



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

Spring 2003

Volume 29, Issue 1

Welcome New Commissioner Elaine Richardson!



Commissioner Elaine Richardson.

Governor Janet Napolitano appointed Elaine Richardson as the new Commissioner for the Department of Real Estate in February of 2003. She was confirmed by the State Senate on May 8, 2003. Prior to her appointment, Commissioner Richardson served ten years in the Arizona Legislature as a state senator for six years and a state representative for four years. She was a very active legislator, having served as Chair of the Senate Judiciary Com-

mittee as well as a member of the Health, Transportation, Natural Resources and Environment and the Banking and Insurance Committees during her tenure.

As a legislator, Commissioner Richardson sponsored over 32 bills directly related to real estate and has been the only Democrat to receive the Legislator of the Year Award given to her by the Arizona Association of Realtors in 1996, for her work on behalf of homeowners and small businesses. A commercial real estate broker by trade, Ms. Richardson has also been a small business owner since 1978.

Commissioner Richardson is committed to a hands-on approach evaluation of the Department of Real Estate to improve the quality of services, while keeping in line with the Department's mission. ☐

New Deputy Commissioner Ronald Passarelli

Ronald Passarelli is the new Deputy Commissioner for the Department of Real Estate. Mr. Passarelli was educated at the University of Notre Dame, and has had a rich array of professional experience in real estate development, architecture, urban planning, design, project management, and public service at the local and state levels.

Prior to his appointment with the Department, he was self-employed, offering civic design and strategic planning consulting services to a variety of clients. Mr. Passarelli's professional and public service background is an asset to the Department. We are glad to have him aboard! ☐

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Our 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.

Trust Accounting — Can You Trust Your Methods?

By Lynda Gottfried

For many people, trust accounting can be a complicated experience. Some brokers tend to procrastinate and hope it will go away, which can only complicate the problem. The designated broker bears the ultimate responsibility for all trust account funds and record keeping. Brokers should have a good knowledge and understanding of the requirements and reports even when they hire accountants, bookkeepers and employees to do the work on their behalf. A.R.S. 32-2151; 32-2174 and 32-2175, as well as Commissioner's Rule R4-28-303 are among the statutes and rules that apply to trust accounts and related records.

Brokers are required to maintain a complete record of all monies received. Records must be kept in accordance with generally accepted accounting principles. Brokers may choose to handle trust accounting either manually or by computer. No matter which method of accounting is used, the broker's records must include a properly descriptive receipts and disbursement journal (commonly known as a checkbook or check register) **AND** a client ledger (an individual breakdown of the funds held for each party such as each owner, tenant, buyer). One of the more common violations occurs when client ledgers are not maintained properly.

For every deposit, withdrawal, transfer and check there must be a record. Deposit slips are required to be descriptive including the date, amount and names of all parties to the transaction. In the case of computerized trust account records for property management, names of parties to the deposit are not required to be written on the deposit slip if the computer program provides the necessary information for each deposit. For property management funds, should the broker and owner agree, money can be deposited directly to the owner's account instead of a trust account. If this is the case, the broker is **NOT** required to have a trust account; however the broker is not to have any access to the owner's account either.

Brokers are required to maintain a trust account reconciliation and client ledger balance on a monthly basis. In many cases when a broker has a shortage or overage in their trust account, it is because they have not reconciled the account on a monthly basis. One of the most prudent methods of catching and correcting any bank or employee errors is by



monthly reconciliation. In many cases where an employee has converted or embezzled funds from a trust account, the broker has had no involvement in or knowledge of the monthly reconciliation process.

Trust account reconciliation has a two-part requirement. One part is the bank statement and the receipts and disbursements journal. The second part is the adjusted balance and the client ledger balance. As with any bank account, a statement is received from the banking institution, which reflects all activity within the account for the given period, usually monthly. Any checks written and not cleared must be accounted for, as are any deposits, transfers and withdrawals. There will be adjustments needed for such things as interest, bank charges and returned items to the account. By taking the bank statement balance, subtracting outstanding checks and disbursements, adding outstanding deposits and receipts and offsetting the necessary adjustments, an adjusted balance is determined. This should be the balance in the broker's receipts and disbursements journal for the same date as the ending date on the bank statement. The adjusted balances should be the same and should then be compared to the client ledger balance. If they are not the same, then an overage or shortage may exist. In other words, what the broker has in the trust account and what the broker owes to the various parties should always be the same.

When these balances are not in agreement, research must be done to determine the error or problem. When this is done promptly, it is easier to find and correct the error or problem, than when it is left undone or not resolved. By comparing the three figures, fraudulent action is easier to determine. For example, the receipts and disbursements journal and bank statement could be in balance and reconciled; however the broker could owe more money to clients than the broker has in the trust account. This usually is a sign of errors, commingling, conversion of funds and/or other violations.

The broker may have their own money, not to exceed five hundred dollars, in a trust account. This is usually for such things as bank charges, fees and minimum balances. This is **NOT** considered commingling. The broker cannot, however, use a client's trust account to manage properties in which the broker is a principal. If interest is earned on a trust

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Commissioner's Corner

By Commissioner Elaine Richardson

I am delighted to have been appointed to serve as your Commissioner for the Arizona Department of Real Estate. Our mission at the Department of Real Estate is to protect the public interest through licensure and regulation. I feel it is imperative that the Department be an accessible, effective and professional resource when dealing with both the public and real estate professionals.

The reception I have received in our community has been very warm and inviting. It is my hope to hear from you as we seek new ways to improve our department and its services.

We are in an extraordinary time in our industry with growth continuing to be pivotal in our state's economy. We will be instituting stakeholder meetings to look at issues of concern. We have a target date of the middle of June for the first of these meetings. I feel this is a first step in reaching out to our community for a healthy working relationship, which is one of the many steps that contributes to a healthy economy.

Look in future bulletins for my section titled **Commissioner's Corner**, where I will address many hot topics and respond to issues as they arise.

Since the Department of Real Estate is a statewide agency, there are different issues that affect licensees in both rural and urban areas. Therefore, we have mapped out a series of visits throughout the state, from Page to Patagonia, in order to listen to your concerns in each diverse area. Our first trip is scheduled to Yuma at the end of May. Please let me know if there is an event in your area that you feel would be beneficial for our Department to attend.

I am excited about working with each of you to make the Arizona Department of Real Estate responsive and effective. I will ask that you help us to help you by sharing your thoughts and keeping our dialogue open. Until next time....

Commissioner Richardson responds to her own emails and can be contacted at erichardson@re.state.az.us.

Due to discrepancies inadvertently made in the Spring 2003 Bulletin article titled, "**Homeowner's Insurance Raises Disclosure Questions**," the Arizona Department of Real Estate has decided to remove this article. It does not reflect the Department's policy or interpretation of law on the subject of homeowner's insurance.

Please watch for a more comprehensive article on this topic in a future Bulletin.



Trust Accounting — Can You Trust Your Methods?

(Continued from page 2)

account, the funds must be removed at least once every twelve months. If interest is retained by the broker (with written authorization such as in a property management agreement,) that which puts the broker over the five hundred dollar amount would have to be removed more frequently. If the interest is to be paid to the owners or tenants, it should be disbursed per the terms of the property management agreement. At all times, the broker should maintain a record of all broker funds and transactions and include the balance as a part of the monthly reconciliation.

A broker may choose to add other parties as authorized signors on their trust account. If a trust account is used for property management only, the broker may authorize a licensee under that broker's license or an unlicensed person in their direct employ to have signatory authority. If the person is an unlicensed person, they must be a bona fide officer, member, principal or employee of the property management firm. If the trust account is used for sales/earnest or any other combination of uses, the broker may only grant signatory authority to a licensee under that broker's license. Of course, the broker remains responsible for any money handled by others.

Records related to property management trust ac-

counts are to be maintained by the broker for a period of three years. This includes bank statements, canceled checks or bank generated check images, deposit slips, receipts and disbursement journals, client ledgers and all other related records. Records related to sales and other real estate transactions are to be kept for a period of five years. As a result, it is also required to maintain trust account records for sales for a five-year period. In the event that a trust account is used for both property management and sales, the five-year record-keeping rule applies.

Trust account records are to be kept at the broker's main office or at an off-site storage location. In the event they are kept somewhere other than the main office, the broker is required to notify the Department of Real Estate, in writing, of the street address of the storage location. Also, brokers are required to notify the Department, in writing, within 10 days of opening, closing or relocating a trust account.

When a broker is involved in trust accounting, he or she bears the responsibility of managing other parties' monies. This means that prompt and accurate accounting is not only prudent, it is required. ▣

Don't Ask Home Inspectors to Break the Law!

By Cindy Ferrin

Did you know that if a real estate person asks home inspectors to pay to place their brochures in their real estate offices, that they are asking the home inspector to break the law? The Department of Real Estate receives inquiries from home inspectors and instructors requesting that we educate real estate professionals. So here is the scoop:

A.A.C. R4-30-301.01 (B)(1), under the Home Inspector Rules of Professional Conduct, states that "a certified home inspector shall not : pay or receive, directly or indirectly, in full or in part, a commission or compensation as a referral or finder's fee."

Based upon this rule, if a Certified Home Inspector pays a real estate office or broker to place their brochures in the real estate office, the Arizona Board of Technical Registration may take disciplinary action against the license of the Certified Home Inspector.

Please consider the above administrative rule when you are working with a Certified Home Inspector so that you are not asking them to break a rule and suffer disciplinary action! ▣





DON'T FORGET YOUR SIGNS!

A.R.S. 32-2126.B states that, "each designated broker ...shall cause a sign to be affixed at the entrance to the broker's place of business, in a place and position clearly visible to all..., with the name of the broker, the name under which the broker is doing business..., and sufficient wording to establish that the person is a real estate broker..."

Remember — **any licensee who has a broker's license**, even if you work out of your home or do not only engage in brokering, **is required to show a clearly visible sign**. Don't get caught without one!

THE BULLETIN

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MAIN OFFICE:

2910 N. 44TH STREET, STE 100
PHOENIX, ARIZONA 85018
PHONE (602) 468-1414
FAX (602) 468-0562

SOUTHERN ARIZONA OFFICE:
400 W. CONGRESS, STE 523
TUCSON, ARIZONA 85701
PHONE (520) 628-6940
FAX (520) 628-6941

JANET NAPOLITANO
GOVERNOR

ELAINE RICHARDSON
COMMISSIONER

RONALD PASSARELLI
DEPUTY COMMISSIONER

LIZ CARRASCO
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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 mission of the Department.

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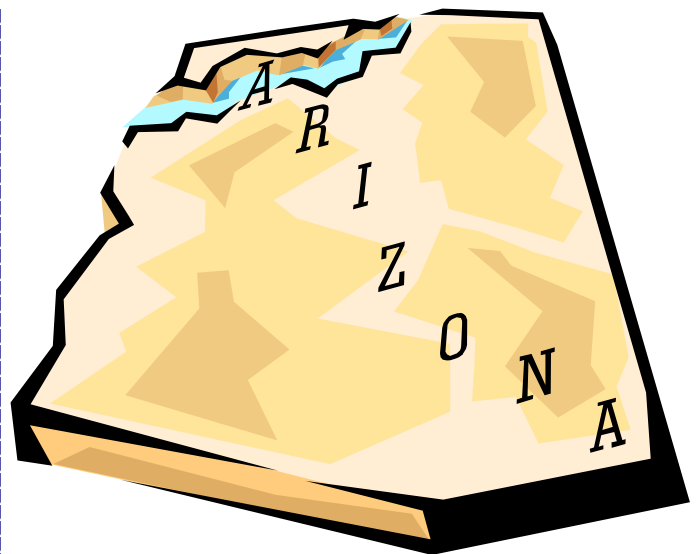
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Administrative Actions

COMMISSIONER'S FINAL ORDERS Disciplinary Actions

Richard C. Anderson

No. 02A-152, Order dated 3/14/2003

The Department denied Anderson's application for renewal of his real estate broker's license pursuant to A.R.S. § 32-2153 (B)(2) and (7), (9) and cited his ineligibility for license renewal pursuant to A.R.S. § 32-2130(E) based on two 12/10/2001 convictions for unlawful possession of marijuana and unlawful possession of drug paraphernalia, class 6 undesignated offenses. After hearing, Anderson was granted a provisional license through September 30, 2004, subject to specified terms and conditions.

Carolyn Graybeal and Kenneth Plein

No. 01A-081 and 01A-020 (consolidated), Order dated 10/23/2001

Graybeal was found to have violated A.R.S. § 32-2153 (A)(22) (B)(1), (3), (7), (10), A.A.C. R4-28-1101(A), (B), and (C). Graybeal filed a false or misleading renewal application by failing to disclose an adverse judgment. The adverse judgment was based on a transaction in which Graybeal, as listing agent, was found to be negligent. Renewal of Graybeal's real estate salesperson's license was denied and she was assessed a civil penalty of \$1,000. After an appeal by Graybeal and Plein, Maricopa County Superior Court affirmed the Commissioner's Final Order as to Graybeal but reversed the Commissioner's Final Order as to Plein, resulting in no violations found or action taken against Plein's license.

Karen Anderson Rose (formerly known as Karen Anderson Nixon)

No. 02A-020, Order dated 12/20/2002

Rose's real estate salesperson's license was revoked after hearing based on statutory violations that included A.R.S. § 32-2153 (A)(9), (10), (16), (24) and (B)(1), (2), (3), (5), (7), (9), and (10). Rose was convicted in 2002 of Theft of More Than \$3,000 But Less Than \$25,000, a class 3 felony, after it was discovered she took cash from clients (usually tenants' monthly rental payments) and "doctored the books" to hide the missing funds. Rose also was proven to be conducting licensed activities while her license was suspended under terms of a prior Consent Order.

Arthur Douglas Royer, Pearl Joanne Royer, Chez Blanche, Inc., and Time Step, Inc.

No. 01A-071 Order dated 5/30/2002

Petitioners created and sold lots in a "wildcat" subdivision, in violation of subdivision statutes and rules, including A.R.S. §§ 32-2181(A) and (D), 32-2183. Royer violated A.R.S. § 32-2164, 32-2153(A)(1), (3), (B)(3), (4), and (7). The Department's Cease & Desist Order remains in effect prohibiting lot sales until the petitioners comply with all applicable subdivision laws and rules. Arthur Royer's real estate broker's license was revoked, but he may



be issued a provisional license as a real estate salesperson for 2 years, subject to specified terms and conditions. Petitioners Arthur Royer, Pearl Royer, and Chez Blanche, Inc., were assessed a civil penalty of \$5,000 and required to offer rescission to purchasers and bring the subdivision into compliance with county requirements. Maricopa County Superior Court affirmed the Commissioner's Final Order and dismissed Petitioners' appeal.

Scott Sean Walski

No. 02A-144, Order dated 2/24/2003

Walski's provisional real estate salesperson's license was revoked pursuant to A.R.S. § 32-2153 (A)(3), (24), and (B)(9) after he tested positive for methamphetamines. Walski was previously issued a provisional real estate salesperson's license pursuant to a 12/26/2001 Consent Order with the Department. Body fluids testing upon request by the Compliance Officer is one of the specified terms and conditions of Walski's provisional license.

Appealable Agency Actions

Brian K. Altherr

No. 02A-122, Order dated 2/3/2003

The Department denied Altherr's application for real estate salesperson's license pursuant to A.R.S. §§ 32-2153 (B)(2), (7), and (10) based on a 1988 conviction for Attempted Child Molestation, a Dangerous Crime Against Children, a class 3 felony.

Jalma Hunsinger and American Homebuyers Inc.

No. 01A-159 and 01A-164 (consolidated), Order dated 7/1/2002
Renewal of brokers' licenses denied after hearing based on statutory violations that included A.R.S. § 32-2153 (A)(3), (B)(2), (3), (7), and (10). The denial was based on Hunsinger's guilty plea to 3 counts of Facilitation of Illegally Conducting an Enterprise, felonies, involving his role in the Baptist Foundation of Arizona, Arizona Land Opportunity, Inc. After an appeal by Hunsinger and American Homebuyers, Maricopa County Superior Court affirmed the Commissioner's Final Order and dismissed the appeal.

Luis A. Morales, Jr.

No. 02A-129, Order dated 2/13/2003

The Department denied Morales' application for real estate salesperson's license pursuant to A.R.S. §§ 32-2153 (B)(2) and (7), based on four convictions: in 1981 for possessing marijuana, a misdemeanor; in 1982 for possession of marijuana, a class 6 felony; in May 1984 for possession of marijuana for sale, a class 4 felony; and in February 1992 for attempted transportation of over one pound of marijuana with the intent to sell, a class 3 felony. Morales appealed and was granted a 2-year provisional license subject to specified terms and conditions.

Robert B. Nixon

No. 02A-084, Order entered 12/30/2002

The Department's denied Nixon's application for real estate salesperson's license pursuant to A.R.S. § 32-2153 (B)(2), (7), and (10) based on a 1987 conviction for Attempted Child Molestation, a class 3 felony. Nixon appealed and was granted a 2-year provisional license subject to specified terms and conditions.

Dean Phelan, Connie Phelan, and Timeshare Resale Bargains

No. 02A-092, 11/19/2002

Following a Cease & Desist Order issued by the Department, an appeal was filed and an administrative hearing was held. Petitioner Dean Phelan was found to have acted as a real estate salesperson or broker in the listing, marketing, and sale of timeshare intervals while not licensed as a salesperson or broker and the Cease and Desist Order was affirmed as to him. Mrs. Phelan was dismissed from the terms of the Order; and Timeshare Resale Bargains was determined to be a trade name, not a separate entity, and was also dismissed.

Gayle Platt

No. 02A-107, Order dated 11/19/2002

Platt 's application for renewal of real estate salesperson's license was denied pursuant to A.R.S. § 32-2153 (B)(1), (7), and (10) based on an adverse civil judgment and payout from the Wyoming Real Estate Commission's recovery fund for Platt's conversion of funds while she was managing property under her Wyoming real estate broker's license.

James M. Rodden

No. 02A-112, Order dated 2/26/2003

The Department denied Rodden's application for real estate salesperson's license pursuant to A.R.S. §§ 32-2153 (B)(2), (4), (5), (7), (9) and (10) based on a lack of good character, demonstrated by his failure to disclose a conviction and a prior consent order. Rodden has been the subject of an Assurance of Discontinuance entered with the Attorney General's Office for misleading and deceptive statements; a Consent Order for material misrepresentations, sale of unregistered and non-exempt securities

and selling without being registered as a (securities) dealer, and failure to disclose the Assurance of Discontinuance. Rodden was convicted in 1996 on 4 counts of Criminal Simulation, Class 6 undesignated offenses; and in 2001 for Extreme DUI. Rodden has not repaid investors who lost money through his actions, nor has he paid a civil penalty assessed him.

Ridgley B. Secrist

No. 02A-091, Order dated 11/26/2002

The Department denied Secrist's application for real estate salesperson's license pursuant A.R.S. § 32-2153 (B)(2) and (7) based on a 1994 conviction for Failure to File Currency Transaction Reports as Part of a Pattern of Illegal Activity Involving More Than \$1,000,000 in a Twelve Month Period, a class C felony. Secrist appealed and was granted a 2-year provisional license subject to specified terms and conditions.

Jacob B. Stahlecker

No. 02A-069, Order dated 12/23/2002

The Department denied Stahlecker's application for renewal of his real estate broker's license for underlying conduct in a real estate transaction. Stahlecker appealed. The renewal was granted however the Commissioner took judicial notice of a payment from the Real Estate Recovery Fund on Stahlecker's behalf for which his broker's license had been terminated.

Frederick F. Taylor

No. 02A-110, Order dated 12/20/2002

The Department denied Taylor's application for real estate salesperson's license based on violations of A.R.S. § 32-2153 (B)(3), (5), (7), and (10) due to the 2001 Judgment and Order by the Arizona Supreme Court suspending Taylor's license to practice law in Arizona for three years.



SETTLEMENTS BY CONSENT ORDERS

Disciplinary Actions

Reza Steve Alavi

No. 01A-151, dated 4/7/2003

Alavi was one of several people involved in a "wildcat" subdivision near Tucson. These people, including Alavi, purchased portions of the subdivision, surveyed their respective parcels into one-acre lots, and then sold their lots to individual purchasers. None of the sellers obtained the required county approvals or a subdivision public report. Eighteen lots were created from the original 20-acre parcel. Alavi violated statutory provisions including A.R.S. § 32-2181, et seq. The Consent Order imposed a Cease & Desist Order that prohibits Alavi from selling his remaining lot without first demonstrating compliance with county and state subdivision laws, and assessed a \$1,000 civil penalty against him. Other respondents named in the caption of the Consent Order were not parties to this settlement.

Lucille Chesser

No. 02A-094, Consent Order 12/11/2002

Chesser was found to have violated statutory provisions including A.R.S. § 32-2153 (A)(22) and A.A.C. R4-28-502(C), based on her preparing and disseminating advertising containing inaccurate claims and which misrepresented the facts or created misleading impressions. Chesser was assessed a civil penalty of \$1,000 and required to complete 9 additional hours of continuing education classes.

Lonnie Garner, Virginia Garner and Chaparral Ranch, Ltd.

No. 00A-121, Consent Order 12/16/2002

Respondents acted in concert with family and others, through a series of owners and conveyances to create an illegal "wildcat" subdivision near Rimrock in Yavapai County, in violation of A.R.S. § 32-2181(A) and (D), and § 32-2183(F). Lonnie Garner, a licensed real estate salesperson, also violated A.R.S. § 32-2153 (A)(3) and (A)(22). The Consent Order imposes a Cease & Desist Order that prohibits Respondents from selling subject lots until they comply with county and state subdivision laws. Respondents were jointly assessed a \$3,000 civil penalty and required to offer rescission to all purchasers. Lonnie Garner's license was suspended for 30 days, and he was required to complete 9 additional hours of continuing education.

Gregory S. Hancock and Hancock Communities, L.L.C.

No. 00A-121, Consent Order 12/16/2002

Respondents filed an application for subdivision public report for Greenfield Lakes Parcel 5 Unit 2, which contained false and misleading information regarding the subdivision's proximity to the proposed San Tan Freeway in Gilbert, in violation of A.R.S. §§ 32-2153(A)(3) and (A)(22), and § 32-2181(A). The Department considered as a mitigating factor Respondents' settlement with buyers of lots in the subject subdivision in a pending civil lawsuit.

Respondents, both real estate licensees, were jointly assessed a \$10,000 civil penalty and were required to offer rescission to all purchasers who did not receive compensation resulting from the lawsuit. Broker Gregory Hancock was assessed an additional \$5,000 civil penalty and ordered to complete 6 additional hours of continuing education.

Julio Hidalgo, Sr.

No. 02A-167, Consent Order 12/19/2002

Hidalgo's real estate broker's license was revoked. Hidalgo violated statutory provisions including A.R.S. § 32-2153 (B)(5) and (10), based on a 2002 plea agreement in which he admits Filing False Documents with HUD, a class E felony, by assisting another person to obtain a federally insured loan while Hidalgo was acting as real estate broker and knew that the person used a false social security number on the loan application.

Russell Jacoby, RJ and DJ Land Trusts, and M&M 2000, L.L.C.

No. 02A-097, Consent Order 12/4/2002

Respondents purchased six or more lots in Lake Mohave Ranchos Unit 6 and Sunset Vista, both existing subdivisions near Dolan Springs in Mohave County, and made sales without first obtaining a public report or exemption, in violation of A.R.S. §§ 32-2181, 32-2181.01 and 32-2181.02 (B)(2). The Cease & Desist Order prohibits Respondents from selling lots until they comply with applicable subdivision laws. All Respondents were jointly assessed a \$2,000 civil penalty and were required to offer rescission to purchasers. Respondents were also ordered to submit an application for public report to the Department within one year.

Beth L. Jones

No. 01A-151, Consent Order 1/13/2003

This case involved lot sales in a "wildcat" subdivision near Tucson. Several people, including Jones, purchased portions of the subdivision, surveyed their respective parcels into one-acre lots, and then sold their lots to individual purchasers. None of the sellers obtained the required county approvals or a subdivision public report. Eighteen lots were created from the original 20-acre parcel. Jones violated statutory provisions including A.R.S. §§ 32-2153 (A)(1), (3) and (22) and 32-2181, et seq., and A.A.C. R4-28-1101(B)(3). She was assessed a \$2,500 civil penalty and required to complete 9 additional hours of continuing education. Other respondents named in the caption of the Consent Order were not parties to this settlement.

Chuck Lesser

No. 02A-044, Consent Order 1/13/2003

Lesser was found to have violated statutory provisions including A.R.S. § 32-2153 (A)(3) and (22) and A.A.C. R4-28-1101(A) based on his failure to determine and verify the credit worthiness of a tenant while acting on behalf of the property owners under a property management agreement. He also failed to include all

Administrative Actions

material terms within the property management agreement. Lesser was assessed a civil penalty of \$2,000 and required to complete 6 additional hours of continuing education classes.

Damion Lupo

No. 01A-155, Consent Order 2/12/2003

Lupo was found to have violated statutory violations including A.R.S. § 32-2153 (A)(1) and (3) and A.A.C. R4-28-502(C) and R4-28-1101(E) when he failed to disclose in writing his licensed status to a seller, and gave the seller a business card that conveyed the false impression that he was not licensed while acting as principal in a transaction. Lupo was assessed a civil penalty of \$1,000 and required to attend 15 additional hours of continuing education classes.

Leonard A. Moon

No. 02A-106, Consent Order 12/19/2002

Moon disseminated false information regarding sewer vs. septic system in an MLS ad for one of his listings, in violation of A.R.S. §§ 32-2101(2) and 2153 (A)(22), and A.A.C. R4-28-502(C). Moon was assessed a \$1,500 civil penalty, and was ordered to complete 9 additional hours of continuing education.

David E. Sewell

No. 02A-090, Consent Order 1/30/2003

Sewell was found to have violated statutory provisions including A.R.S. § 32-2153 (A)(3) and (22) and A.A.C. R4-28-1101(A) by failing to convey accurate and complete information concerning numerous significant problems with the property's septic system while acting on behalf of the seller. The Department considered as a mitigating factor Sewell's completion of all septic system renovations and repairs satisfactory to the buyer. Sewell was assessed a civil penalty of \$1,000 and required to attend 9 additional hours of continuing education classes.

William J. Smith

No. 01A-046, dated 3/27/2003

Smith's provisional real estate salesperson's license was revoked pursuant to A.R.S. §§ 32-2153 (A)(24) and (B)(9) after he tested positive for cannabinoids and cocaine metabolite. Smith was previously issued a provisional real estate salesperson's license pursuant to a 11/9/2001 Consent Order with the Department. Body fluids testing upon request by the Compliance Officer was one of the specified terms and conditions of Smith's provisional license.

Arturo S. Soto and Marilyn Soto

No. 01A-116, Consent Order 12/16/2002

The Sotos violated statutory provisions including A.R.S. § 32-2153 (A)(22), based on their presenting a buyer's purchase contract to the seller, where a substantial amount of the purchase price was financed with a seller carry-back, without verifying the buyer's financial ability and qualifications. Arturo Soto's license was suspended for 60 days; Marilyn Soto was assessed a \$1,500

civil penalty. Both are required to complete 18 additional hours of continuing education classes.

Nicholas Edward Villani and Linda L. Villani

No. 02A-168, dated 4/22/2003

Nicholas and Linda Villani were found to have violated provisions including A.R.S. § 32-2153 (A)(3) and A.A.C. R4-28-502 (C) based on their advertising and marketing a residential property as having a 24 year warranty on roof and structure when no such warranty was available. The Villanis were assessed civil penalties of \$1,500 each and each will attend 9 additional hours of continuing education classes.

Kathleen Yamauchi

No. 02A-080, dated 4/7/2003

Yamauchi was found to have violated statutory provisions including A.R.S. § 32-2153 (A)(3), A.A.C. R4-28-502 (C) and (G) based on her failure to confirm and correctly advertise the size of property she listed for sale. The lot was advertised as "over an acre" despite Yamauchi having previously ordered a survey, and having a copy of the survey in her records, which showed the property was less than an acre. Yamauchi was assessed a civil penalty of \$2,500 and will attend 9 additional hours of continuing education classes.

Appealable Agency Actions

Rudolph H. Alvarez

No. 02A-150, Consent Order 1/6/2003

The Department denied Alvarez's application for real estate salesperson's license pursuant to A.R.S. § 32-2153 (A)(1), (3), (22), and A.A.C. R4-28-1101 (A) and (B) based on Alvarez's conduct when licensed previously in which he misrepresented his receipt of buyer's earnest money and failed to timely disclose the information he received as to the buyer's inability to purchase the property. Alvarez appealed. Alvarez was granted a provisional license subject to specified terms and conditions, required to attend 12 additional hours of continuing education courses, and assessed a \$1,000 civil penalty.

Kevin A. Beasley

No. 02A-132, Consent Order 12/17/2002

The Department denied Beasley's application for real estate salesperson's license pursuant to A.R.S. § 32-2153 (B)(2) and (7) based on convictions in 1989, 1993 and 1994 respectively for Solicitation to Possess a Dangerous Drug, a misdemeanor; Possession of Dangerous Drugs, a class 4 felony; and Attempted Possession of Dangerous Drugs for Sale, a class 4 felony. Beasley appealed. Beasley was granted a license on a provisional basis for 2 years subject to specified terms and conditions.

Troy Jay Elston

No. 03A-010, dated 4/9/2003

Administrative Actions

The Department denied Elston's application for real estate salesperson's license pursuant to A.R.S. §§ 32-2153 (B)(2), (7), and (10) based on his 1997 conviction for Theft, a class 6 undesignated offense. Elston appealed and was granted a provisional license for 2 years subject to specified terms and conditions.

Marcel Higginbothan

No. 02A-123, Consent Order 12/11/02

The Department denied Higginbothan's application for real estate salesperson's license pursuant to A.R.S. § 32-2153 (B)(2) based on a 1996 conviction for Aggravated Assault, a class 3 felony. Higginbothan appealed. Higginbothan was granted a license on a provisional basis for 2 years subject to specified terms and conditions.

Craig O. Jolly

No. 02A-134, Consent Order 1/31/2003

The Department denied Jolly's application for real estate salesperson's license pursuant to A.R.S. § 32-2153 (B)(10) based on prior sanctions against him and Heritage West Securities Inc., of which he was the owner and president, by the National Association of Securities Dealers, Inc., for violations of the securities regulations and laws. Jolly appealed. Jolly was granted a 2-year provisional license, subject to specified terms and conditions.

Kayle B. Kartchner

No. 02A-157, Consent Order 1/30/2003, amended 2/4/2003

The Department denied Kartchner's application for real estate salesperson's license pursuant to A.R.S. § 32-2153 (B)(2) based on a 1994 conviction for Possession of Burglary Tools, a misdemeanor. Kartchner appealed. Kartchner was granted a provisional license for 2 years subject to specified terms and conditions.

Terra R. Kowalski

No. 02A-131, Consent Order entered 12/19/2002

The Department denied Kowalski's application for real estate salesperson's license pursuant to A.R.S. § 32-2153 (B)(2) based on a 2001 conviction for Theft, a misdemeanor. Kowalski appealed. Kowalski was granted a license on a provisional basis for 2 years subject to specified terms and conditions.

Marcus V. Marnell

No. 03A-009, dated 4/15/2003

The Department denied Marnell's application for real estate salesperson's license pursuant to A.R.S. §§ 32-2153 (B)(7) and (10) based on a criminal Information filed October 14, 1997 in Maricopa County Superior Court charging Marnell with Child Abuse, a class 4 felony. Marnell was discharged from probation on September 4, 1998, and the court ordered the matter dismissed with prejudice without entering a conviction. Marnell appealed and was granted a provisional license for 2 years subject to specified terms and conditions.



Juan Palacio

No. 02A-138, Consent Order 12/12/2002

The Department denied Palacio's application for real estate salesperson's license pursuant to A.R.S. § 32-2153 (B)(2) and (7) based on two misdemeanor convictions in 2000 for Driving Under the Influence of Alcohol or Drugs, and Driving with a Blood Alcohol Level of .08 or more. Palacio appealed. Palacio was granted a license on a provisional basis for 2 years subject to specified terms and conditions.

Kevin S. Petruska

No. 02A-133, Consent Order 12/16/2002

The Department denied Petruska's application for real estate salesperson's license pursuant to A.R.S. § 32-2153 (B)(2) and (7) based on misdemeanor convictions in 2001 and 1991 respectively for Public Sexual Indecency and Operating a Vehicle While Under the Influence of Alcohol. Petruska appealed. Petruska was granted a provisional license for 2 years subject to specified terms and conditions.

Norris L. Randle, Jr.

No. 02A-160, dated 3/21/2003, amended 4/17/2003

The Department denied Randle's application for real estate salesperson's license pursuant to A.R.S. §§ 32-2153 (B)(2) and (7) based on a 1999 felony conviction for Possession of a Controlled Substance. Randle appealed and was granted a provisional license for 2 years subject to specified terms and conditions.

Bill J. Sezate

No. 02A-147, Consent Order 1/30/2003

The Department denied Sezate's application for real estate salesperson's license pursuant to A.R.S. § 32-2153 (B)(2) and (7) based on 1992 convictions for Attempted Possession of Marijuana (Over Eight Pounds) for Sale, and Misconduct Involving Weapons, both class 4 felonies. Sezate appealed. Sezate was granted a provisional license for 2 years subject to specified terms and conditions.



**ARIZONA DEPARTMENT OF
REAL ESTATE**

Main Office:

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

Southern Arizona Office:

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

Mailing Address Line 1
Mailing Address Line 2
Mailing Address Line 3
Mailing Address Line 4
Mailing Address Line 5

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