need to mirror that sophistication.

If at all possible, get into a mentor relationship with an experienced agent for the first year or so. There are some highly skilled resource people in the industry that operate

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under an umbrella of “coaching.” They are worth a look. Consider a designation program because they are taught by some of the most highly skilled trainers. All of these options are readily available.

I hear agents talk about commission splits all of the time. In many instances, agents approach this split issue from the perspective of how much they are paying the broker. OOPS! The law is pretty clear on who owns the commission and all of it belongs to the broker. I am of the opinion that making a choice of a broker solely on the commission split is poor judgment. It's nice to get all of the commission, but the key to personal income is the number of transactions, not the split.

There are designations available to you that will raise your skill level and benefit to the public. Many of them have targeted curriculums for specialists and others are there for enhanced knowledge. Applied technology has risen to the level that the client and customer will pass you by because you are not in their line of sight as they explore the market.☐

Editor's Note: Cec Daniels is an educator, school owner and broker who has served on various AAR committees.



**1. Can a broker/salesperson give a “rebate” or “refund” directly to a client at close of escrow?**

The way the law is structured it requires the title company to pay commissions to the broker. If the broker provides written directions to the title company instructing that a portion of the broker's commission be returned to the client the title company may make the payment directly. The title company should indicate in its paperwork the total commission to go to the broker and the distribution of that total.

Obviously the broker is restricted from directing a payment to a third (unlicensed) party for a referral fee, however a "refund" or "rebate" to the client is allowed under the above circumstances.

Some inquiries to the Department on this subject have received a more strict interpretation of statute (regarding payments only to licensed parties) and although that answer is not incorrect, such an interpretation may be more restrictive than the law intends. Thus, under the circumstances outlined above, a direct payment to the client is possible.

**2. When must a broker complete a Broker Supervision and Control Audit Declaration (“Self-Audit”)?**

Commissioner's Rule R4-28-303(A)(2)(f) requires that to renew as a designated broker for an employing broker, the designated broker shall complete and submit to the Department a Broker Supervision and Control Audit Declaration no more than 90 days before the broker's license expiration date. The key things here are that only designated brokers must complete the self-audit, that the audit must be completed at or within 90 days before the renewal date, and that it is based on the renewal of the BROKER, not the entity license. If the Audit Declaration is not submitted with or before the renewal form the license renewal will not be processed. The Audit Declaration may be completed online as a part of the renewal process if the broker chooses to exercise that option.

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**3. What if I answer "N/A" on the Broker Supervision and Control Audit?**

There are some occasions when an "N/A" answer is appropriate, but there are many more when it is not. Certainly if the question does not apply then "N/A" is the correct answer, but answering "N/A" to a question that does apply is providing a false answer. The Broker Audit is a required part of the renewal process, and a false answer on it is a false answer as part of the license renewal application and will be treated as such. As an example, all brokers, with very rare exceptions, must maintain records, so an "N/A" answer by an active broker to questions concerning record retention is not appropriate.

Department auditors review every Broker Supervision and Control Audit form and follow up with the submitting broker to clarify any answer that does not seem appropriate. In addition, questionable Broker Audit responses may result in actual on-site audits conducted by Department auditors. In short, answer "N/A" if it is truly the correct answer, but do not answer that way for expediency's sake or to avoid disclosing potential problem areas.

**4. Are there any changes to the advertising requirements in the revised Commissioner's rules?**

Yes, there are several. R4-28-502 governs advertising, and one of the changes is that when licensees advertise their own property they must include the words "owner/agent" in the advertisement.

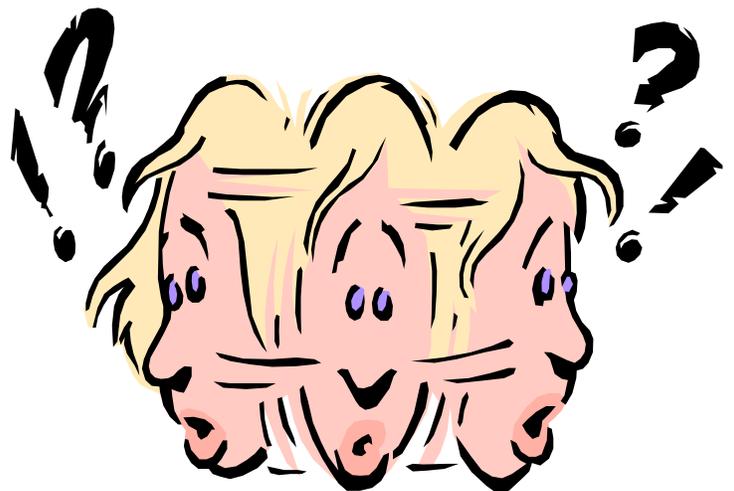
Another change to this rule provides that the owner of a real estate school is ultimately responsible for the accuracy of advertisements for the school.

The requirement covering identification of the employing broker in advertisements was changed to be "in a clear and prominent manner." Webster defines prominent as "thrusts itself into attention" or "conspicuous in position or importance."

**5. Is there anything new in the rule governing "Professional Conduct?"**

Yes. In addition to requiring a salesperson or broker to exercise reasonable care in ensuring that they convey information to the client that is material to the client's interest, as it always has, R4-28-1101(I) now has additional language. The new requirement is that the salesperson or broker "shall take reasonable steps to assist a client in confirming the accuracy of information." So what does that mean? It does not mean that the salesperson must personally confirm everything, however if there is an indication of termite infestation the licensee should advise the client that a termite inspection should be considered. If the client is concerned about the structural integrity of the building the licensee should advise the client of the appropriate type of specialist to conduct an inspection. The intent of the rule is not that the licensee arrange for the inspections or conduct all inspections possible, but that the licensee not just tell the client "I don't know, you figure it out." ☐

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





TITLE 4, CHAPTER 28. REAL ESTATE DEPARTMENT

**ARTICLE 1. GENERAL PROVISIONS**

Contains definitions, sets development inspection fees, describes computation of filing deadlines, time frames and procedures for processing license applications.

**ARTICLE 3. LICENSURE**

Describes requirements and procedures for applying for licensure as a salesperson or broker, changes to name, address, license status, employer; license renewal and reinstatement, and documentation in instances of unlicensed activity.

**ARTICLE 4. EDUCATION**

Provides guidelines and requirements for pre-license and continuing education instruction, including course content, administration of the state license examination, and approval of schools, courses, and instructors, and for certification as a business brokerage specialist.

**ARTICLE 5. ADVERTISING PROVISIONS**

Describes permitted, restricted, or prohibited activities pertaining to advertising and promotional activities by salespersons, brokers and developers.

**ARTICLE 7. COMPENSATION**

Disclosure requirement concerning compensation a broker may receive.

**ARTICLE 8. DOCUMENTS**

Describes requirements for providing copies of documents and when certain contract disclosures and notices are required to be made.

**ARTICLE 11. PROFESSIONAL CONDUCT**

Identifies specific conduct that is required or prohibited to guide salespersons and brokers in their dealings with clients and customers, and brokers' responsibilities to exercise supervision over licensed and unlicensed employees.

**ARTICLE 12. DEVELOPMENTS**

**PART A. APPLICATION FOR PUBLIC REPORT, CERTIFICATE OF AUTHORITY, OR SPECIAL ORDER OF EXEMPTION**

Procedures to follow and information required to apply for a subdivision public report, to sell unsubdivided land, or exemption, or to operate a cemetery.

**PART B. GENERAL INFORMATION**

Permitted use of an expedited process, conditional sales and subsequent owner exemptions, changes to a development or cemetery, or the owner or operator of a development or cemetery that require amendment of the license, certification of a development for filing with HUD, options and blanket encumbrances, partial releases, restrictions on developers' handling of earnest monies, and record keeping.

**ARTICLE 13. ADMINISTRATIVE PROCEDURES**

Describes service on the Department and licensees, investigative information, response to charges, procedures for an attorney to appear for a respondent licensee, describes procedures for consolidation of similar matters, and rehearing requests, procedures, and rulings.

The RULES can be viewed in entirety by going to the Department's web site: [www.re.state.az.us](http://www.re.state.az.us) or the Secretary of State's website: [www.azsos.gov](http://www.azsos.gov) and selecting Administrative Code, Title 4, Chapter 28.



**No. 2005.01**

Short Title: **Acceptable Forms of Payment**  
Description: Methods of payment accepted by the Department.  
Effective Date: June 18, 1999; Revised & Renumbered 5/28/04; Renumbered 4/01/05.

**No. 2005.02**

Short Title: **Attendance Requirements for Credit & Enforcement**  
Description: Circumstances when a licensee is entitled to credit for a class.  
Effective Date: June 18, 1999; Revised & Renumbered 5/28/04; Renumbered 4/01/05.

**No. 2005.03**

Short Title: **Disclosure of Licensee's Home Address**  
Description: Circumstances under which a licensee's home address must be disclosed.  
Effective Date: June 18, 1999; Revised & Renumbered 5/28/04; Renumbered 4/01/05.

**No. 2005.04**

Short Title: **Unlicensed Assistants**  
Description: Clarification of tasks that can be delegated to an unlicensed assistant.  
Effective Date: June 18, 1999; Revised & Renumbered 5/28/04; Renumbered 4/01/05.

**No. 2005.05**

Short Title: **Access to Arizona Real Estate Law Book on the World Wide Web**  
Description: Unrestricted access to the Arizona Real Estate Law Book on the Department's Web-Site meets the requirement of statute.  
Effective Date: December 6, 1999; Renumbered 5/28/04; Renumbered 4/01/05.

**No. 2005.06**

Short Title: **Electronic Record Keeping**  
Description: Conditions under which brokers may keep required records electronically.  
Effective Date: August 15, 2000; Revised & Renumbered 5/28/04; Renumbered 4/01/05.

**No. 2005.07**

Short Title: **Department Investigation of Cases Involving Civil Litigation**  
Description: Investigation of complaints and pursuit of civil remedies.  
Effective Date: June 18, 1999; Revised & Renumbered 5/28/04; Renumbered 4/01/05.

**No. 2005.08**

Short Title: **Payment of Commission after License Expiration or Transfer of Employment**  
Description: Department's position concerning payment of a commission to a licensee after the Licensee has changed employing brokers or the license has expired.  
Effective Date: June 18, 1999; Revised & Renumbered 5/28/04; Renumbered 4/1/05.

**No. 2005.09**

Short Title: **Non-commercial Requests to Inspect Records and Fees for Copies**  
Description: Availability of Department's records and the estimated time for production.  
Effective Date: June 18, 1999; Revised & Renumbered 5/28/04; Renumbered 4/1/05.

**No. 2005.10**

Short Title: **Electronic Signatures**  
Description: Acceptance of a broker's electronic signature on contracts and agreements.  
Effective Date: November 5, 2004; Renumbered 4/01/05.

**No. 2005.11**

Short Title: **Subdivision Public Report Application Form, Changes**  
Description: Frequency of changes to the Applications for Subdivision Public Report and provision for comment by stakeholders.  
Effective Date: April 1, 2005.

**No. 2005.12**

Short Title: **Continuing Education, Residential Resale Purchase Contract**  
Description: Requirement for instructors to attend a train-the-trainer course by the Arizona Association of Realtors®.  
Effective Date: April 1, 2005.



## **Commissioner's Final Orders**

### Appealable Agency Actions

#### **Margie Means (Queen Creek)**

File No. 05F-DI-166-REL, Order 1/20/2005

Means' salesperson's license was summarily suspended under A.R.S. § 32-2157(C) based on her conviction of two counts of Theft, in violation of A.R.S. § 32-2153 (B)(2) and (7). Means did not appeal the suspension.

#### **Thomas Cady (Scottsdale)**

File No. 05F-054-REL, Order 1/19/2005

After hearing, Cady's application for real estate salesperson's license is denied under A.R.S. § 32-2153 (A)(3), (B)(7) and (10) and A.A.C. R4-28-301 (F) based on disciplinary actions 11/18/1999 and 6/15/2000 by the Department of Building and Fire Safety against the Class D-8 Dealer license of an entity d/b/a Crossroads Mobile Homes for which Cady was the qualifying party; payment of Consumer Recovery Fund awards by the Department of Building and Fire Safety for Crossroads Mobile Homes' failure to complete certain items on homes it had sold, failure to properly refund a payment, and misrepresentations; disciplinary action by the State Banking Department 8/21/2001 against an entity for which Cady was the managing member for its violation of Banking statutes and rules; disciplinary action by the Department of Insurance 10/17/2001 revoking Cady's insurance license; and Department of Real Estate Consent Order 5/16/2002 revoking Cady's real estate license.

#### **Jeffrey J. Eger (Mesa)**

File No. 05F-LI-029-REL, Order 1/12/2005

After hearing, Eger's application for renewal of his real estate salesperson's license is denied under A.R.S. § 32-2153 (A)(3) (B)(1), (3) and (7) based on his failure to timely disclose disciplinary actions taken against him by the Optometry Board; his filing of false and misleading renewal applications in 1994, 1996, 1998 and 2002 wherein he failed to disclose those same actions against him by the Optometry Board; and his substantial misrepresentations to the Department.

#### **Venice F. Harris (Phoenix)**

File No. 05F-LI-008-REL, Order 12/3/2004

After hearing, Harris's real estate salesperson's license is denied under A.R.S. § 32-2153 (B)(2), (7) and (10) based on her conviction for Forgery and Theft by Employment, which was in violation of state laws involving theft and forgery, and demonstrates a lack of honesty, truthfulness and good character.

#### **Inis Paul Hernandez, III (Peoria)**

File No. 04F-LI-205-REL, Order 12/3/2004

After hearing, Hernandez's application for real estate salesperson's license is denied under A.R.S. § 32-2153 (B)(2) and (7) based on his conviction of a crime of moral turpitude, and failure to demonstrate honesty, truthfulness and good character.

conviction of theft, a crime of moral turpitude, and failure to demonstrate honesty, truthfulness and good character.

#### **Kevin G. Lee (Mesa)**

File No. 05F-LI-024-REL, Order 12/3/2004

After hearing, Lee's application for real estate salesperson's license is denied under A.R.S. § 32-2153 (B)(2), (7), and (10) based on his conviction of theft, a crime of moral turpitude, and in violation of state laws involving theft, and failure to demonstrate honesty, truthfulness and good character.

#### **Jason Robert Litten (Tucson)**

File No. 05F-LI-022-REL, Order 12/3/2004

After hearing, the Department denied Litten's application for real estate salesperson's license under A.R.S. § 32-2153 (B)(7) and (9) based on his violation of court orders and failure to demonstrate honesty, truthfulness and good character.

#### **Ray Morrow (Maricopa)**

File No. 05F-LI-109-REL, Order 3/24/2005

The Department denied Morrow's application for real estate salesperson's license under A.R.S. § 32-2153 (B)(2) and (7) based on four alcohol-related misdemeanor convictions. After hearing, Morrow is granted a 2-year provisional license, subject to specified terms and conditions.

#### **Gretchen L. Novak (Fountain Hills)**

File No. 04F-LI-199-REL, Order 11/15/2004

After hearing, the Department denied Novak's application for real estate salesperson's license under A.R.S. § 32-2153 (B)(7) based on her failure to demonstrate honesty, truthfulness and good character.

#### **Toni L. Redfern (Phoenix)**

File No. 05F-LI-068-REL, Order 2/7/2005

After requesting a hearing, Redfern failed to appear and the Department denied Redfern's application for real estate salesperson's license under A.R.S. § 32-2153 (B)(3) and (7), and because there exists an outstanding repayment due and owing to the real estate recovery fund.

#### **Jena Lynne Russell (Tucson)**

File No. 05F-LI-016-REL, Order 2/28/2005

The Department denied Russell's application for real estate salesperson's license under A.R.S. § 32-2153 (B)(2), (7) and (9) based on felony convictions, violation of court order, and failure to demonstrate honesty, truthfulness and good character. After hearing, Russell is granted a 2-year provisional license, subject to specified

**Azure S. Schaffer (Chandler)**

File No. 05F-LI-035-REL, Order 12/3/2004

After requesting a hearing, Schaffer failed to appear and the Department denied Schaffer's application for real estate salesperson's license under A.R.S. § 32-2153 (B)(2), (7), (9) and (10)

**Carey G. Stock (Mohave Valley)**

File No. 04F-LI-194-REL, Order 12/21/2004

After hearing, the Department denied Stock's application for real estate salesperson's license under A.R.S. § 32-2153 (B)(2), (5), (7), (9) and (10) based on his convictions for theft, a crime of moral turpitude, his having been found guilty of conduct which constitutes dishonest dealings, violation of criminal probation order, violation of state laws involving theft, and failure to demonstrate honesty, truthfulness and good character.

**William S. Thomas (Gilbert)**

File No. 04F-LI-208-REL, Order 12/3/2004

The Department denied Thomas's application for real estate salesperson's license under A.R.S. § 32-2153 (B)(2) and (7) based on felony convictions and failure to demonstrate honesty, truthfulness and good character. After hearing, Thomas is granted a 2-year provisional license, subject to specified terms and conditions.

**Patricia Irene Wade (Prescott Valley)**

File No. 05F-LI-069-REL, Order 1/26/2005

The Department denied Wade's application for real estate salesperson's license under A.R.S. § 32-2153 (B)(2) and (7) based on her conviction for theft and failure to demonstrate honesty, truthfulness and good character. After hearing, Wade is granted a 2-year provisional license, subject to specified terms and conditions.

**Consent Orders**

Appealable Agency Actions

**Luis Alonso (Gilbert)**

File No. 05F-LI-062-REL, Consent Order 1/31/2005

The Department denied Alonso's application for renewal of real estate salesperson's license under A.R.S. § 32-2153 based on his conviction of Aggravated DUI, a felony and a crime of moral turpitude, his failure to disclose the conviction to the Department within 10 days, and failure to demonstrate honesty, truthfulness and good character. Alonso appealed and is issued a 2-year provisional license subject to specified terms and conditions, including that his license is suspended for thirty days and he is assessed a \$2,000 civil penalty.

**Matthew John Beck (Paradise Valley)**

File No. 05F-LI-164-REL, Consent Order 3/14/2005

The Department denied Beck's application for real estate salesperson's license under A.R.S. § 32-2153 based on his violation of Minnesota state laws that involve substantial misrepresentation and his failure to demonstrate honesty, truthfulness and good character. Beck appealed and is issued a 2 year provisional license, subject to specified terms and conditions.

**Kelly Brentas, a/k/a Kelly Givens (Scottsdale)**

File No. 05F-LI-0138-REL, Consent Order 2/28/2005

The Department denied Brentas's late-filed application for renewal of real estate salesperson's license under A.R.S. § 32-2153 based on her misrepresentation to sellers that she held an active real estate license when she purchased a home after her license had expired and her receipt of compensation while not licensed to receive it. Brentas appealed and is issued a 2-year provisional license subject to specified terms and conditions.

**Michael J. Byrne (Gilbert)**

File No. 05F-LI-207-REL, Consent Order 4/4/2005

The Department denied Byrne's application for real estate salesperson's license under A.R.S. § 32-2153 based on his misdemeanor convictions for DUI and Driving Without a Valid License. Byrne appealed and is issued a 2-year provisional license subject to specified terms and conditions.

**Arturo Castro (Glendale)**

File No. 05F-LI-075-REL, Consent Order 1/12/2005

The Department denied Castro's application for real estate salesperson's license under A.R.S. § 32-2153 based on his misdemeanor convictions for theft and shoplifting. Castro appealed and is issued a 2-year provisional license, subject to specified terms and conditions, including that he post a surety bond.

**Raymond L. Ferrier a/k/a Raymond L. Jowell (Mesa)**

File No. 05F-LI-171, Consent Order 3/16/2005

The Department denied Ferrier's application for real estate salesperson under A.R.S. § 32-2153 based on disciplinary action against his appraiser's license, 1987 felony convictions and 1989 conviction for theft, crimes of moral turpitude. Ferrier appealed and is issued a 2-year provisional license, subject to specified terms and conditions.

**Linda Ginest (Kingman)**

File No. 05F-DI-147-REL, Consent Order 2/1/2005

The Department denied Ginest's late-filed application for renewal of her real estate salesperson's license under A.R.S. § 32-2153 based on her activities in four real estate transactions after the expiration of her

*Continued from page 15*

license. Ginest appealed and her application for license renewal is granted, her license is suspended for 60 days, effective 11/22/2004 and she is assessed a civil penalty of \$500.

**Eric K. Jacobs (Scottsdale)**

File No. 05F-DI-202-REL, Consent Order 3/30/2005  
The Department denied Jacob's application for real estate salesperson's license under A.R.S. § 32-2153 based on a 1994 felony conviction. Jacobs appealed and is issued a 2-year provisional license, subject to specified terms and conditions.

**Brandon Ace Loomis (Phoenix)**

File No. 05F-LI-074-REL, Consent Order 1/7/2005  
The Department denied Loomis's application for real estate salesperson's license under A.R.S. § 32-2153 based on his misdemeanor conviction for Possession of Marijuana and violation of a criminal order. Loomis appealed and is issued a 2-year provisional license, subject to specified terms and conditions.

**Michael Matthew Morton (Scottsdale)**

File No. 05F-LI-076-REL, Consent Order 1/7/2005  
The Department denied Morton's application for real estate salesperson's license under A.R.S. § 32-2153 based on his 2002, 2000, and 1999 alcohol-related misdemeanor convictions and 2001 plea of guilty to writing a bad check. Morton was also convicted in 2002 of Driving with License Suspended and Failure to Appear, which he failed to disclose. Morton appealed and is issued a 2-year provisional license, subject to specified terms and conditions.

**Ernest Paz (Phoenix)**

File No. 05F-LI-162-REL, Consent Order 4/11/2005  
The Department denied Paz's application for real estate salesperson's license under A.R.S. § 32-2153 based on his 1998 felony conviction and 2002 misdemeanor conviction. Paz appealed and is issued a 2-year provisional license, subject to specified terms and conditions, including that he post a surety bond.

**Bob L. Plemon (Lake Havasu City)**

File No. 05F-LI-200-REL, Consent Order 4/4/2005  
The Department denied Plemon's timely filed application for renewal of his real estate salesperson's license under A.R.S. § 32-2153 based on his 2004 misdemeanor convictions for Driving under the Extreme Influence of Intoxicating Liquor and DUI. Plemon appealed and is issued a 2-year provisional license, subject to specified terms and conditions.

**Disciplinary Actions**

**Robin Aronoff a/k/a Rob Aronoff and Scotia Group Management (Tucson)**

File No. 05F-DI-203-REL, Consent Order 1/25/2005  
Aronoff, designated broker, allowed Scotia Group Management to continue to operate as a real estate broker, to employ real estate salespersons, and to manage properties after its license expired in October 2004, in violation of A.R.S. § 32-2153 (A)(3) and (B)(6). Aronoff's and Scotia's broker's licenses are suspended for 15 days, effective 1/11/2005, and they are assessed a civil penalty of \$2,000. Aronoff will develop and implement procedures to prevent a recurrence.

**Olatunde Ayoola (Gilbert)**

File No. 05F-DI-289-REL, Consent Order 4/12/2005  
Ayoola continued to be employed by 1st USA Realty, to operate as a real estate salesperson, and received compensation after his license expired, and failed to timely renew his license in December 2004, in violation of A.R.S. § 32-2122 (B), 32-2153 (A)(10), (A)(22) and (B)(6). His license renewal application is granted and his license suspended for 30 days, effective 3/14/2005, and he is assessed a civil penalty of \$1,000.

**Janice Cornia, Walter Schirmer and SMDI Company (Phoenix)**

File No. 05F-LI-181-REL, Consent Order 3/7/2005  
Cornia continued to work, and SMDI Company, through Schirmer, its designated broker, continued to employ Cornia as a real estate salesperson, after her license expired in August 2004, in violation of A.R.S. §§ 32-2153 (A)(3) and 32-2155 (A). Cornia's license is suspended for 45 days, effective 12/22/2004 and she is assessed a civil penalty of \$750. Schirmer is assessed a civil penalty of \$500.

**FF Properties, LP, Kimberly Crugnale, and Elizabeth "Liz" Culibrk (Phoenix, Gilbert)**

File No. 05F-DI-156-REL, Consent Orders 3/4/2005 and 3/11/2005  
FF Properties continued to operate as a real estate broker, to employ and pay compensation to real estate salespersons, and to manage properties after its license expired in January 2004, in violation of A.R.S. §§ 32-2153 (A)(3) and 32-2155 (A). Crugnale was FF Properties' designated broker through April 23, 2004, and failed to exercise reasonable supervision over FF Properties, including to ensure that FF Properties was currently licensed, in violation of

## Disciplinary Actions

*Continued from page 16*

A.R.S. § 32-2153 (A)(3) and (21). FF Properties failed to file an application to renew its license and appoint Culibrk its designated broker until November 2004, and Culibrk acted as a real estate licensee without an active-status license as required under A.R.S. § 32-2122, in violation of A.R.S. § 32-2153 (A)(3). FF Properties' application for license renewal is granted, subject to a 15 day suspension effective 12/3/2004, and it is assessed a civil penalty of \$3,000. Culibrk's broker's license is suspended for 30 days, retroactive to 12/3/2004 and she is assessed a civil penalty of \$2,000. Crugnale's license is suspended for 15 days and she is assessed a civil penalty of \$5,000.

### **Dreams-Homes & Land and George Bridges (Fountain Hills)**

File No. 05F-DI-247-REL, Consent Order 3/11/2005

Bridges, designated broker, allowed Dreams-Homes & Land to continue to operate as a real estate broker, to employ and pay compensation to a real estate salesperson, and executed listing agreements, purchase contracts and received referral fees after its license expired in October 2004, in violation of A.R.S. § 32-2153 (A)(3) and (B)(6). Bridges' and Dreams-Home & Land's real estate broker's licenses are suspended for 30 days, effective 2/22/05 and they are assessed a civil penalty of \$2,000. Bridges shall develop and implement procedures, and provide a copy to the Compliance Officer, to prevent a recurrence.

### **Jeffrey Hanrath and Equity Development, LLC (Chandler)**

File No. 05F-DI-132-REL, Consent Order 2/1/2005

Hanrath, designated broker, allowed Equity Development to continue to operate as a real estate broker, to pay and or receive compensation in violation of the statutes and rules, to employ real estate salespersons, and executed purchase contracts after its license expired in February 2004, and failed to timely file an application for license renewal, in violation of A.R.S. § 32-2153 (A)(3), (6), (10), (14), and (B)(6). Hanrath and Equity's real estate broker's licenses are suspended for 10 weeks, effective 11/3/2004, and they are assessed a civil penalty of \$4,000.

### **Nichole Mehalic, Camille Herbst, Robert Herd, Stephen Torkelsen and Debbie Valdes (Tucson/Oro Valley)**

File No. 05F-DI-051-REL, Consent Orders 1/31/2005, 2/1/2005, and 2/4/2005

In the spring of 2003, Mehalic hired Herd as a project manager and consultant, and Valdes, Torkelsen, and Herbst as licensed assistants, and paid them compensation for real estate activities to them directly, without going through their employing broker, Roy Long Realty, in violation of A.R.S. § 32-2153 (A)(3) and (10). Herd, Valdes, Torkelsen, and Herbst accepted employment and compensation from other than their employing broker, in violation of A.R.S. §§ 32-2153 (A)(7), (10) and 32-2155 (A). Respondents are each assessed a civil penalty of \$1,000.

### **David Higgins, Troy Brown, Randolph Tenney, and R & D Dart Realty Services, Inc., d/b/a GMAC Real Estate Tenney & Associates (Pinetop/Show Low)**

File No. 05F-DI-104-REL, Consent Order 1/6/2005

Higgins continued to work for R & D Dart Realty after his license expired November 2003, in violation of A.R.S. § 32-2153 (A)(3) and (B)(6). Brown, designated broker for R & D Dart Realty from 8/18/2003 until 4/1/2004, and Tenney, R & D Dart Realty's designated broker since 4/1/2004, allowed R & D Dart Realty to continue to employ and pay compensation to Higgins, in violation of A.R.S. §§ 32-2153 (A)(3) and 32-2155(A). Higgins' real estate salesperson's license is suspended for 16 weeks, effective 10/25/2004, and he is assessed a civil penalty of \$1,000. Brown, Tenney and R & D Dart Realty are each assessed civil penalties of \$500.

### **Lobo Jody, LLC (Scottsdale)**

File No. 05F-SD-142, Consent Order 2/4/2005

Lobo Jody, through a real estate broker, acquired six or more lots in Pine Oaks, a previously approved subdivision of unimproved lots. Lobo Jody listed some of the lots it had acquired, now improved lots because a dwelling had been constructed or was under contract to be constructed, for sale with the same broker and sold some of these improved lots without first notifying the Commissioner, obtaining a public report, and notifying purchasers by written contract disclosure that a public report was required, and taking a receipt for public report from purchasers, in violation of A.R.S. § 32-2181 (A), 32-2183 (A) and (F) and A.A.C. R4-28-803 (A) and R4-28-805. Lobo Jody shall cease & desist until it complies with all applicable laws, may complete two pending sales, shall offer rescission to all purchasers, shall obtain a subdivision public report and amend it, as necessary, and is assessed a civil penalty of \$1,000.

### **Martha Alicia Montero (Phoenix)**

File No. 05F-DI-028, Consent Order 1/31/2005

Montero's real estate salesperson's license is revoked under A.R.S. § 32-2153 (B)(2), (5), (7) and (10) based on her felony conviction for Conspiracy to Commit Money Laundering; having been found guilty of conduct which constitutes fraud or dishonest dealings; failure to demonstrate honesty, truthfulness and good character; and violation of a state law or rule that relates to real estate and that involves fraud, substantial misrepresentation, dishonest dealings.

### **Robert Morales (Flagstaff)**

File No. 05F-DI-204, Consent Order 3/28/2005

Morales signed the name of his business partner, who was also a real estate broker, to two purchase contracts in which Morales was principal without written authorization to do so, and received compensation, in the form of a reduction in the purchase price, for one of the properties, in violation of A.R.S. § 32-2153 (A)(10) and (25). Morales is assessed a civil penalty of \$2,500.

## Disciplinary Actions

Continued from page 17

### **Pulte Home Corporation (Phoenix)**

File No. 02A-SD-075, Consent Order 3/3/2005

Pulte procured a public report by filing applications in violation of A.R.S. § 32-2183 (C)(7) (by providing inaccurate information about the availability and cost of fire protection service and property taxes) and failing to include complete property tax disclosures, in violation of A.R.S. § 32-2183.03 (C)(2). Pulte is assessed a civil penalty of \$5,000.

### **Jeffery Slaughter and Bud Crawley d/b/a Bud Crawley Real Estate (Phoenix)**

File No. 05F-LI-186-REL, Consent Order 1/28/2005

Slaughter continued to work for Crawley as a real estate salesperson after Slaughter's license expired in January 2004, in violation of A.R.S. § 32-2153 (A)(3) and (B)(6), and Crawley continued to employ Slaughter as a real estate salesperson in violation of A.R.S. §§ 32-2153 (A)(3) and 32-2155 (A). Slaughter's application for license renewal is granted and his license suspended for 15 weeks, effective 12/6/2004, and he is assessed a civil penalty of \$1,750. Crawley is assessed a civil penalty of \$1,000 and shall develop and implement procedures to prevent a recurrence.

### **James Souza (Queen Creek)**

Souza, as principal, made misrepresentations to a prospective tenant/buyer about his ability to lease a residential property because he had already agreed to sell the property to another buyer, in violation of A.R.S. § 32-2153 (A)(1) and (B)(3). Souza disregarded or violated provisions of Title 32, Chapter 20, A.R.S., and the Commissioner's Rules, in violation of A.R.S. § 32-2153 (A)(3), and demonstrated negligence in violation of A.R.S. § 32-2153 (A)(22). Souza failed to deal fairly with the two purchasers, and failed to disclose to the second purchaser that he was unable to perform under the terms of the second contract due to the prior contract he had executed to sell the property to the first purchaser, in violation of A.A.C. R4-28-1101 (A) and (B). Souza's real estate salesperson's license is revoked.

### **Terri Tchernovanov (Gilbert)**

File No. 04F-126-REL, Consent Order 1/31/2005

Tchernovanov failed to disclose an adverse real estate judgment to the Department within 10 days, required under A.A.C. R4-28-301 (F) and in violation of A.R.S. § 32-2153 (A)(3). This consent order supersedes in entirety Commissioner's Final Order dated 10/14/2004 in this matter, Tchernovanov is assessed a \$1,000 civil penalty, shall dismiss her appeal, and each party shall bear their own costs.

### **Tara Van Hoose f/k/a Tara Keller, Quanta d/b/a Keller Williams Southwest Realty, and James Dunning (Scottsdale)**

File No. 05F-LI-184-REL, Consent Order 2/25/2005

Van Hoose continued to work as a real estate salesperson after her license expired in September 2004 in violation of A.R.S. § 32-2153 (A)(3) and (B)(6), and Keller Williams Southwest Realty employed and paid compensation to Van Hoose as a real estate salesperson after her license expired, in violation of A.R.S. §§ 32-2153 (A)(3) and 32-2155(A). James Dunning, Keller Williams Southwest's designated broker, failed to supervise its employees and to ensure that salespersons in its employ were currently licensed, in violation of A.R.S. § 32-2153 (A)(3) and (21). Van Hoose's license is suspended for 15 days and she is assessed a civil penalty of \$1,000. Dunning and Keller Williams Southwest are jointly assessed a civil penalty of \$1,000.



**ARIZONA DEPARTMENT OF  
REAL ESTATE**

**Main Office:**

2910 North 44th Street, Suite 100  
Phoenix, Arizona 85018  
Phone: 602.468.1414  
Fax: 602.468.0562

**Southern Arizona Office:**

400 W. Congress, Suite 523  
Tucson, Arizona 85701  
Phone 520.628.6940  
Fax 520.628.6941

**We are on the web:  
<http://www.re.state.az.us>**

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