

Arizona Department of Real Estate (ADRE)
Real Estate Advisory Board

Minutes
March 9, 2011

The Arizona Real Estate Advisory Board met on Thursday, March 9, 2011, at the Arizona Department of Real Estate (ADRE), 2910 N. 44th. Street, First Floor Conference Room, in Phoenix, Arizona.

I. Call to Order

Chair Ann White called the meeting to order at 10:05 a.m.

Members present:

- Ann White, Chair, Pima County
- Carla Bowen, Member, ~~Gila~~ ^{Yavapai} County
- Charles Bowles, Member, Pima County
- Kim Horn, Member, Yavapai County

Present Via Phone:

Absent:

- Frank Dickens-Maricopa County
- Jo Ann Sabbagh-Pima County
- Bruce Mosby-Maricopa County

ADRE Representatives present:

- Judy Lowe, Commissioner
- Mary Utley, Assistant Commissioner-Operations
- Gretchen Conger, Legislative Liaison
- Vicky Rokkos, Business Services Manager

Public: Tom Weddingfeld

II. Introductions & Welcome

Chair White welcomed Board members; ADRE staff; and Thomas Weddingfeld. New Board member Kim Horn introduced herself and provided an overview on her personal and professional experience. Commissioner Lowe stated that Member Horn brings forth knowledge as a Broker; familiarity with Northern Arizona, subdivision development and general real estate.

III. Minutes

Upon a motion by Charlie Bowles, seconded by Carla Bowen, the Minutes of January 20, 2011 were unanimously approved.

IV. Election of Officers

Available Officer Positions are Chair and Vice-Chair. Chair White asked if there were any nominations. Member Bowen nominated Charlie Bowles; the motion seconded by Member Horn. Discussion occurred; the motion was voted on; and, it passed unanimously.

Member Bowles nominated Carla Bowen; the motion seconded by Member Horn. Discussion occurred; the motion was voted on; and, it pass unanimously.

V. Advisory Board Members' Facilitator Report

Member Bowen reported that she had a call regarding Property Management and provided a brief description of the call. Resolution was met without having to involve the ADRE.

Member Shaw, Member Bowles and Chair White reported that they had not received any Facilitator calls.

V. Short Sales

Commissioner Lowe reported that Short Sales are driving the market, as well as, complaints at ADRE. She reported that approximately four months ago ADRE started working with the Department of Finance (DFI) and the Arizona Association of REALTORS® (AAR) to address the Short Sale Negotiator Regulations items. She described some of the issues as to the licensure of Mortgage loan originators; earnest money; and that these issues were addressed and a consensus on licensee requirements was reached.

Discussion ensued regarding the licensure of Mortgage Loan Originator licensees and/or real estate licensee; earnest money; fees; and, the role of escrow companies.

The Arizona Short Sale Negotiator Regulations article was published by ADRE, as well as the MARS (Mortgage Assistance Relief Services) guidelines provided by the Federal Trade Commission (FTC). ADRE was advised not to provide any interpretation on MARS. The enforcement of the MARS guidelines will be conducted by the Federal government. ADRE has indicated that violations in these matters will not be retroactive and ADRE will pursue ADRE violations as of March 1, 2011. The MARS rule came into place December 31, 2010.

VI. 2011 Legislative Updates

Gretchen Conger, Legislative Liaison provided the Legislative Update handout (See attached) and provided an overview. Discussion ensued regarding HB 2005 and the items listed. SB 1458 and SB 1585 will directly affect ADRE. A copy of SB 1292 was provided and discussion occurred.

Upon a motion by Member Bowles that states "The Real Estate Advisory Board hereby endorses the SB 1292 in its' original language, which includes continuing education for new original licensees and Designated Brokers/Supervisory Brokers. The Governor's Office, Arizona Association of REALTORS® Leadership, including the Board of Directors, as well as, the Bill 1292 Sponsor Gail Griffin should be notified of this endorsement immediately, no later than March 11, 2011."

The motion was second by Member Horn and passed unanimously.

VII. Strategic Planning

Commissioner Lowe provided the board with ADRE Strategic Plan handout which delineates Strengths/Weaknesses; Opportunities/Threats, etc. She provided an overview on the role of ADRE leadership; Managers; and, their feedback. Board members expressed their support of ADRE staff in relation to dealing with abusive licensees.

VIII. Commissioner's Report-Judy Lowe, Commissioner

a. Division Reports (See Attached)

- **Business Services-** Highlighted the number of in-coming calls to the HUB; the amount of postage being spent on mail; and, an overview of the Recovery Funds was provided by Vicky Rokkos. Discussion ensued on the Recovery Fund and the Condo Fund. Member Bowen is conducting research nationwide on recovery funds. She stated that Wyoming requires a bond from all of the real estate licensees and many states are terminating their recovery funds.
- **Licensing-**Highlighted were the total number of original license applications completed for February which were **318**.
- **Education-**Highlighted were the number of applications received and processed for February which were **150**.
- **Development Services/ Investigations-** Highlighted applications for Public Report-which are low; as well as the number of investigations completed.
- **Enforcement and Compliance-** Highlighted total cases pending (most of them are continuing education); 209 are pending with the Attorney General's Office.

b. Department Report (See Attached)

Business Services Manager Rokkos provided an overview of the ADRE YTD report.

c. Pending Issues- None noted.

IX. Other Matters- None noted.

X. Call to the Public- Tom Weddingfeld spoke in reference to the Short Sale Negotiations discussion and asked, "How does this apply to a general real estate consultant." He stated that he is an advocate of getting paid for what he thinks he is worth, including the number and content of regulations that come forth that affect his ability to earn a living.

XI. Adjournment

A motion to adjourn by Member Bowen; motion seconded by Member Horn. The motion passed unanimously. Meeting was adjourned by Chair White at 11: 58 a.m.

DATE THIS 18TH DAY OF MAY, 2011
ARIZONA REAL ESTATE ADVISORY BOARD

BY: _____



Charles Bowles

Legislative Update
Wednesday, March 09, 2011

Real Estate Industry Related Bills:

HB2005 subdivisions; acting in concert (Sponsor: Representative Burges): as amended, makes various changes to the statutes governing subdivisions, acting in concert and the Arizona Department of Real Estate.

- States that the county where the division occurred OR the ADRE, but not both, may enforce statutory prohibitions against acting in concert
- Stipulates that “familial relationship” alone is not sufficient to constitute unlawful acting in concert
- States that for a subdivision consisting of ten or fewer lots, tracts or parcels, the board of supervisors for that county may waive the requirement to prepare, submit and receive approval of a preliminary plat as a condition precedent to submitting a final plat.
- States that the definition of subdivision does not include the sale or lease of a lot, parcel or fractional interest that occurs ten or more years after the sale or lease of another lot, parcel or fractional interest IF the other lot, parcel or fractional interest is not subject to the Article and is treated as an independent parcel
- Removes the provision that allows the commissioner to “take whatever other action he deems necessary to ensure compliance with the subdivision laws of this state.”
- States that the Commissioner has five years after the date of an initial complaint or initiation of an investigation by the commissioner to determine if the sale or lease of land has violated subdivision statutes

This bill passed out of the House with 39 ayes, 20 nays, 1 not voting on 2/17/11. The bill will now move to the Senate. The Department is now **opposing** the bill with the understanding that we will go neutral if a few changes are agreed upon.

HB2193 municipal water charges; responsibility (Sponsor: Representative JP Weiers): places additional restrictions on whom municipalities may penalize for unpaid water and wastewater charges; prohibits municipalities from requiring payment for unpaid water and wastewater rates from anyone other than the person who made the contract, resided at the property, and received the service.

HB2264 home sales; water supply disclosure (Sponsor: Representative Ableser): mandates the disclosure of water supply status by a subdivider and requires a statement of the water supply status to be recorded with the county recorder if the subdivision is outside of an Active Management Area.

HB2545 homeowners’ associations; rental restrictions (Sponsor: Representatives Heinz, Patterson, Gowan et al): prevents homeowners’ associations from restricting the leasing and rental of properties and units.

HB2609 homeowners' associations; signs; political; leasing (Sponsor: Representative Barton): modifies the statutes governing the display of for sale, rent, lease, or political signs in condominium and planned communities and allows the prohibition of signs that are not commercially produced.

SB1148 homeowners' associations; disputes; administrative hearings (Sponsor: Senator Biggs): States that the Department of Fire, Building and Life Safety, through its hearing officer function, applies and enforces statutes regulating condominiums and planned communities.

SB1149 planned communities; condominiums; document fees (Sponsor: Senator Biggs): limits, for documents that cannot be transmitted electronically, the fee that a planned community and condominium association can charge a unit owner for the preparation of required documents with the resale of a unit to ten cents per page.

SB1292 real estate; education; broker requirements (Sponsor: Senator Griffin): as amended, changes the number of days a designated broker has to review listing agreements, purchase or nonresidential lease agreements, or similar documents from five to ten business days and defines business day.

Bills that would affect the Department of Real Estate:

SB1458 professional licensure; out-of-state applicants (Sponsor: Senators Sinema & Driggs): as amended, requires professional licenses and certificates to be issued to a person married to an active duty member of the U.S. Armed Forces who is licensed or certified in another state, if certain conditions are met.

SB1585 military operations; real estate disclosure (Sponsor: Representative Burges): adds military operations area to real estate disclosure provisions; requires the department to post military operations maps on the website and to file them with the office of the county recorder.

*Please visit www.azleg.gov and insert the bill number in the top right hand corner of the screen to view information about these and other bills.

*Please note that this list is not comprehensive, it is a selection of real estate related bills that are currently moving through the legislature.

State Laws Related to Unlicensed Activity

Nebraska's Real Estate Commission reached out in early 2010 and asked all of the states to respond to an inquiry relating to whether or not states impose administrative fines for unlicensed real estate activity. A total of 24 states responded to the request; and of those, 17 answered affirmatively to imposing administrative fines for unlicensed real estate activity. Below is a selection of the laws from those states that give the respective Real Estate Departments the authority to impose administrative fines.

Massachusetts (Chapter 112, Section 65A): Notwithstanding any general or special law to the contrary, each board of registration under the supervision of the division of professional licensure and each board of registration under the supervision of the department of public health may, after a consent agreement between the parties or after an opportunity for an adjudicatory proceeding held pursuant to chapter 30A, assess and collect a civil administrative penalty not to exceed \$1,000 for the first violation and a civil administrative penalty not to exceed \$2,500 for a second or subsequent violation upon a person who, without holding the required license, certificate, registration or authority, engages in the practice of a trade or profession for which a license, certificate, registration or authority is required. Nothing in this section shall affect, restrict, diminish or limit any other penalty or remedy provided by law. A board may apply to the appropriate court for an order enjoining the unlicensed practice of a trade or profession or for an order for payment of an assessed penalty or for such other relief as may be appropriate to enforce this section.

Wyoming: 33-28-114. Conducting business without license prohibited; penalties; civil liability.

(a) Any person acting as a broker, associate broker or salesman without first obtaining a license is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a term not to exceed six (6) months. Upon conviction of a subsequent violation the person shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a term not to exceed one (1) year or both. If a corporation is convicted it shall be punished by a fine of not more than five thousand dollars (\$5,000.00).

(b) If any person receives any money or the equivalent thereof as a fee, commission, compensation or profit by or in consequence of a violation of any provision of this act, he shall, in addition, be liable to a penalty of not less than the amount of the sum of money so received and not more than three (3) times the sum so received as may be determined by the court, which penalty may be recovered in a court of competent jurisdiction by any person aggrieved.

Virginia: § 54.1-2105.2. Cease and desist orders for unlicensed activity; civil penalty.

A. Notwithstanding any other provision of law, the Board may issue an order requiring any person to cease and desist from acting as a real estate broker or salesperson when such person is not licensed by the Board in accordance with this chapter. The order shall be effective upon its entry and shall become final unless such person files an appeal with the Board in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) within 21 days of the date of entry of the order.

B. If the person fails to cease and desist the unlicensed activity after entry of an order in accordance with subsection A, the Board may refer the matter for enforcement pursuant to § 54.1-306.

C. Any person engaging in unlicensed activity shall be subject to further proceedings before the Board

and the Board may impose a civil penalty not to exceed \$1,000 for any real estate transaction or the compensation received from any such real estate transaction, whichever is greater. Any penalties collected under this section shall be paid to the Literary Fund after deduction of the administrative costs of the Board in furtherance of this section.

Alabama: § 34-27-36. Disciplinary action - Generally.

(c) (1) Notwithstanding any other provisions of law, the commission may issue an order requiring any accused person, firm, corporation, or any business entity to cease and desist from activities requiring a license under this chapter when the accused person, firm, corporation, or any business entity is not licensed under this chapter. The order shall be entered by the executive director after a finding of probable cause by the commission staff. The order shall become final 15 days after its service upon the accused, unless the accused requests a hearing before the commission. Upon hearing the case and finding violations, the commission may make the cease and desist order final and the commission may impose a fine for each violation in an amount consistent with the range of fines applicable to licensees, and in addition, may impose a fine in the amount of any gain or economic benefit that was derived from the violation, and in addition, may impose a fine in the amount of the commission's costs incurred. Any fines not paid as ordered shall be enforceable in any court with competent jurisdiction and proper venue.

(2) Notwithstanding any other provisions of law, the commission may decline to issue an order requiring any accused person, firm, corporation, or any business entity to cease and desist from engaging in activities requiring a license under this chapter when the accused person, firm, corporation, or any business entity is not licensed under this chapter. In this instance, the commission shall proceed to give appropriate notice of the violations and hold a hearing thereon. Upon hearing the case and finding violations, the commission may impose a fine for each violation in an amount consistent with the range of fines applicable to licensees, and in addition, may impose a fine in the amount of any gain or economic benefit that was derived from the violation, and in addition, may impose a fine in the amount of the commission's costs incurred. Any fine or fines not paid as ordered shall be enforceable in any court with competent jurisdiction and proper venue.

Iowa: (Code 543B.34) If an investigation pursuant to this section reveals that an unlicensed person has assumed to act in the capacity of a real estate broker or real estate salesperson, the commission may issue a cease and desist order, and may impose a civil penalty of up to the greater of ten thousand dollars or ten percent of the real estate sale price.