



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

July 2004

Volume 30, Issue 4

Let's Get Acquainted with Subdivisions



Cindy Ferrin
Deputy Director of Subdivisions
30 Years of Service
Cindy collects pets, raises desert tortoises and is proud of her two children who are in the honor society.



John Silliman
Subdivisions Representative
3.5 Years of Service
John loves reading historical biographies.



Jon Salak
State Examiner
9 Years of Service
Jon recently married a beautiful woman who "keeps him straight" and says although sometimes people think he is not friendly, he would give the shirt off his back for a customer.



Roy Tanney
Director of Subdivisions
24 Years of Service
Roy loves to keep people laughing and has a positive perspective on life.

Judy Kisselburg
Subdivisions Representative
16 Years of Service

A native Arizonan, Judy loves film noir movies, designer clothes and is the proud grandmother of three.



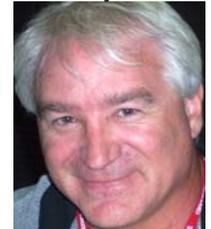
Kurt La Botz
Subdivisions Representative
4 Years of Service

Kurt has been married for 20 years and reads 8 books at a time, mostly about military history.



Richard Kyle
Ed. Monitor/ Property Inspector
1 Year of Service

Richard says he is not as old as he looks—he is only 43—and he collects royal crowns.



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Our Mission

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

The Game of Life at ADRE — At a Stalemate — No One Wins!

By Dick Simmonds

In the Bulletin's May 04 issue, I wrote an article titled "The Game of Life at ADRE." The article related to how difficult it was getting to provide the same level of service to licensees while continuing our mission of protecting the public interest. This is a follow-up to that article, to let licensees know that they have unfortunately, lost the game! The legislature has passed a budget but even with the efforts of the Arizona Association of Realtors® to help increase our budget, the Department's budget will remain the same for fiscal 2004-2005, as it was last year.

What does this mean to you? Our workload has increased dramatically in every division, even though our resources have not increased proportionally. Therefore, only time will tell. One thing is certain — ADRE **will not** lower its standards for protecting the public interest. If that means taking longer to do the job right because of inadequate staffing, we are committed to doing the job right.

We will continue inspections of subdivision properties and will not skim through a Public Report filing just to take care of the backlog. By the same token, since we do not have adequate licensing staff, there will be times when the front counter will have one closed station so that the mail-in applications may be processed in a timely manner. We have also been recently inundated with calls asking why complaints and investigations are taking so long. For the most part, this is a staffing problem and now with the current budget situation, there will be no relief in sight.

Sorry to sound so negative, but I'm just trying to paint the picture with the facts. The fact is, "The Game of Life at ADRE" is currently at a stalemate, which means currently there are no winners.

Editor's Note: Mr. Simmonds is Business Services Director and a Special Assistant to the Commissioner. He has been with ADRE for 10 years. ☐

Updated Substantive Policy Statements Unveiled

The Department of Real Estate recently completed a review of its Substantive Policy Statements. The 29 previously existing statements were revised down to a short 13. Substantive Policy Statements are meant to be used as a guide for licensees, in clarifying ADRE's Commissioner's rules or statutes.

Following is a list of the current statements with a brief description:

No. 2004.01 (formerly SPS No. 1)

Acceptable Forms of Payment

Describes the methods of payment accepted by the Department. Effective Date: June 18, 1999; Revised & renumbered 5/28/04

No. 2004.02 (formerly SPS No. 3)

Attendance Requirements for Credit & Enforcement

Describes when a licensee is entitled to credit for a class. Effective Date: June 18, 1999; Revised and renumbered 5/28/04.

No. 2004.03 (formerly SPS No. 7)

Disclosure of Licensee's Home Address

Describes circumstances under which a licensee's home address must be disclosed. Effective Date: June 18, 1999; Revised and renumbered 5/28/04.

No. 2004.04 (formerly SPS No. 19)

Categories for Course Approval (Continuing Education)

Provides a description and examples of topics that are included for continuing education credit within the various categories. Effective Date: May 2, 2000; Revised and renumbered 5/28/04.

No. 2004.05 (formerly SPS No. 20)

Unlicensed Assistants

Clarification of tasks that may be delegated to an unlicensed assistant. Effective Date: June 18, 1999; Revised & renumbered 5/28/04.

No. 2004.06 (formerly SPS No. 23)

Access to Arizona Real Estate Law Book on the World Wide Web

Availability of real estate laws and rules on Department's Web page via the Internet. Effective Date: December 6, 1999; Renumbered 5/28/04.

No. 2004.07 (formerly SPS No. 24)

Electronic Record Keeping

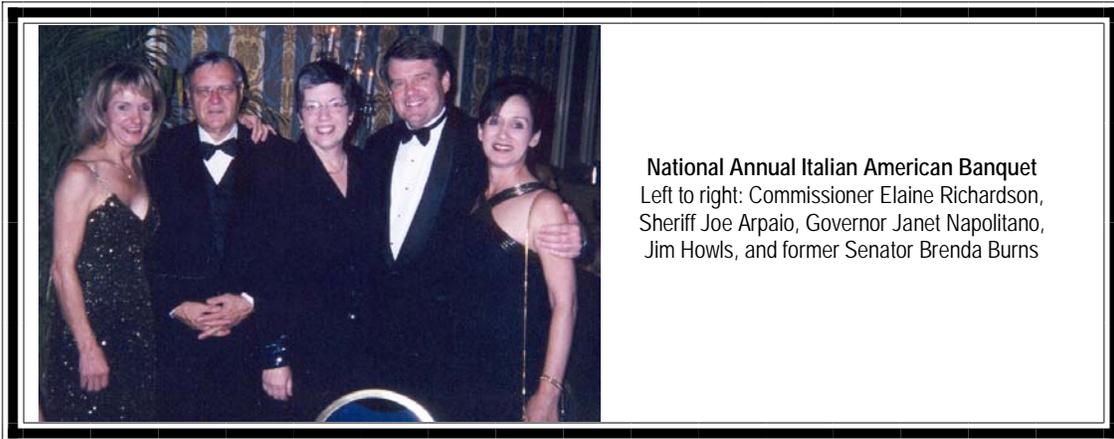
Conditions under which brokers may keep required records electronically. Effective Date: August 15, 2000; Revised & renumbered 5/28/04.

(Continued on page 10)

Commissioner's Corner

By Commissioner Elaine Richardson

A picture is worth a thousand words...



National Annual Italian American Banquet
Left to right: Commissioner Elaine Richardson, Sheriff Joe Arpaio, Governor Janet Napolitano, Jim Howls, and former Senator Brenda Burns

At the Arizona Mexico Commission's Summer Plenary Session



Rafael Mendivil Rojo, Special Assistant for the Office of Sonoran Governor Eduardo Bours.



ADRE Staff with State of Sonora Staff
Left to right: Commissioner Elaine Richardson; Amos Moreno Ruiz, General Director of ICRESON (Finance); Cindy Ferrin, Deputy Director of Subdivisions; Mario Larios Velarde, General Director of ICRESON (Subdivisions); and Liz Carrasco, Public Information Officer.



ADRE Staff with AMC Real Estate Task Force Members
Left to right: Liz Carrasco; Cindy Ferrin; Raul O'Farrill, Managing Partner for O'Farrill and Associates; Commissioner Elaine Richardson; and Ana Maria Araque, Partner in Lopez Caballero Accounting Firm.



Cindy Ferrin; Paco Manzo Taylor, Notario and Member of the AMC's Finance, Legal and Business Committee; and Commissioner Elaine Richardson.

A NOTE ABOUT GUEST COLUMN ARTICLES...

GUEST COLUMN ARTICLES DO NOT NECESSARILY REFLECT THE OPINIONS, POLICIES OR INTERPRETATIONS OF LAW BY ADRE. ADRE ASSUMES NO RESPONSIBILITY FOR THE CONTENT IN SUCH GUEST ARTICLES. THEY ARE MEANT TO INFORM THE PUBLIC AND PROVIDE VARIETY TO ADRE'S BULLETIN. ALL ARTICLES ARE EDITED FOR SPACE LIMITATIONS.

Spotlight on New Vice-Chair Gary Brasher

Governor Janet Napolitano appointed Gary Brasher to the Real Estate Advisory Board in 2003. Gary was recently elected to be the Board's Vice-Chair. The Bulletin Editor recently sat down with Gary to learn more about his background.

Gary is a fifth-generation native of the Phoenix area, currently living in Southern Arizona in the beautiful town of Tubac. With roots going back so far, at an early age Gary started what has become a lifelong appreciation and love for the state of Arizona and its diversity. As with many early pioneers, Gary's family ranched and farmed much of the land that is now in the city of Peoria. During his childhood, Lyle Patrick --Gary's grandfather-- gave Gary an early admiration for the land as well as the water that has made the valley grow.

Gary attended high school at Thunderbird High School in Phoenix, Arizona, graduating in 1976. It was during this time-frame that Gary's love for sports took root, eventually earning him an athletic scholarship to the University of Colorado, where he later became a member of the 1977 Big Eight Championship football team that went on to participate in the 1977 Orange Bowl. In 1978, Gary left the U. of C. football program to take a position with the Federal Bureau of Investigation in Denver, Colorado. In 1979, Gary transferred to Arizona State University while still working for the F.B.I. and obtained his Bachelor of Science degree in Political Science.

Upon leaving the F.B.I. in 1981, Gary began his real estate career first in the Phoenix area, then in southern Arizona. Gary is currently the president of Brasher Real Estate in Tubac, Arizona and has been engaged in developing a master planned community for the last 15 years. In 2001, Gary's development ("Barrio de Tubac") won the coveted "Governor's Award for



Community Leadership." This was the first time a developer had been awarded the Governor's Award in this category.

Gary and his wife Patricia have two girls and two boys between the both of them: Alexandra who currently attends Northern Arizona University; Delaney, a sophomore in high school; Mason Falbaum, 10 and Barrett Falbaum, 8.

Gary looks forward to working cooperatively with the other members of the Advisory Board under the leadership of Chairman R.L. Brown, as well as working with the stakeholders in the real estate community. He brings his unique background as a fifth-generation native and knowledge of farming, ranching, developing and preserving the land within the state he loves to his new position of Vice-Chair. ADRE welcomes Gary to his new position! ☐

States of Arizona and Sonora Form Real Estate Alliance

By Guest Columnist Raul O'Farrill

Mexico has become an important destination for US investments in real estate. The most popular beach destination for Arizona residents is now Rocky Point (Puerto Peñasco) in the Mexican state of Sonora, as well as the San Carlos Bay area. The proximity of Rocky Point to both Phoenix and Tucson, coupled with the beauty of its beaches, all have contributed to a market boom where most buyers happen to be Arizona residents.

O'Farrill and Associates is a Mexican law firm based in Phoenix, Arizona. As such, we are proud of the growth in this Mexican market. The ability to acquire legal protections that are now offered by most of the new developments in the region has contributed to a higher consumer level of confidence. Rocky Point is one of the few locations in Mexico where we can find hybrid (U.S. and Mexican) legal professional services like those offered by our law firm, that offer strong protections to the Arizona buyer. Many Arizonans are looking for a safe investment to be able to use and enjoy property on the Mexican coast that includes: a bank trust that holds the asset backed by a strong financial institution; U.S. title insurance to cover contingencies on the property titles; escrow accounts in the U.S.; and professional and effective subdivision approval for real estate developments in the State of Sonora to protect the environment, preserve the zoning, and the consumer by guaranteeing the delivery of what is offered by a developer.

U.S. developers and American citizens have influenced the Rocky Point real estate market dramatically. Because of this, there is an increasing number of Mexican attorneys who are getting experience specializing in real estate practice, especially in dealing with American transactions.

In June 2004, I was honored to help facilitate a meeting between the Arizona Real Estate Department and the cabinet-level Economic Development Secretary for the State of Sonora. We reached historic agreements to keep an agent registry for real estate professionals in the Rocky Point region, so that the public will have access to more information. Even more importantly, it was agreed that Sonoran developments would have access to a special application process to obtain an approved Arizona Public Report, after receiving an approval certificate issued by the Undersecretary of Urban Infrastructure and Ecology for the state of Sonora (SIUE). SIUE will only issue an approved certificate after: a specific subdivision or condominium has been approved by the state of Sonora; the lots or condo units have been recorded in the public registry (ICRESON); each lot and subdivision has been issued a property tax identification number, and each development has been issued a license-to-sell after completion, or bonding to guarantee completion.

ADRE is also in the process of preparing a special

application for developments in Mexico. This will serve to help the process become more efficient, so that once the legality of the Mexican development is verified by having received an approval by SIUE (the state agency in Sonora overseeing the approval process for subdivision developments), the specialized application may be approved more quickly, after checking for additional disclosures and other simple application requirements. (It is currently possible to obtain an Arizona Public Report for Mexican developments by attaching to the application several separate, documents that must be translated to English and that are sometimes hard to get.) The new application process will require that certain Mexican documents be included, which will be recognized by the Arizona Department of Real Estate as meeting the minimum disclosure and application requirements for the state of Arizona.

This new agreement to work together came about in just a few weeks' time, thanks to the following: the business-oriented and open mind of Sonora's new Governor Eduardo Bours; his team, led by Raymundo Garcia de Leon, Secretary of Economic Development for the state of Sonora; Governor Janet Napolitano's efforts to keep a strong business and real estate relationship with the state of Sonora through Commissioner Elaine Richardson's work (who was instrumental and understands the benefits of this agreement.) Last but not least, I should mention the work of the Real Estate Task Force through the Arizona Mexico Commission, of which I have had the honor of being a part, which is co-chaired by Commissioner Richardson and Mitch Creekmore. All of these people took part in the negotiating process to help both states work together for the common good.

Since this agreement should be up and running for the public before December of this year, developers with properties in Mexico will then have the opportunity to legally advertise and promote their developments which target Arizona residents, through a more efficient process. Currently, a developer with Mexican properties who targets Arizona residents, and does not have an Arizona Public Report is not allowed to advertise in the state of Arizona. This will also help improve business for developers based in Arizona, which in turn will result in safer investments for the consumer looking to enjoy Arizona's natural beaches south of the border.

Editor's Note: Mr. O'Farrill is a managing partner for the Law Firm of O'Farrill and Associates and was appointed by Governor Janet Napolitano to be a member of the Arizona Mexico Commission's Real Estate Task Force. He may be emailed at rofarrill@ofarrill.tv. 

Frequently Asked Questions (FAQ)...

Question: What do I have to report to the Department regarding my criminal/disciplinary history?

Answer: Commissioner's Rule R4-28-301 requires reporting

1. A conviction for a misdemeanor or felony or deferral of a judgment or sentencing for a misdemeanor or felony;
2. An order, judgment, or adverse decision against the applicant/licensee involving fraud or dishonesty or the conduct of any business or transaction in real estate, cemetery property, time-share intervals, membership camping contracts, or campgrounds;
3. Restriction, suspension or revocation of a professional or occupational license or registration currently or previously held; and
4. An order, judgment or decree permanently or temporarily enjoining the applicant from engaging in or continuing any conduct or practice in connection with the sale of purchase of real estate...or involving consumer fraud or the racketeering laws.

Question: If I was convicted of a crime but the conviction was deferred and later dismissed do I have to report it?

Answer: Yes.

Question: What if my professional license (nursing, for example) was suspended in another state, do I have to report that?

Answer: Yes.

Question: Do I have to report a judgment against me in small claims court?

Answer: Yes, if it meets the requirements outlined above.

Question: Can I just report these things with my renewal form?

Answer: No, Commissioner's Rule R4-28-301(F) requires that you report the incident, in writing, within 10 days of each occurrence. Failure to do so is a violation and may result in disciplinary action.

Question: What about original applications?

Answer: The same things must be reported at the time of the original application. Failure to do so may result in either denial of the license or disciplinary action if the Department learns of the item after the license is issued. ☐

Joyce Constantino Is Deeply Missed

Our friend and colleague, Joyce, lost her battle with cancer on May 20, 2004.

Joyce had been a member of ADRE's subdivisions staff for 8 years.

She will be remembered for her wonderful sense of humor, her smile, her love of her work, and her affinity for making fabulous desserts. Joyce is survived by her husband and two children, and will be deeply missed at the Department of Real Estate. ☐

Recovery Fund Changes Spur Milestone Achievements

By Ron Passarelli

The Real Estate Recovery Fund is available for reimbursement of actual and direct out-of-pocket losses up to \$30,000 for each transaction and \$90,000 for each individual real estate or cemetery licensee where there is an uncollected judgment against a licensee for conduct that violates statutory duties. The Recovery Fund is administered under the direction of the Arizona Real Estate Commissioner and gets its money from a surcharge on license fees. No tax dollars are used.

Persons may apply for relief through the Real Estate Recovery Fund only after the following conditions have been met: the person has bought, sold or leased real property or a cemetery lot in Arizona with the professional assistance of a licensed agent, or hired a licensed agent or property management company to manage property in Arizona; obtained a court judgment against the agent(s); and was then unable to collect the judgment. Agents involved in a Recovery Fund payout are subject to having professional licenses terminated.

The State Legislature revised the Recovery Fund statutes, A.R.S. § 32-2186 through 32-2189, in 2002. That legislation put into effect several substantive changes to the procedures for application for payout from the fund. Detailed information about the new procedures is available on the ADRE web site under "Download Forms" at the "Recovery Fund Forms" link (see form RF-101).

Due to changes in the law, the Recovery Fund achieved several milestones this year:

- The \$28,000 January payment on Hofmann vs. Muller was the last one to be paid under the old statutes. This case was based on findings of failure to disclose and breach of fiduciary duty.
- The \$24,500 Thompson vs. Tchernovianov payment in February was the first under the new statutes. The application involved the assignment of purchase rights on a home purchase contract to the listing agent in exchange for a promised future payment that was not met. In this case, Tchernovianov's license was not automatically terminated upon payment because the payment was made by operation of law (on a technicality).
- The April payments to five applicants totaling

\$23,300 against the license of Carol L. Bauer were the first to be paid based on a Criminal Restitution Order (C.R.O.). These applications were based on findings of breach of contract, breach of fiduciary duty, conversion of funds, and property management irregularities. The Bauer payments also chronicle a concerted effort by the Department to work with a prosecutor in a criminal case to ensure an order providing for payment to victims. The moving force in deciding to pursue joint efforts with the prosecutor was the fact that Bauer filed for bankruptcy in April 2003, right before her criminal conviction, and at a time when the Department was waiting on supplemental documents from the five applicants. The bankruptcy stayed the Department's ruling on the applications, and finally resulted in the 8/19/2003 discharge of all of Bauer's debts, including the amounts Bauer owed to the applicant victims on outstanding civil judgments. As a result, they could not be paid from the Fund. To accommodate victims, instead of denying the applications, the Department asked the victims to stipulate to extend the time allowed to make a decision on the applications until after the C.R.O. was entered. (Bankruptcy does not affect the court's ability to enter or enforce a C.R.O.) Once that C.R.O. was entered in Mojave County Superior Court, the Department substituted the C.R.O. as the basis for payment from the Recovery Fund, and Commissioner Richardson ordered reimbursement.

- An application has been made, and a second one is anticipated, for Payment from the Recovery Fund in a property management case of fraud and management irregularities against the license of Terri Williamson. Williamson pleaded guilty last year in Yavapai County Superior Court to theft, a class-2 felony. This case represents the first major effort by the Department to work with a prosecutor toward the goal of compensating as many victims as possible from available resources. The Department first contacted the Yavapai County Attorney in April 2003, and continued interaction that resulted in an unprecedented conference between the

(Continued on page 10)

Real Estate Advisory Board Submits Report to Governor

The Real Estate Advisory Board, comprised of nine members appointed by the Governor, is expected to turn in a yearly report to the Governor's office. This report must contain an assessment of the Commissioner's work and the work of the Department of Real Estate. This year's report was submitted to the Office of Governor Napolitano on June 17. Following is a copy of the letter signed by Chairman R.L. Brown. ☐



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Janet Napolitano
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Elaine Richardson
COMMISSIONER

June 17, 2004

The Honorable Janet Napolitano
Office of the Governor
1700 West Washington Street, 9th Floor
Phoenix, Arizona 85007

Dear Governor Napolitano:

The Arizona Real Estate Advisory Board is pleased to render this report to the Governor as a part of our mandated duties and responsibilities. We have summarized herein the major activities and events that have impacted the Arizona Real Estate Department (ADRE) and its stakeholders over the last year.

We are very pleased to report that Real Estate Commissioner Elaine Richardson and her staff have taken strong steps to revitalize the department's morale. Over the past year, the affects of reduced budgets and low staffing have negatively affected morale and began to impact the department's performance. Ms. Richardson recognized this problem and immediately took steps to mitigate it. These steps included a restructuring of the department through the reassignment of valuable existing personnel and the employment of key new personnel. In addition, the department has undertaken an aggressive and effective outreach to and involvement of its stakeholders.

In reaching out to the stakeholders, Ms. Richardson and her staff organized and coordinated a series of public open house meetings with virtually every group regulated by the department. These meetings were held over several months and their purpose was two-fold. First, Ms. Richardson established an "open door" policy wherein she invited critiques and suggestions on ways to improve the department's current operations. Secondly, and most importantly, she solicited the groups' input on ways to better regulate themselves.

The stakeholders responded positively and with enthusiasm to extensive participation in the reworking of major areas of the department's activities, which brought about a revived spirit of cooperation to both the stakeholders and to the department's professional staff. This enhanced cooperation and participation is a watershed event for the department and for the stakeholders who have historically often maintained an almost adversarial relationship with the regulators.



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Elaine Richardson
COMMISSIONER

This outreach has resulted in a very active legislative session for the department in recent memory, which culminated in the passage of Senate Bill 1140. Provisions in SB 1140 included enhanced regulation of in-state and out-of-state real estate broker, property managers and the first steps of regulating the emerging sector of business brokers. Additionally, the department has produced extensive revisions to licensing, education and advertising in the department's Five Year Rule Report. The Governor's Regulatory Review Council approved this Report earlier this month.

Finally, with the support of Commissioner Richardson, the Advisory Board has begun to take a more proactive position and has participated in policy, liaison, personnel, and legislative matters on behalf of the department. This position has been to the benefit of both the department, the stakeholders, and the Board itself.

In closing, we would like to note that the problems which continue to challenge the department are largely related to the department's ability to adequately staff to meet the needs of constantly growing number of licensees and the burgeoning real estate industry in Arizona. The department generates annual revenues through its fees to adequately protect the interest of the public and serve its industry stakeholders. If the department could use these funds and they not become General Funds of the State the Department would have revenues approximately of \$4.4 million this year or \$1.3 million over its appropriation. The Department urgently needs legislative relief to be able to be self-sustaining to best serve the public and its stakeholders.

We expect that the real estate industry in Arizona will continue to grow, that the numbers of licensees will continue to grow, and that the need for vigilant oversight, judicious regulation, and enhanced industry involvement will grow even more. The Advisory Board believes that, given adequate funding, the Department of Real Estate and Commissioner Richardson and her staff are well-positioned to meet the challenges of this growth and enhanced complexity.

Respectfully submitted,

R. L. Brown,
Chairman

Recovery Fund (continued...)

(Continued from page 7)

Department, the County Attorney, the defendant and her attorney, and several victims. At the request of the Department and County Attorney, the judge in the criminal case in open court directed the parties to review all claims to reach an agreement on the amount and method of restitution to victims. They categorized claims as: 1) not qualifying for payment from the Recovery Fund; 2) best paid from monies on deposit in the criminal case; and 3) clearly qualified for payment from the Fund. All of this was done to insure that: 1) all victims, regardless of the amount and nature of their loss, would receive compensation. Full repayment has been made through the criminal action to all but two victims, both of whom are applying for payment from the Fund. These two victims incurred substantial attorneys fees and related costs in their attempts to collect directly from Williamson prior to her indictment, and stood to lose thousands of dollars if they had been paid in the criminal case because fees and costs cannot be

awarded in a C.R.O.

Former Recovery Fund Administrator Anne Manross oversaw the Muller, Bauer and Williamson cases. In taking on the assignment for administration of the Fund, Deputy Commissioner Passarelli congratulates Anne for her creative effort in assisting the victims in these two last cases, and for her years of service to the Fund. We wish Anne well in her new assignment in the Subdivision Investigation Section of the Department. Assistant Attorney General Mary Kosinski continues in her assignment as the attorney for the Recovery Fund. Her advice and legal guidance played a significant part in the appropriate disposition of the cases highlighted above.

Editor's Note: Mr. Passarelli is the Deputy Commissioner for the Arizona Department of Real Estate. Mr. Passarelli has been with ADRE for over one year and also serves as the Department's Recovery Fund Administrator. ☐

Substantive Policy Statements (continued...)

(Continued from page 2)

No. 2004.08 (formerly SPS No.22)

Unlawful License Activity

Describes the Department's policy concerning persons who conduct activities requiring licensure when the person is not properly licensed to the broker or who does not hold a current and active license. Effective Date: September 19, 1999; Revised and renumbered 5/28/04.

No. 2004.09 (formerly SPS No. 11)

Department Investigation of Cases Involving Civil Litigation

Investigation of complaints and pursuit of civil remedies. Effective Date: June 18, 1999; Revised & renumbered 5/28/04.

No. 2004.10 (formerly SPS No. 14)

Payment of Commission after License Expiration or Transfer

Department's position concerning commission payment to licensee after the licensee has changed employers or the license has expired. Effective Date: June 18, 1999, Revised & renumbered 5/28/04.

No. 2004.11 (formerly SPS No. 9 and 12)

Non-commercial Requests to Inspect Records and Fees for Copies

Availability of Department records and estimated time for production. Effective Date: June 18, 1999; Revised and renumbered 5/28/04

No. 2004.12 (formerly SPS No. 5)

Contract Writing Continuing Education Course

Expresses the Department's policy of accepting for renewal credit a new salesperson's attendance at the Contract Writing class that is required even though it may have been taken before the effective date of the person's original license. Effective Date: June 18, 1999; Revised and renumbered 5/28/04.

No. 2004.13 (formerly SPS No. 2)

Agent Responsibility to Client

Department's opinion on duties of a licensee acting as an agent. Effective Date: June 18, 1999; Revised & renumbered 5/28/04. ☐

Do you like to write?

Do you have an article idea?*

If you would like to submit an article to be considered for inclusion in The Bulletin, please send your article to the Editor via email at: lcarrasco@re.state.az.us.

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

*Submissions of guest writers may not necessarily reflect the opinion of the Department and may be edited due to space limitations.

Administrative Actions

COMMISSIONER'S FINAL ORDERS Disciplinary Actions

[Patricia Beckett; Prescott Valley School of Real Estate \(Prescott Valley\)](#)

File No. 04F-070-REL, Order 4/27/2004; Rehearing or Review Denied 6/10/2004

After hearing, the Commissioner ordered that renewal of Beckett's broker's license is denied, withdrew her approval to operate the Prescott Valley School of Real Estate and to instruct real estate courses, and assessed a civil penalty of \$3,000. This is based on Beckett's violation of law provisions, including A.R.S. § 32-2153, for claiming degrees in Business Administration and International Banking Law as qualifications, resulting in false and misleading applications and her obtaining licenses by fraud or misrepresentation.

[Nicholas J. Gownaris \(Chandler\)](#)

File No. 03A-039-REL, Order 4/28/2004

After a hearing before an administrative law judge, the Commissioner revoked Gownaris's real estate salesperson's license and assessed a civil penalty of \$1,000 based on his convictions and his failure to disclose those convictions to the Department, resulting in his false and misleading application and his obtaining a license by fraud or misrepresentation. Gownaris failed to disclose on his original application for license in April 2002 convictions for Possession of Dangerous Drugs, a Class 4 Felony, Possession of Marijuana, a Class 6 Felony, and Possession of Drug Paraphernalia, a Class 6 Felony, in violation of A.R.S. § 32-2153.

[Stanley S. Stobierski, Marilyn G. Stobierski, Sunwest Cemetery & Crematory, Inc. \(Sun City\), Heritage Memorial Park, Inc. and Darwin "Dan" Crouch \(Dewey\)](#)

File No. 03A-089(A)-REL, Order 2/5/2004; Reconsideration Granted, Order Amended 4/6/2004
In a September 2002 Consent Order, Stanley Stobierski, Marilyn Stobierski, and Sunwest Cemetery stipulated that they would cease operating as a cemetery until they applied for and received a Certificate of Authority for the cemetery. In September 2003, the Department issued Cease & Desist and Summary Suspension Orders, alleging that the respondents named above had operated or continued to operate as a cemetery without a certificate of authority, and had sold or continued to sell lots in an unauthorized cemetery while not properly licensed as or employed by a cemetery broker. After an administrative hearing, the Commissioner found that: Sunwest violated statutory provisions including A.R.S. §§ 32-2194.18, 32-2122(A)(3) and (4), 32-2153 (A)(3), and (24); Heritage had numerous violations of A.R.S. § 32-2122 and a violation of A.R.S. §§ 32-2194.18 and 32-2153 (A)(3); the Stobierskis were the unlicensed owners of both cemeteries; Crouch, who held an inactive-status cemetery salesperson's license, violated § 32-2153 (A) (1), (8), and (B)(3). The Commissioner ordered that Stanley Stobierski, Marilyn Stobierski, Sunwest Cemetery, Heritage Memorial Garden and Crouch cease and desist selling or offering for sale cemetery property without properly complying with cemetery and licensing laws; that Stobierskis, Sunwest and Heritage notify purchasers of cemetery property from Sunwest within the preceding three years and from Heritage Memorial Garden since September 2002 of the purchasers' right to

void the purchase contracts and to a refund of the purchase price, court costs, and reasonable attorneys' fees. The Commissioner's Order assessed the Stobierskis a civil penalty of \$4,000; assessed Sunwest a civil penalty of \$3,500; assessed Heritage a civil penalty of \$36,000; and assessed Crouch a civil penalty of \$3,000; required that Crouch post a \$10,000 surety bond while actively licensed for two years, and that he provide a copy of the Findings of Fact, Conclusions of Law, and Order, as amended, to each designated broker employing him during the next two years.

Appealable Agency Actions

Autumn Garza (Sedona)

File No. 04F-047-REL, Order 3/22/2004

The Commissioner denied Garza's application for real estate salesperson's license based on her 1993 Misdemeanor conviction for Shoplifting and 2001 convictions for Possession or Use of Marijuana, a class 6 Undesignated Felony; Shoplifting, a Class 1 Misdemeanor; and Possession of Drug Paraphernalia, a Class 6 Undesignated Felony, in violation of A.R.S. § 32-2153. After a hearing before an administrative law judge, her application for license is denied.

William Groh (Fountain Hills)

File No. 04F-052-REL, Order 4/27/2004

The Department denied Groh's application for real estate salesperson's license based on statutory violations of A.R.S. § 32-2153 for his conduct and dishonest dealings in 1994 that led to Deferred Adjudication Judgment and Order of the Felony offense of Misapplication (of) Fiduciary Property, entered against him in Texas on May 3, 1996. Groh appealed but failed to appear at the requested administrative hearing, and his application is denied.

Thomas William Kolesar (Sedona)

File No. 04F-072-REL, Order 4/27/2004

The Department denied Kolesar's application for real estate salesperson's license based on statutory violations of A.R.S. § 32-2153 due to the Stipulated Final Order entered by the Oregon Real Estate Agency suspending his temporary Oregon broker's license, and



the underlying conduct. Kolesar appealed but failed to appear at the requested administrative hearing, and his application is denied.

Robert C. Noperi (Tucson)

File No. 04F-053-REL, Order 3/30/2004

The Department denied Noperi's application for real estate salesperson's license based on statutory violations of A.R.S. § 32-2153 for his 1998 conviction for Aggravated Assault on a Police Officer, a Class 6 Felony; 2001 conviction for Facilitation to Possess a Dangerous Drug for Sale, Methamphetamine, a Class 6 Felony; and 2000 conviction for DUI, a Class 1 Misdemeanor. After a hearing before an administrative law judge, Noperi's application is denied.

Jerome Talbow (Phoenix)

File No. 04F-066-REL, Order 5/10/2004

The Department denied Talbow's application for renewal of his real estate broker's license based on statutory violation for his 2003 conviction for indecent exposure as well as six DUI convictions dating 2001, 1998, 1995, 1991, 1987 and 1982. After a hearing before an administrative law judge, Talbow's application is denied.

SETTLEMENTS BY CONSENT ORDERS Disciplinary Actions

Virginia Y. Bristol (Nogales)

File No. 04F-031, Consent Order 6/11/2004

Administrative Actions (continued...)

A default civil judgment was entered against Bristol in the amount of \$654,683.96, including amounts awarded under A.R.S. § 12-671 for issuing bad checks and prejudgment interest, based on her involvement in a limited liability company operating as a produce supplier in southeastern Arizona. The judgment, which included a finding of breach of contract and fraud, and Bristol's failure to disclose it to the Department within 10 days, constitute violations of A.R.S. § 32-2153. Bristol's license is suspended for one year.

Scott Harper (Surprise)

File No. 04F-014, Consent Order 3/1/2004

On his original application for real estate salesperson's license, Harper failed to disclose deferred prosecution for his Felony theft of a Rolex watch and August 1995 conviction for Theft, a Class 1 Misdemeanor, in violation of A.R.S. § 32-2153. Harper is assessed a civil penalty of \$1,000, his license is suspended for 60 days, and is thereafter issued a provisional license for two years subject to specified terms and conditions.

Sonoran Family Communities, LLC; Titan Realty and Investments Group, LLC; and Kimberli Baker (Tempe)

File No. 04F-138-REL, Consent Order 5/24/2004

Sonoran Family Communities obtained a Conditional Sales Exemption for lots at The Village at South Mountain. Contrary to the provisions of the special order of exemption, they sold the four improved lots which were the model homes to investors before issuance of a public report by the Department for the Development, in violation of A.R.S. §§ 32-2164, 32-2181(A) and 32-2183 (F). The contract form used by Respondents did not disclose that a purchaser was to be given a copy of the subdivision Public Report before signing the contract, in violation of A.A.C. R4-28-803, nor did Respondents take a receipt from the four purchasers for the Public Report, required under A.A.C. R4-28-805. Respondents were assessed a civil penalty of \$3,000; shall offer rescission to the four purchasers; and comply with state, county and local subdivision requirements.

Appealable Agency Actions

Adam Hobeiche (Tucson)

File No. 04F-091-REL, Consent Order 5/11/2004

The Department denied Hobeiche's application for real estate salesperson's license under A.R.S. § 32-2153, for his 2002 conviction for Trespass, a Class 2 Misdemeanor. Hobeiche appealed the denial and is granted a provisional license subject to specified terms and conditions, including that he post a surety bond.

Christopher Holmes (Tucson)

File No. 04F-137-REL, Consent Order 6/15/2004

The Department denied Holmes's application for real estate salesperson's license under A.R.S. § 32-2153 based on his 2000 conviction for Facilitation to Commit Theft by Control and/or Controlling Stolen Property with a Value of \$3,000 or More, an Undesignated Offense. Holmes appealed the denial and is granted a provisional license subject to specified terms and conditions.

Michelle Mortel (Glendale)

File No. 04F-104-REL, Consent Order 4/27/2004

The Department denied Mortel's application for real estate salesperson's license under A.R.S. § 32-2153 based on her 1996 conviction for Unlawful Flight, a Class 5 Felony. Mortel appealed the denial and is granted a provisional license subject to specified terms and conditions.

Bruce Mortensen (Tucson)

File No. 04F-082-REL, Consent Order 6/1/2004

The Department denied Mortensen's applications for reinstatement and renewal of his real estate broker's license under A.R.S. § 32-2153 after it was cancelled for abandonment of office. Mortensen, designated broker for Financial Benefits, listed as the brokerage business address the address of a car wash. Attempts to contact him by letter and telephone were unsuccessful, and an auditor's visit to the business address revealed that there was no brokerage located there. Mortensen had gone to Europe for an extended time and his return date was unknown, and no one had been appointed to act as designated broker in his absence. Mortensen appealed the denials and is granted a provisional license as an associate broker subject to specified terms and conditions. ☐

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