

Short Title: Department Investigation of Cases Involving Civil Litigation

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

Description of Practice/Procedure: A Complainant's filing of a civil suit has no bearing on whether the Department will pursue an alleged violation of a statute or rule within the Department's jurisdiction. The Department shall commit the appropriate resources to investigate possible violations.

The Department monitors and regulates real estate licensees, but does not determine a licensee's civil liability to third parties. A finding by the Department that a violation warranting administrative action did or did not occur, is not dispositive of liability and does not create any presumption regarding whether or not civil liability exists.

The Department's investigations shall not be utilized for the purpose of circumventing the Arizona Rules of Civil Procedure or as a means of discovery of evidence for use in civil litigation. The Department will not intentionally place itself in the position of providing discovery and building a prima facie case for a Complainant, only to have the Complainant use the Department's investigative file as evidence in a civil suit. It is not the Department's role to assist a Complainant to develop a case that will assist them pursuing damages.

The Department shall not delay an investigation to await the outcome of a civil court proceeding. Such a delay may discourage or financially inhibit a Complainant's pursuit of a civil cause of action. Such a delay might also encourage a licensee to assert the Department's inaction as an argument in the licensee's favor.

Authority: The Department's authority to investigate alleged or perceived violations of Arizona Revised Statutes Title 32, Chapter 20, and Title 4, Chapter 28 of the Arizona Administrative Code, is found at A.R.S. § 32-2108.

Policy Program: Enforcement.

Effective Date: 6/18/99; Revised & Renumbered 5/28/04; Renumbered 4/01/05.