



DIALOG

The Periodic Bulletin

from

The Arizona Department of Real Estate

Volume 2010– Issue 1



Judy Lowe
Commissioner

COMMISSIONER'S CORNER

T E A M

“A WHIRLWIND OF CHANGE” has impacted the Arizona Department of Real Estate as we approach the last quarter of the Fiscal Year 2010, (which ends June 30, 2010). As I look over the past ten months since I joined the department, I am so pleased at how much we have accomplished, and how much we have adjusted to. Let me share with you!!

ATTITUDE ADJUSTMENT:

The department staff developed an internal, and external, theme, of “Together Everyone Achieves More”> When visiting or calling the department you should have a pleasant experience. Each of us will do as much as we can to assist anyone who has an issue, or question...please remember to treat us politely.

BUDGET ADJUSTMENTS:

In June '09 the department suffered the first round of mandated budget cuts, which we were able to adjust to, by downsizing our staff, and modifying our operating expenses. We also consolidated our Phoenix staff into smaller square footage....which we quickly realized would not relieve our square footage costs, until/unless we found a government tenant to take the space, to replace our rent contribution to the state.

I will say, it brought all our staff closer together, and facilitated the “cross training” which we are focused on today.

We spent the summer months working through a “situational analysis” of the Department, looking at each Division, analyzing processes, workload, and each staff’s job description.

The second round of mandated budget cuts (\$245,000) were implemented in January 2010, resulting in: (a) more downsizing of our staff (total of 15 staff in nine months), (b) reducing our Southern Arizona office staff to one, with minimized public service office hours of Monday, Wednesday and Friday, (c) cutting our operating expenses as far as possible, and (d) terminating and/or reducing two service contracts with other state agencies.

On March 8, 2010, the Legislature convened the Seventh Special Session to complete work on the FY 2010 budget and enact a budget for FY 2011. The budget legislation included an additional reduction to the Department of Real Estate. Fund sweeps of the Recovery Fund, as well as , a permanent 2.75% reduction in state employee compensation and mandatory furloughs through FY 2012, which equal an additional 2.3 % salary reduction. The Arizona Department of Administration has selected a schedule for the mandatory furlough days and will require state agencies to close on those days. The schedule of agency closures due to mandatory furlough is available on page 7 of this newsletter.

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Additionally, as part of the budget compromise, the Legislature enacted a contingency budget that will go into effect if the temporary sales tax increase is not approved by voters in May. Included in the contingency budget are additional 2011 budget cuts, which beginning July 1, 2010, could result in a diminished protection to the public, and a decrease in the services the department offers to the real estate industry.

HOW ARE WE SURVIVING?

We are all proud of what we've accomplished, and truly feel, that we are achieving more with much, much less.

We are in the process now of streamlining the processes of each Division, and each staff member. Written strategic plans, technology, and cross training (even across Division lines) are all being implemented.

DIVISION UPDATES: "Just a few of our successes"**Division Updates: "Just a few of our successes"**

Janet Blair, Assistant Commissioner oversees Real Estate Services.

Customer Service & Licensing

Manager– Diane Paulsen

- **Broker/Entity Assistance:** Ernie Pena-Douthitt & Toni Pollard
- **Salesperson/Associate Broker Assistance:** Diane Ortega & Pat Lykken

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- Phones: Bob Cates

Division Accomplishments:

- Reduced need for licensees to visit an ADRE office
- Scan/Email documents to the Department for:
- New Branch office: PC/PLC, add or change: business add/change to entityupdates@azre.gov
- Personal name change; branch manager change to licenseeupdates@azre.gov
- New Entity/change of Designated Broker to broker.specialist@azre.gov
- Respond to incoming mail within 3 days.

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Education**Manager**—Vacant position. AC Blair provides oversight.

- Volunteer Monitor Program– Judy Kisselburg
- Course Approval– Jeremy Sotomayor
- Educator Services–Tami Gray

- **Division Accomplishments:**
 - Two day turn-a-round on School, Instructor, Course Approval
 - Online Course Renewal with 30, 60, 90 day prior notice of pending approval date
 - Clarifying definition of distance learning, online, live-classroom
 - Improving the approval criteria for Schools, Instructor, Course Approval

Real Estate Investigations & Auditing**Manager**–Robin King

- Auditor– Jay Montoya
- Investigators– Linda Bevins, Bonnie Carrillo

- **Division Accomplishments:**
 - Implemented the Electronic broker Audit Review (Property Management)
 - Reduced the Pending Log cases to none older than 2008, with focus on handling all new cases that may cause harm to the public.
 - Developed, along with Business Services, the Complaint Receipt Program, which expedites the initial receipt of all complaints.
 - Reports that the most prevalent written complaints involve: Unlicensed activity; Violations of Statutes and Rules; Property Management and Trust Account Violations.

Development services & Investigations**Manager**– Robin King

- Development Representative– Rose Frazee
- Development Investigators– Scott Brumett, Kurt LaBotz, Toni Pittman and Lynn Long

- **Division Accomplishments:**
 - Shortened the turn-around time for subdivision/development approvals to an all-time low.
 - Reduced the Pending Log cases from an Open Files count in June '09 of 189 (with many dating back to 2005) to a Pending Log of 60 cases, none older than 2008.

Enforcement & Compliance**Manager**–Mike Wheeler

- Settlement Officers– Chris Cranny and Jeanne Yawger
- Compliance –Carla Randolph, Connie Johnson, June Marshall and Jim Williams

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Mary Uteley, Assistant Commissioner of Business Services, Legislative Liaison, Rules and Communications oversees:

Communications

- Editor of Quarterly Bulletin;
- liaison with media,
- Develop and implement communication alerts to licensees and the public

Rules

- Five –Year-Review Report reviewed and approved 1/5/2010: Title 4, Chapter 28, Article 1, General Provisions: Article 3, Licensure; Article 5, Advertising; Article 11, Professional Conduct; Article 13, Administrative Procedures.
- Prepare and present Rules Package

Business Services: Vicky Rokkos, Manager is assisted by Veronica DeLaTrinidad and Jon Salak at the HUB and Jerry Baranuk in our File and Mail Room.

- Proposed all options for Budget Modifications
- Created cost efficiencies leading to the streamlining of processes agency-wide and a minimal reduction in force, thus minimizing the impact to the public and ADRE of the mandated budgetary reductions.

HUB

- Developed and implemented the Continuing Education Non-Compliance Process
- Developed and implemented the Fingerprint Deficiency Process

File/Mail Room

- Consolidated/modified the File Room
- Created efficiency so as to reduce time allocated to “filing”

Manager Information & Technology– Kevin Goode
Network Administrator– Jim DeSilva

- Developed and implemented the new www.azre.gov home page
- Developed and implemented the Online Education course Renewal process
- Developed and implemented the Online Education Course Scheduling process
- Implemented internal Licensing application changes to accommodate document scanning.
- Started development on the online Education Original Course Application process.

I have traveled around our beautiful state over the last several months, speaking to a very diverse population. The consistent feedback from the industry, the educators and the public is...”Let’s increase the knowledge level of the real estate licensee”. When the Legislative session began in January 2010,

DEPARTMENT'S NEW & IMPROVED WEBSITE AZRE.GOV

there were some very strong proposals for changes to the educational requirements for holding an Arizona Real Estate Salesperson and/or Designated/Supervisory Broker license.

We are sorry to say, there will be no education changes accomplished in this legislative session. I predict they will be brought forward at the next Legislative Session with a renewed passion, and will be met with success. Thanks to all who participated in voicing the many positive opinions to our Legislators, and many thanks to those Legislators, who considered sponsoring or who sponsored real estate legislation this Session.

Thanks to the Arizona Association of REALTORS® who brought forward SB 1219 and to Senator Barbara Leff who sponsored the bill, which we feel will be passed this month. Thanks to the Central Arizona Homebuilders who brought forward SB 1136 and to Senator Nelson who sponsored the bill which we feel positive will be passed.

Contact Mary Utley at mutley@azre.gov to schedule my visit with your group.

Continuing Education Requirements

CONTINUING EDUCATION REQUIREMENTS

Licensees – Know your personal responsibilities!

Every month the Department continues to see a steady flow of licensees who are non-compliant with their Continuing Education (CE) requirements. Non-Compliance of CE requirements will or “may” lead to disciplinary action; an Accelerated Settlement Agreement (ASA) and a \$300.00 fine.

What are your responsibilities as a licensee?

Know your license expiration date

→ your CE requirements are based on your expiration date

Complete 24 hours of CE credit every 24 months

→ If your expiration date is 12/31/2014, 24 hours of CE are due by 12/31/2012 and 12/31/2014.

Upload your CE credits at www.azre.gov

→ look for the “blue box”



What are your options as a licensee?

- Become Compliant!
Complete your CE credits and upload them through our on-line licensing system
- Inactivate your license prior to your expiration date
You will be required to meet all continuing education requirements prior to reactivation of your license
- Do nothing and be in non-compliance
ADRE will take action!

You Have No Business Doing a Short Sale Unless...

Well, for starters, make a diligent effort to qualify your competency and knowledge on the subject of short sales by honestly answering the following questions:

DEFINITION: Can I define a “short sale” to my client seller or buyer? Can I communicate it clearly? How do I know if my client understands what has been communicated? Can I prove it? Do I know the difference between a potential short sale, pre-foreclosure and a foreclosure? Do I know how to explain and distinguish a short sale from other “normal” transactions?

PROCESS: Do I know the process involved in a short sale transaction? Am I able to provide a detailed written step by step procedure of what will transpire? Do I know what documents will be required by a lender? Do I know if those documents will be the same or different if there is more than one or two lenders involved? Have I anticipated extraordinary and frustrating circumstances related to working with a lender such as: finding the right decision maker; getting phone calls returned timely or even at all; experiencing inordinate time delays for lenders response to an offer; Am I capable of educating my clients to make sure they understand upfront all the delays and potential difficulties that await them?

REMEDIES: Am I familiar with other remedies that may be explored before I promote the short sale alternative? Can I name them? And if so what are they? Do I have a list of resources for my clients to view to help educate them in this endeavor? Have I spent enough time familiarizing myself with these resources to know which may be helpful and which may be harmful to my clients? Do I know how a short sale will impact my seller’s credit rating? Do I tell my client or do I refer that conversation to my clients’ CPA or attorney?

SEMINARS: Have I attended more than one seminar on short sales which focuses my learning on how to assist my client rather than how I can make “a buck” on their misfortune? What will it take for me to feel competent to perform a short sale for my buyer or seller client?

LAWS: Have I become familiar with recent changes in the law that affects potential deficiencies as a result of a short sale? What am I obligated to disclose to my seller or buyer? What are the consequences for working outside of my area of competency? What liability and confidentiality issues occur in a short sale transaction? What are the serious adverse legal, tax and economic consequences in a short sale?

FORMS: Have I read, studied and understood the content of state forms available for listing a potential short sale or selling a short sale property? Do I have a detailed checklist and time line for the documents needed in a short sale?

NEGOTIATIONS: Am I aware that my fee may be negotiated downward in a short sale transaction? Do I know how to handle this negotiation and how it may impact a cooperating broker’s compensation? Am I familiar with MLS requirements on inputting a listing agreement and reporting a short sale? What happens when a lender insists on paying a reduced fee to make the short sale work? Are all short sales “as-is”? How are repairs paid for and handled? What happens when a lender requires the owner to keep the property on the market, even after the owner and buyer have agreed to the terms of a proposed purchase contract? Who is really in control of the short sale transaction? Absent legal counsel representation on behalf of the seller is it my job to negotiate with the lender or that of my seller? Do I have the temperament and stamina to withstand the financial and emotional stress my clients’ are experiencing? How do I protect and preserve the best interests of my client, myself and that of my company?

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You Have No Business Doing a Short Sale Unless...*Continued from page 6*

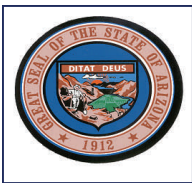
Now that you've had a chance to silently address some of these questions to qualify your competency, how are you feeling about taking on the short sale challenge? If you're still unsure, please just **"don't do it"** and expose yourself and your clients to unnecessary liability and potential litigation in the future. Statutory obligations aside, pursuing something you know little about can be very costly to you and detrimental to your clients. Be smart. Do the right thing. Refer your client to someone who is an expert at short sales.

On the other hand if you're feeling somewhat confident and sense you can handle whatever comes your way because you're a fast-study or simply because you really need the money, just **"don't do it"** unless you discussed it first with your broker. See if they want to support you.

Find out what they know about short sales. Ask them if they have the expertise to supervise you; to monitor every step of this unique process. If your broker is unwilling or unable to help you ask them to recommend someone in your firm who may agree to mentor you for a reasonable fee. Make sure that person, if another agent, has done multiple (more than five) short sale transactions and/or is someone who is capable of sharing their expertise such as an Office Manager or Sales Manager.

Editor's Note: This article was provided by James J. Tsighis, GRI, CRS, CRB, ABR, e-PRO, AAR Master Real Estate Society, AAR rCRMS Realty Executives Southern Arizona ~ ADRE December 16, 2009

**DISCIPLINARY ACTIONS TO BE FEATURED IN UPCOMING
"SPECIAL EDITION"
APRIL 2010**



**State Designated
Furlough Days**

2010

July 23
August 20
September 17
November 25
December 23

2011

June 10
July 22
August 19
September 16
November 25
December 23

2012

June 15



"I am excited at the opportunity to enhance the quality of Arizona's distance learning environment" stated Becky Ryan.



"I feel that it is my personal mission to support the Department's focus of enhancing the knowledge and professionalism of the industry, in protecting the public," stated John Foltz

Continuing Education (CE) Subcommittee convened on March 18, 2010

Commissioner Judy Lowe convened the Continuing Education Subcommittee addressing Distance Learning and appointed Becky Ryan to chair the group.

Ms. Ryan is a real estate broker, educator and consultant in Scottsdale, Arizona and has been in the real estate profession since the 1980's. She has been an ADRE-approved instructor since 1995, and has acted in the capacity of an online instructional designer and content developer for multiple distance learning

courses. Additionally, she has initiated a number of live classroom instructor development workshops.

The CE Subcommittee met on March 18, 2010 at the department.

Some of the items on the agenda were:

- Overview of Subcommittee
- Identify the "Right" Problems to Solve
- Categorize the Issues
- Subgroup Formation
- Subgroup Reporting

- Establish Communication Mechanism (s)
- What's Next?

The subgroups have been meeting and it is anticipated that the Subcommittee will present recommendation to the Department in May 2010.



Short Sale Seller /REO "THINK TANK' Update

After several meetings, a Short Sale Seller Advisory was ready to be rolled out to the industry and for the benefit of the public. The first event hosted by the Prescott Area Association of REALTORS® occurred on March 15, 2010 at the Prescott Resort in Prescott. There were over 100 in attendance.

The second event was held in Phoenix at the Department, third floor conference room where nearly 70 individuals were in attendance.

We invite everyone in Southern Arizona to attend a "roll out" of the Seller Advisory, April 26, 2010 from 10 am to Noon hosted by the Tucson Association of REALTOR®, 2445 N. Tucson Blvd., Tucson. RSVP to Mary Utley. Email: mutley@azre.gov

The "Think Tank" groups will be coming together again soon to review the Seller Advisory and to approve of an ADRE Short Sale Licensee Advisory. To view the Short Sale Seller Advisory [click here](#).

Real Estate Advisory Board Update

At the January 12, 2010 meeting, the Advisory board voted to meet every other month. They anticipate that the meetings more frequently will assist the board in fulfilling their role as board members.

At the March 16, 2010 meeting, election of officers was held. Ann White of Tucson, was elected Chair and Tom Pancrazi of Yuma, as Vice-Chair.



Carla Bowen
January, 2010 – 2013

Current Advisory Board members and their contact information :

- Frank Dickens, Chair - Frankdkns@msn.com
- Anne White-member - AWhiterealty@q.com
- Tom Pancrazi-member - tom@pancrazi.com
- Patti Shaw-member - PShaw151@cox.net
- Bruce Mosley-member- Bdm23@cornell.edu
- Charles Bowles-cbowles@diamondven.com
- Carla Bowen– 928-267-6400 9am– 5pm

Meetings scheduled for the remainder of 2010:

- May 26
- July 21
- September 8
- November 10

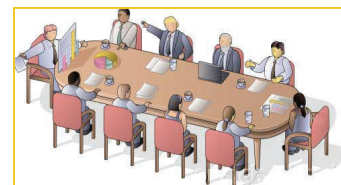
Minutes from prior board meetings can be viewed at the department's website: www.azre.gov

Meetings are open to the public. An agenda can be obtained prior to the meeting by contacting Mary Utley at email: mutley@azre.gov

Carla Bowen's first official act as an Advisory Board member was to attend the March 16, 2010 Board Meeting. She was appointed by Governor Jan Brewer to replace Kathy Howe.

Ms. Bowen has been actively licensed as a full time Realtor since 1980, has served as President of White Mountain Association of Realtors twice, Realtor of the Year 2001, currently serves as Region 3 Vice President for AAR and serves on the Executive Committee for AAR. Serves as Vice Chair of the Navajo County Board of Adjustments.

She is the Designated Broker / Owner of Realty Executives White Mountains with offices in Pinetop and Show Low.



LEGISLATIVE BILL UPDATE

Although the Department did not sponsor any legislation, there were bills of particular interest. A list of these bills and a brief summary and status are as follows:

- **SB 1136 Subdivisions: Internet Ads**-Advertising including internet ad for lots or parcels must include a statement that a Public Report is available on the department's website. Sponsor: Sen. Nelson. Passed the Senate amended; to House. Department's position: In Favor.
- **SB 1219 Real Estate Licensees**- Shortens the license period of real estate licenses to 2 years from 4 years; allows licensees to voluntarily surrender a license if ADRE has started an investigation of the licensee; ADRE will accept the license if it is surrendered at least 10 days before a hearing pursuant to the investigation; the former licensee is thereafter ineligible for a real estate license; requires salespersons and brokers to obtain a valid fingerprint clearance card issued by DPS and replaces and repeals provisions that require a full set of fingerprints, a criminal background check and the corresponding fee submitted to the department; adds business brokers to the definition of real estate brokers. Sponsor: Senator Leff. Passed the Senate amended; to House. Department's position: In FAVOR
- **HB 2689 Realtors: Education Requirements:** STRIKER BILL Originally technical correction; financial responsibility; NOW: Realtors; education requirements- regarding the 24 hours of continuing education requirements for licensees; CE hours may include the Commissioner's Current Topics, including Short Sales. Provides definition of short sales. Sponsor McLain. Passed the House amended; to Senate. Department's position: In Favor
- **SB 1176 Apartment Referrals; finder fee**- Increases the maximum finder fee credit from \$100 to \$200; reduces the number of times a finder fee may be received from six to five times in any 12 month period; stipulates that tenant activities regarding referrals are limited to referring prospective lessees to the owner and that the show prospective lessee a residential dwelling unit; discuss terms or conditions of leasing a dwelling unit with a prospective lessee; participate in the negotiation of the leasing of the dwelling unit. Establishes that ADRE may suspend or revoke the licensee's license or impose a civil penalty of \$1,000 for each violation of the finder fee section of statutes. Sponsor Leff. Passed the Senate as amended. Transmitted to : Governor 4/12/2010; signed by Governor 4/16.

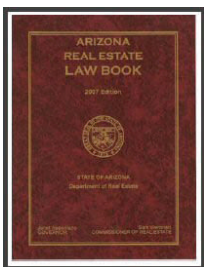
Real Estate Law Books Still Available!

The Department still has Real Estate Law Books available. Copies can be purchased either at the Department's offices: 2910 N. 44th Street , Phoenix or 400 W. Congress, #523 in Tucson. Cost is \$15.00 per book and \$2.00 for shipping.

The money received from the sale of the law books fund the department's Education Revolving Fund. This fund pays for education, publications distributed to the industry and the public and other Department education activities.

The link to the order form is

http://www.azre.gov/LAW_BOOK/Forms/Law_Book_Order_Form.pdf



Arizona Department of Real Estate SUBSTANTIVE POLICY STATEMENT NO. 2010.01

Short Title: Guidance for using Electronic Real Estate Transaction Management and/or Document Storage Programs

Description of Practice/Procedure:

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 A.R.S. § 41-1033 for a review of the statement.

Designated brokers may implement a Transaction Management (TM) program for internal standardization of document storage, so long as the document storage program adheres to the guidelines mandated by the Arizona Revised Statutes (“A.R.S.” or “statutes”) and the Arizona Administrative Code Rules (“A.A.C. R” or “rules”) applicable to the Arizona Department of Real Estate (“Department” or ADRE).

Understanding there are several computer based TM and/or document storage programs (“TM system” or “electronic storage system”), this advisory provides guidance and outlines the responsibilities of brokers who are using or intend to use any electronic record program. This advisory also provides guidance to brokers using electronic record programs who have signed or intend to sign the Department’s User Agreement, which provides the Department access to their electronic storage systems.

Electronic Record Keeping

Backing up records: Transaction and employment records required to be maintained pursuant to statute or rule, must be backed-up (duplicated and stored in a secure, offsite location) in a manner allowing restoration in the event electronic data maintained at the principal place of business is destroyed.

Production of records: Records must be reproducible for the Department, at the broker’s expense, in a legible, paper form (“hard copy”) upon the request of the Commissioner, or the Commissioner’s representative, for auditing, inspection, or investigation purposes. Brokers who maintain electronic records in a computer based TM and/or document storage program may provide the Department with electronic access to records, unless a hard copy is specifically requested by the Department.

Electronic records maintained in an electronic storage system should be legible, exact duplicates of the original documents.

Maintenance of a log: Brokers using web based TM and/or document storage programs shall maintain a log in a chronological or other systematic manner that lists each real estate purchase contract or lease agreement, and identifies the file in which these documents are maintained. If the web based TM and/or document storage program maintains this log or list electronically, it should be made easily accessible upon request by the Commissioner or the Commissioner’s representatives. If the web based TM and/or document storage program is not capable of maintaining this log or list electronically, the broker shall maintain a separate list or log in either written or electronic form and shall make it available to the Commissioner or the Commissioner’s representative upon request.

Notification requirements: If the file servers containing a broker’s web based TM and/or document storage program are directly or indirectly owned by the broker, the broker, the broker shall inform the

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Arizona Department of Real Estate SUBSTANTIVE POLICY STATEMENT NO. 2010.01

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Commissioner in writing of the legal address and name of the entity responsible for storing such records. The broker may be required to show evidence that the broker's electronic records are backed-up in accordance with this SPS, and SPS 2005.06 addressing "Electronic Record Keeping."

A. **ADRE Online Review/Audit Option:** A broker using a web based TM and/or document storage program may opt to sign the Department's User Agreement and provide the Department with direct access to his/her electronic storage system. Providing the Department access to brokers' electronic storage systems is intended to enable efficient, streamlined exchanges of information with the Department, increase efficiency within the brokerage, and assist in ensuring compliance among real estate salespersons and associate brokers licensed to brokers. This capability is available using a web based TM and/or document storage program if a broker complies with the following requirements: (1) the broker must sign a User Agreement with ADRE allowing ADRE internet access to all required documents; (2) the broker must be able to produce the required documents and files in hard copy format if hard copies of documents are specifically requested by the Commissioner or the Commissioner's representative; and (3) the broker must sign a guarantee that the documents and files will be maintained for the mandatory time frames set forth in the relevant statutes and rules including, but not limited to, A.R.S. §§ 32-2151.01, 32-2153 (A)(17) and 32-2175.

B. The Commissioner's access to broker's files shall be used for:

- i. Preliminary review/research of consumer complaints against brokers and salespersons;
- ii. Routine audits or audit reviews of broker files to ensure compliance with any requirements in the relevant statutes and rules, including but not limited to ensuring that brokers properly maintain documents in a timely manner; and
- iii. Any other purposes the Commissioner deems necessary to protect Arizona consumers.

Electronic Signature

1. A broker's statutory review of contracts and agreements maintained on an electronic TM and/or document storage system may be recorded through a dated secure electronic signature in compliance with A.R.S. § 44-7031. The TM and/or document system must have a means of demonstrating, in accordance with A.R.S. §§ 44-7032 thru 44-7034 as applicable, that when the signature was made, the signature was:

- A. Unique to the person using it;
- B. Capable of verification;
- C. Under the sole control of the person using it; and
- D. Linked to the electronic record it relates to in such a manner that if the record were changed the electronic signature would be invalidated;

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Arizona Department of Real Estate SUBSTANTIVE POLICY STATEMENT NO. 2010.01

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2. Electronic review of any document is permitted in lieu of actual initials on a document, providing that such electronic review is recorded in an unalterable history or log file.
3. The broker must enforce a written supervision policy requiring personal computer security that, at a minimum, requires each person with electronic signature authority and capability to lock or sign off his/her computer every time he/she walks away from the computer.

The broker must have a backup system defining how and when contracts and agreements would be reviewed in situations where the broker's computers become inaccessible for an extended period of time.

The electronic TM and/or document storage system must have the ability to create a secure history log of all activity for electronic signatures or broker review which can be reviewed by Department auditors and investigators.

Authority: A.R.S. §§ 32-2108, 32-2151, 32-2151.01, 32-2151.02, 32-2153, 32-2175, and A.A.C. R4-28-701, R4-28-802, R4-28-803, R4-28-804, R4-28-805, R4-28-1101, R4-28-1102, R4-28-1103, R4-28-1303

Policy Program: Licensing/Regulation

Effective Date: 4/8/2010



USER AGREEMENT GRANTING DEPARTMENT OF REAL ESTATE ACCESS TO USER'S ELECTRONIC MANAGEMENT SYSTEM

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I. Parties

This Agreement is made and entered into by the Arizona Department of Real Estate (hereafter referred to as "ADRE") and _____, a licensed designated broker (hereafter referred to as "Broker") for the brokerage licensed with ADRE under the name _____ (hereafter referred to collectively as "User" of the electronic transactional management system).

II. Background and Purpose

User is required by law to maintain certain records and to make those records available to ADRE for inspection upon notice with unlimited access. User currently uses an electronic transactional management system ("TM Program"), a computer or web-based transaction management system and/or document storage program, for maintenance of real estate records. The purpose of this Agreement is to grant ADRE electronic access to User's TM Program to enable streamlined exchanges of information when ADRE conducts records inspections as authorized by law, thereby minimizing disruption to User's business and making the process more cost-efficient for both User and ADRE.

III. Responsibilities

User agrees to:

1. Grant ADRE electronic, remote access to User's TM Program for the purpose of conducting records inspections authorized by law.
2. Set up on its TM Program an access code or other necessary authorization that will allow ADRE to obtain electronic, remote access to the records in the TM Program and to provide ADRE with the access code or other information needed to obtain that access.
3. Provide ADRE prompt access to User's records upon notice if ADRE is unable to remotely access User's electronic records for any reason.
4. Produce and provide legible, readable paper copies of any records maintained in accordance with law to ADRE upon notice.
5. Maintain complete records of all transaction and employment records in accordance with law.

ADRE agrees to:

1. Limit its access and use of User's TM Program to examining records in connection with User's real estate business as authorized by law.
2. Conduct inspections of User's records using its electronic, remote access to User's TM Program in lieu of requiring in-person access or physical production of User's records when reasonably possible.
3. Notify Broker by email when ADRE intends to access the User's TM Program.

IV. General Terms and Conditions

- A. Term: This Agreement is effective upon execution by both parties. This Agreement will continue in effect unless either party gives the other party written notice of its intent to terminate the Agreement at least thirty days in advance of the termination date. Termination does not relieve a party of its obligations incurred prior to the termination date.
- B. Amendments: User may only amend this Agreement with written consent of the Commissioner of ADRE. ADRE may amend this Agreement upon providing User with thirty days notice of the amendments, though User may reject the amendments by providing written notice of intent

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USER AGREEMENT GRANTING DEPARTMENT OF REAL ESTATE ACCESS TO USER'S ELECTRONIC MANAGEMENT SYSTEM
Continued from page 14

to terminate the Agreement in thirty days before the amendments go into effect.

- C. Applicable Law: This Agreement shall be governed and interpreted by the laws of the State of Arizona.
- D. Responsibility for Records: User has full responsibility for the accuracy, adequacy, and completeness of the records contained in its TM Program.
- E. Ownership: User warrants that it is the owner of or has the right to use the TM Program and has authority to permit ADRE access to the TM Program.
- F. Equipment: ADRE shall not be responsible in any manner for errors or failures of any hardware or software in User's possession. User shall promptly correct, at its own expense, any errors or failures resulting from the malfunction of the TM Program's software or hardware used in connection therewith.
- G. Malicious Programs: User warrants that the TM Program does not and will not contain any computer virus, disabling device, programming code, or instructions intentionally constructed with the ability to damage, interfere with, or otherwise adversely affect computer programs, data files, or hardware.
- H. Entire Agreement: This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements relating hereto, written or oral, between the parties.
- I. Indemnification: User agrees to indemnify, defend, and hold harmless ADRE from all damages of any kind, foreseen or unforeseen, that may arise as a result of this Agreement.
- J. ADRE Disclaimer: ADRE makes no promises, guarantees, or representations that its review or access of records contained in User's TM Program constitutes approval, ratification, or assumption of responsibility for the content or condition of User's records. ADRE specifically disclaims any liability for harm to User arising out of ADRE or User's use of the TM Program, including, but not limited to, damages incurred as a result of viruses, unauthorized access, User's inability to use the TM Program, or programming devices that might access, modify, delete, damage, corrupt, deactivate, disable, disrupt, or otherwise impede in any manner the operation of any of User's software, hardware, data, or property. This Agreement does not preclude or mandate legal action by ADRE for any violations discovered while accessing the TM Program. Except as specifically provided in this Agreement, no other warranties or conditions, express or implied, are made or given by ADRE.
- K. Headings, Construction: The paragraph and section headings in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation of this Agreement.
- L. Severability: If any provision of this Agreement is held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall nevertheless continue in full force and effect.
- M. Conflict of Interest: This Agreement is subject to cancellation pursuant to A.R.S. § 38-511
- N. Arbitration: To the extent required pursuant to A.R.S. § 12-1518, the parties agree to use arbitration to resolve any dispute arising out of this Agreement.

Continued page 18

USER AGREEMENT GRANTING DEPARTMENT OF REAL ESTATE ACCESS TO USER'S ELECTRONIC MANAGEMENT SYSTEM

Continued from page 15

- O. **Audit:** Pursuant to A.R.S. § 35-214, all books, accounts, reports, files and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by the State for five years after completion of this Agreement. Upon notice request, the original of such records shall be produced at ADRE, 2910 N. 44th Street, Phoenix, Arizona 85018.
- P. **Nondiscrimination:** The provisions of Executive Order 75-5, as amended by Executive Order 2009-09, are incorporated herein by reference. These provisions mandate, in part, that contractors will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex or national origin.
- Q. **Limitations:** Nothing in this Agreement shall be construed as limited or expanding the statutory responsibilities of the parties or relieving the parties of any obligation or responsibility imposed by law.
- R. **Parties in Interest:** This Agreement shall bind User, which includes both the employing broker and entity, and its successors and assigns, including subsequent owners, designated brokers, and managers of the User.

V. Notice

Notice under this Agreement shall be provided to:

For ADRE:
 Auditing Division
 Arizona Department of Real Estate
 2910 N. 44th St.,
 Phoenix, AZ 85018
 auditing@azre.gov

For Broker:
 Name: _____
 Address: _____

 Email Address: _____

VI. Required Disclosures: User hereby agrees to disclose information included in "Exhibit A" and incorporated herein by reference. User agrees to promptly update this information if any changes are made to the TM Program.

VII. Authority

By signing below, the signatory certifies that he or she has the authority to enter into this Agreement, has read the foregoing, and agrees to accept the provisions herein.

For Arizona Department of Real Estate:

Signature

Date

Printed Name

Position

For User - Brokerage:

Signature

Date

Printed Name

Designated Broker
Position

USER AGREEMENT GRANTING DEPARTMENT OF REAL ESTATE ACCESS TO USER'S ELECTRONIC MANAGEMENT SYSTEM

Exhibit A

Name of Licensed Real Estate Brokerage: _____

Name of Licensed Real Estate Employing Broker: _____

Disclosures Relating to User's Electronic Transactional Management System

Nature of TM Program: User's hereby discloses to the Department that its records are maintained on a TM Program that is one of the following (indicate with an "X"):

- A web based electronic transaction management and/or document storage program;
- An electronic program maintained on servers owned entirely by the broker; or
- 3. An electronic program maintained on servers of which the broker's ownership interest extends throughout the mandatory timeframes statutorily required for maintenance of the records.

TM Program Vendor: User hereby discloses to the Department that its records are maintained with the following TM Program Vendor:

Access Rights Authorization: User hereby discloses to the Department that if an access rights user profile or code is necessary for access, the following information is required:

Address of Offsite Location of Server or Legal Address of Web Provider:

Granting ADRE Access to AAR TM Files

Granting ADRE Access to AAR TM Files

Once a broker has opted to sign the [User Agreement Between A Licensed Broker And The Arizona Department Of Real Estate For Unlimited Access Rights To Web Based Electronic Records](#), the broker must complete and send the following to the Arizona Association of REALTORS® (AAR):

Dear AAR,

I have opted to grant the ADRE access to my AAR TM files for audit and investigative purposes. I authorize you to provide that access by:

- Creating an ADRE Auditor Security profile in our AAR TM account.
- Creating an ADRE Auditor profile using the ADRE Auditor Security profile in our AAR TM account, make sure this profile has:
 - o auditing@azre.gov as the notification email
 - o A password set to never expire (until I send AAR written notice revoking ADRE's access to my firm's AAR TM files)
- Instructing SureClose® to add the ADRE Auditor profile using the ADRE Auditor Security profile to all existing files in our AAR TM account.
- Adding the ADRE Auditor profile using the ADRE Auditor Security profile to all templates in our AAR TM account.
- Sending ADRE the login and password to auditing@azre.gov.

Please notify me at the email address below when this has been accomplished.

Broker's Name (Printed): _____

Broker's Signature: _____

Broker's Email: _____

Broker's Phone: _____

Firm Name: _____

Date: _____

Completed form should be emailed to tmsupport@aaronline.com or mailed to:

Transaction Management
 c/o Arizona Association of REALTORS®
 255 E. Osborn Rd., Suite 200
 Phoenix, AZ 85012

Without this request, AAR will not have the authority to make the make the changes necessary to provide the Arizona Department of Real Estate access to files.

PROPERTY MANAGERS: EPA's Lead-based Paint safe Work Practices take Effect in April

The Lead-based Paint renovation, Repair and Painting Program is a federal regulatory program affecting contractors, property managers, and others who disturb painted surfaces. It applies to residential houses, apartments, and child-occupied facilities such as schools and day-care centers built before 1978.

Training, certification and work practice requirements that become effective after April 22, 2010 may affect residential rental property owners/managers, general contractors, and special trade contractors, including painters, plumbers, carpenters and electricians.

The EPA has developed a handbook for property managers and maintenance personnel. The "Small Entity Compliance Guide to Renovate Right" is available in pdf format from the EPA website at www.epa.gov.

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Remember to use the department's website www.azre.gov and Online Services to download:

- Legal Presence
- Continuing Education
- Change of address
- Current email
- View current "Informational Alerts"

BUSINESS NAME

Main Office:

2910 North 44th St., 1st
Floor
Phoenix, Arizona 85018
Phone: 602.771-7700

Southern Arizona Office:

400 W. Congress, Suite 523
Tucson, Arizona 85701
Phone 520.628.6940
Fax 520.628.6941
Office Hours: Monday ,
Wednesday & Friday

www.azre.gov

DIALOG
THE PERIODIC BULLETIN FROM THE
ARIZONA DEPARTMENT OF REAL ESTATE

An official publication of the State of Arizona

JANICE K. BREWER
Governor

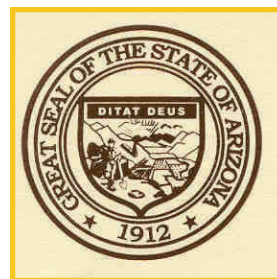
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