DIALOG

The Periodic Bulletin

from

The Arizona Department of Real Estate

Volume 2010– Issue 3

Judy Lowe
Commissioner

COMMISSIONER'S CORNER

TEAM

"RAISING THE BAR".....has become the mantra of the real estate industry in Arizona. "Raising the Bar" is a huge challenge and results are achieved slowly. However, this past year I have heard, from a very large majority of the 90,000+ real estate licensees, that this is their commitment.

The ADRE 2010 achievements are supporting the "raising of the bar", as well. A few of these achievements, include:

Short Sale Seller Advisory – John Foltz, along with Michele Lind and the ADRE, led a group of some of Arizona's greatest real estate Master Minds to develop the Short Sale Seller Advisory. This document has been adopted by Brokers and their agents throughout Arizona, as these professionals counsel the Short Sale Seller. Most Arizona Designated Brokers now make the Short Sale Seller Advisory receipt, signed by the Seller, a part of the mandatory documents in every short sale Listing File. Reducing risk and raising the bar.

Pre License Education – Thanks to a Pre Licensing Educator Workgroup, and the feedback of many, the Arizona real estate licensing education has been enhanced to create a more comprehensive curriculum with the Brokers' course being much more stringent than the Salesperson, and the real estate licensing exam having more questions. Under the direction of our new testing vendor, Pierson VUE, and their team of Arizona Subject Matter Experts (SME), chosen from the Arizona real estate community, the test question bank has been revised to include additional and new questions. Raising the knowledge bar of the new salesperson and broker licensees.

Continuing Education (CE) – The first of many CE changes have been implemented, with more to come. The CE Course application and qualifying criteria have been "rolled out"....no longer is approval given for new or renewal courses which do not meet the specifications of the ADRE rules, i.e. feng shui. Distance Learning approval guidelines have been clarified, with the "50 minute" rule being enforced, even with those courses within their 4 year approval time. The changes on the drawing board are Instructor approval criteria, and clarifying the approval guidelines for Schools and their Administrators. The School/Course Monitor program is in place, with volunteer monitors from around the state participating. The first Educator Audit Declaration will be completed by all Schools and submitted to ADRE by January 31, 2011, and every two years thereafter.

On-line Licensing – Many more on-line licensing services have been added to the online license renewal capability. Our licensing staff now accepts and processes Scanned documents for other services (see page 7).

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- Investigations – The Pending Investigation Log numbers have decreased dramatically…not because of fewer complaints…but through the Investigators streamlining the investigation processes. We are now better prepared to expedite the thorough investigation of new complaints, especially those harming the public. The Electronic Audit Review is producing "red flags" in Broker Trust Accounts, that when the field audits are completed, have proven unbelievable violations. Licenses have been revoked or suspended. With the new year, ADRE will implement a schedule of in-field audits throughout the state. Auditors will include a review for short sale violations, property management violations and licensees operating LLC's separate from the Broker.

- Enforcement and Compliance (E&C) – Even with the increased load of CE non-compliance, the E&C has decreased the number of open files. On proven violations the E&C Division has taken a tougher position, with increased penalties, including many cases where licenses were suspended or revoked.

- The HUB – A "live body" now answers most calls to the Department, with a genuine effort made to answer the questions for the caller. If a message must be left, a call back is made by close of business that day.

- 2010 Legislative Successes – Include:
  - 4 yr. license to a 2 yr. license - All new licenses issued and all licenses renewed after July 29, 2010, will be for a two (2) year period. Those licensees holding a license issued prior to July 29, will renew on the expiration date showing on their license. CE hours of 24 hours every 24 months is still required. Those holding a 4 year license must still upload 24 hours of CE at the end of the first two years of their 4 year license, and then upload an additional 24 hours of CE at time of renewal. All Designated Brokers must do the Broker Audit Declaration at time of renewal.
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  - Fingerprint Clearance Card - All new salesperson and broker license applicants must present a Fingerprint Clearance Card, issued by DPS at time of application. All licensees disclosing a criminal conviction or disciplinary action within 10 days of the conviction/action, must still disclose within 10 days, and deliver a Fingerprint Clearance Card within 60 days of the conviction.

  - Cancel License – Any licensee, holding an active license, and with no disciplinary actions or investigations pending against them, may cancel their license with written agreement with the ADRE. The license may be reinstated per terms of the Statutes and/or rules.
  - Surrender License – Any licensees, with an ADRE investigation pending, may surrender their license, when done at least 10 days prior to the hearing of their case. This surrender is completed, with the understanding that the licensee can never hold an Arizona real estate license again. Since July 29, 2010, forty-six licensees have surrendered their licenses.

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- Public Report Disclosure on Advertising – All Developers and Sub dividers, when advertising a subdivision and/or development, must disclose on said advertising that a "public report is available from the Arizona Dept. of Real Estate".

THANKS TO OUR MANY ARIZONA PARTNERS WHO HAVE WORKED WITH ADRE TO ACCOMPLISH THESE ACHIEVEMENTS TOWARD "RAISING THE BAR".

The Team at the Arizona Department of Real Estate is very proud of our accomplishments in 2010. Please watch for our next Bulletin to learn what is planned for 2011. We promise much excitement!

WE AT THE DEPARTMENT WISH FOR YOU, AND YOURS, A HAPPY HOLIDAY AND A BLESSED AND PROSPEROUS 2011.

Southern Arizona Broker Meetings!

Want to hear what's happening at ADRE? Be informed and an active stakeholder by attending the Broker Meetings scheduled in Southern Arizona at the Tucson Association of REALTORS®.

The schedule for 2011 meetings is:

- January 10
- March 17
- May 23
- July 25
- September 26
- November 7

An email blast from the Department will be sent out a month prior to the meeting as a reminder! Please make sure that your e-mail is current by visiting the Department's website: www.azre.gov and using the Online Services.

- If you would like Commissioner Lowe to speak at your group meeting, association or special event please contact Mary Utley at (602) 771-7766 or email at mutley@azre.gov

Fun Facts!

NEW LICENSEE EXAMS

NOVEMBER 2010 – Average Passing Percentages for "First Time Takers"

REAL ESTATE BROKER	=70%
REAL ESTATE SALESPERSON	=67%
CEMETARY SALESPERSON	=100%

As of December 15, 2010:

ADRE Licensee Online CE Entries for Calendar Year **2010 (through 12/15/2010)**

Total courses entered: **197678**
Distance Learning: **83955**
Percentage Distance Learning: **42%**

3,413 Active Continuing Education Courses

2,877 Live CE (Approximately **84.29%**)
536 Distance Learning CE
(Approximately **15.71%**)

Educator's Update

ADRE recognizes that the caliber of real estate education provided to licensees is crucial in promoting professionalism and consumer protection. This focus will result in an increase in the "raising of the bar" through education of the Real state licensee. The ADRE is constantly looking at ways in which to assist and advance such standards.

On November 1, 2010 the following were implemented:

- Course Approval
  - Visit www.azre.gov under Forms & Publications tab to obtain required modified Course Approval Application (ED-102-CE/DL/PE) and instructions-Applications will only be accepted using this form.
  - Distance Learning is included on this modified Course Approval Application based on adopted recommendations from the Continuing Education Distance Learning Subcommittee. Please note the detailed qualifying criteria for approval.
  - This change has been very well received by both the Educators and the licensees.

- Course Renewal
  - Online renewal is no longer available; all schools requesting Course Renewal must complete the Course Approval Application (ED-102-CE/DL/PE), to meet the current approval requirements. A 90 day "Renewal Reminder" will continue to be sent to the school email address in ADRE database. This reminder will appear as follows:

Dear School Administrator,

Below is a list of courses that are coming due for renewal for school (School Name). Please download and complete our new course application in its entirety. Once the application is complete, submit it to the Arizona Department of Real Estate (ADRE)-Education Division by e- mail, facsimile or mail before the course expiration date.

(Course Information)

If ADRE can be of assistance or you find a discrepancy I our notice, please contact the Education Division.

  - All courses must be submitted on the latest version of the modified Course Approval Application.

- Expanded Distance Learning Criteria
  - A.A.C. R4-28-101 "Distance learning course: means a course of instruction outside a traditional classroom situation consisting f computer-based interactive instructional material, requiring completion in the credit hours specific. A course that requires a student to read text, listen to audio tapes, or view video material without student participation, feedback and remedial instruction is not a distance learning course".

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Educator's Update

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- Refer to the Course Approval Application (ED-102-CE/DL/PE) for Distance Learning course approval guidelines.

- Substantive Policy statements-two (2) issued
  - Distance Learning Guidelines-to view, click here
  - Real Estate School Audit Declaration-to view click here

- 14-Day Online Course Notice
  - To schedule all currently approved continuing education and pre licensure course events online system at : https://services.azre.gov/oes/
- Pointers/Tips
  - The sooner you get your notice in, the more easily a licensee can contact your school to plan in advance and register for upcoming courses.
  - Check your entries for accurate information. Some of the entries are incomplete.
  - Be sure to enter the correct course location in the "other location" field if the course is held at a location other than a campus.
  - If information in the online notice changes, such as cancellation or other pertinent course information, be sure to update the online notice.
- Timing of Online Notice
  - The latest entry for a 14-day online notice is exactly to the day and hour of the event. For example, if a course is scheduled for July 14, 2010 at 3:00 p.m., the online notice must be submitted no later than July 1, 2010 at 2:59.59 pm.
- Other 14-Day Notice Options
  - Mail-ADRE, Attn: Education Division, 2910 N. 44th Street, Suite 100, Phoenix, AZ 85018
  - Email - education@azre.gov
  - Facsimile-(602) 957-0558

Other Information

- ADRE Updating Education Database
  - Schools may apply to withdraw Education courses that no longer meet the current ADRE course approval guidelines.
  - Schools must communicate all changes of all licensing information per statutes and rule requirements. A.A.C. r4-28-301; r4-28-404
- ADRE Course Numbers– Privileged Information-Liability
  - Course numbers are privileged information and should only be given to licensees upon successful completion of the course (s) on a school certificate.
  - Please ensure that no school course numbers are accessible to the licensee through advertising (printed, internet, word-of-mouth, etc.). This is especially important, since most real estate continuing education is entered online in Arizona. Should a school's course number

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become compromised, the ADRE will likely have to renumber all of the affected course numbers.

- Volunteer Monitor Program
  - Monitor assignments continue
  - Any returned critiques noting issues needing to be addressed will be delivered to the School Administrator by ADRE Education Manager, Carla Randolph.
- Licensing Requirement
  - A Fingerprint Clearance Card application is taking approximately 4-8 weeks.
    - Required for Original applicants for approval to operate a real estate school, and all real estate licenses.
    - Required for new disclosures that the Department had not been notified of previously from existing licensed/approved individuals; i.e. schools and/or instructors giving ADRE "w/in 10 day notice" per A.A.C. R4-28-301-(F)
    - Required for school renewals in which the person exercising control overt the school had not previously submitted a fingerprint card.
  - Broker Education Verification Form
    - No longer necessary to submit to the Department for a "valid through date". Instead the candidate just needs to complete the form prior to license exam, and submit at time of license application for approval. Be sure to refer the candidate to specific instructions in the Pearson VUE online Candidate Handbook under what to have at registration and what to bring to examination.

- Pearson VUE-Two new testing centers are available. They are:
  - Mesa Pearson Professional centers
    555 W. Iron Avenue, Suite 102
    Mesa, AZ 85210

  - Phoenix Pearson Professional Center
    2401 W. Dunlap Ave, Suite 260
    Phoenix, AZ 85021

- State Examination
  - As of January 1, 2011, the Arizona State Specific questions will be questions based on the new Real Estate Salesperson and Broker Course outlines that have been reviewed by Subject Matter Experts from the Arizona real estate industry. As you know, the General and State Specific Sections of the examination are almost equal; therefore, ensure that your course content instruction and school examination equally covers both sections.

THE EASY WAY…LICENSING SERVICES

TECHNOLOGY SAVE TIME, ENERGY, GAS, AND DOLLARS!!

ONLINE AT www.azre.gov ; Visit the ADRE Website to find answers to most questions. THANKS!!!

Renew License on-line - www.azre.gov – Less expensive when you renew on-line. No need to call ADRE to confirm that your license is renewed…..Visit your on-line license information to check new expiration date.

Sever/Hire/Transfer – www.azre.gov – Remember the hiring broker must accept the hire on on-line.

Enter Continuing Education – www.azre.gov – Best to do it as you complete the course. When entering courses for the first 24 months of a 4 year license, there is no need to call the ADRE when the message appears that the requirement has been satisfied.
Legal Presence – Go to www.azre.gov ; select "Manage my Legal Presence", follow directions Remember, Legal Presence must be entered, received by ADRE and reviewed before License Renewal or Entering Continuing Education.

SCAN IT – (Expect a two (2) day turnaround time, with a call from ADRE for payment when complete)

Licensee Personal Name or Address Change – licenseeupdates@azre.gov

Branch Manager Change – licenseeupdates@azre.gov

Licensee Licensing Questions – licenseeupdates@azre.gov

New PC-PLLC Request or Changes – licenseeupdates@azre.gov

Cancellation of license – licenseeupdates@azre.gov

New Entities – broker.specialist@azre.gov

Designated Broker Change – broker.specialist@azre.gov

Name Reservations – broker.specialist@azre.gov

Broker Questions – broker.specialist@azre.gov

Business/Mailing Address Changes – entityupdates@azre.gov

New Branch Offices or Changes – entityupdates@azre.gov

General Licensing Questions – licensing@azre.gov

Legal Presence Questions – licensing@azre.gov

Cancel or Surrender a License!

Prior to July 29, 2010, licensees have never had an option to voluntarily cancel or surrender their license. The most recent legislative session has given a new choice to Arizona real estate licensees: to opt to surrender or cancel their license.

CANCEL – ARS §32-2137

An active licensee may request to cancel their license, and the Department has the discretion to do so if both of the following are true:

- The licensee is not presently under investigation by the Department, and
- The Department has not commenced any disciplinary proceeding against the licensee.

The form for canceling a license can be found at www.azre.gov . Submit form to the ADRE after the Designated Broker and Licensee have signed. The Designated Broker must not sever the Licensee prior to ADRE receiving the signed confirmation of the Commissioner. .

SURRENDER – ARS §32-2157(A)

If the Department has commenced a disciplinary proceeding **against** a licensee, the licensee may request in writing to voluntarily surrender their license to the Department only, if the surrender of the license occurs not less than 10 days prior to a hearing. After acceptance of the voluntary surrender, "**the Department shall not thereafter issue a license under this chapter to the licensee.**"

Choosing to surrender your license would forego a licensee's ability to ever apply for a license through the Arizona Department of Real Estate in the future.

Fingerprint Clearance Card (FCC)

Pursuant to ARS §32-2108.01

The 49th Legislature in its 2nd regular session of 2010 enacted a law that requires original applicants for licensure to obtain a valid Fingerprint Clearance Card (FCC) through the Arizona Department of Public Safety prior to submitting their application to the Arizona Department of Real Estate. The FCC is required upon application of new original license applications including, but not limited to:

- Salesperson – real estate, cemetery or campground
- Broker – real estate, cemetery or campground
- School (Owner and Administrator)
- Public Report, etc.
-

For current licensees, the FCC is only required upon renewal for a salesperson or broker license if the licensee has any disclosures, such as any misdemeanor conviction, felony conviction, judgment restriction, disciplinary action, civil judgment or ADRE Recovery Fund payment. Please note that the FCC is valid for six years.

You will still be required to notify ADRE within 10 days of a criminal conviction, as all disclosure requirements of licensing remain the same. At the time of the ten day disclosure, ADRE will require an FCC within 60 days or license is subject to suspension. The presentation of a FCC does not guarantee future license.

ADRE highly suggests that the Broker verify if there are restrictions (i.e. driving, etc.) noted on the FCC. Look at the front and back of the FCC.

How to Obtain A Fingerprint Clearance Card (FCC)

A Fingerprint Clearance Card does not preclude the requirement to disclose any misdemeanor, conviction, felony conviction, judgment, restriction, disciplinary action, civil judgment or recovery fund payment to the ADRE.

How to obtain a Fingerprint Clearance Card

- Obtain a Regular Fingerprint Card and be fingerprinted at the real estate school, or an outside fingerprinting facility authorized to do fingerprinting. Ensure the fingerprint card is not bent, folded or damaged in any way, or it may be rejected.
- Obtain a Fingerprint Clearance Card application from the real estate school or the Arizona Department of Public Safety (DPS), by calling (602) 223-2279 or faxing your request to (602) 223-2947. Office Hours: Weekdays 8am—5pm.

Complete the application packet thoroughly and accurately. Your application packet must include the following:

- Completed Fingerprint Card
- DPS Application for Fingerprint Clearance Card Form
- DPS Supplement to the Fingerprint Clearance Card Application Form
- Fingerprint Clearance Card Fee of $69.00
- DPS accepts Cashier's Checks, Money Orders or a check drawn on a business account made **payable** to the **AZ Department of Public Safety**.
- Place the application packet in a large envelope with sufficient postage and return address (in the top left corner of the envelope).
- DO NOT FOLD, BEND OR DAMAGE THE FINGERPRINT CARD.
- Mail the completed application packet to:

  Arizona Department of Public Safety
  PO BOX 18390
  Phoenix, AZ 85005-8390

Other Relevant Information

- Processing time averages five to eight weeks, depending on whether or not there is a criminal record. Fingerprints will be used to obtain both state and federal criminal records check.
- Fingerprint Clearance Cards are valid for six years.
- Fingerprint Clearance precluding offenses may be found by visiting the state website: www.azleg.gov and view A.R.S. §41-1758.03.

- Fingerprint Clearance Card denials may be appealed through the Fingerprint Clearance Appeal Board.

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ARIZONA PUBLIC REPORT FOR MEXICO

DID YOU KNOW that Arizona law governing Subdivision Public Reports also applies to developments in Mexico if they are marketed or sold in Arizona? If a licensee in Arizona sells property that is subject to the Public Report laws and the property does not have a Public report, the licensee is subject to possible disciplinary action by the department. Requirements for a Public Report include advertising or selling property to citizens in Arizona. Here are some examples of illegal activity due to no Public Report being issued.

- If the licensee conducts the sale in this state, it is a violation.
- If the licensee advertises the property in this state but meets the client in Mexico and conducts the transaction there, it is a violation (Advertising in Arizona).
- If the licensee advertises in Mexico and the client sees the ad, but comes to Arizona to do the paperwork, it is a violation (Sale in Arizona). Referral to a specific project in Mexico that is not in compliance with the Public Report requirements, however, is not a violation.
- If the Arizona agent only refers the prospective customer to an agent in Mexico and not to a specific development, that is not a violation.

BROKER EXPERIENCE VERIFICATION FORM

The Broker Experience Verification Form (LI-226), which is a required document for New Broker License Applications, no longer must be submitted to ADRE prior to license application, for an ADRE determination of the "valid through date".

The licensee will self-determine eligibility. The experience must be established for at least three years of actual real estate experience as a salesperson or broker within the immediately preceding five-year period prior to broker license application.

To substantiate that the experience requirement for a broker's license has been met, the current broker, or last designated or employing broker (s) must complete and sign a Broker Candidate Experience Verification Form (LI-226). If the experience was acquired in a state other than Arizona, a certified license history from each state in which a salesperson's or broker's license was held during the immediately preceding five years must be obtained.

These forms, along with any certified license history must be presented to Pearson VUE at the time of examination, and submitted to the Department with the application for licensure. The form can be found on ADRE's website: www.azre.gov .

Should there be a delay in time from the time of examination, to the time of license application, new documents may be required, to have the necessary "valid through date".

BROKER'S ABILITY TO DELEGATE

Scenario: A Designated Broker submits a "letter of authorization" to the Department, seeking to designate other licensees (employed by the same employing broker), to sign and/or authorize online severs, hires, and renewal applications for licensees employed under that Designated Broker's license.

While the Department acknowledges that today's business demands quick responses, it cannot legally honor many of these letters of authorization.

The **Designated Broker** is the **only person authorized** by statute to act on behalf of a licensed entity or sole proprietorship. The Statute (A.R.S. §32-3125(A) specifically authorizes only the Designated Broker to act on behalf of an employing broker, and does not authorize any others to be delegated that authority. Two exceptions to this restriction include:

1. When the Designated Broker is "unable to act within 24 hours" and the Designated Broker appoints another licensee (singular) to act in his behalf during his absence (A.R.S.32-2127(D), and;
2. In the appointment of a Branch Manager. In the case of the Designated Broker appointing another licensee as the Broker's designee in the D.B.'s absence, that designation shall not exceed thirty days duration, and may authorize the designee to perform any and all duties the Designated Broker may legally perform, except that a salesperson (not an Associate Broker) shall not be authorized to hire or sever licensees, and a written designation is required for each temporary absence. In the case of the Designated Broker appointing a Branch Manager, (per A.R.S.32-2127(C) and R4-28-304), only a Branch Manager who is an Associate Broker, may assume the responsibility of "hire or sever of a salesperson or associate broker" affiliated with the Brokerage. That Branch Manager cannot be authorized to act as the Branch Manger of more than one branch office, unless appointed as the designee on a temporary basis when the Designated Broker is absent.

The Department cautions Designated Broker's in the sharing of their personal passwords, whether the passwords are to the Designated Broker's personal page on www.azre.gov , or used for reviewing files on behalf of the Designated Broker, in a document storage or transaction management platform.

SHORT SALE FRAUD SCENARIOS

Short Sale fraud is growing, with evidence that a large number of real estate licensees are participating in this fraud. Many of those participating believe that they are doing so after receiving the "go ahead" from others, in many instances their own Broker, while other participating licensees may conclude that unlawful or questionable practices "can't be bad" since "everyone is doing it". Some licensees have developed a false sense of security as to the propriety of their short sale transactions, since they have included a "hold harmless" language in the contracts and/or agreements. Licensees must understand that fraudulent and unlawful practices, when proven, will lead to disciplinary action by the ADRE and possible civil and criminal liability on a state and federal level. It seems that many agencies nationwide, as well as lenders, are looking for fraudulent activities in the actions of the real estate licensee in short sale transactions.

The following scenarios around Short Sale Negotiators are presented with the hope that each Licensee will be looking for the potential "red flags" of short sale fraud.

Scenario – Buyers paying the Short Sale Negotiator's (SSN) Fee – The ADRE has been made aware of a sharp increase in the number of Listing Agents and SSNs who are requiring Buyers to pay the SSN's fee. The Buyer's agent is sometimes told (either in the MLS remarks and/or in a pre-sale instruction sheet) that Buyers must sign a special SSN Agreement which requires that the Buyers agree to pay the SSN's fee before an offer can be considered.

The Buyer's agent is told that this SSN Agreement/Addendum, signed by the Buyer, must be included with the offer documents. If the requirement for the Buyer to pay the SSN fee is being driven by the Listing Agent and/or the SSN, and is not a true Seller requirement, with the full knowledge and desire, of the Seller, and a part of the "negotiations" between the principals, there could be a breach of the Listing Agent's fiduciary duty to the Seller, by stifling and limiting the presentation of legitimate offers, as well as other violations and potential ethics violations.

Many times it is suggested by the Listing Agent that the Buyer's agent look to the transaction closing for additional dollars to pay the SSN fee, and/or to pay any other party who is not satisfied with the amount authorized by the Short Sale Lender (such as a second Lender), and many times suggesting that these dollars not appear on the HUD-1, and if the fee must be paid through escrow that it would appear on a later/second escrow HUD-1. However, these additional fees are often paid outside of escrow since the Lenders may not approve of same.

Why would a Listing Agent become involved in a "Buyer paid Short Sale Negotiator" fee? In some instances the Listing Agent is trying to get paid extra dollars to serve as both the Listing Agent and the SSN. In other cases, the Listing Agent has hired an outside SSN to avoid providing the short sale negotiation services to their clients, and by having the Buyer pay the SSN is avoiding sharing his/her commission earnings with the outside SSN.

Brokers are experiencing an increased risk in the situation created by the SSN Agreement/Addendum shifting the responsibility for the SSN's fee to the Buyers. Many questions must be asked of this arrangement, a few of which include: Is the Short Sale Negotiator licensed in Arizona? If licensee is acting as the SSN, is all compensation being paid through the Broker? Where does the fiduciary responsibility lie? Can proven civil violations or license discipline be the result of breaches of fiduciary duties?

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SHORT SALE FRAUD SCENARIOS

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Has full disclosure on all aspects of the arrangement been disclosed to all parties? What are the agency relationships, especially, when the Buyer is paying the Short Sale Negotiator? Does requiring the Buyer, to pay that "extra" fee (s) constitute an unlawful "junk" fee under the federal law known as RESPA? Should the SSN's fee be paid outside of escrow, so that the fee is not disclosed on the HUD-1, is that concealment in violation of federal law. Is it possible, depending upon the involvement of the Sellers, Agents, Buyers and Escrow, that a violation of federal law of agreeing to structure the deal to include "hidden" payments outside of escrow can be proven? Are all real estate statutes, rules and policies being adhered to?
Other "red flags" and/or risk in the Short Sale Negotiator situation that should be considered.
Scenario: Who represents whom? – Depending on the language in the SSN Agreement/Addenda, there may be the indication that the SSN is negotiating with Seller's Lender on behalf of the Seller, however, it may also be assumed that the SSN is also representing the interests of the Buyer, since the Buyer is paying the fee. Is there undisclosed dual agency?

Scenario: Concealing information from Seller's Lender – Even though the SSN Agreement/Addendum may be a contract document, one of the reasons that the terms and conditions are on a stand-alone Addendum may be, to better enable the Listing Agent and/or SSN to withhold information from the Seller's Lender, and in some instances, the Buyer's Lender. It appears some unscrupulous SSNs are not including the Addenda as part of the offer package submitted to the Short Sale Lenders at all. Short Sale Lenders are citing this occurrence as grounds for Lender Fraud, since there has been no disclosure of the Buyer's contribution to others in the sale, including the SSN. Buyers are also being asked to pay off the Seller's credit card debt, the Seller's moving expenses, to buy the Seller's furniture at an inflated price, and to otherwise provide funds for the direct benefit of the Seller. When these funds/payments are not expressly approved by the Short Sale Lender, legal problems could exist.

The disclosure of the SSN's fee on a HUD-1 may not be considered sufficient notice to the Short Sale Lender. Had the disclosure of the fee been made at initial offer presentation, the Lender may not have approved a payment to an SSN, since it is in addition to the amount authorized as payment for the Listing and Selling Brokers. Lenders may consider the SSN payment to be a commission payment, and when added to the other commissions being paid, the total may exceed the lender's authorized limit.

Presented here are only a few of the myriad issues arising with respect to Buyers being compelled to pay a fee (s) to a Short Sale Negotiator. Arizona real estate licensees must realize how unsafe and problematic this practice is in terms of potential license discipline and civil and criminal liability.

Annual FBI Report Details Increasing Mortgage Fraud, Emerging Schemes and Top Fraud States (used with permission from ARELLO)

The latest annual mortgage fraud report issued by the U. S. Federal Bureau of Investigation (FBI) concludes, somewhat predictably, that mortgage fraud activity in the U.S continued to grow during fiscal year 2009. The report indicates that the top states for mortgage fraud during 2009 were California, Florida, Illinois, Michigan, Arizona, Georgia, New York, Ohio, Texas, the District of Columbia, Maryland, Colorado, New Jersey, Nevada, Minnesota, Oregon, Pennsylvania, Rhode Island, Utah, and Virginia, in that order. While the report reveals the continuation of well-known mortgage fraud schemes, it also provides a look at new scams that are emerging.

Emerging Schemes

Many of the prevalent mortgage fraud schemes that are well-known to law enforcement and regulatory agencies continued to plague consumers and the real estate industry in FY2009. These familiar schemes involve loan origination, foreclosure rescue, builder bailouts, equity skimming, short sales, home equity lines of credit (HELOCs), illegal property flipping, reverse mortgage fraud and many others. According to the FBI, new techniques and trends in mortgage fraud were reported in FY2009 by various law enforcement, regulatory and industry entities.

Mortgage Debt Elimination Schemes by "Domestic Extremists/Sovereign Citizens"

"Sovereign citizen/domestic extremists" throughout the U.S. are perpetrating debt elimination schemes. "Sovereign citizens" reject all forms of government authority and believe they are immune from federal, state and local laws. Victims pay advance fees to perpetrators espousing themselves as “sovereign citizens” or “tax deniers” who promise training in methods to reduce or eliminate debts. Schemes primarily targeting mortgages and commercial loans, unsecured debts and other types of loans have victimized consumers in several U.S. jurisdictions. The schemes involve "coaching" people on how to file fraudulent liens, proofs of claim, entitlement orders and other documents to prevent foreclosure and forfeiture of property.

Commercial Real Estate Loan Fraud

The FBI report indicates that the $6.4 trillion commercial real estate market is experiencing a high incidence of loan origination fraud similar to that seen during the last few years in the residential market. Perpetrators such as loan officers, real estate developers, appraisers and apartment management companies are increasingly submitting fraudulent documents that misrepresent assets and property values to qualify for loans.

Flopping, Short Sales and Broker Price Opinions

As cited in previous annual mortgage fraud reports, short sale property flipping schemes continue to emerge using the distressed properties of homeowners who are unemployed or facing foreclosure. The perpetrators collude with appraisers or real estate agents to undervalue the property using an appraisal or a broker price opinion to further manipulate the price down (the "flop") to increase their profit margin when they later sell the property (the "flip"). They negotiate a short sale with the bank or lender, purchase the property at the reduced price and flip it to a pre-selected buyer at a much higher price. The FBI's report also expresses concern over HUD/FHA's waiver of the 90-day property flipping rule, which was designed to prevent illegal property flips of FHA -insured properties.

Continued on page 15

Annual FBI Report Details Increasing Mortgage Fraud, Emerging Schemes and Top Fraud States (used with permission from ARELLO)

Continued from page 14

The waiver, in effect through January 31, 2011, was initiated in order to boost the stagnant real estate market and remove properties from "the books" of banks.

Property Theft Targeting Bank-Owned Properties

The FBI also reports that perpetrators are targeting bank-owned properties by filing a false warranty deed, using a false rental/lease agreement and collecting advance fees from an unauthorized tenant. The perpetrator arranges to rent out the REO property to an unsuspecting renter. The perpetrator advises the renter that, if confronted by a realtor [sic] or law enforcement officer, the renter is to produce a lease agreement provided by the perpetrator. On inspection of public records, the false warranty deed seems to support the equally false lease. During the course of this scheme, the perpetrator places “no trespassing” signs on the properties and often changes the locks.

Foreclosure Rescue Schemes—Prime Fixed-Rate Loan Delinquencies

Although mortgage loan delinquencies and related fraud activity are generally associated with higher-risk subprime loan borrowers, the FBI says that an increasing number of prime-rate mortgage loan delinquencies are being driven by unemployment. Because of the known correlation between mortgage loan delinquencies, defaults, foreclosures and mortgage fraud, it is anticipated that the increasing number of prime-rate loan delinquencies will fuel a greater pool of potential mortgage fraud victims and perpetrators. Prime-rate homeowners will also add to the growing number of foreclosure "rescue" victims. According to the Mortgage Bankers Association, prime fixed-rate loans are now the biggest contributing factor to foreclosure rates and account for approximately 30 percent of all new foreclosures, a 10% percent increase from 2008.

Foreclosure Rescue Schemes/Loan Modification Fraud

Despite the efforts of local, state and federal agencies to warn consumers about foreclosure rescue and related loan modification fraud, the FBI says that predatory practices in this area are still flourishing. In the face of growing numbers of homeowners needing loss mitigation assistance, mortgage servicers are overwhelmed with loan modification requests and are not providing borrowers with timely and consistent information regarding modifications or other alternatives. Consequently, loan modification scams that typically involve advance fees are increasing.

The Outlook

According to the FBI, a decrease in loan originations, increased unemployment, increased housing inventory, lower housing prices and increases in defaults and foreclosures in FY 2009 created a favorable environment for mortgage fraud perpetrators. The current housing market, while showing modest signs of improving, continues to be an attractive environment for mortgage fraud perpetrators. Even with recent regulatory interventions, mortgage fraud levels are not expected to decrease until 2013, at the very earliest. The FY 2009 FBI Mortgage Fraud Report is publicly available and includes more information about existing and emerging schemes, geographical data and relevant statistics.

UNLICENSED ASSISTANTS

In the current market, it has become apparent that real estate licensees are utilizing the services of unlicensed assistants. In many instances these unlicensed assistants are performing services/activities outside of the guidelines of what an unlicensed assistant may and may not do, according to The Substantive Policy Statement No. 2005.04.

Just a few examples of what is actually happening out in the field include, Unlicensed Assistants:

- Answering phones/emails and/or making phone calls/emails in which they are "talking real estate" specifics. i.e. price and terms of properties.
- Meeting clients at open house without a licensee present, or worse yet, meeting clients at the steps of courthouse to handle the bidding at a trustee sale of foreclosed properties.
- Presenting offers to Sellers on behalf of the listing licensee.
- Negotiating terms and conditions of addendums of pending escrows.
- Meeting the buyer to perform a walk-through inspection prior to closing.
- Meeting client to have documents signed, and offering information or answering questions relative to a document.
- Giving instructions to inspectors, appraisers or maintenance/repair people.
- Meet a tenant at a rental to show the property without a licensee, or have a lease signed.
- Paying an Unlicensed Assistant the basis of how many sales are pended or closed.

PLEASE REVIEW **SUBSTANTIVE POLICY STATEMENT No. 2005.05** TO DETERMINE WHETHER YOU ARE IN VIOLATION WITH REAL ESTATE LICENSE LAW.

Remember there are many other guidelines to keep in mind when hiring an Unlicensed Employee, including, but not limited to, how that individual is paid. (employee or independent contractor) Consult your tax advisor or an attorney.

ATTENTION! Let's remember:

According to Arizona Real Estate Statutes and Rules: Every real estate licensee is responsible for the accuracy of contact information registered with the Arizona Department of Real Estate (ADR). There may be disciplinary actins taken against those licensees who have invalid information in the ADRE database. Also, should the ADRE send any kind of correspondence to an incorrect address or e-mail that is on file, the excuse of "not receiving" correspondence is not acceptable for any delayed acting. Correspondence sent by the ADRE to a licensee, and sent to the licensee's Designated Broker's office constitutes delivery to the licensee.

Visit http://www.azre.gov/OnlineServices.aspx TODAY!! CONFIRM THAT YOUR NAME, ADDRESS AND E-MAIL INFORMATION IS ACCURATE! It is best to use an e-mail address that you check regularly and that is personal to you.

THE ARIZONA DEAPRTMENT OF REAL RECOVERY FUND – FACT OR FICTION

The Real Estate Recovery Fund was established July 2, 1963, in an effort to make consumers whole who have been harmed by an Arizona Real Estate/Cemetery Licensee during a real estate and/or cemetery transaction. The fund is subsidized solely through contributions made by all licensed real estate salespersons and brokers when obtaining an original license and/or renewing an existing license. The fees are $10.00 for Salespersons and $20.00 for Brokers.

In recent months, there have been numerous rumors circulating in the Real Estate community with regards to the Recovery Fund; this information should clarify and/or dispel some of these rumors.

The Arizona Department of Real Estate is issuing IOU's to qualified/eligible claimants.
Answer: Fiction
The Department has received 10 applications thus far in FY 2011 and made 4 payouts totaling $100,250.00. As of November 30, 2010 the fund balance is $69,198.00.
The payouts were made against the following licensees:

Name	License Number	Payout Amount	Violation	License Status
Roy K. Fife*	SA112525000	$60,000.00	Forgery/Fraud	Suspended
Robert E. Curran Jr.	BR541628000	$12,180.00	Property Management – Failure to remit funds	Revoked
Thomas R Sparks	BR006736000	$28,069.65	Misrepresentation – Dishonest dealings	Revoked

* Fife had 2 payouts of $30,000.00 each for two separate transactions for the same claimant.

The Recovery Fund has been swept by legislature to make up for the State's deficit.
Answer: Fact
From June 2009 to present date, the legislature has imposed mandated sweeps/reductions from the Recovery Fund totaling $614,250.00. The Department requested that payment for FY 2011 sweeps be made quarterly in order to allow for revenue to be generated, while continuing to meet its obligations to payout on qualified claims. The Department's current outstanding obligation could be $117,750.00.

The Department is turning down eligible claims because there is no money in the fund for payouts.
Answer: Fiction
Each application is judged on its own merit. Applications are thoroughly reviewed for eligibility and completeness. All requirements pursuant to the Recovery Fund Arizona Revised Statutes (ARS §32-2186 et al.) must be satisfied in order to be eligible for payment. The Recovery Fund is liable to pay a maximum of $30,000.00 per transaction and a total of $90,000.00 per licensee. Payment eligibility is based on a first come first serve basis.
Minimum requirements for application are:

- Obtain a Judgment in a competent court of jurisdiction;
- Record the judgment in the county where the judgment was obtained and where the licensee resides;
- All parties involved in the transaction have been included in the judgment, as well as the designated broker;
- The ADRE Recovery Fund Application has been completed and submitted;
- The claimant has diligently pursued collection efforts from the licensee, and provided the department with the supporting documentation ;
- A notice to the licensee (s) has been issued informing them that an application

THE ARIZONA DEAPRTMENT OF REAL RECOVERY FUND – FACT OR FICTION

Continued from page 16

The Recovery Fund is still liable for eligible payment even if the fund has been depleted.

Answer: Fact

When insufficient funds are available in the Recovery Fund to satisfy a claim, the eligible claimant will be put on a wait list for any unsatisfied portion, if any, and will accrue interest at 4% per year. Once the Recovery Fund is replenished it will pay any unsatisfied claims in the order of final approval.

For more information on the Recovery Fund, please visit our website at http://www.azre.gov/EnC/RecFund.aspx.

RECOVERY FUND FACTS – A DECADE IN REVIEW:

CALENDAR YEAR	APPLICATIONS RECEIVED	NUMBER OF PAY-OUTS	PAYOUTS IN DOL-LARS	AMOUNT REPAID BY LICNESEE
2000	21	5	$47,491.61	$0.00
2001	16	2	$60,000.00	$0.00
2002	13	2	$13,231.70	$12,601.73
2003	6	5	$64,561.07	$6,216.87
2004	5	3	$69,987.55	$11,676.27
2005	5	3	$31,635.79	$0.00
2006	6	2	$36,652.80	$0.00
2007	23	12	$242,847.79	$0.00
2008	11	5	$25,626.67	$1,304.02
2009	20	4	$12,836.00	$0.00
2010	19	4	$100,249.64	$0.00

Rea Estate Advisory Board

Current Advisory Board members and their contact information :

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

Meeting Schedule

The Real Estate Advisory Board meets every other month at the Department, 2910 N. 44th Street, Phoenix. The meetings are open to the public and the agenda is available 24 hours prior to the meeting. A copy of the agenda can be obtained by contacting the Department at (602) 771-7799 or by emailing Mary Utley at mutley@azre.gov.

2011 Meetings
10 am to Noon

January 20
March 9
May 18
July 13,
September 14
November 17

Jo Ann F. Sabbagh
Public Member
Term Expires 1/31/2015

Jo Ann F. Sabbagh was appointed to the Board by Governor Janice Brewer on July 30, 2010.

Ms. Sabbagh has worked in public accounting for over 15 years. She founded Sabbagh Tax an Accounting, LLC in 2004. Her practice focuses on the needs of small business owners and individuals in both Tucson and Sierra Vista. When not attending to the needs of her clients, Ms. Sabbagh is also an author and speaker for Gear Up Seminars, a division of Thomson Reuters.

She is an active member of the National Society of Accountants (NSA) and is a Past President of the Arizona Society of Practicing Accountants (ASPA). She is also a member of the Tucson Botanical Gardens and Tucson Zoological Society.

Ms. Sabbagh is originally from Toledo, Ohio, but considers Tucson her “home” since moving there in 1997.

ADRE Employee "Highlights"

Gretchen Conger
ADRE LEGISLATIVE LIAIISON

During the 49th Legislative session, Ms. Conger was an intern in the Governor's Office. After the session ended, her next assignment was to intern with ADRE and the Department of Financial Institutions.

She has proven to be an invaluable asset to both Departments. Ms. Conger was hired full-time and is shared with ADRE and the Department of Financial Institutions as the Legislative Liaison.

Ms. Conger graduated from the University of Arizona in 2010. Although she hails from New Mexico, she considers herself a native Arizonan having lived here for the past ten years. One of her hobbies is dance.

Carla Randolph
EDUCATION MANAGER

Carla Randolph has been with ADRE for over 25 years and has been assigned in various divisions. Most recently she was with Enforcement and Compliance.

Ms. Randolph was transferred to the Education Division as Education Manager. She oversees the Education Division staff and facilitates a positive relationship with the public, the schools and the educators.

The Department is very fortunate to have Ms. Randolph at the "helm" of the Education Division as she has very valuable institution knowledge which uses on a daily basis.

She is an avid volunteer with the Girl Scouts of America .

Proof of Legal Presence

A.R.S. § 41-1080 requires all agencies that issue professional licenses to obtain proof of the licensees' legal presence in the state before issuing or renewing a license.

Have you submitted your proof of legal presence? There are currently 20,000 licensees who have not! Remember, you can't renew until you have provided proof of legal presence. Documents that are acceptable to meet the requirements of A.R.S. § 41-1080:

- An Arizona Driver's License issued after 1996 OR an Arizona Non-Operative Identification license.
- A driver license issued by a state that verifies lawful presence in the U.S.
- A birth certificate or delayed birth certificate issued in any state, territory or possession of the U.S.
- A U.S. Certificate of birth abroad.
- A U..S. Passport
- An I-94 form with a photograph
- A U.S. Citizenship and Immigration Services Employment Authorization document or a Refugee Travel document
- A U.S. Certificate of Naturalization; A U.S. Certificate of Citizenship
- A tribal certificate of Indian Blood; a tribal or BIA Affidavit of Birth

Can I submit more than one person's documentation at the same time?

The electronic documents are attached to the person's license file, so you should ONLY include one person's document (driver's license, passport, etc.) in the scanned file you attach. If more than one person's information is in one scanned document it will be rejected.

How will I know if my document is received and is acceptable?

When the Department processes the document you will receive an email either advising you that it was accepted or rejected and, if rejected, why. You can go to the Department's website: www.azre.gov; log onto the Department's **Online Licensing System**, go to "**Manage My Legal Presence**" and click on "**View Current Status**" to determine whether you document was approved. You can also view the document you submitted.

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DIALOG
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An official publication of the State of Arizona
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Patti Shaw

Volume 2010--Issue 3

Note: Please check your mailing label and if the date above your name is more than 1 year old, you must subscribe for another year. Send check for $20 payable to ADRE and note your request on your envelope.

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