



THE
Arizona Department of Real Estate
BULLETIN

June 2006

Volume 32 – Issue 3

Milestones at ADRE. See pages 2 & 3.

Real Estate Hot Topic at Arizona Mexico Commission.
See page 5.

So, You Want to be in Real Estate?

by Colin Austin, Deputy Director of Professional Education

This is a question many of you have asked over the last few years. Recently the Department of Real Estate released a six-minute DVD explaining the process and pitfalls of becoming a licensed real estate agent. The DVD will be shown in the first class of the pre-licensing courses taught by licensed schools. From an educational standpoint, becoming a licensed real estate agent is not all that difficult. Enroll in a quality school, sit through 90 hours of classroom instruction, and pass the state and national portions of the Real Estate Examination. Ok, for some it may be bit taxing, but it's a requirement set forth by the Arizona Revised Statutes. Education is extremely important, and can be the foundation of a life-changing career.

There are other considerations when contemplating a career in real estate one should think about, such as "What have I done to get to this point in my life?" Some of the factors that will affect your career choices are **character, honesty, truthfulness**, and overall **competency**. The ability to make sound, solid decisions is extremely important. After all, you are considering a career that will not only affect your life, but also the lives of a great many people who will look to you for professional assistance when they sell or buy property. Criminal activity, civil judgments, and professional license revocations or suspensions (regardless of the location) may have a profound effect on your ability to procure a real estate license. The Department will not issue a license to someone on probation/parole for a felony conviction.

After obtaining a real estate license, one may consider where to go from there. "Should I work towards my GRI (Graduate Realtor® Institute)?" "Do I want to qualify for CRS (Certified Residential Specialist) courses?" "Should I specialize in business brokerage". "Do I want to obtain my broker's license?" The possibilities are endless. So the next time someone asks you about becoming a real estate agent, let him or her know what's expected. After all, this is your profession too. Help ADRE keep it a cut above. ☐

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The ADRE Mission

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

Final Thoughts as I Retire

by **Richard Simmonds**
Assistant to the Commissioner

As I think back over the last twelve years with the Department of Real Estate, I can't say enough about the good people who make up the staff at the Department. They work hard and don't get the pay they deserve from the State but they continue on each day with a smile. I will miss them. Certainly the highlight of my career with ADRE was being part of the team working with Commissioner Richardson. She is dedicated and works hard as your Commissioner. During the past 3 ½ years I have seen the Department change dramatically for the better and all of this while facing odds stacked against us with an inadequate budget appropriation, outside forces trying to tell us how to do our job, and an increasing workload that was staggering.



However, in spite of this, we managed to accomplish quite a bit. A few things that stand out in my mind that we accomplished were: much improved information to the public through our web site, increased protection for the public through improved investigations and enforcement, on-line licensing renewals, and improved screening of new license applications just to name a few.

I mentioned that we had and still have an inadequate budget appropriation. I believe the last projection showed that for this fiscal year ending June 30, 2006, the income we bring into the state will exceed our appropriation by 45% or put another way, our appropriation was only 77% of the fees received. The Department needs your help in contacting your legislators about this unjust treatment.

Finally, my heartfelt thank you for all your support over the years and for your thoughts and prayers as I enter this new part of my life. ☐

ADRE's Fiscal Planner, and all around "Mr. Fix-it", **Curt Leaf** retired this month, after 33 years of service. Curt has been a fixture at the Department since he came to work for ADRE in 1973 when the ADRE offices were at 1645 West Jefferson Street. Curt helped orchestrate the moves to the three subsequent ADRE office locations and served the Department under 10 Commissioners. During Curt's tenure, he has gained the reputation of not only being "Mr. Fix-it" but also being "Mr. Statistics". Curt has been known and respected over these past three decades not only at ADRE but also at the Governor's Office of Strategic Planning & Budgeting, at the Joint Legislative Budget Committee – and even at the State Surplus Property warehouse!

All of us at ADRE will miss his many talents and wish him well, knowing his avocation with the Phoenix Symphony Guild will keep him occupied doing good work that benefits our community and the state of Arizona. ☐



On June 16, 2006, **Joe Amy** retired from the Department of Real Estate. Joe served in several areas within Licensing and Education during his tenure. Joe started with the Department in 1994 as a customer service representative, screening complaint calls in what was then known as the Customer Service Division. Joe transferred to the Education Division and for the last few years he was charged with reviewing most of the School, Instructor and Course Applications.



Joe and his wife Barbara will be relocating to Minnesota, in the near future and will most likely long for the Arizona sun next winter. All of us, here at the Department wish him happiness and good health, as he pursues his hobbies of fishing and hunting. Good Luck and Best Wishes, Joe!!! ☐

Thomas J. Pancrazi of Yuma Appointed to Advisory Board



Thomas Pancrazi was appointed to the Real Estate Advisory Board by Governor Janet Napolitano on March 16, 2006. Her term expires January 31, 2011.

Mr. Pancrazi has two decades of experience in commercial real estate from leasing retail and office space, development of industrial, retail and office sites, to site selection for a regional shopping center. He has a Broker's license in both Arizona and California.

He is a University of Arizona graduate with a Bachelor of Science Degree in Real Estate. ☐

ADRE Has New Deputy Director of Licensing



Connie Johnson was hired as the Deputy Director of Licensing, effective 4-17-2006. Connie has retired from service in the United States Army, where she most recently served as a liaison with training schools to create positive results through structure, retraining, educational presentations, and her ability to identify and correct deficiencies within an application process. She was able to save the military over \$400,000 by eliminating a 15-year backlog of work orders.

Connie has training and experience in leadership development, operations, supervision and management, and within government service structure, ensuring that all policies and procedures are within compliance. She is currently pursuing a degree in Public Administration. ☐

Governor Proclaims May 3, 2006 State Employee Recognition Day



ADRE employees enjoying their appreciation lunch.

From left: Sheila Perry-Johnson, Toni Pittman, Amy Wilson, Carla Randolph, Michelle Wos and Bonnie Carrillo



Employee Appreciation Day.
From left: Sheila Perry-Johnson, Curt Leaf, Jim Napier and Linda Bevin

License Renewal Requirements

by Cindy Wilkinson

Director of Licensing and Professional Education



To be eligible to renew your real estate license, you must first have completed a minimum of 24 credit hours of ADRE-approved continuing education courses, taken since original licensure or last renewal, whichever is later.

Eighteen of the 24 hours must include at least three credit hours each in six mandatory categories, prescribed in rule. These mandatory categories are: 1. Agency Law; 2. Contract Law; 3. Commissioner's Standards; 4. Disclosure; 5. Fair Housing; & 6. Real Estate Legal Issues.

To complete the 24 credit hours, you may take additional courses in any of the mandatory categories, or you may take courses in the General Real Estate or Business Brokerage categories. (A.A.C. R4-28-402)

If you have earned the Business Brokerage Specialist designation from the Department and wish to renew the designation along with your license, you will need a total of 30 hours of continuing education credit. In addition to the 18 hours in the mandatory categories, you will need 12 credit hours approved in the Business Brokerage category, and if it is your first renewal of the designation, you must pass a test on these 12 hours. (See A.R.S. § 32-2130(A) and A.A.C. R4-28-405)

You may qualify to take an alternate course as a substitute for the Fair Housing category. If you are interested in this option, refer to Substantive Policy Statement No. 2005.14, in the back of the 2005 edition of the Arizona Real Estate Law Book, and on the Department's webpage, www.azre.gov. No continuing education credits are required to renew an employing entity's license.

S. A. H. B. A.* Banquet

Tucson, Arizona February 25, 2006

Darryl & Barbara Churchill, David Jankofsky,
Commissioner Richardson, & Ann White

* Southern Arizona Home Builders Association

If you received a waiver for any part of the continuing education requirement, are claiming a substitute for the Fair Housing course, or did not take courses that were pre-approved by the Department and assigned a course number, currently, you cannot renew using the On-line Licensing system. In those instances you will have to mail in your application for license renewal with the required forms, fees and supporting documentation.

You can look up approved courses and schools on the Department's webpage. The Department will accept a renewal application filed no earlier than 90 days prior to your license expiration date. No continuing education credits are required to renew an employing entity's license.☐

The Commissioner Out-&-About in the Real Estate Community



A. A. R.* Mid-Winter Conference

Prescott, Arizona March 8, 2006

Bob Peirce, Bob Bass, Diane Scherer, Commissioner
Richardson, George Watrous, & Dan Carapellucci

* Arizona Association of REALTORS®





Commissioner's Corner

By Commissioner Elaine Richardson

The Real Estate Ad Hoc Committee met on June 15, 2006, as part of the of the Arizona — Mexico Commission’s Plenary Session, at the Hyatt at Gainey Ranch in Scottsdale, Arizona. The following are notes from Commissioner Richardson’s Note Book:

Real Estate Ad Hoc Committee Co-Chairs:

Gary Brasher and Elaine Richardson

Sonora Chair:

Edmundo Chavez Mendez

Attendees:

10 of the 11 Ad Hoc Committee Members
Plus approximately 85 Industry Members from both Arizona and Sonora

Overall Tone:

Energetic, Informative and Interactive

Agenda: Welcome and Introductions followed by very interesting presentations by nine different professionals in various fields covering subjects such as Certification of real estate agents in Sonora, Financing issues, a Streamlined Arizona Public Report, Taxation, Federal legislation regarding mandatory licensure for Sonora agents to name just a few.

Outcome: Two of last year’s Action Items Completed as follows:

- a) To promote and endorse the design of a Sonora Public Report for Real Estate Developments to be homogenized with the Arizona Public Report within the legal framework allowed.
- b) Work with National Law Center regarding Real Estate Securitization (financing) Projects. Phase 1 Complete.

Continuing Projects:

- a) Continue to work with National Law Center for Phase II of the Real Estate Securitization (financing) Projects
- b) Agree to move toward reciprocity regarding Sonora and Arizona Real Estate Certification.
- c) Committee will help promote bill of law presented to Sonora Congress for mandatory Sonora Real estate Agent Certification Program to become obligatory. If ratified, the Ad Hoc Committee will assist with implementation.

What Does the Crystal Ball Show for the Future?

- a) Please stay tuned.

Comments Made About the Real Estate Ad Hoc Committee and ADRE:

- a) Folks “loving the booklet” on BUYING PROPERTY IN MEXICO.
- b) Real Estate “Model” Committee in entire AMC.
- c) “Please consider me for your Committee.”
- d) “How can I get involved helping either the Committee or ADRE”
- e) “Classes initiated by members of the Ad Hoc Committee on various real estate issues in Mexico the most helpful and informative I’ve ever attended.”
- f) “Your Committee Rocks!” – (my personal favorite) ☺



Gary Brasher*, ADRE Advisory Board; **Rodolfo Elias Calles Dingfelder**, *Secretaría de Economía, Sonora, Mexico*; ADRE Commissioner **Elaine Richardson***, visit with **Edmundo Chavez Mendez*** *Vocal Ejecutivo del ICRESON, Hermosillo, Mexico* between sessions.

* Real Estate Ad Hoc Committee Co-Chairs

NOTE: see page 8 for abbreviations used.



Commingling Funds Are On The Rise!

by Janet A. Blair, Deputy Director, Auditing



Department Auditors have seen a significant increase in the commingling of funds by Brokers handling Trust Accounts. Over and over again - brokers rationalize they are “helping” clients by covering shortages in the owners’ accounts to cover NSF checks and to pay small maintenance and repair invoices. These brokers show little concern or recognition that by doing this they are violating statutes and rules. A review of ARS § 32-2151 and § 32-2174 shows that such activity is not legal. Brokers may rationalize they are violating statutes in order “to help their client,” but in reality the broker is breaking the law. This may be because they are afraid of losing a client; one that fails or refuses to leave a reserve on account to pay for unexpected maintenance, repairs or other expenses. Brokers cannot dip into other clients’ funds to “help” the client with no funds in reserve. Is commingling funds worth having your license suspended or revoked [ARS § 32-2153(A)(16)] ? Brokers cannot abrogate their responsibility to one client by raiding the funds of another client. Brokers cannot pay their own operating expenses, commissions or other costs from trust funds.

Auditors are trained to scrutinize broker’s records, and will report any commingling violations they observe. It is a part of the Auditors job to protect the safety and interest of the public, the owners of the trust funds. If you are unsure about your record keeping, the Auditing Division suggests you visit the Arizona Department of Real Estate website azre.gov and 1) go to the Auditing section, 2) find (by category) trust accounts basics and trust accounts requirements. This section provides an overview, with examples and requirements, on how to handle these accounts. If you still have questions, E-mail the Auditing Division at auditing@azre.gov.



USING THE ON-LINE LICENSING SYSTEM

There are a few underlying points to remember to make using the on-line system your best friend.

As background information, with respect to on-line renewals, the on-line system defaults to renewing the salesperson or associate broker's license without change (employed by the same broker, if active-status) unless the broker specifically disapproves the person remaining with the broker. If the broker either logs on and approves, or fails to log on and approve or disapprove, the status quo continues -- the license is renewed and the employee remains employed by that brokerage. A broker who chooses not to continue employing the salesperson or associate broker can terminate the relationship by logging on and denying the renewal. If that occurs, the license is renewed on an inactive status and the Department notifies the licensee that their license is renewed on inactive status and employment has been severed.

An application that is filed on-line by a salesperson or associate broker to be hired by an employing broker remains pending in the on-line system for up to 30 days, waiting for the designated broker to log in on behalf of the employing brokerage and approve the hire. If the designated broker fails to approve the request within the 30-day window the application is closed as incomplete, since the broker's approval was never received. The request for hire is also never completed if the broker denies the request, and the salesperson/associate broker is not licensed to the brokerage.

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USING THE ON-LINE LICENSING SYSTEM

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A designated broker can log onto the On-line System at any time and view the list of transactions that are pending the broker's approval. When a designated broker approves a request for hire, the broker can print the license certificate on the spot. Alternatively, the broker can have the Department print and mail the license to the office by choosing that option. If the designated broker fails to confirm that the licenses printed properly the Department will print and mail a copy to the broker. ☐

“Flipping” In Restricted Subdivisions by Tom Adams, Director of Regulation

As a result of the dramatic increase in the demand for housing that occurred in the recent past, many developers instituted a policy of restricting sales to owner/occupied properties only. The developers, wishing to limit or avoid speculators purchasing property in their developments, attempt to screen purchasers to ensure that only those who will live in the house become successful buyers. The developers do not want people either renting out the properties or “flipping” them for a profit shortly after the original sale.

Toward this end, developers screen potential buyers to attempt to identify investors/speculators, and include in the sales contract some language requiring the buyer to confirm that the buyer will reside in the property and will not sell it within a specific time-frame (usually a year). Whether this is appropriate or not, it is not illegal.

Recently the Department has begun receiving complaints from developers concerning licensees who were involved as the buyers' agents in the original purchases of property and who are now representing the sellers as the properties are listed for sale. These complaints involve situations where the new sale is less than a year after the original purchase, and in some cases less than three months after the original purchase.

Licensees involved in these situations may be

in violation of the following statutes and rules and may be subject to disciplinary action by the Department.

- 1 A.R.S. § 32-2153(A)(1) prohibits a licensee from pursuing a course of misrepresentation. Knowing that a property is subject to a contractual limitation and failing to disclose that to a potential buyer falls within the scope of this statute.
- 2 A.R.S. § 32-2153(A)(4) prohibits advertising, distributing or circulating any material false or misleading statement or representation concerning...any land... offered for sale...”. Failing to disclose any restrictions on resale would fall under this statute.
- 3 A.R.S. § 32-2153(A)(11) prohibits a licensee from inducing a party to a contract to break the contract for the purpose of substituting a new contract...if the substitution is motivated by the personal gain of the licensee. Under certain circumstances this might apply, since the original contract on the house applies for an extended period (i.e. a year after closing) and the new contract would benefit the licensee through commissions paid.
- 4 A.R.S. § 32-2153(B)(3) prohibits making a substantial misrepresentation. Knowing there is a limitation on the resale of the property and that civil action might occur upon sale and not advising any potential buyer of this information could violate this statute.
- 5 A.R.S. § 32-2153(B)(5) prohibits any act that constitutes fraud or dishonest dealings. Under some conditions this statute may apply in these situations.
- 6 A.R.S. § 32-2153(A)(3) provides that the Commissioner may take disciplinary action against a licensee who violates any of the Commissioner's Rules. The following Commissioner's rules may also apply to these listings:

A. Commissioner's Rule (A.A.C.) R4-28-1101(A) provides that a licensee has a fiduciary duty to the client and shall protect and promote the client's interest. Taking a listing that could result in a civil suit against the client would fall within this area.

B. A.A.C. R4-28-1101(B) requires the licensee to inform, in writing, all parties to the transaction of “any information the licensee possesses that materially or adversely affects the consideration to be paid by any party to the transaction...”. This would require disclosure to any potential buyer that there is a possibility of a civil suit concerning the legality of the sale.

C. A.A.C. R4-28-1101(B)(3) provides that a licensee “shall disclose in writing to all other parties any information that the seller...may be unable to perform.” If the developer sues the seller and ties the property up in legal action the seller may be unable to perform, and the licensee would be required to disclose that information.

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“Flipping” In Restricted Subdivisions

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D. A.A.C. R4-28-1101(G) provides that a salesperson shall “conform to the standards of practice and competence recognized in the professional community...”. Taking a listing that would subject the client to a potential civil suit would apply.

E. A.A.C. R4-28-1101(I) requires the salesperson to “exercise reasonable care in ensuring that the salesperson...obtains information material to a client’s interests and relevant to the contemplated transaction and accurately communicates the information to the client.” Taking a listing that could result in a civil suit would fall within this requirement.

Any licensee involved as a representative of the buyer who then becomes the representative of the seller in a situation such as this would have a very difficult time convincing the Department that the licensee was unaware of the restriction on resale, and could almost certainly expect disciplinary action. Licensees taking listings in new developments would be well advised to confirm whether such a limitation on resale exists prior to taking a listing and actively marketing the property.

Although the Department of Real Estate does not enforce contracts, per se, these situations clearly fall within the scope of several statutes and rules and may fall within the scope of others, as indicated above. Developers will report such listings, and the Department will investigate the complaints. The wise agent will avoid becoming involved in these situations, both for their own sake and the sake of the client who may end up in civil litigation.



Abbreviations Used In The Bulletin

AAC	Arizona Administrative Code (<i>usually citing the Rules promulgated by the Arizona Department of Real Estate, often referred to as “The Commissioner’s Rules”</i>)
AAR	Arizona Association of REALTORS®
ADRE	Arizona Department of Real Estate
ARS	Arizona Revised Statutes
ICRESON	<i>Instituto Catastral y de Servicios Registrales</i> This is the agency within the Government of the State of Sonora, Mexico that maintains the public registry (<i>catastral</i>) of titles and deeds, and the voluntary registry of real estate agents working in Sonora.

ADRE RULE AND POLICY REGARDING PROVIDING INFORMATION TO CLIENT

by K. Michelle Lind, Esq.



The Arizona Department of Real Estate (“ADRE”) has the authority to promulgate Administrative Rules, which are often referred to as “Commissioner’s Rules” and Substantive Policy Statements (“SPS or Policy”). These Rules and Policies expand on the statutes that govern the ADRE and the brokers and salespersons (collectively “broker”) regulated by the department.

The Administrative Procedure Act (“Act”), which applies to all state agencies such as the ADRE, defines an Administrative Rules as the ADRE’s “statement of general applicability that implements, interprets or prescribes law or policy or describes the procedure or practice requirements of an agency.” A.R.S. §41-1001(17). The Rule making process is governed by statute and all Rules must be approved by the Governor’s Regulatory Review Council before they become effective. A.R.S. §41-1021 *et. seq.*

The Act defines a “substantive policy statement” as:

A written expression which informs the general public of an agency’s current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency’s current practice, procedure or method of action based upon that approach or opinion. A substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents which only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties, confidential information or rules made in accordance with this chapter. A.R.S. §41-1001(20).

The policy making process is not regulated by statute. However, a policy that exceeds the agency’s policy making authority may be challenged. A.R.S. §41-1033.

The ADRE Rule that provides guidance on a broker’s duties when communicating information to a client states:

A salesperson or broker shall exercise reasonable care in ensuring that the salesperson or broker obtains information material to a client’s interests and relevant to the contemplated transaction and accurately communicates the information to the client. A salesperson or broker is not required to have expertise in subject areas other than those required to obtain the salesperson’s or broker’s license. A salesperson or broker shall take reasonable steps to assist a client in confirming the accuracy of information relevant to the transaction.

A.A.C. R4-28-1101 (I).

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or broker's license. A salesperson or broker shall take reasonable steps to assist a client in confirming the accuracy of information relevant to the transaction. A.A.C. R4-28-1101 (I).

The related Policy states:

A licensee is a real estate professional with a fiduciary duty to his or her client to act in the client's best interests as described in R4-28-1101(I). Reasonable care or competence may include recommending that a client seek professional or technical advice when the matter is beyond the expertise of the agent.

Licensees are expected to take reasonable steps to assist their clients in confirming or verifying information under circumstances in which a reasonably prudent real estate professional has reason to question the accuracy of the information being provided in a transaction, or where the client has questioned the accuracy of the information.

These considerations are intended to provide a reasonable standard for licensees to follow in complying with their duties and obligations under statute and rule.

SPS No. 13 (Revised 6-1-2001; revised and renumbered 5/28/04, revised and renumbered 4/8/2005).

This Policy is consistent with the obligations imposed by the NATIONAL ASSOCIATION OF REALTORS® Code of Ethics, Article 2, which states: "REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law." Standard of Practice 2-1 states: "REALTORS® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR® the obligation of expertise in other profes-

sional or technical disciplines."

The Policy is also consistent with the *Restatement (Second) of Torts § 552*, which provides that:

One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for the pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

GUIDANCE PROVIDED IN RULE & POLICY

"A salesperson or broker shall exercise reasonable care in ensuring that the salesperson or broker obtains information material to a client's interests and relevant to the contemplated transaction and accurately communicates the information to the client". What is reasonable in most cases is dependent upon the circumstances and will vary according to many factors. However, the Rule and SPS provide some guidance on this issue.

1. *"A salesperson or broker is not required to have expertise in subject areas other than those required to obtain the salesperson's or broker's license."* In other words, the real estate agent is not required to have the expertise of a home inspector, appraiser or surveyor when representing a client. Therefore, if the seller states that the roof is in excellent condition and only an inspector would have the expertise to determine otherwise, the broker should have no liability for merely passing along the seller's representation.

2. *"A salesperson or broker shall take reasonable steps to assist a client in confirming the accuracy of information relevant to the transaction."* *"Licensees are expected to take reasonable steps to assist their clients in confirming or verifying information under circumstances in which a reasonably prudent real estate professional has reason to question the accuracy of the information being provided in a transaction, or where the client has questioned the accuracy of the information."* In other words, if the seller states the roof is new and in excellent condition, but the agent has reason to believe that the roof is old and in a state of disrepair, evidenced by broken shingles and obvious water leaks, the agent should point out these circumstances to the buyer/client and recommend that the buyer obtain a professional roof inspection. Similarly, if the buyer questions the accuracy of the seller's

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representations or other information provided during the transaction, the same rule applies: the agent should assist the buyer in obtaining independent verification.

3. "Reasonable care or competence may include recommending that a client seek professional or technical advice when the matter is beyond the expertise of the agent." In other words, in the above scenario, if the client is concerned about the roof's condition, the agent should advise the client to have the roof inspected by a roofing expert.

BECOME FAMILIAR WITH THE ADRE RULES AND POLICIES

Every broker should become familiar with the ADRE Rules and Substantive Policy Statements. A complete copy of the Rules is available on the ADRE website at:

www.azre.gov/AZRE_Law_Book/HTML/AZREAL/AZREAL.htm .

and the Substantive Policy Statements can be found at http://www.azre.gov/substantive_policy_statements.htm . 

Michelle is General Counsel to the Arizona Association of REALTORS® ("AAR") and a State Bar of Arizona board certified real estate specialist.

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

A NOTE ABOUT GUEST COLUMN ARTICLES

Guest column articles do not reflect the policies or interpretations of law by the Arizona Department of Real Estate. They are meant to inform the public and provide variety to ADRE's Bulletin. All articles are edited for space limitations.

An Appraiser's Perspective Checklist for Listing Property in Mexico by Bruce Greenberg



As an appraiser and as observer to the many Real Estate transactions in Mexico I have seen a lot of easy transfers and a lot of long, frustrating closings. Here is my perspective to generate a good closing experience.

As a selling agent, the best way to insure a clean closing is to have your listing file fully complete at the time you execute the listing agreement. A competent listing agent will be able to inform their clients what will be expected from them when they sell their property. A professional real estate agent will not only have a complete file ready at the point of listing, but will maintain the file through closing. If you list a property in 2006 and you still have it on the market in 2007 the agent and seller should be updating the file with the 2007 documents! The buyer and seller should ask your agents to meet these factors!

Here is a list of issues that should be asked by the selling agent (or Seller) in order to adequately perform due diligence on a property. These are the documents that should form the listing file, and are the documents the Buyer's agents should be requesting from the Seller:

For Single Family Homes:

- A. Deed of Ownership- A copy of the Deed showing that the person who purports to sell the property actually holds title. This should include recording information of the Deed (datos de registro);
- B. Power of Attorney, if applicable- In the event the Seller will not be present at closing, a valid power of attorney will be necessary in Spanish;
- C. Survey- Some buyers and title insurance companies request a current survey, especially if the property is oceanfront;

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Checklist for Listing Property in Mexico

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- D. Utility Bills- copies of the latest payments for water, electricity, and telephone services;
- E.. Property Tax Statement- Copy of the latest payment of the property tax;
- F.. Federal Zone Concession/Oceanfront properties- It is crucial to see the concession or evidence of application for the Federal concession. This is not optional if there are improvements constructed within the federal zone boundaries; remember these boundaries fluctuate;
- G.. List of Expenses-Most buyers want to see the costs of maintaining a home;
- H. No Lien Certificate from the Public Registry reflecting no encumbrances;
- I. A copy of your original title report, if available.
- J. Homeowners Minutes- Formalized minutes of the association meetings (ordinary and extraordinary) for the last three years, (in Spanish) and formalized before the Notario and set forth at the Public Registry;
- K. Current HOA Budget-Actual budget for the year that shows what is included in the maintenance fee and what are the current payments and assessments.
- G. being built;
- G. No Lien certificate from the Public Registry showing no encumbrances
- H. Article of Incorporation if the developer is a corporation (In Spanish);
- I. Purchase agreement and payment plan;
- J. Construction Calendar;
- K. Federal Zone concession or corresponding application in the case of oceanfront properties;
- L. Permit to sell by municipality;
- M. Developers Guarantees if applicable or available (bonds, administrative, trusts, escrow accounts.)
- N. A copy of the project/site title report, if available.
- O. Homeowners Minutes- Formalized minutes of the association meetings (ordinary and extraordinary) for the last three years, (in Spanish) and formalized before the Notario and set forth at the Public Registry;
- P. Current HOA Budget-Actual budget for the year that shows what is included in the maintenance fee and what are the current payments and assessments.

For Condominiums (Including Houses or Villas in Condominium Horizontal Regimes):

- A. Deed of Ownership-A copy of the Deed noting that the person who purports to sell the property actually holds title. This should include the recording information of the deed (datos de registro);
- B. Condominium Regime and Amendments, Recorded Spanish version- This document will show legal formation of the condominium and the bylaws that are in place;
- C. Power of Attorney, if applicable- In the event the Seller will not be present at closing, a valid power of attorney will be necessary in Spanish;
- D. Utility Bills- copies of the latest payments of water, electricity, and telephone services

Costs of Transaction:

Sellers Agents: Get an estimate from the Notario Publico of the capital gains tax the Seller will need to pay. This way there are no surprises!

Buyers Agents: When submitting an offer, get an estimate on closing costs for your Buyer- again, the best surprise is no surprise!

Closings:

Before there is an accepted offer and both parties are in agreement with the terms and conditions, have an attorney review the necessary documents and agreements.

continued on page 12.

Checklist for Listing Property in Mexico

continued from page 11.

Signed Offer:

Have an original signed offer, **signed by all parties on the same document!** If there is ever a dispute that would need to be argued in Mexican court, you will need the original document, not a fax and no counterpart signatures. A fax is fine in order that both parties “feel” bound, but it behooves all to circulate sets of originals so that each party has a fully signed original. Remember binding documents before a judge/court must be in Spanish.

Escrow Accounts:

An escrow is the safest way to protect good faith for both parties. Attorneys, Notarios and real estate agents are NOT escrow agents. Use competent title companies and or bonds to hold the appropriate funds.

Choosing a Notario:

Generally the Buyer chooses the Notario since it is the Buyer who pays the Notario fees. This does not mean that the Seller cannot choose the Notario – they would make that a condition to the accepted offer. It also does not mean that the Notario represents one of the parties; the Notario is a neutral third party who is responsible for making sure that clear title is transferred. He/she is NOT responsible for making sure that the parties have done their due diligence.

Closing Costs:

In Mexico, the Buyer traditionally pays the closing costs and the Seller pays the capital gains tax. The Buyers fees include the Notario fees, bank fees, no lien certificate; no debt certificates fees, recording fees, real estate transfer tax and foreign investment fees. Since many of these costs are percentage of the selling price. The foreign investment and permit fees are fixed, it is difficult to say that the closing costs will be an exact percentage of the purchase price. Most Notarios can give you a good estimate of fees.

The Bank Trust/The Fideicomiso:

All residential property located in the restricted zone must be held in a bank trust (Fideicomiso) if the purchase is by; 1) a foreign individual, 2) a foreign corporation, or 3) a Mexican corporation with foreign shareholders. Mexican corporations with foreign shareholders may hold real property in fee simple in the restricted zone **ONLY IF THE USE OF THAT PROPERTY IS COMMERCIAL BY NATURE.**

The bank trust has received bad press but is a very safe way to hold property title. The trusts have an initial term of 50 years, which is renewable during the life of the trust. A buyer can isolate their assets, as the owner of the real estate property is the trust and not the individual. A Fideicomiso (bank trust) creates your Mexican estate-planning document by indicating succession and substituted beneficiaries – no need for probate.

When purchasing a property in the restricted zone one has the option of forming a new trust and/or assuming an existing trust. Ask an attorney if they recommend forming a new trust in the case where the trust is older or if the bank trustee of the existing trust are difficult to work with.

Who Needs to be Present at Closing:

The general rule is that in the case of a new trust, only the Seller need be present. Check this out since many banks are now requiring the presence of the buyers as well. In the event you are assuming an existing trust, both Buyers and Sellers must be present, either personally or through power of attorney (In Spanish).

Additional Thoughts:

There are additional things that are also a good idea to require at closing and may not be on typical list.

- A. Employee Liquidations-Even if the Buyer is going to maintain the staff; the Seller must liquidate their employees and pay full severance. These liquidations need to be formalized before the labor board and the original ratifications given to Buyer at closing.

continued on page 13.

Checklist for Listing Property in Mexico

continued from page 12.

- B. Warranties-If the Seller has any valid warranties on workmanship, appliances etc....they should be given to Buyer in writing before closing.
- C. Transfer of Utilities- The Seller should sign letters transferring their rights in the utility services to Buyer.
- D. Assignments of Federal Zone Documents-Seller must assign his rights in the Federal Zone Concession or Applications – although a Buyer will need to apply for his or her own concession, the Seller must give up his or her rights at closing.
- E. Prorations and Holdbacks- It is sometimes wise to establish a holdback of funds to cover any future bills that may correspond to Seller but that arrive post closing.

Finally work with a competent AMPI/PPREA agent who is registered as “Real Estate Professionals” within the State of Sonora. Also have a competent bi-lateral due diligence team.

Please visit the members of International Consultants Services (ICS) at our new Puerto Peñasco office located above ICRESON (the public registry) across from the Municipal building and the City Park.

Bruce D. Greenberg, MAI, SRA, ASA is the principal appraiser for Bruce D. Greenberg, Incorporated in Tucson, Arizona and Valuaciones Montaña Verde, S.A. de C.V he is also a principal in International Consulting Services, S. de R. L. (ICS), a Mexican due diligence firm.



A NOTE ABOUT GUEST COLUMN ARTICLES

Guest column articles do not reflect the policies or interpretations of law by the Arizona Department of Real Estate. They are meant to inform the public and provide variety to ADRE's Bulletin. All articles are edited for space limitations.

Pictures from the Real Estate Ad Hoc Committee of the Arizona — Mexico Commission Plenary Session June 15 — 17, 2006 in Scottsdale



Jeff Peterson, Arizona Mexico Commission Board Member & Gary Brasher, Real Estate Ad Hoc Committee Co-Chair.



Mary Utley, ADRE Public Communications Director and Edmundo Chavez Mendez, Chair, *Comité de Bienes Raíces, Sonora, Mexico*, at the Real Estate Ad Hoc Committee meeting.



JUDY LOWE
Chief Operating Officer
Realty Executives
Southern Arizona

Judy's multi-faceted real estate career of more than 25 years, includes all areas of sales, including relocation, business operations, Designated Broker, regional management, as well

as ownership of two of the largest Arizona real estate companies, Coldwell Banker Success Realty and Realty Executives Southern Arizona. She is currently the Chief Operating Officer for Realty Executives Southern Arizona, with ten offices in Southern Arizona and 395+ Sales Executives. Judy's service to the National Association includes the NAR Executive Committee, Budget and Finance Committee, Housing Needs Committee, the Business Issues Committee, International Operations Committee, and is an NAR Director.

Judy has served the Arizona Association of Realtors as Treasurer, Vice President, and President. She is the current 2005 President of the Arizona Realtors Housing Needs Foundation, and serves on the Sonora-Arizona Workgroup for the Arizona International Real Estate Council.

Judy has been active in the Tucson Association of Realtors, serving as President in 1996. She is currently the T. A. R. Multiple Listing Service President.

Judy and her husband John grew up in Tucson, own a place in San Carlos, Mexico, and enjoy their beach life there. A very large part of their family live in Hermosillo. ☺

JUAN FRANCISCO MORENO
Counsel, Bryan Cave, L.L.P.
Phoenix



Mr. Moreno practices in the Real Estate Development, Construction and Project Finance Client Service Group. His practice emphasizes the representation of U.S.

companies on investment opportunities, strategic alliances, joint ventures and development of real estate in Mexico. In addition, Mr. Moreno assists Mexican clients doing business in Arizona, with particular emphasis on commercial real estate, business formations, contract negotiations and agribusiness dealings. He has experience in structuring, negotiating, and establishing cross-border operations in Mexico for manufacturing, distribution, lending and tourism-related ventures. Mr. Moreno's LL.M. concentration was in international trade law. ☺



Members of the Real Estate Ad Hoc Committee seen at work as part of the Arizona — Mexico Commission Plenary Session earlier this month in Scottsdale.

REMINDER

Copies of the ADRE Consumer Guides:

BUYING REAL ESTATE IN MEXICO
&
Arizona Los Bienes Raíces y Usted
&
ARIZONA REAL ESTATE & YOU

are available from the Department of Real Estate.
For more information e-mail: [mutley @azre.gov](mailto:mutley@azre.gov)

DISCIPLINARY DECISIONS

in alpha order



Name Brenda Allison
License Number SA021424000
Violation Misrepresentation
Summary Respondent misrepresented the condition of a property to buyers and buyers agent by stating a walk-through was successful and complete, even though requested repairs had not been completed.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-1101 (A), (B)(3), (H)
Order Date May 30, 2006
Order Type Consent Order
Order Terms \$3,000 Civil Penalty, 12 hrs CE in Commissioner's Standards, 2 yr Provisional License w/ Practice Monitor

Name Tom Argiropoulos, Jr.
License Number BR008098000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, December 2004 misdemeanor conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date January 30, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 Civil Penalty

Name Dawn Bardone
License Number SA105733000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, May 2005 misdemeanor conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date February 17, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Rosemarie Anne Barton
License Number SA508285000
Violation Unlicensed Activity
Summary Conducted sales activities without an active license.
Statutes/Rules A.R.S. §32-2130 (B), §32-2153 (B)(6)
Order Date May 18, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$2,000 to ADRE Education Fund

Name Thomas Wilson Bata, Jr.
License Number Unlicensed Applicant
Violation Convictions - Violence against another person
Summary April 2005 misdemeanor conviction for Disorderly Conduct.
Statutes/Rules A.R.S. §32-2153 (B)(10)
Order Date April 21, 2006
Order Type Consent Order
Order Terms License granted, 2 year Provisional License w/ Practice Monitor

Name Jerry T. Beavers
License Number SA547108000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, December 2004 misdemeanor conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date March 6, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Heather Gabrielle Behmer
License Number Unlicensed Applicant
Violation Convictions - Violence against another person
Summary December 1999 misdemeanor conviction for Criminal Damage/DV; November 1997 conviction for Public Intoxication and Possession of Drug Paraphernalia; June 1996 conviction, Minor in Possession of Alcoholic Beverage.
Statutes/Rules A.R.S. §32-2153 (B)(7)
Order Date May 24, 2006
Order Type Consent Order
Order Terms License granted, 2 year Provisional License w/ Practice Monitor.

Name Benjamin Matthew Bethel
License Number SA546028000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, a January 2006 Consent Agreement with the Arizona Department of Liquor Licenses and Control, agreeing to surrender a liquor license.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date May 4, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name David Betz
License Number SA557933000
Violation False Application
Summary Failed to disclose a 1996 misdemeanor conviction for Vandalism on original license application.
Statutes/Rules A.R.S. §32-2153 (B)(1), (B)(3), (B)(7)
Order Date March 22, 2006
Order Type Consent Order
Order Terms Revocation of license

Name Natasha Michelle Biggs
License Number SA530600000
Violation Convictions - Moral Turpitude (DUI)
Summary November 2004 conviction for misdemeanor DUI and failure to notify the Department in a timely manner of the conviction.
Statutes/Rules A.R.S. §32-2153 (A)(3), (B)(2), (B)(7); A.A.C. R4-28-301 (F)
Order Date April 21, 2006
Order Type Consent Order
Order Terms \$2,000 Civil Penalty, 2 year Provisional License w/ Broker Acknowledgment



Name John Billings
License Number SA555136000
Violation Advertising
Summary Advertisement did not include name of employing broker.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-502 (E)
Order Date April 3, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$500 to ADRE Education Fund

Name Jennifer Bloss
License Number SA115978000
Violation Property Management Irregularity
Summary Conducted property management under the name of an unlicensed entity (Bloss Property Management), received payment from broker to the unlicensed entity and failed to keep trust accounts properly funds and/or misused or misapplied trust funds.
Statutes/Rules A.R.S. §§32-2153 (A)(3), (A)(4), (A)(7), (A)(10) and (A)(22); (B)(6) and (B)(8); A.A.C. R4-28-502 (C) and (E), R4-28-1101 (A), (C) and (H)
Order Date May 25, 2006
Order Type Consent Order
Order Terms Make all affected trust accounts whole within 90 days; \$5,000 Civil Penalty; License suspension for 30 days, 2 year Provisional License (upon reinstatement) with Broker Acknowledgment, 6 hr CE in Commissioner's Standards.

Name Guidal S. Brar
License Number Unlicensed Applicant
Violation Convictions - Forgery
Summary 1997 conviction for misdemeanor Forgery/False statement and 2002 conviction for domestic violence
Statutes/Rules A.R.S. §32-2153 (B)(2), (B)(7), (B)(10)
Order Date March 28, 2006
Order Type Commissioner's Final Order
Order Terms Denial of License

Name Dwight D. Brown
License Number Unlicensed Individual
Violation Unlawful Sales (Development)
Summary Involving the division of property, located in Mohave County, into six or more parcels, failure to comply with applicable subdivision statutes and rules.
Statutes/Rules A.R.S. §§32-2181 (A), 32-2183 (F); A.A.C. R4-28-803 (A), R4-28-804 (A), R4-28-805
Order Date April 24, 2006
Order Type Consent Order
Order Terms \$10,000 Civil Penalty (jointly and severally), Cease & Desist sales, Rescission offer, apply for Public Report

Name Gino Christopher Cabadas
License Number Unlicensed Applicant
Violation Convictions - Moral Turpitude (DUI)
Summary September 2002 conviction for misdemeanor OUI and a June 2003 conviction for misdemeanor OUI, both in Michigan.
Statutes/Rules A.R.S. §32-2153 (B)(2), (B)(7)
Order Date March 23, 2006
Order Type Consent Order
Order Terms License renewal granted, 2 year Provisional License w/ Practice Monitor, Bodily Fluid Testing, AA, Sobriety Monitor

Name Douglas Lance Clodfelter
License Number SA546703000
Violation Unlicensed Activity
Summary Conducted sales activities without an active license.
Statutes/Rules A.R.S. §32-2130 (B), 32-2153 (B)(6)
Order Date May 5, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$2,000 to ADRE Education Fund

Name Joseph "Joe" A. Conway
License Number BR117281000
Violation Unlicensed Activity
Summary Conducted sales activities without an active license.
Statutes/Rules A.R.S. §32-2130 (B), §32-2153 (B)(6)
Order Date May 26, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$2,000 to ADRE Education Fund

Name Christopher P. Corso
License Number SA555375000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, June 2005 misdemeanor conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date May 4, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Anthony Cosgrove
License Number Unlicensed Applicant
Violation Convictions - Moral Turpitude (DUI)
Summary 1998 and 2004 convictions for DUI.
Statutes/Rules A.R.S. §32-2153 (B)(2), (B)(7)
Order Date May 2, 2006
Order Type Commissioner's Final Order
Order Terms Denial of license

DISCIPLINARY DECISIONS

continued



Name Elliot T. Crosby
License Number BR003495000
Violation Other Jurisdiction Sanction
Summary October 1997 Consent Order with the Arizona Department of Insurance and April 2004 Consent Order with the Arizona Corporation Commission regarding securities sales.
Statutes/Rules A.R.S. §32-2153 (B)(10)
Order Date April 24, 2006
Order Type Commissioner's Final Order
Order Terms License renewal granted, 2 year Provisional License w/ Practice Monitor, \$25,000 surety bond

Name Christine Cushere
License Number SA547782000
Violation Advertising
Summary Installed a sign in front of a branch office that did not list the broker's name, indicate the office was a branch office.
Statutes/Rules A.R.S. §32-2126 (B), 32-2127 (B); A.A.C. R4-28-502 (C) & (E)
Order Date March 23, 2006
Order Type Consent Order
Order Terms \$500 Civil Penalty, 6 hr CE in Commissioner's Standards

Name Clifford J. Cutler
License Number BR005306000
Violation Broker Supervision
Summary Failed to properly supervise; allowing sales activities by an unlicensed person
Statutes/Rules A.R.S. §32-2153 (A)(6), (A)(21)
Order Date May 19, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Lisa Dandridge-Cielto
License Number SA549488000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, January 2005 misdemeanor conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date May 26, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Nathan Christopher Davis
License Number SA557916000
Violation False Application
Summary Failed to disclose a May 2002 conviction for misdemeanor Reckless Driving on original application.
Statutes/Rules A.R.S. §32-2153 (A)(3), (B)(1), (B)(7)
Order Date March 30, 2006
Order Type Consent Order
Order Terms \$1,000 Civil Penalty, 6 hr CE in Commissioner's Standards, 2 year Provisional License w/ Broker Acknowledgment

Name Devaki Furuya Dharano
License Number SA527653000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, August 2005 misdemeanor conviction for False Reporting to a Police Officer.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date May 1, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Melissa L. Diesing
License Number SA518854000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, August 2005 misdemeanor convictions for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date February 9, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Stephanie A. Dimaria
License Number BR116750000
Violation Broker Supervision
Summary Failed to properly supervise; allowing sales activities by an unlicensed person
Statutes/Rules A.R.S. §32-2153 (A)(6), (A)(21)
Order Date May 23, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$2,000 to ADRE Education Fund

Name Royers W. Drachman
License Number BR006575000
Violation Convictions - Felonies
Summary December 2, 2005 convictions for Attempt to Unlawfully Possess a Narcotic Drug (Class 5 felony) and Unlawful Possession of Drug Paraphernalia (Class 6 felony).
Statutes/Rules A.R.S. §32-2153 (A)(3), (B)(2), (B)(7)
Order Date March 17, 2006
Order Type Summary Suspension
Order Terms Summary Suspension of Broker's License

Name John Orval Dryer
License Number Unlicensed Applicant
Violation Convictions - Felonies
Summary Respondent's broker's license was revoked (Consent Order) in October of 2002 for a Class 6 felony conviction (Tampering with Physical Evidence). The conviction occurred in August of 2002. Respondent was placed on Probation. Mitigating: Respondent has received an early release from Probation due to compliance with all terms.
Statutes/Rules A.R.S. §32-2153 (B)(2), (B)(7)
Order Date May 25, 2006
Order Type Consent Order
Order Terms License granted; 2 year Provisional License with Practice Monitor; \$25,000 surety bond

DISCIPLINARY DECISIONS

continued



Name Kathleen Dutton / Delbert Corporation dba Four Peaks Property Management
License Number BR031136000 / CO109935000
Violation Unlicensed Activity
Summary Failed to remit payments in a timely manner and conducted real estate activities while the entity license was expired.
Statutes/Rules A.R.S. §§32-2130 (B), 32-2153 (A)(3), (A)(9), (A)(10), (A)(21), (A)(22), (B)(6); A.A.C. R4-28-1101 (A) & (C).
Order Date May 10, 2006
Order Type Consent Order
Order Terms \$2,000 Civil Penalty (jointly and severally), \$1,000 payment to Real Estate Education Fund (jointly and severally), 6 hr CE in Commissioner's Standards, 30 day retroactive license suspension

Name Carlos O. Enriquez
License Number SA530819000
Violation Multiple violations
Summary 2003 conviction for misdemeanor DUI. Failure to disclose the 2003 conviction in a timely manner. In 2004, submitted a late renewal application and conducted unlicensed activity in April of 2004.
Statutes/Rules A.R.S. §32-2153 (A)(3), (A)(22), (B)(2), (B)(6), (B)(7); A.A.C. R4-28-301 (F).
Order Date May 17, 2006
Order Type Consent Order
Order Terms \$5,000 Civil Penalty, 6 hr CE in Commissioner's Standards, 2 year Provisional License w/Practice Monitor

Name Debra L. Fagan
License Number SA548334000
Violation Unlicensed Activity
Summary Conducted sales activities without an active license.
Statutes/Rules A.R.S. §32-2130 (B), §32-2153 (B)(6)
Order Date May 31, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Gary Finlinson / Finlinson Properties, LTD
License Number CO509471000
Violation Unlicensed Activity
Summary Conducted sales activities without an active license.
Statutes/Rules A.R.S. §32-2130 (B), §32-2153 (B)(6)
Order Date May 17, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$2,000 to ADRE Education Fund

Name Gregory A. Foster
License Number Unlicensed Individual
Violation Unlawful Sales (Development)
Summary Involving the division of property, located in Mohave County, into six or more parcels, failure to comply with applicable subdivision statutes and rules.
Statutes/Rules A.R.S. §§32-2181 (A), 32-2183 (F); A.A.C. R4-28-803 (A), R4-28-804 (A), R4-28-805
Order Date April 24, 2006
Order Type Consent Order
Order Terms \$10,000 Civil Penalty (jointly and severally), Cease & Desist sales, Rescission offer, apply for Public Report

Name Future Assets International, Inc. dba Stonewest Properties
License Number CO002537000
Violation Unlicensed Activity
Summary Failure to promptly pay renewal fee, unlicensed activity.
Statutes/Rules A.R.S. §32-2153 (A)(3), (A)(14), (B)(6)
Order Date May 4, 2006
Order Type Consent Order
Order Terms License Renewal granted; \$4,000 Civil Penalty

Name Kathleen Gamble / Jody & Kathy Gamble Real Estate, LLC dba Century 21 Havasu Real Estate
License Number BR041216000 / CO574680000
Violation Multiple violations
Summary Unlicensed activity, received compensation while unlicensed and maintained an unlicensed branch office.
Statutes/Rules A.R.S. §§32-2127, 32-2153 (A)(3), (A)(10), (A)(21), (B)(6)
Order Date March 28, 2006
Order Type Consent Order
Order Terms \$10,000 Civil Penalty, \$1,000 to Real Estate Education Fund

Name Brigid Gannon
License Number SA116442000
Violation Convictions - Moral Turpitude (DUI)
Summary Failure to disclose October 2002 conviction for Extreme DUI in a timely manner.
Statutes/Rules A.R.S. §32-2153 (A)(3), (B)(2), (B)(7); A.A.C. R4-28-301 (F)
Order Date April 4, 2006
Order Type Commissioner's Final Order
Order Terms Denial of License

Name Estela R. Garcia
License Number SA545952000
Violation False Application
Summary Failure to complete CE as required for licensure.
Statutes/Rules A.R.S. §§32-2130, 32-2153 (B)(1); A.A.C. R4-28-402
Order Date March 1, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 Civil Penalty

DISCIPLINARY DECISIONS

continued



Name Carrie Christina Goff
License Number Unlicensed Applicant
Violation Convictions - Violence against another person
Summary January 2003 misdemeanor conviction for Assault, 4th Degree in Kentucky.
Statutes/Rules A.R.S. §32-2153 (B)(7), (B)(10)
Order Date March 15, 2006
Order Type Consent Order
Order Terms License granted, 2 year Provisional License w/ Practice Monitor, 40 hours Domestic Violence Counseling within 6 months

Name Michael James Graham
License Number SA547897000
Violation Convictions - Moral Turpitude (DUI)
Summary April 2004 conviction for misdemeanor DUI and failure to notify the Department in a timely manner of the conviction.
Statutes/Rules A.R.S. §32-2153 (A)(3), (B)(2), (B)(7); A.A.C. R4-28-301 (F)
Order Date April 21, 2006
Order Type Consent Order
Order Terms \$2,000 Civil Penalty, 2 year Provisional License w/ Broker Acknowledgment

Name Matthew Gruender
License Number BR008755000
Violation Convictions - Moral Turpitude (DUI)
Summary January 2004 misdemeanor convictions for Extreme DUI and excessive speeding.
Statutes/Rules A.R.S. §32-2153 (A)(3), (B)(2), (B)(7); A.A.C. R4-28-301 (F)
Order Date April 11, 2006
Order Type Consent Order
Order Terms \$2,000 Civil Penalty

Name Todd Randall Hamilton
License Number BR113954000
Violation Unlicensed Activity
Summary Conducted sales activities without an active license.
Statutes/Rules A.R.S. §32-2130 (B), §32-2153 (B)(6)
Order Date May 12, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Alicia Diane Hammond
License Number Unlicensed Applicant
Violation Convictions - Felonies
Summary August 2001 conviction for Theft, Class 6 Undesignated Felony. Reduced to a Class 1 misdemeanor in September of 2002.
Statutes/Rules A.R.S. §32-2153 (B)(2), (B)(7)
Order Date April 26, 2006
Order Type Consent Order
Order Terms License granted, 2 Yr Provisional License w/ Practice Monitor; \$10,000 Surety Bond

Name Richard Hanten
License Number BR008418000
Violation Broker Supervision
Summary Advertisement of employed salesperson/associate broker did not include the name of the employing broker or broker's dba name.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-502 (E); R4-28-1103 (A), (A)(5)(b), (B)
Order Date February 23, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$500 Civil Penalty

Name Thomas E. Hargis
License Number Unlicensed Applicant
Violation Convictions - Moral Turpitude (DUI)
Summary 2002 conviction for DUI and a 2004 conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (B)(2), (B)(7)
Order Date April 13, 2006
Order Type Commissioner's Final Order
Order Terms Denial of License

Name Angelina M. Hartl
License Number SA538531000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, May 2003 misdemeanor conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date January 30, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 Civil Penalty

Name Chaeson Hernandez
License Number SA530096000
Violation Convictions - Moral Turpitude (DUI)
Summary April 2004 misdemeanor conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3), (B)(2), (B)(7); A.A.C. R4-28-301 (F)
Order Date April 4, 2006
Order Type Consent Order
Order Terms \$1,000 Civil Penalty, \$1,000 to Real Estate Education Fund

Name Lawrence Hibler
License Number BR003931000
Violation Broker Supervision
Summary Advertisement of employed salesperson/associate broker did not include the name of the employing broker or broker's dba name.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-502 (E); R4-28-1103 (A), (A)(5)(b), (B)
Order Date May 9, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$500 to ADRE Education Fund

DISCIPLINARY DECISIONS

continued



Name Steve Horn
License Number SA518040000
Violation Advertising
Summary Advertisement did not include name of employing broker.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-502 (E)
Order Date April 10, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$500 to ADRE Education Fund

Name David Howes
License Number Unlicensed Applicant
Violation Convictions - Moral Turpitude (DUI)
Summary 1997 and 2002 misdemeanor convictions for DUI, 2004 misdemeanor conviction for Disorderly Conduct/Domestic Violence.
Statutes/Rules A.R.S. §32-2153 (B)(7), (B)(10)
Order Date March 23, 2006
Order Type Commissioner's Final Order
Order Terms Denial of License

Name Scott James Hubbard
License Number Unlicensed Applicant
Violation Convictions - Moral Turpitude (DUI)
Summary January 2003 misdemeanor conviction for DUI and a January 2004 misdemeanor conviction for Extreme DUI.
Statutes/Rules A.R.S. §32-2153 (B)(2), (B)(7)
Order Date March 16, 2006
Order Type Consent Order
Order Terms License granted, 2 year Provisional License w/ Practice Monitor, Bodily Fluid Testing, AA, Sobriety Monitor

Name Ken Ireland
License Number BR013427000
Violation Broker Supervision
Summary Failed to properly supervise a salesperson, failed to ensure proper accounting of trust funds and made payments to an unlicensed entity.
Statutes/Rules A.R.S. §§32-2153 (A)(3), (A)(21) and (A)(22); (B)(8); A.A.C. R4-28-502 (C), (E) and (G), R4-28-1101 (A), (C) and (H) and R4-28-1103 (A) and (C).
Order Date May 25, 2006
Order Type Consent Order
Order Terms Make all affected trust accounts whole within 90 days; \$5,000 Civil Penalty; License suspension for 30 days, 2 year Provisional License (upon reinstatement) with Broker Acknowledgment, 6 hr CE in Commissioner's Standards.

Name Esther Margaret Jensen
License Number SA554285000
Violation Convictions - Felonies
Summary December of 2004, conviction for Theft (Class 6 felony).
Statutes/Rules A.R.S. §32-2153 (A)(3), (B)(2), (B)(7), (B)(10); A.A.C. R4-28-301 (F)
Order Date April 17, 2006
Order Type Consent Order
Order Terms \$1,000 Civil Penalty, 2 year Provisional License w/ Broker Acknowledgment, \$5,000 surety bond

Name Ryan Gary Jensen
License Number SA544201000
Violation Convictions - Felonies
Summary Respondent convicted in January 2006 of Luring a Minor for Sexual Exploitation, a Class 3 felony. Sentence to 6 month deferred jail term and lifetime Probation.
Statutes/Rules A.R.S. §32-2153 (A)(3), (B)(2), (B)(7)

Order Date May 31, 2006
Order Type Consent Order
Order Terms Revocation of license

Name Carl K. Johnson / Johnson Commercial Properties, Inc.
License Number CO547202000
Violation Unlicensed Activity
Summary Conducted sales activities without an active license.
Statutes/Rules A.R.S. §32-2130 (B), 32-2153 (B)(6)
Order Date May 11, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$3,000 to ADRE Education Fund

Name Stephen R. Judd
License Number SA042461000
Violation Convictions - Moral Turpitude (DUI)
Summary February 2005 convictions for misdemeanor DUI and Attempted Unlawful Flight from Pursuing Law Enforcement Vehicle.
Statutes/Rules A.R.S. §32-2153 (A)(3), (B)(2), (B)(7)
Order Date April 26, 2006
Order Type Commissioner's Final Order
Order Terms 2 year Provisional License w/Practice Monitor, Bodily Fluid Testing, AA, Sobriety Monitor

Name Michael N. Kaltenbach
License Number SA526188000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, March 2005 misdemeanor conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date January 27, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Carolyn Komanek
License Number SA546974000
Violation Forgery
Summary Signed broker's signature on license renewal documents without permission or knowledge of broker.
Statutes/Rules A.R.S. §32-2153 (A)(1), (A)(3), (A)(25), (B)(1), (B)(3), (B)(5), (B)(7); A.A.C. R4-28-303 (A)(2)(c)
Order Date April 26, 2006
Order Type Consent Order
Order Terms \$3,000 Civil Penalty, 2 year Provisional License w/ Practice Monitor, 12 hr CE in Commissioner's Standards

DISCIPLINARY DECISIONS

continued



Name Timothy J. Krieger
License Number SA529516000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, November 2004 misdemeanor conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date January 27, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 Civil Penalty

Name Ira S. Kristol
License Number BR043830000
Violation Broker Supervision
Summary Failed to properly supervise; allowing sales activities by an unlicensed person
Statutes/Rules A.R.S. §32-2153 (A)(6), (A)(21)
Order Date May 25, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Dennis Krostal / Green Valley Mortuary & Memorial Gardens, Inc. / Green Valley Mortuary & Cemetary, Inc.
License Number CO001070000 / CO562839000 / BR039084000
Violation Unlicensed Activity
Summary Unlicensed activity, received compensation while unlicensed.
Statutes/Rules A.R.S. §§32-2153 (A)(3), (A)(10), (A)(21), (B)(6); 32-2155 (A) and (B)
Order Date May 24, 2006
Order Type Consent Order
Order Terms \$5,000 civil penalty

Name Navin I. Kuber
License Number SA529011000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, September 2004 misdemeanor conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date January 25, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 Civil Penalty

Name Brian Scott Kubitzka
License Number Unlicensed Applicant
Violation Convictions - Violence against another person
Summary November 1997 misdemeanor conviction for assault and December 2004 misdemeanor violations of Order of Protection.
Statutes/Rules A.R.S. §32-2153 (B)(2), (B)(7)
Order Date April 4, 2006
Order Type Commissioner's Final Order
Order Terms Denial of License

Name Brian C. Kusmer
License Number SA508229000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, March 2005 misdemeanor conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date January 31, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 Civil Penalty

Name Russell E. Lagerblade
License Number BR003877000
Violation False Application
Summary Failed to notify in writing of change of address for office. Failed to complete required education before applying for renewal of license.
Statutes/Rules A.R.S. §§32-2126 (A), 32-2136 (C), 32-2153 (A)(3) (B)(2); A.A.C. R4-28-301 (F), R4-28-303 (A)(2)(f), R4-28-402 (A)(1)
Order Date May 15, 2006
Order Type Consent Order
Order Terms \$2,000 Civil Penalty, 60 day retroactive suspension, 6 hours CE including Broker Management Clinic

Name Franklin Daniel Leedy
License Number SA530794000
Violation Convictions - Violence against another person
Summary March 2005 misdemeanor conviction for Disorderly Conduct/Domestic Violence.
Statutes/Rules A.R.S. §32-2153 (B)(2), (B)(7), (B)(10)
Order Date April 4, 2006
Order Type Consent Order
Order Terms License renewal granted, 2 year Provisional License w/ Practice Monitor, 24 anger management counseling sessions within 1 year

Name Neil Erland Leeser
License Number SA560922000
Violation False Application
Summary January 2004 conviction for misdemeanor DUI. Failed to disclose conviction on original license application.
Statutes/Rules A.R.S. §32-2153 (A)(3), (B)(1), (B)(2)
Order Date April 11, 2006
Order Type Consent Order
Order Terms \$2,000 Civil Penalty, 6 hr CE in Commissioner's Standards, 2 year Broker Acknowledgment

Name Michael Long
License Number BR007678000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, June 2004 misdemeanor conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date May 23, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

DISCIPLINARY DECISIONS

continued



Name Christine Luna
License Number BR041818000
Violation Advertising
Summary Advertisement did not include name of employing broker.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-502 (E)
Order Date April 26, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$500 to ADRE Education Fund

Name Jason Thanh Ly
License Number Unlicensed Applicant
Violation Convictions - Violence against another person
Summary December 14, 2004 misdemeanor conviction for Possession of a Weapon in Sterile Area of Airport and a December 16, 2004 misdemeanor conviction for Resisting and Obstructing a Peace Officer and Battery on a Peace Officer
Statutes/Rules A.R.S. §32-2153 (B)(10)
Order Date May 2, 2006
Order Type Consent Order
Order Terms License granted, 2 year Provisional License w/ Practice Monitor

Name Victor Martin
License Number Unlicensed Applicant
Violation Other violations
Summary June 1999 conviction for Criminal Damage, a class 6 undesignated offense.
Statutes/Rules A.R.S. §32-2153 (B)(7)
Order Date April 24, 2006
Order Type Commissioner's Final Order
Order Terms Denial of License

Name Stephen S. Mason
License Number SA546015000
Violation Convictions - Moral Turpitude (DUI)
Summary Failed to disclose a 1986 felony conviction for Possession of Cocaine on original license application; failed to notify the Department in a timely manner of a November 2005 misdemeanor conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3), (B)(1), (B)(2); A.A.C. R4-28-301 (F)
Order Date May 31, 2006
Order Type Consent Order
Order Terms \$4,000 Civil Penalty, 60 day license suspension, 6 hr CE in Commissioner's Standards, Provisional License w/ Practice Monitor

Name Terry Randall Mauger
License Number Unlicensed Applicant
Violation Convictions - Felonies
Summary August 1992 felony conviction for Aggravated Trafficking.
Statutes/Rules A.R.S. §32-2153 (B)(2), (B)(7)
Order Date April 6, 2006
Order Type Consent Order
Order Terms License granted, 2 year Provisional License w/ Practice Monitor, \$10,000 surety bond

Name Edgar McCloud / McCloud & Associates dba RMA-Integrity Realtors
License Number BR004020000 / CO000568001
Violation Broker Supervision
Summary Failed to properly supervise a broker who was involved in unlawful sales of subdivided property.
Statutes/Rules A.R.S. §32-2153 (A)(21); A.A.C. R4-28-1103 et seq
Order Date April 6, 2006
Order Type Consent Order
Order Terms \$2,000 Civil Penalty, Cease & Desist Sales (with other respondents), Obtain Public Report (with other respondents)

Name Helen S. McElwain
License Number BR005888000
Violation Broker Supervision
Summary Failed to properly supervise; allowing sales activities by an unlicensed person
Statutes/Rules A.R.S. §32-2153 (A)(6), (A)(21)
Order Date May 23, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,500 to ADRE Education Fund

Name Michelle "Miki" Amanda McElwain
License Number SA526382000
Violation Unlicensed Activity
Summary Conducted sales activities without an active license.
Statutes/Rules A.R.S. §32-2130 (B), 32-2153 (B)(6)
Order Date May 23, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,500 to ADRE Education Fund

Name Tim Wayne McMillon
License Number SA113323000
Violation False Application
Summary Failure to complete CE as required for licensure.
Statutes/Rules A.R.S. §§32-2130, 32-2153 (B)(1); A.A.C. R4-28-402
Order Date February 24, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 Civil Penalty

Name Jason Mongeau
License Number SA546310000
Violation Convictions - Moral Turpitude (DUI)
Summary May 2004 misdemeanor conviction for DUI and an August 2004 misdemeanor conviction for DUI
Statutes/Rules A.R.S. §32-2153 (A)(3), (B)(2), (B)(7)
Order Date March 23, 2006
Order Type Consent Order
Order Terms License renewal granted, 2 year Provisional License w/ Practice Monitor, Bodily Fluid Testing, AA, Sobriety Monitor, \$1,000 Civil Penalty

DISCIPLINARY DECISIONS

continued



Name Janice Moore-Acridge
License Number BR003759000
Violation Broker Supervision
Summary Failed to supervise a licensee, who had not timely renewed a license and had conducted unlicensed activity.
Statutes/Rules A.R.S. §§32-2153 (A)(3), (A)(6); 32-2155 (A); A.A.C. R4-28-1103 (A)
Order Date April 12, 2006
Order Type Consent Order
Order Terms \$1,000 Civil Penalty

Name Pamela Morales / DWH Action Realty, Inc.
License Number CO546152000
Violation Unlicensed Activity
Summary Conducted sales activities without an active license.
Statutes/Rules A.R.S. §32-2130 (B), 32-2153 (B)(6)
Order Date May 25, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$5,000 to ADRE Education Fund

Name John Moreno
License Number Unlicensed Applicant
Violation Convictions - Violence against another person
Summary January 2004 misdemeanor conviction for Battery, Domestic Violence.
Statutes/Rules A.R.S. §32-2153 (B)(7), (B)(10)
Order Date March 15, 2006
Order Type Commissioner's Final Order
Order Terms License granted, 2 year Provisional License w/ Practice Monitor

Name Ronald A. Moreno
License Number Unlicensed Individual
Violation Unlawful Sales (Development)
Summary Involving the division of property, located in Mohave County, into six or more parcels, failure to comply with applicable subdivision statutes and rules.
Statutes/Rules A.R.S. §§32-2181 (A), 32-2183 (F); A.A.C. R4-28-803 (A), R4-28-804 (A), R4-28-805
Order Date April 24, 2006
Order Type Consent Order
Order Terms \$10,000 Civil Penalty (jointly and severally), Cease & Desist sales, Rescission offer, apply for Public Report

Name Barbara H. Morgenstern
License Number BR112450000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, of an adverse judgment in small claims court, paid in April of 2006.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date May 12, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Linda Mulberger
License Number SA041283000
Violation Unlicensed Activity
Summary Failed to renew license in a timely manner and conducted unlicensed activities.
Statutes/Rules A.R.S. §§32-2130 (B), 32-2153 (A)(3), (A)(14), (B)(6)
Order Date April 14, 2006
Order Type Consent Order
Order Terms License renewal granted, 120 day retroactive suspension to August 18, 2005, \$1,000 Civil Penalty

Name Michael Nabers
License Number BR008037000
Violation Broker Supervision
Summary Advertisement of employed salesperson/associate broker did not include the name of the employing broker or broker's dba name.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-502 (E); R4-28-1103 (A), (A)(5)(b), (B)
Order Date April 19, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$500 to ADRE Education Fund

Name Nancy L. Nancy L. Golba
License Number BR044562000
Violation Broker Supervision
Summary Failed to properly supervise; allowing sales activities by an unlicensed person
Statutes/Rules A.R.S. §32-2153 (A)(6), (A)(21)
Order Date May 16, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Elaine E. Nelson
License Number SA537394000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, June 2005 misdemeanor conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date February 22, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Robert J. Nevins / Nevins Service Realty, LLC
License Number LC104327000 / BR047314000
Violation Unlicensed Activity
Summary Failed to renew entity broker license in a timely manner and conducted unlicensed activities
Statutes/Rules A.R.S. §§32-2153 (A)(3), (A)(10), (A)(21), (B)(6); 32-2155 (A) and (B)
Order Date May 25, 2006
Order Type Consent Order
Order Terms License renewal granted, \$2,000 Civil Penalty (jointly and severally).

DISCIPLINARY DECISIONS

continued



Name Sarah Elizabeth Newtown
License Number Unlicensed Applicant
Violation Convictions - Moral Turpitude (DUI)
Summary April 2003 Class 1 misdemeanor conviction for DUI
Statutes/Rules A.R.S. §32-2153 (B)(2)
Order Date March 28, 2006
Order Type Consent Order
Order Terms License granted, 2 year Provisional License w/ Practice Monitor, AA, Sobriety Monitor

Name Kelly Nichols
License Number SA528513000
Violation Convictions - Moral Turpitude (DUI)
Summary November 2003 misdemeanor conviction for Extreme DUI, failure to notify the Department in a timely manner.
Statutes/Rules A.R.S. §§32-2153 (A)(3), (B)(2), (B)(7); A.A.C. R4-28-301 (F).
Order Date May 25, 2006
Order Type Commissioner's Final Order
Order Terms Denial of license renewal

Name Ray M. Ortiz
License Number SA515095000
Violation Breach of Fiduciary Duty/Fail to Deal Fairly
Summary Failed to appropriately advise clients regarding the purchase of property within a restricted zone in Mexico and failed to recommend an appropriate and safe custodian for client's funds in Mexico.
Statutes/Rules A.R.S. §32-2153 (A)(3) (B)(8); A.A.C. R4-28-1101 et.seq.
Order Date May 2, 2006
Order Type Consent Order
Order Terms \$2,000 Civil Penalty, 6 hours CE in Commissioner's Standards, 2 year Broker Acknowledgment

Name Craig Otto
License Number BR101987000
Violation Convictions - Moral Turpitude (DUI)
Summary April 2004 conviction for misdemeanor Extreme DUI and failure to notify the Department of the conviction in a timely manner.
Statutes/Rules A.R.S. §32-2153 (A)(3), (B)(2), (B)(7); A.A.C. R4-28-301 (F)
Order Date May 10, 2006
Order Type Commissioner's Final Order
Order Terms \$2,000 Civil Penalty, License granted, 2 year Provisional License w/ Practice Monitor, Bodily Fluid Testing, AA, Sobriety Monitor

Name Benjamin Jacob Packard
License Number Unlicensed Applicant
Violation Convictions - Moral Turpitude (Other)
Summary Multiple misdemeanor convictions for Illegal Consumption, Failing to Appear, Shoplifting and Disorderly Conduct.
Statutes/Rules A.R.S. §32-2153 (B)(2), (B)(7)
Order Date April 13, 2006
Order Type Commissioner's Final Order
Order Terms Denial of License

Name Rick Patrick
License Number SA545802000
Violation Advertising
Summary Advertisement did not include name of employing broker.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-502 (E)
Order Date May 4, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$500 to ADRE Education Fund

Name Nick C. Perkins
License Number Unlicensed Applicant
Violation Convictions - Violence against another person
Summary January 1998 misdemeanor convictions for Assault, Damage to Property, Disorderly Conduct and Assault-Domestic Violence.
Statutes/Rules A.R.S. §32-2153 (B)(7), (B)(10)
Order Date April 11, 2006
Order Type Consent Order
Order Terms License granted, 2 year Provisional License w/ Practice Monitor, complete 10 weeks of approved domestic violence counseling within 180 days

Name Cheryl L. Perry
License Number SA508144000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, September 2005 disciplinary action by the Arizona Nursing Board.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date March 7, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 Civil Penalty

Name Lori Lucille Petrozza
License Number Unlicensed Applicant
Violation Convictions - Theft
Summary December 2004 misdemeanor conviction for Theft.
Statutes/Rules A.R.S. §32-2153 (B)(2), (B)(7), (B)(10)
Order Date March 21, 2006
Order Type Consent Order
Order Terms License granted, 2 year Provisional License w/ Broker Acknowledgment, \$10,000 surety bond

Name Dore Pfaff
License Number SA017317000
Violation Unlawful Sales (Development)
Summary Offering unimproved real estate ("Saddle Mountain Ranch") without complying with applicable subdivision statutes and rules. Pfaff's license was summarily suspended and a Cease and Desist Order was issued to all respondents.

Statutes/Rules A.R.S. §§32-2153 (A)(3), 32-2181(B) & (D), 32-2183 (F)
Order Date May 16, 2006
Order Type Commissioner's Final Order
Order Terms Vacate Cease and Desist Order for sales, Rescission offers, compliance with County subdivision laws; Pfaff: \$10,000 Civil Penalty, 4 month License Suspension, 6 hr CE in Commissioner's Standards

DISCIPLINARY DECISIONS

continued



Name Kelly Marie Polzer
License Number Unlicensed Applicant
Violation Convictions - Moral Turpitude (DUI)
Summary May 2000 and April 2004 convictions for misdemeanor DUI.
Statutes/Rules A.R.S. §32-2153 (B)(2), (B)(7)
Order Date April 4, 2006
Order Type Consent Order
Order Terms License granted, 2 year Provisional License w/ Practice Monitor, Bodily Fluid Testing, AA, Sobriety Monitor

Name Gary Semion Powers
License Number SA561072000
Violation False Application
Summary Failed to disclose a March 2003 misdemeanor conviction when applying for an original salespersons license.
Statutes/Rules A.R.S. §32-2153 (A)(3), (B)(1), (B)(7)
Order Date May 9, 2006
Order Type Consent Order
Order Terms \$1,000 Civil Penalty, 6 hr CE in Commissioner's Standards, 2 year Broker Acknowledgment

Name Thyda Puth & Suor V. Lim
License Number BR113353000 (Puth)
Violation Unlawful Sales (Development)
Summary Offered for sale, sold or transferred subdivided lots without complying with applicable subdivision statutes and rules.
Statutes/Rules A.R.S. §§32-2153 (A)(3), 32-2164, 32-2181 (A), 32-2183 (F), 32-2185.01 (D); A.A.C. R4-28-803 (A), R4-28-804 (A), R4-28-805
Order Date April 6, 2006
Order Type Consent Order
Order Terms Cease & Desist Sales, Rescission offer, apply for Public Report (with other respondents), \$30,000 Civil Penalty, \$5,000 payment to Real Estate Education Fund, 90 day suspension of license (Puth), 2 year Broker Acknowledgment

Name Marnie Ramirez
License Number SA116942000
Violation False Application
Summary Failed to complete required Continuing Education courses when applying for license renewal. Provided false information on renewal.
Statutes/Rules A.R.S. §32-2153 (A)(3), (B)(1); A.A.C. R4-28-402
Order Date April 24, 2006
Order Type Consent Order
Order Terms \$1,000 civil penalty; compliance with CE requirements within 30 days; 2 year Broker Acknowledgment

Name Jess Ramirez
License Number Unlicensed Applicant
Violation Other Jurisdiction Sanction
Summary Applicant surrendered Arizona substitute teacher's certificate in August of 2004 for misuse of a school computer system.
Statutes/Rules A.R.S. §§32-2153 (B)(7)
Order Date May 25, 2006
Order Type Commissioner's Final Order
Order Terms Denial of license

Name Bryan Rhoden
License Number Unlicensed Applicant
Violation Convictions - Theft
Summary 2004 Class 6 Undesignated felony for Theft and a Class 1 misdemeanor conviction for Possession of Drug Paraphernalia.
Statutes/Rules A.R.S. §32-2153 (B)(2), (B)(7)
Order Date May 17, 2006
Order Type Commissioner's Final Order
Order Terms Denial of License

Name Robert W. Riddle
License Number SA510041000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, a January 2005 disciplinary action by the Arizona Registrar of Contractors.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date May 4, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Jocelyn A. Ross
License Number SA102583000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, August 2005 misdemeanor conviction for Disorderly Conduct.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date April 7, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Roy Drachman Realty Company
License Number CO002545000
Violation Convictions - Felonies
Summary December 2, 2005 Designated Broker convicted of Attempt to Unlawfully Possess a Narcotic Drug (Class 5 felony) and Unlawful Possession of Drug Paraphernalia (Class 6 felony). Order vacating Summary Suspension issued on March 25, 2006.
Statutes/Rules A.R.S. §32-2153 (A)(3), (B)(2), (B)(7)
Order Date March 17, 2006
Order Type Summary Suspension
Order Terms Summary Suspension of Broker's Entity License

Name Henry Romo Saucedo
License Number SA112471000
Violation Convictions - Moral Turpitude (DUI)
Summary September 2004 conviction for misdemeanor DUI. Failure to renew timely and disclose DUI conviction in a timely manner.
Statutes/Rules A.R.S. §32-2153 (A)(3), (B)(2), (B)(7); A.A.C. R4-28-301 (F)
Order Date April 6, 2006
Order Type Consent Order
Order Terms \$2,000 Civil Penalty, 2 year Provisional License w/Broker Acknowledgment

DISCIPLINARY DECISIONS

continued



Name Peter Hutchisson Schultz
License Number License Applicant
Violation Other Jurisdiction Sanction
Summary August 1999 misdemeanor conviction for DUI in Missouri. December 2001 disbarment from practice of law in Missouri.
Statutes/Rules A.R.S. §32-2153 (B)(2)
Order Date May 4, 2006
Order Type Consent Order
Order Terms License granted, 2 year Provisional License w/Practice Monitor

Name John W. Shamrock
License Number SA056273000
Violation Unlicensed Activity
Summary In 2005, conducted unlicensed activities and failed to timely renew license.
Statutes/Rules A.R.S. §§32-2130 (B), 32-2153 (A)(10), (A)(22), (B)(6)
Order Date March 28, 2006
Order Type Consent Order
Order Terms \$500 Civil Penalty

Name Dennis Shankland
License Number SA551262000
Violation False Application
Summary Failed to disclose a 1998 misdemeanor conviction when applying for licensure.
Statutes/Rules A.R.S. §32-2153 (B)(1), (B)(7)
Order Date May 4, 2006
Order Type Consent Order
Order Terms \$1,000 Civil Penalty, 2 year Provisional License with Broker Acknowledgment

Name Kimberly Shaw
License Number SA513612000
Violation Advertising
Summary Advertisement did not include name of employing broker.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-502 (E)
Order Date March 13, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$500 to ADRE Education Fund

Name Sean Robert Shertzer
License Number Unlicensed Applicant
Violation Convictions - Theft
Summary January 2002 misdemeanor conviction for Theft.
Statutes/Rules A.R.S. §32-2153 (B)(2), (B)(7), (B)(10)
Order Date May 9, 2006
Order Type Consent Order
Order Terms License granted, 2 year Provisional License w/ Practice Monitor, \$15,000 surety bond

Name A. Chad Shriner / Copper Desert Properties, Inc.
License Number BR540737000 / CO544235000
Violation Multiple violations
Summary A 2006 audit showed: paid compensation to an unlicensed individual, failed to exercise reasonable supervision, failed to keep appropriate records, failed to properly handle trust funds and accounts.
Statutes/Rules A.R.S. §§32-2151 (C), 32-2151.01 (A), 32-2153 (A)(21), (A)(22), 32-2174 (A) & (B)
Order Date March 28, 2006
Order Type Consent Order
Order Terms \$5,000 Civil Penalty, \$5,000 to Real Estate Education Fund (jointly & severally); Broker: license suspended for 30 days, 6 hr CE in Broker Management

Name Craig Skibiski
License Number Unlicensed Applicant
Violation Convictions - Felonies
Summary 2002 conviction for Battery.
Statutes/Rules A.R.S. §32-2153 (B)(7), (B)(10)
Order Date April 25, 2006
Order Type Commissioner's Final Order
Order Terms Denial of License

Name Glenda A. Smith
License Number SA042700000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, September 2004 misdemeanor conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date January 31, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 Civil Penalty

Name Daniel P. Smith
License Number SA532309000
Violation Convictions - Moral Turpitude (DUI)
Summary September 2005 misdemeanor conviction for DUI and failure to notify the Department in a timely manner of the conviction.
Statutes/Rules A.R.S. §32-2153 (A)(3), (B)(2), (B)(7); A.A.C. R4-28-301 (F)
Order Date May 16, 2006
Order Type Consent Order
Order Terms \$2,000 Civil Penalty, License renewal granted, 2 year Provisional License w/ Practice Monitor,

Name Michael L. Stanton
License Number SA531810000
Violation Unlicensed Activity
Summary Conducted sales activities without an active license.
Statutes/Rules A.R.S. §32-2130 (B), §32-2153 (B)(6)
Order Date May 30, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,500 to ADRE Education Fund

DISCIPLINARY DECISIONS

continued



Name Vicki A. Sutliff
License Number SA545576000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, April 2005 misdemeanor conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date February 2, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 Civil Penalty

Name Christopher M. Thelen
License Number Unlicensed Applicant
Violation Convictions - Felonies
Summary 2002 conviction for Theft, a Class 6 designated felony.
Statutes/Rules A.R.S. §32-2153 (B)(2), (B)(7), (B)(10)
Order Date April 24, 2006
Order Type Commissioner's Final Order
Order Terms Denial of License

Name Eric Thomas
License Number SA509220000
Violation Dishonest Dealings
Summary Respondent signed documents on behalf of a client without express written permission to do so.
Statutes/Rules A.R.S. §32-2153 (A)(3), (A)(18), (A)(25)
Order Date March 24, 2006
Order Type Consent Order
Order Terms \$1,000 Civil Penalty, 6 hr CE in Commissioner's Standards, 2 year Broker Acknowledgment

Name Kristine Tiley
License Number SA549728000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, December 2005 misdemeanor conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date May 25, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Wayne Howard Uhler / Arizona Industrial Advisors, Inc. dba Truckyards.com
License Number CO507942000
Violation Unlicensed Activity
Summary Conducted sales activities without an active license.
Statutes/Rules A.R.S. §32-2130 (B), §32-2153 (B)(6)
Order Date April 18, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$6,000 to ADRE Education Fund

Name Tamra L. Ulmer
License Number SA518926000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, October 2005 misdemeanor conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date February 13, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Harold W. Vinson
License Number SA031102000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, September 2005 misdemeanor conviction for DUI.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date May 31, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Michael B. Wallace
License Number SA520750000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, April 2004 misdemeanor conviction for Driving With a Suspended License.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date April 5, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$2,000 to ADRE Education Fund

Name Adam P. Weber
License Number SA547342000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, Suspension from the practice of law.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date February 7, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Nick Wilson
License Number SA515570000
Violation Advertising
Summary Advertisement did not include name of employing broker.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-502 (E)
Order Date March 6, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$500 to ADRE Education Fund

Name World Live, Inc. / Tonopah MT Corp.
License Number Unlicensed Entities
Violation Unlawful Sales (Development)
Summary Offering unimproved real estate ("Saddle Mountain Ranch") without complying with applicable subdivision statutes and rules.
Statutes/Rules A.R.S. §§32-2181(B) & (D), 32-2183 (F)
Order Date May 16, 2006
Order Type Commissioner's Final Order
Order Terms Vacate Cease and Desist Order for sales, Rescission offers, compliance with County subdivision laws; \$10,000 Civil Penalty to World Live Inc, \$1,000 to Tonopah MT Corp



Name Thomas J. Wright
License Number BR026084000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, October 2003 civil judgment.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date March 8, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name Lawrence L. Young
License Number Unlicensed Applicant
Violation Convictions - Felonies
Summary December 1999 conviction for federal income tax evasion.
Statutes/Rules A.R.S. §32-2153 (B)(2)
Order Date April 4, 2006
Order Type Commissioner's Final Order
Order Terms License granted, 2 year Provisional License w/ Practice Monitor, 9 hr CE in Commissioner's Standards and Contract Law

Name Rebecca Young
License Number Unlicensed Applicant
Violation Convictions - Moral Turpitude (Other)
Summary March 1998 misdemeanor conviction for shoplifting; January 2001 misdemeanor conviction for shoplifting.
Statutes/Rules A.R.S. §§32-2153 (B)(2), (B)(7)
Order Date May 24, 2006
Order Type Consent Order
Order Terms License granted; 2 year Provisional License with Practice Monitor; \$15,000 surety bond

Name Joseph S. Yu
License Number SA531589000
Violation Failure to Disclose in a Timely Manner
Summary Failed to disclose, within 10 days, April 2005 misdemeanor conviction for Consuming Liquor in a Vehicle.
Statutes/Rules A.R.S. §32-2153 (A)(3); A.A.C. R4-28-301 (F)
Order Date March 28, 2006
Order Type Accelerated Settlement Agreement
Order Terms \$1,000 to ADRE Education Fund

Name James M. Zinkand
License Number SA560697000
Violation False Application
Summary Failed to disclose a previous real estate sales license in the State of Pennsylvania as well as a license revocation.
Statutes/Rules A.R.S. §§32-2153 (A)(3), (B)(1), (B)(3), (B)(4), (B)(5), (B)(7), (B)(8), (B)(10); A.A.C. R4-28-301 (F)
Order Date May 22, 2006
Order Type Summary Suspension
Order Terms Summary Suspension of Salesperson's License

End of June Listings



IN CASE YOU DIDN'T NOTICE !

The above listings are evidence that ADRE's Administrative Actions staff has been exceptionally busy these past several months. What they lack in staff numbers they are making up for in hard work and dedication. The division takes seriously its responsibilities to protect the Public Interest and to uphold the professional standards that Arizona's real estate community expects of this licensing agency.

Since the last listing of Disciplinary Decisions reported in the April 2006 issue of **The Bulletin**, the Administrative Actions staff has reached resolution of 134 cases including: denials of problematic new applications and license renewal applications; consent orders; accelerated settlement agreements (a recent innovation); and disciplinary actions that include the granting of provisional licenses.

A number of the cases listed here involved violation of subdivision laws. Several of these had multiple respondents and were the result of lengthy and complex investigations requiring extensive work by the Investigations & Audits Division staff.

The budget appropriation to operate ADRE effectively has been woefully short of the amount needed to meet the licensing and enforcement responsibilities of the Department. ADRE has had to think strategically, work harder, and manage smarter. Streamlining case management techniques and employing "triage" evaluations of the more than 400 active cases (on average each month) being worked by the Administrative Actions Division, has been part of that strategy.

The innovative Accelerated Settlement Agreements were initiated in February and have been a great benefit to the speedy resolution of relatively minor violations of statutes and rules. Akin to a "Traffic Ticket," this innovation has reduced the length of time a licensee has to wait for the infraction to be dealt with by ADRE and the process allows ADRE staff to devote more time and attention to much more severe violations of real estate licensing laws.

While these efforts have been good stop-gap measures that keep ADRE abreast of the ever increasing case load, these measures can not be expected to keep pace with what undoubtedly will be ever increasing numbers of complaints, resulting in more investigations and disciplinary actions, next year and into the foreseeable future.

Commissioner Richardson will be making the case for a more realistic appropriation for the next state budget cycle, showing evidence of the increasing level of real estate transactions that inevitably result in more applications for licenses and an increase in complaints. Currently, virtually all fees and fines collected by ADRE go into the State General Fund. The Legislature then appropriates a budget for the Department. In recent years, the licensing fees and other revenues collected by the Department have far exceeded the budget appropriated by the Legislature for the Department.

The Commissioner will have this added evidence of the steep increases in revenues collected by ADRE due to Arizona's real estate market activity, now going into the State General Fund. The Commissioner will be making the case that the majority of those revenues should be dedicated to more adequately funding the Department's required functions. ☐

REHABILITATION

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The Department currently denies, revokes or restricts approximately 1,500 licenses per year because of criminal convictions. In every case the Department takes into account the evidence of rehabilitation furnished by the applicant or licensee. The Department has developed formal criteria to use in evaluating rehabilitation which are set forth in sections 2911 and 2912, Chapter 6, Title 10, California Code of Regulations. The following overview of the concept of “rehabilitation” was included in a recent Proposed Decision written by an Administrative Law Judge assigned to the San Diego offices of the Office of Administrative Hearings:

“Rehabilitation is not an event but rather a process. The opportunity at a second chance has long and deep roots in our culture and our law. We do not insist that people wear the scarlet letter for a lifetime. But the opportunity at a second chance does not come automatically, simply earned with the passage of time. Rather, we all must earn our second chance. This is the core of the notion of rehabilitation. Society takes it as a given that we all make mistakes, some larger than others. When our mistakes are social mistakes, breaches of the criminal law, for example, society imposes certain disabilities on us. We are penalized for our conduct by incarceration, fines, probation, community services, etc. Implicit in this set of disabilities imposed by society is a deeper truth. Society no longer trusts us completely. We have lost, at least temporarily, the trust of the community that we can do the tasks of citizenship without some oversight, some monitoring. Furthermore, depending on the social breach and depending on one’s job, society may say that the breach is such that one can’t be trusted to continue working in a particular area. The social breach is inconsistent with the particular type of work one is engaged in.

“Rehabilitation is a process by which an individual earns back the trust of the community. It is composed of two very different modes of change. The first is attitudinal and involves the demonstration of a change of mind and heart. The second involves changes in behavior. To establish the change of mind and heart one must come to terms with the underlying criminal behavior. One must demonstrate an awareness and understanding that it was wrong and that it was harmful. One must accept responsibility for the actions, not blaming it on others or excusing it. One must, in a word, show remorse. To establish a change in behavior, one must demonstrate a track record of consistently appropriate behavior over an extended period of time. In this way, society has the benefit of making a considered judgment with sufficient evidence.

“There is no specific formula to establish rehabilitation. Each case must be evaluated on its own unique set of factors.” ☐



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