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Governor signs airport noise bill

The Governor has signed a bill intended to put prospective homeowners on notice that a subdivision is located so close to a public airport that aircraft noise may be a nuisance.

House Bill 2404, introduced by Rep. Jeff Groscost and 10 co-sponsors, adds A.R.S. § 28-8486 which requires developers to disclose to prospective buyers that a home in a subdivision "experiences a day-night average sound level of 60 decibels or higher at airports where such an average sound level has been identified."

The legislation also requires the Department of Real Estate to "have and make available to the public on request a map showing the exterior boundaries of each territory in the vicinity of a public airport. The map shall clearly set forth the boundaries on a street map. The State Real Estate Department shall work closely with each public airport and affected local government as necessary to create a map that is visually useful in determining whether property is located in or outside of a territory in the vicinity of a public airport."

The bill defines a "public airport" as "an airport that is owned by a political subdivision of this state or that is otherwise open to the public." It further defines "territory in the vicinity of a public airport" as "property that is within the traffic pattern airspace as defined by the Federal Aviation Administration [FAA] and includes property that experiences a day-night sound level of sixty-five decibels or higher at airports where such an average sound level has been identified."

According to the Department of Transportation, many 60-decibel noise contours do not extend outside airport boundaries. Airports that have applied for or obtained FAA grants for airport improvements have had to have noise contour studies performed showing 65 decibel and higher noise levels, and should be able to furnish a chart of those noise contours to the Department. It is not know how many of the 81 public airports in Arizona have not identified average sound levels.

The legislation also amends A.R.S.

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Three Department employees promoted to new positions

John Gerard, who has served with the Department's Investigations and Subdivisions Divisions for eight years, has been named Deputy Director of the Subdivisions Division. He replaces Bill Lucas who has been promoted to Director of Operations of our Tucson office. [See the February, 1999 issue of the *Arizona Real Estate Bulletin*.]

John joined the Department in 1990 as an investigator, then left in 1993 to work for a title company. He returned to the Department in 1994 as a Subdivision Representative, a position he held until today.

To fill Mr. Gerard's former position, Joyce Costantino, who joined the Department in 1996 as a Customer Services Specialist, has been promoted to the position of Subdivision Representative.

A licensed real estate salesperson, Ms. Constantino was formerly employed by Desert State Realty in Phoenix where she worked as the office manager and earlier was employed by Arizona BEST Real Estate where she specialized in residential sales.

"I am pleased to have John as my Deputy Director," said Division Director Roy tanney. "His extensive experience in subdivision matters makes him an excellent choice for the position. And we are fortunate that Joyce chose to move from Customer Service to Subdivisions. Her knowledge of real estate law and practice will be of

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John Gerard

Joyce Costantino

Should you agree to mediation?

by K. Michelle Lind, Esq.

Many real estate contracts contain an agreement to mediate any dispute, claim or alleged breach of contract before resorting to court action. Under Arizona law, an agreement in a written contract to submit a dispute or claim to mediation is enforceable. In such a case, if one party files a lawsuit without offering to mediate, the court will either dismiss the claim as premature or "stay" the litigation pending mediation. If a party refuses to mediate when a dispute arises, the refusal to mediate may be construed as bad faith or breach of contract.

Often, the buyer and seller, and often the real estate agents involved in the dispute, are reluctant to mediate. Some of this reluctance is the result of a lack of understanding of the mediation process. Mediation is often confused with arbitration. However, mediation and arbitration are completely different. A mediation is a facilitated negotiation; while arbitration is litigation outside the court system. In a mediation, a neutral party, called the mediator, attempts to assist the parties to negotiate a mutually acceptable solution to the dispute. In contrast, in an arbitration, the parties agree that a neutral party, called an arbitrator, will act as a judge, hear the evidence, and make a decisions as to who is "right" and who is "wrong." In a mediation, no such decision is made. If the parties do not reach and agreement, they may arbitrate or litigate the dispute.

Every mediation is a little different, depending on the mediator, the parties involved and the nature of the dispute. However, most mediations follow a similar pattern. First, the mediator will have all parties meet in the same room. The lawyer, or a party, for each side makes an "opening statement." During this statement, each side explains the party's claim or defense, evidence and desired outcome. Thereafter, the mediator will generally separate the parties into different rooms to discuss the party's position in detail. The mediator will privately point out the strengths and weaknesses of each party's position. The mediator then engages in "shuttle diplomacy" conveying positions, concerns, offers and counteroffers between the still separated parties. The mediator's goal is to achieve a binding written agreement between the parties.

Mediation is less expensive and less time consuming than litigation. The mediation process allows the parties to vent their anger and tell their story to a neutral third party. It may also allow a party to realistically evaluate the merits of their claim or defense, and consider the risks of litigation. Finally, a mediation can produce a creative solution to a dispute which may not be possible in court.

If you are asked to participate in a mediation, you should discuss the request with your attorney. With your attorney's assistance, you can determine if you have any "exposure" in the dispute. You should discuss whether you are obligated to participate in the mediation, and whether your attorney should attend the mediation with you. An attorney can be a valuable asset during a mediation to assist in any negotiations and advise regarding any proposed settlement agreements.

K. Michelle Lind, Esq., is a partner in the firm of Combs, Mack & Lind, P.C., and is a Certified Real Estate Specialist.

AAR moves to new quarters

The Arizona Association of Realtors® has moved to its new home at 255 East Osborn Road, Suite 200, in Phoenix.

The telephone number, 602/248-7787, has not changed. You can visit the AAR on the Internet at www.aaronline.com.

Jerry Holt

News From The Commissioner

Although we were sorry to lose Duane Turner who retired recently after a long tenure as the Director of Operations of our Tucson office, his retirement had a positive domino effect that resulted in well-deserved promotions for three of our staff members.

As noted in the February Bulletin, Bill Lucas, formerly Deputy Director of our Subdivisions Division, is now the Director of Operations in Tucson. Last week, Bill named Mary York as his Deputy Director (see story beginning on page 1). Mary, who will supervise Licensing and Customer Services in Tucson, and who will be in charge of the office when Bill is away, joined the Department in 1982 as a clerk and has come a long way since then.

Roy Tanney, Director of our Subdivisions Division, has named John Gerard to replace Bill as Deputy Director of our Subdivisions Division, a very well earned promotion. John's knowledge of subdivision law and the intricacies of obtaining a public report will serve both developers and the public in the best possible way.

Finally, to fill John Gerard's position as a Subdivision Representative, Roy has asked Joyce Costantino to move from our Customer Services Division to Subdivisions. Joyce is extremely knowledgeable about real estate statutes and practice, and will be a great asset to our Subdivision Division. All of these fine ADRE employees have my congratulations.

New Legislation

The Legislature has adjourned, and House Bill 2373 that would have amended the definition of "acting in concert" to create an illegal subdivision never reached the floor of the Senate.

This bill was yet another attempt to strip the Department of its power to prosecute illegal subdividers. Had it passed, the amended definition could have caused great harm to the public.

Deputy Commissioner John King worked diligently on many fronts to kill this ill-conceived legislation and has won the day. A tip of the Commissioner's hat to John!

Other legislation of interest to licensees that did pass:

- House Bill 2404 requires the Department to "work closely" with public airports to prepare maps depicting 60 decibel aircraft noise contours at the airport, and showing aircraft traffic patterns. These criteria will establish the "territory in the vicinity" of the airport. Subdividers and developers will have to disclose that a new subdivision is in the "territory in the vicinity;"
- House Bill 2236 allows property managers to pay a finder's fee to tenants for referrals which result in new rentals;
- House Bill 2041 extends the exemption from real estate licensure to include virtually any employee of a corporate entity dealing in selling, exchanging, purchasing, renting, leasing or managing the entity's own property

A directory of licensees is now on the Web

The Department now posts a directory of active licensees on our Web site (www.adre.org). The directory lists licensee names, business addresses and telephone numbers and license expiration dates. The directory is updated about the middle of each month.

About 14 percent of licensees fail to renew their licenses before the expiration date. Perhaps having this information available on the Web will reduce the number of late renewals. I'm optimistic that it will because the directory has become the most often visited part of our Web site.

Annual edition of the Arizona Real Estate Bulletin

We asked the Legislature to give us money to fund four issues of the Bulletin to be mailed free of charge to every active and inactive licensee. The legislators gave us enough money to print and mail one issue.

In August, we will publish our first annual issue. It will contain detailed descriptions of new legislation, new Commissioner's Rules, Substantive Policy Statements and more. It will be mailed to licensee's home address.

We will, of course, continue to publish the Bulletin every other month on the ADRE Web site, and mail it to those who have purchased a $10 annual subscription.

Have you visited adre.org?

Congrats to Charlie Downs, the Department's Webmaster (among other things). We've been told by others in State government that our Web site is the best they've ever seen! Charlie tells me we're averaging 161 visits to our Home Page every day. Try it!

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The Department of Real Estate is an Equal Employment Opportunity, Reasonable Accommodation Agency.

1999 Schedule of Broker Audit Clinics

A.R.S. § 32-2136 requires all newly licensed real estate brokers to attend a Broker Audit Clinic presented by the Department within 90 days of issuance of their original broker's license. ***Effective July 21, 1997, all designated real estate brokers must also attend a Broker Audit Clinic within 90 days after becoming a designated broker unless the broker has attended an audit clinic during the broker's current licensing period.*** All designated brokers shall attend a broker audit clinic once during every four-year period after their initial attendance.

Seating is limited and reservations are required. To make a reservation for a Phoenix clinic, call the Department's Customer Services Division at (602) 468-1414, extension 100. In Tucson, call (520) 628-6940. Those who fail to make reservations will be turned away if seating is not available. Brokers who attend will receive three hours of continuing education credit in the category of Commissioner's Standards.

The following is the schedule of Clinics to be offered in Phoenix and Tucson during the remainder of 1999. Additional clinics may be scheduled from time to time at other locations in Phoenix and in rural areas.

PHOENIX	TUCSON
Industrial Commission Auditorium	State Office Building
800 W. Washington	400 W. Congress
	Room 222
1 p.m. to 4 p.m.	**1 p.m. to 4 p.m.**
May 13	May 19
May 20	June 16
June 17	July 14
July 8	August 18
July 15	September 15
August 19	October 20
September 9	November 17
September 16	December 15
October 21	
November 18	
December 16	

Current license must now be submitted with sever or change form

The new Commissioner's Rules, which became effective February 3, now require that all sever or change forms submitted by employing or designated brokers be accompanied by the affected person's current real estate license.

The mission of the
Arizona Department of Real Estate
is to safeguard and promote the public interest
through timely and capable assistance,
fair and balanced regulation,
and sound and effective education.

ADMINISTRATIVE ACTIONS

REVOCATIONS

H-1978
Randall W. Coroneos
Prescott
DATE OF ORDER: March 12, 1999
FINDINGS OF FACT: Respondent applied for and was issued a real estate salesperson's license in February 1997. In his application he disclosed a prior conviction for a felony in addition to numerous misdemeanors, all of which he claimed to have been attributable to an admitted alcohol problem. Respondent avowed that his extensive criminal record was behind him and he was living a different lifestyle. Several individuals submitted letters attesting to Respondent's good character. As a result, the Department issued Respondent a salesperson's license despite its knowledge of his extensive prior criminal record. The Department reserved the right to re-allege his entire criminal history in any future proceeding involving the licensee's status.

The disclosed felony conviction was for acts committed on November 25, 1991, and consisted of the offense of unlawful imprisonment, a Class 6 felony. Pursuant to the terms of Respondents guilty plea agreement, the Court, on January 14, 1992, withheld its judgment of guilt but sentenced Respondent to three years of probation plus participation in a DWI Victim Impact Panel Program.

One condition of Respondent's probation was that he abstain from consuming alcoholic beverages. However, very shortly after the sentencing date, the Court entered a further Order on February 13, 1992, effectively revoking Respondent's probation for violating that condition and convicting Respondent of the Class 6 felony as charged. A sentence for a term of imprisonment was imposed.

After the Department's issuance of the license presently held, Respondent pleaded guilty and was convicted of child abuse and neglect (of two minor granddaughters in his care), a felony. The charges also included intentional or reckless causing of injury to a firefighter who was attempting to assist Respondent who was highly intoxicated (blood alcohol content 0.36) at the time. This offense was committed on September 14, 1997, seven months after having received his real estate license.

Respondent was sentenced to three years' supervised probation expiring on February 2, 1001. Respondent was sentenced to 90 days in Yavapai County Jail, $560 in fines and fees and $40 per month for the duration of his probation period. There is no evidence that Respondent complied with these payment conditions.

While the felony offense was still pending and prior to conviction, on February 17, 1998, Respondent was again arrested for and convicted of DUI.

Respondent failed to notify the Department of either of his February, 1998 criminal convictions within 10 days as required by statute.

Respondent did not attend the administrative hearing held in this matter.
VIOLATIONS: Respondent has not demonstrated he is a person of honesty, truthfulness and good character in violation of A.R.S. § 32-2153(B)(7). Respondent violated State laws involving violence to another person, in violation of A.R.S. § 32-2153(B)(10). By failing to notify the Department of his felony and DUI convictions within 10 days, Respondent is in violation of A.R.S. § 32-2153(A)(3) and A.A.C. R4-28-301(C)(1).
DISPOSITION: Respondents real estate salesperson's license is revoked.

H-1977
In the matter of Ranel V. Cox and United American Realty Company, dba United American Realty, and in the matter of Subdivision Public report No. 95-05198, issued to Newberry Park Townhomes, L.C.
Tucson
DATE OF ORDER: APRIL 1, 1999
FINDINGS OF FACT: On November 12, 1998, the Department summarily suspended the real estate broker's licenses of Ranel V. Cox and United American Realty and summarily suspended the Public report issued to Newberry Park Townhomes, L.C. (Respondents).

The suspensions were the result of a bankruptcy hearing in which the Bankruptcy Court Judge found that:

a. United American Realty and Cox breached their fiduciary duty to their client, Patricia Sygal;

b. United American Realty and Cox made substantial misrepresentations to Wygal which resulted in her financial loss;

c. Cox and United American Realty defrauded Wygal;

d. Cox. United American Realty and Newberry Park violated the provisions of A.R.S. §§ 32- 2183.03(C) and 32-2185;

e. United American Realty's and Cox' conduct and representations constituted intentional reckless false statements or publications concerning land for sale or lease or sale of subdivided lands or resale of realty with intent to defraud, and a scheme or artifice to defraud;

f. United American Realty and Cox knowingly obtained a financial benefit by means of false or fraudulent pretenses, promises or material omissions.

On October 22, 1998, Cox pleaded guilty of Attempted Illegal Conduct of an Enterprise, a Class 4 felony, in Pima County Superior Court.

Respondents did not file a timely request for an Administrative Hearing.
DISPOSITION: Respondents' real estate broker's licenses are revoked.

SUSPENSIONS

H-1969
Radford T. Pinckard
Chandler
DATE OF ORDER: March 12, 1999
FINDINGS OF FACT: Respondent was originally issued a real estate salesperson's license on February 14, 1992. His current license will expire on February 29, 2000. At all times material herein, Respondent was employed by West USA Realty, Inc.
Count 1: In his February 1998 license renewal application, respondent failed to disclose a February 1998 judgment entered by Maricopa County Superior Court for participating in and inducing others to participate in a "pyramid promotional scheme."
Count 2: In December 1997, Respondent prepared two bids on HUD properties for Katie Holloway (Holloway) and her son Ventre Holloway. Holloway gave Respondent two personal checks in the amount of $500 each as earnest money deposits payable to West USA Realty. Respondent submitted Holloway's bids to HUD and retained the checks. He did not turn them over to his designated broker or place the funds in his broker's trust account.
On December 23, 1997, Respondent endorsed and cashed on of the checks and used the proceeds to purchase a cashier's check in the amount of $500. He then cashed the cashier's check for his personal use.
Holloway's bids were rejected by HUD. When Respondent notified Holloway, she asked that both checks be returned to her.
On January 25, 1998, Respondent prepared a bid for Holloway on a third HUD property. He returned one $500 earnest money deposit check to Holloway and told her the other check would be used as earnest money deposit on the third bid. This bid was also rejected.
Although Holloway asked Respondent to return the money a telephone message, Respondent did not return the money. On February 9, Holloway discovered that Respondent had cashed one of her checks.

On February 15, 1998, Holloway sent Respondent's designated broker a letter enclosing a copy of the cashed check and advising him of what had occurred . On April 15, 1998, Respondent informed the Department that he had cashed the check, and on June 22, 1998, Respondent's designated broker informed the Department he had instructed Respondent to refund the money. Respondent repaid the money to his designated broker and on July 18, 1998,

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West USA Realty reimbursed Holloway $500.
VIOLATIONS: Respondent demonstrated he was unaware of the Superior Court judgment at the time he submitted his license renewal application. His conduct which resulted in the Superior Court judgment constitutes a violation of A.R.S. § 32-2153(B)(5). He violated A.R.S. § 32-2151.01(D) by failing to place the earnest money in the care of his designated broker. This failure also constitutes violations of A.R.S. § 32-2153(A)(3) and A.R.S. § 32-1101(A). His failure to account for or to remit the earnest money check constitutes violations of A.R.S. § 32-2153(A)(9) and A.A.C. R4-28-1101(A). His unlawful retention of the earnest money for his personal purposes constitutes a violation of A.R.S. § 32-2153(A)(16). His actions and omissions regarding the handling of the earnest money check constitute a violation of A.R.S. § 32-2153(B)(10). The evidence does not establish that Respondent is person of honesty, truthfulness and good character in violation of A.R.S. § 32-2153(B)(7).
DISPOSITION: Respondent's real estate salesperson's license is suspended for two years from the date of this order. Respondent to pay a civil penalty in the amount of $1,000.

LICENSE APPLICATIONS DENIED

H-1976
Marie A. Lawrence
Phoenix
DATE OF ORDER: February 23, 1999
FINDINGS OF FACT: In August 1998, Petitioner submitted an application for a real estate salesperson's license in which she disclosed she had been convicted in February 1988 of two bank robberies (felonies) and had admitted she committed three other bank robberies.

At the time of the robberies, Petitioner was 23 years old. She committed the robberies to support an admitted drug addiction.

The Court ordered Petitioner to participate as a inpatient at a rehabilitation facility for two years, to pay restitution in the amount of $3,559, and to serve five years' probation.

Evidence shows Petitioner paid the restitution and successfully completed the two-year rehabilitation program and five-year probation without any problems. As well as testing negative for drugs over this prolonged time span, she displayed admirable diligence and competence in her business and social relationships, holding several positions of responsibility during and after her probation period.

With the documented support of her probation officer, Petitioner applied for and was granted an insurance license issued on two different occasions by the State of Washington. The licenses were issued by that state with its full knowledge of Petitioner's felony conviction and several instances of criminal behavior, all of which took place in Washington.

In her application for an Arizona real estate license, Petitioner also disclosed that in October 1996, she was convicted of DUI in the State of Washington.

In his Findings of Fact, the Administrative Law Judge cited Petitioner's positive progress and behavior since her convictions and wrote, "While the sincere and ongoing efforts by Petitioner to guard against future temptations and against the possible reoccurrence of any anti-social actions or activities are highly commendable, as are the unqualified expressions of confidence and support from business colleagues and others, it does not follow that an entitlement presently exists for Ms. Lawrence to receive the license for which she is presently applying…Petitioner may become eligible to apply for and receive a license in the future if she continues for a reasonably extended time period to exhibit a good and trouble-free record in her business and private life."
DISPOSITION: Application denied.

H-1979
Michael S. Kucera
Sedona
DATE OF ORDER: March 8, 1999
FINDINGS OF FACT: In his August 26, 1998 application for an original real estate salesperson's license, Petitioner disclosed he had been convicted of aggravated robbery and theft, both Class 3 felonies, in March 1994. The Court placed Petitioner on intensive probation for three years and ordered him to pay restitution in the amount of $8,495.69. The evidence established that Petitioner completed his probation on July 9, 1997 and paid full restitution.

Petitioner demonstrated during the Administrative Hearing that since the conviction he has taken affirmative measures to "turn his life around" by working and pursuing an Associates Degree and obtaining employment with Sunterra Resorts for the past year.

In his Findings of Fact, the Administrative Law Judge wrote, "Despite the showing of Mr. Kucera's efforts of putting the past behind him and of his attempts to establish good character, because he has been off of probation for approximately one-and-a-half years, there is sufficient evidence to support the Department's concern as to his character. Consequently, he failed to sustain his burden of showing that the Department did not have grounds to deny the Application. Although Mr. Kucera has made significant strides towards accomplishing rehabilitation, Mr. Kucera did not establish good character for a sufficient period of time for this Judge to determine that the Department's denial of the Application should be reversed."
VIOLATIONS: Petitioner has been convicted in a court of competent jurisdiction of a felony, the crime of theft, a crime of moral turpitude, within the meaning of A.R.S. § 32-2153(B)(2). His conduct demonstrates that at this time he is not a person of good character within the meaning of A.R.S. § 32-2153(B)(7). Petitioner violated State laws involving theft, in violation of A.R.S. § 32-2153(B)(10).
DISPOSITION: License application denied.

LICENSE APPLICATIONS GRANTED

H-1995
Stacie R. Shosted
Cave Creek
DATE OF ORDER: April 5, 1999
FINDINGS OF FACT: On November 3, 1998, Petitioner submitted an application for a real estate salesperson's license in which she disclosed convictions of Possession of a Dangerous drug, Criminal Damage, Possession of Burglary Tools and Possession of Drug Paraphernalia. The Department denied the application. Petitioner requested an Administrative Hearing.

In May 1995, Petitioner pleaded guilty to the offenses described above in Yavapai Superior Court. In June 1995, the Court suspended imposition of sentence and placed Petitioner on probation for a period of three years. As terms of probation, Petitioner was ordered to be incarcerated in the Yavapai County Jail for 86 days, to pay restitution of $100 and to pay a fine and surcharge of $1,570.

On July 28, 1998, Petitioner was discharged from probation. The Court ordered that all of Petitioner's offense be designated as Class 1 misdemeanors.

Petitioner is currently 24 years old. Her arrest occurred when she was 19. Petitioner testified that she started using drugs when she was 16 when she "got in with the wrong crowd." She testified that she stopped using drugs when she was incarcerated.

Petitioner testified that she successfully served her jail sentence and probation and that she attends Narcotics Anonymous meetings on a weekly basis. She testified that she also sees a psychiatrist every two months and a counselor every week. She testified that she has "grown up" since incarceration and has worked extremely hard to move her life in a positive direction. Petitioner testified that she would like the opportunity to be a more productive member of society.

Petition has been employed by Vistana West, Inc., since October 1996. The company markets and develops resort property and attracts potential owners to the resort property through various marketing promotions. Petitioner's job has been to meet and greet prospective owners and customers. She coordinates barbecues, breakfasts and other forms of entertainment. Petitioner now desires to move up from marketing to sales.

Donna Dufresne has been licensed as a real estate salesperson in Arizona for nine years and is the Resort Manager for Villas Cave Creek.

She has worked with the Petitioner and testified that Petitioner is extremely reliable and trustworthy. She testified that Petitioner has routinely handled money for customers and clients. "The books have always balanced" at the end of the day, she said.

James Danz is Vice President of Marketing for Vistana and has 14 years experience as a real estate salesperson in California and Arizona. He worked directly with Petitioner from October 1996 through September 1998. He testified that Petitioner is a hard worker who has put in long hours at Vistana. He testified that Petitioner has been a reliable and trustworthy employee with no "bad blemishes" on her record. He also testified that Petitioner possesses the qualifications to be a successful real estate salesperson.

Don Rumble is the Director of Owner and Guest Services for Vistana. He has been a licensed real estate salesperson for more than 12 years and has known Petitioner since 1996. He testified he has always encouraged Petitioner to move up from marketing to sales at Vistana, and that Petitioner is a hard worker who is totally dependable and trustworthy. He said he would take personal responsibility for Petitioner's actions as a real estate salesperson and that he will personally train her and review all of her work.

Paul Shosted is Petitioner's older brother and co-worker at Vistana. He has been a licensed real estate salesperson in Arizona for nine years and in Colorado for three years. He testified that Petitioner was raised in a very strict household and that she rebelled in her teenage years. He testified that Petitioner's incarceration was a "wake-up call" that Petitioner needed to turn her life around, and that she has strong support from her family.

Cynthia Krauss is Petitioners counselor and psychotherapist. She testified that Petitioner attends therapy every week and never misses an appointment. She testified that Petitioner now has a "sense of conscious" and a "desire to do good."

VIOLATIONS: Petitioner was convicted of a crime of moral turpitude within the meaning of A.R.S. § 32-2153(B)(2). Her criminal behavior in 1994 shows that she was not a person of good character during that time period within the meaning of A.R.S. § 32-2153(B)(7). Her behavior from June 1995 to the present shows that she is now a person of honesty, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Real estate salesperson's license granted.

CIVIL PENALTIES

H-1947

Lee Jane Hunter, aka Avalee Jane Hunter

Glendale

DATE OF ORDER: March 31, 1999

FINDINGS OF FACT: Respondent was issued a real estate salesperson's license in 1993. During the period at issue in this matter, she was employed as a salesperson by Nu-Way Realty. Her license expired on September 30, 1997.

In October 1995, Respondent was the agent for Regis and Kassandra Johnson who wished to buy a home from Steven and Pam Kobernick. On October 25, 1995, the Johnsons and Kobernicks came to the following lease/purchase agreement: The Johnson's would buy the home for $67,00 with escrow to close on March 10, 1996. The Johnsons would immediately make a $700 earnest money deposit and would make a down payment at the close of escrow, then assume the existing loan. Beginning November 10, 1995, the Johnsons would rent the home for $700 a month until close of escrow. Both parties signed a rental agreement and purchase contract and the Johnsons tendered a personal check for $700 which Respondent was to put in escrow.

Later that day or the next day, the Johnsons told Respondent that their checkbook has been stolen and that they were closing the account and would need to replace the check they had written. They asked Respondent to hold the check until they replaced it.

Respondent put the check and signed agreements into a filing cabinet and forgot them. She did not tell the Kobenicks or their agent about it, nor did she tell her designated broker anything about the transaction. In fact, her designated broker did not know of the existence of the transaction until several months later.

At about the same time that the Johnsons asked Respondent to hold the check, the Kobernicks agreed to let the Johnsons move in earlier than November 10, 1995. They agreed that the lease would run from November 1, 1995 to March 1, 1996. Respondent failed to amend the rental agreement to reflect this change.

During the next few months the Kobernicks had trouble collecting rent from the Johnsons. On January 10, 1996 they contacted Nu-Way Realty to get some help. A broker at Nu-Way could not find any record of the transaction and contacted Respondent. The documents were still in the filing cabinet. Licensee gave them to the broker and he immediately deposited the check into Nu-Way's trust account. The check was returned for insufficient funds.

The broker instructed Respondent to contact the Johnsons, get the $700 replaced and help the Kobernicks get rent that was past due. Respondent obtained new checks from the Johnsons, one to replace the missing escrow funds and one for past rent. The checks bounced.

Nu-Way issued $700 to the Kobernicks out of its own funds. Respondent obtained certified funds from the Johnsons for the rent due the Kobernicks. The broker also prepared an addendum to the agreements that incorporated all the changes the Kobernicks and Johnsons had agreed to, which all parties signed.

In February 1996, the Kobernicks instructed Nu-Way to begin eviction process for failure to pay rent. In March 1996, the Johnsons left the premises.

VIOLATIONS: Respondent did not attend the Administrative Hearing held in this matter. Respondent violated A.R.S. § 32-2153(A)(22) by negligently performing her duties as a salesperson. She violated A.R.S. § 32-2153(A)(3) by failing to comply with A.R.S. § 32-2151.01(D) which requires all licensees to give their designated broker all cash and checks received as payment.

By failing to immediately give the documents and check to her designated broker and by failing to make the broker aware of the transaction, Respondent violated A.R.S. §§ 32-2153(A)(9) and 2153(A)(3), and A.A.C. R4-28-1101(A) and R4-28-1101(C).

DISPOSITION: Respondent to pay a civil penalty in the amount of $2,000.

CONSENT ORDERS

99A-005

Richard F. Combs

Flagstaff

DATE OF ORDER: March 10, 1999

FINDINGS OF FACT: In May 1998, Respondent filed an original application for a real estate salesperson's license in which he failed to disclose convictions for Operating While Impaired in Detroit, Michigan in 1987, for DUI in Nebraska in 1990, for DUI in Wisconsin in 1997, and for trespassing in Phoenix in 1991. Respondent did not pay the fines imposed by the Courts in Michigan or Wisconsin.

VIOLATIONS: Respondent procured or attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1). His conduct shows he is not a person of honesty and truthfulness, within the meaning of A.R.S. § 32-2153(B)(7). By failing to comply with court-ordered terms, he has violated the terms of a criminal order, decree or sentence, within the meaning of A.R.S. § 32- 2153(B)(9).

DISPOSITION: Respondent's real estate salesperson's license is revoked.

99A-004

Joseph J. Davis

Phoenix

DATE OF ORDER: March 15, 1999

FINDINGS OF FACT: Respondent filed an application for a real estate salesperson's license with the Department in August 1998 in which he failed to disclose criminal citations for two counts of Disorderly Conduct, and as a result, a conviction on one count of Disorderly Conduct, a misdemeanor, in Pima County Justice

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Court.

He provided statements to the Department in which he attested that he did not disclose the conviction because he believed the charges had been dropped and that he did not understand his agreement to do community service to be a "conviction."

VIOLATIONS: By failing to disclose the conviction, Respondent procured or attempted to procure a license by filing a license application that was false or misleading, within the meaning of A.R.S. § 32- 2153(B)(1).

DISPOSITION: Respondent to pay a civil penalty in the amount of $750.

99A-024

In the matter of the real estate broker's licenses of Timothy Duncan and Apartments and More, L.L.C., and in the matter of the real estate salesperson's license of Mario F. Muth

Cave Creek

DATE OF ORDER: March 16, 1999

FINDINGS OF FACT: Muth was issued an original real estate salesperson's license in December 1996. The license expired December 31, 1998/ At all times material to this matter, Muth's license was on inactive status.

Duncan is a licensed real estate broker and was appointed designated broker for Apartments and More on December 1, 1996. His license expired March 31, 1999.

Apartments and More is licensed as a real estate broker in Arizona. That license expires January 31, 2000.

As designated broker of Apartments and More, Duncan was responsible to ensure that salespersons and associate brokers employed by Apartments and More were currently and actively licensed to the limited liability company.

On May 7, 1997, Muth left the employ of Brothers Realty and began working for Apartments and More as a real estate salesperson. On June 9m, 1997, the Department received notice that Muth was no longer employed by Brothers Realty, but did not receive notice that he had been hired by Apartments and More.

Between May 7, 1997 through December 29, 1998, and while his license was on inactive status, Muth provided real estate services which require a current and active real estate license on behalf of Apartments and more.

On December 29, 1998, he submitted a timely application for license renewal and was advised by the Department that his license was on inactive status. During the time his license was on inactive status, he earned approximately $33,758.52. He stated that at the time he was hired by Apartments and More he believed the "corporate office" would switch his license to the new broker.

VIOLATIONS: Muth failed to ensure that the Department was properly notified of his employment by Apartments and more, and conducted real estate activities for the company without being authorized to do so, in violation of A.A.C. R4-28-302(B) (now R4-28-303(E)(4)(c) and failed to ensure that a license certificate was issued to him showing his employment by Apartments and More.

Muth accepted compensation in violation of Arizona Revised Statutes, Title 32, Chapter 20, within the meaning of A.R.S. § 32-2155(A).

Apartments and More, by and through Duncan, employed a salesperson without properly notifying the Department in violation of A.A.C. R4-28-302(B) (now R4-28-303(E)(4)(b). Apartments and more, by and through Duncan, paid compensation to a salesperson who was not properly licensed in violation of A.R.S. § 32-2155(A).

DISPOSITION: Muth shall attend six hours of continuing education classes in the category of Commissioner's Standards. These hours shall be in addition to hours required for license renewal.

Muth, Duncan and Apartments and More, jointly and severally, shall pay a civil penalty in the amount of $500.

99A-041

In the matter of the real estate salesperson's license of Raymond J. Kowantz, and in the matter of the application for real estate broker's license of AAA Qualitour

Scottsdale

DATE OF ORDER: March 17, 1999

FINDINGS OF FACT: In his May 1998 application for a real estate salesperson's license, Respondent disclosed a 1972 conviction for Possession of Marijuana, a 1984 conviction for Possession of Cocaine, and that charges for Threats, Driving while Impaired and Knowingly Causing Injury were pending against him.

As a courtesy, Respondent was reminded that he was required to report any conviction resulting from the charges within 10 days.

On March 11, 1999, an application for a broker's license was filed by AAA Qualitour, a limited liability company of which Kowantz is a member. As part of the license application, Kowantz disclosed that on July 6, 1998 he pleaded guilty in Scottsdale City Court to Reckless Driving and to Assault. He was sentenced to one day in jail, ordered to complete alcohol screening and counseling by December 6, 1998, and to pay fines and costs of $546. He was placed on unsupervised probation for one year. The remaining charges against him were dismissed.

VIOLATIONS: Kowantz did not disclose the 1998 convictions to the Department within 10 days as required by A.A.C. R4-28-301(F). He violated provisions of law or rule, within the meaning of A.R.S. § 32-2153(A)(3).

DISPOSITION: Kowantz to pay a civil penalty in the amount of $500. Kowantz real estate salesperson's license is suspended for 30 days upon entry of this Consent Order.

H-1759

Avenue Plaza, L.L.C., a Louisiana time-share developer

DATE OF ORDER: March 21, 1999

FINDINGS OF FACT: On July 22, 1994, the Department issued a Cease and Desist Order against Avenue Plaza and other parties who were promoting time-share intervals to Arizona residents without first obtaining a Public Report for each time-share project promoted, and for failing to have all advertising and promotions approved by the Department before use.

One of the time-share projects being unlawfully promoted was Avenue Plaza Resort and Spa in New Orleans, owned and developed by Ocean Development.

On May; 5, 1995, the Department entered into a Consent Order with Avenue Plaza in which it admitted to violations of Arizona real estate statutes.

Avenue plaza agreed:

1. to obtain a time-share public report prior to marketing time-share intervals to Arizona residents;
2. to offer rescission to Arizona residents who purchased time-share intervals from Avenue Plaza;
3. to pay a civil penalty of $1,000;
4. that the Cease and desist Order would remain in full force pending issuance of a time-share public report.

Subsequently, on November 22, 1995, the Department issued another Cease and Desist Order against Avenue Plaza and other entities for promoting time-share projects to Arizona residents without first obtaining a public report and for failing to have all advertising and promotions approved by the Department before use.

On December 5, 1995, Avenue Plaza timely filed an appeal of the second Cease and Desist Order. Upon the mutual consent of Avenue Plaza and the Department, the hearing on the appeal was postponed indefinitely, and Avenue Plaza waived its right to a hearing within 60 days as then provided by A.R.S. §§ 32- 2157 and 41-1092, et seq.

Upon issuance of the second cease and Desist Order, Avenue Plaza provided a rescission affidavit as required under the Consent Order. Further, Avenue Plaza submitted an application for public report with respect to the Avenue Plaza Resort and Spa in New Orleans on November 11, 1998. Issuance of the Report is pending final disposition of the second Cease and Desist Order.

ORDER:

1. Avenue Plaza shall not offer or market time-share intervals to Arizona residents without first applying for and being issued a time-share public report for each project so promoted.
2. Avenue Plaza shall file with the Department a complete application for a time-share public

report for each time-share project Avenue Plaza seeks to market to Arizona residents.
3. The second Cease and Desist Order shall be partially vacated, by separate order, to be issued by the Commissioner simultaneously with this Consent Order. Upon entry thereof, the Department shall issue a public report with respect to Avenue Plaza Resort and Spa.

H-1993
Scott R. Simkins
Fountain Hills
DATE OF ORDER: March 23, 1999
FINDINGS OF FACT: In his July 1998 application for a real estate salesperson's license, Respondent failed to disclose that in 1977 he was convicted of Distribution of a Controlled Substance, Mescaline, in Fairfax County, Virginia. As a result, he was placed on three years' probation.
VIOLATIONS: By failing to disclose the conviction Simkins procured or attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1).
DISPOSITION: Respondent to pay a civil penalty in the amount of $500.

99A-033
Brett Arthur Nassano
Phoenix
DATE OF ORDER: March 29, 1999
FINDINGS OF FACT: In his December 1998 application for a real estate salesperson's license, Respondent failed to disclose a 1983 conviction for Theft in Tempe Justice Court. He was fined $137.
VIOLATIONS: By failing to disclose the conviction, Respondent procured or attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1).
DISPOSITION: Respondent's real estate salesperson's license is suspended for 30 days. Respondent to pay a civil penalty in the amount of $100.

99A-031
Dianne C. Daniels
Phoenix
DATE OF ORDER: April 1, 1999
FINDINGS OF FACT: In her October 1998 application for a real estate salesperson's license, Respondent failed to disclose a 1988 conviction in Rhode Island for Insufficient Funds.
VIOLATIONS: By failing to disclose the conviction, Respondent procured or attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1).
DISPOSITION: Respondent's real estate salesperson's license is suspended for 30 days to begin 10 days after entry of this Consent Order. Respondent to pay a civil penalty in the amount of $100.

99A-034
Holly Cauley
Tucson
DATE OF ORDER: April 1, 1999
FINDINGS OF FACT: In her October 1998 application for a real estate salesperson's license, respondent failed to disclose a 1992 conviction in Tucson for Criminal Damage/Domestic Violence.
VIOLATIONS: By failing to disclose the conviction, Respondent procured or attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1).
DISPOSITION: Respondent's real estate salesperson's license is suspended for 10 days beginning 10 days after entry of this Consent Order. Respondent to pay a civil penalty in the amount of $500.

99A-017
Danny D. Horton
Phoenix
DATE OF ORDER: April 1, 1999
FINDINGS OF FACT: Petitioner was originally licensed as a real estate salesperson in January 1987. On December 15, 1998, he submitted a timely application for renewal in which he disclosed an October 20, 1997, conviction for Assault/Domestic Violence. He was sentenced to 20 days in jail, to be suspended upon successful completion of a substance abuse program, to pay a $240 fine and to serve a period of three years' unsupervised probation. Petitioner will remain on probation until October 28, 2000.

Petitioner did not notify the Department of his conviction until he submitted his renewal application.
VIOLATIONS: Petitioner failed to notify the Commissioner in writing of his conviction within 10 days as required by A.A.C. R4-28-301(F). As a result, he disregarded or violated the provisions of Arizona Revised Statutes, Title 32, Chapter 20, and the Commissioner's Rules in violation of A.R.S. § 32-2153(A)(3).
DISPOSITION: Petitioner's application for renewal is approved provided that he satisfies all conditions set forth herein.

Petitioner to pay a civil penalty in the amount of $1,500. He shall take six hours of approved real estate continuing education, in addition to hours required for renewal, in the category of Commissioner's Standards.

99A-032
Grace Rojan Chiquette
Mesa
DATE OF ORDER: April 20, 1999
FINDINGS OF FACT: Petitioner was issued a real estate salesperson's license in September 1993. On February 23, 1999, she submitted a severance form from her employing broker and an application for a real estate broker's license. She disclosed that in December 1998 she was convicted in Buckeye Justice Court for Possession of Marijuana and DUI, Class 1 misdemeanors. She was placed on probation until December 25, 2000.

Petitioner did not notify the Commissioner in writing of her convictions until she submitted her application for a broker's license.
VIOLATIONS: Petitioner has disregarded or violated the provisions of Arizona Revised Statutes, Title 32, Chapter 20, and the Commissioner's Rules in violation of A.R.S. § 32-2153(A)(3). She failed to notify the Commissioner of her convictions within 10 days as required by A.A.C. R4-28-301(F).
DISPOSITION: Petitioner's application for a real estate broker's license is approved. The license is suspended from February 23, 1999 until the entry of this Consent Order. Petitioner to pay a civil penalty in the amount of $1,000.

99A-006
in the matter of the real estate broker's license of Paul Gutierrez, dba Gutierrez Realty & Associates, and in the matter of the real estate salesperson's license of Manuela Ana Andrews, aka Nellie Andrews
Yuma
DATE OF ORDER: April 23, 1999
FINDINGS OF FACT: Andrews was issued a real estate salesperson's license in June 1993. That license expires June 30, 1999. At all times material to this matter, Andrews was employed as a salesperson by Gutierrez. On June 8, 1998, the Department received notice from Gutierrez placing Andrews' license on inactive status.

Gutierrez was issued a real estate broker's license in September 1997. That license expires September 30, 1999. He is, and was at all times material to this matter, the designated broker of Gutierrez Realty & Associates. As the designated broker he is responsible to supervise licensees and others in his employ.

In September 1997, Karen Spencer, a licensed real estate salesperson employed by Realty Executives, listed for sale a home in Yuma owned by Mr. And Mrs. Carson Bench.

On March 17, 1998, Andrews prepared a Residential Resale Real Estate Purchase Contract and Receipt for Deposit for Enrique L. Rivas to purchase the home. The offer provided that the price was $74,900 with $500 down as earnest money.

On the same day, Realty Executives received a second offer from a prospective purchaser who was self-employed and which would require the seller to wrap the new loan amount into the existing encumbrance. The seller was advised that Rivas was pre-qualified

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for a new loan.

On the same day, the seller made a counter offer to Rivas specifying that the earnest money was to be deposited with Yuma Title & Trust within 24 hours of acceptance. The counter offer further required buyer to pay the appraisal fee and closing costs, and stated that the spa was sold in "as is" condition.

On March 22, Rivas signed the counter offer accepting the seller's terms. Close of escrow was scheduled for May 17, 1998.

In March or April 1998, Andrews provided a loan application signed by Rivas to Norwest Mortgage. The loan application was blank with the exception of Rivas' name and signature. Norwest Mortgage returned the application to Andrews to be completed. The application was not returned to Norwest Mortgage.

In May 1998, Spencer learned that Rivas had never completed the loan application, the loan was not approved and the sale could not close. She also learned that the earnest money deposit had been paid by Andrews with a personal check that bounced.

In response to the Department's inquiry, Gutierrez initially stated he was not aware of the problems with this transaction until May 17, 1998 when he was contacted by Realty Executives for an update on the Bench/Rivas transaction.

Gutierrez later provided an affidavit stating he learned on March 25, 1998, that Andrew had used her personal check to pay the earnest money deposit and that the check bounced, based on information provided by Yuma Title. Gutierrez further stated that Andrews assured him at the time that the transaction was going well.

The sale did not close escrow. As a result, sellers had to rent the home to cover the cost of mortgage payments while continuing to make payments on their new home.

Subsequently, on June 1, 1998, Gutierrez, through his attorney, sent Bench a letter and a cashier's check for $500 for earnest money and liquidated damages. According to Gutierrez, Bench accepted and negotiated the check.

Gutierrez and Andrews did not check with Yuma Title or Norwest Mortgage on the status of the transaction after Andrews gave the executed purchase to Yuma Title.

VIOLATIONS: Andrews and Gutierrez failed to deal fairly with the parties to this transaction, in violation of A.A.C. R4-28-1101(A). Andrews had knowledge of, and failed to disclose to the seller, the status of the loan application, the lack of earnest money and the buyer's plan to postpone his purchase of a home and not proceed with this transaction, in violation of A.A.C. R4-28-1101(B)(2). Andrews pursued a course of misrepresentation, within the meaning of A.R.S. § 32-2153(A)(1). She demonstrated negligence in performing the acts for which a license is required, in violation of A.R.S. § 32-2153(A)(22). Her conduct constitutes fraud or dishonest dealings, within the meaning of A.R.S. § 32-2153(B)(5). As the result of her conduct and actions, she has shown that she is not a person of honesty, truthfulness and good character, within the meaning of A.R.S. § 32-2153(B)(7). Andrews failed to notify the Department within 10 days of her change of residence address, in violation of A.A.C. R4-28-303(E)(2).

Gutierrez failed to reasonably supervise a licensee in his employ, within the meaning of A.A.C. R4-28-302(I)(1), formerly R4-28-303(H), in violation of A.R.S. § 32-2153(A)(21). He failed to confirm that the earnest money had been deposited with Yuma Title when he reviewed and initialled the Bench/Rivas purchase contract, as required by A.R.S. §§ 32- 2151 and 32-2151.01.

DISPOSITION: Andrews' real estate salesperson's license is suspended for 12 months and denying her right of license renewal upon entry of this Consent Order. Andrews may apply for license reinstatement and renewal pursuant to A.R.S. §§ 32-2130 and 32-2131. Andrews to pay a civil penalty in the amount of $500.

Gutierrez to pay a civil penalty in the amount of $500.

99A-022
Douglas Wade Ballard
Phoenix

DATE OF ORDER: March 9, 1999

FINDINGS OF FACT: In his January 13, 1999, application for a real estate salesperson's license, Petitioner disclosed a 1992 conviction for attempted possession of marijuana for sale (a felony), and a 1992 conviction for DUI. He also disclosed that he had previously held a real estate salesperson's license which had been revoked.

Petitioner had been issued an original real estate salesperson's license in March 1976.

In November 1992, the Department denied Petitioner's application for license renewal. Petitioner requested a hearing which was held in May 1993. In June 1993, the Commissioner issued a Final Order denying renewal of Petitioner's license and assessing a civil penalty in the amount of $4,000.

The denial was based on the convictions stated above. In addition, Petitioner had failed to notify the Department of these convictions within 10 days as required by A.A.C. R4-28-301(C)(1).

VIOLATIONS: Petitioner has been convicted of a felony, within the meaning of A.R.S. § 32-2153(B)(2). Petitioner has had an administrative order entered against him by a real estate regulatory agency, within the meaning of A.R.S. § 32-2193.02(A)(3).

DISPOSITION: The Department shall issue Petitioner a real estate salesperson's license upon his posting of a $20,000 surety bond to cover a period of two years.

Airport noise

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§ 32-2181(A)(23), part of the subdivision statutes enforced by the Department, to require a subdivider who applies for a Subdivision Public Report to furnish the Department with "a true statement as to whether all or any portion of the subdivision is located in the...territory in the vicinity of a public airport." This subsection already requires subdividers to state whether any portion of the subdivided land is in the territory in the vicinity of a military airport.

The territory in the vicinity of a military airport, however, is defined as the distance from the center of the main runway rather than by noise level.

The Department has contacted the airports listed below to determine whether noise contour studies have been performed, and if so, will attempt to obtain maps depicting the 65-decibel noise level contour. The airports will also be asked to provide traffic pattern airspace information. The resulting maps will be available for inspection at the Department's Phoenix office. They most likely will be too large to be sent by fax or to be posted in any meaningful form on the Department's Web site.

According to the Arizona Department of Transportation, there are 81 airports in Arizona affected by the legislation. They are:

Ajo Municipal Airport
Apache Junction
Avi Suquilla (Parker)
Bagdad
Benson
Bisbee Municipal
Bisbee-Douglas International
Bowie
Buckeye Municipal
Casa Grande Municipal
Cascabel Air Park (Tucson)
Chandler Municipal
Cochise College
Cochise County
Colorado City Municipal
Coolidge Municipal
Cottonwood
Douglas Municipal
Eagle Airpark (Mohave Valley)
Eloy Municipal
Earnest A. Love Field (Prescott)
Estrella Sailport
Falcon Field
Flagstaff-Pulliam
Flying J Ranch Airstrip (Pima)
Ganado Airport (Window Rock)
Gila Bend Municipal
Glendale Municipal

Globe-San Carlos Apache Regional
Grand Canyon Bar Ten (St. George)
Grand Canyon Caverns
Grand Canyon National Park
Grand Canyon West
Greenlee County
H.A. Clark Memorial
Holbrook Municipal
Kayenta (Window Rock)
Kearny
Kingman Municipal
Lake Havasu City
Laughlin-Bullhead
Marble Canyon
Memorial Airfield (Sacaton)
Nogales International
Page Municipal
Payson
Pearce Ferry
Phoenix-Goodyear Municipal
Phoenix Deer Valley Municipal
Phoenix Sky Harbor International
Pinal Airpark (Florence)
Rolle (Yuma)
Ryan Field
Safford Municipal
San Manuel
Scottsdale Municipal
Sedona
Seligman
Sells
Show Low Municipal
Sierra Vista Municipal
Springerville-Eagar Municipal
St. Johns Industrial Airpark
Stellar Airpark
Sun Valley
Superior Municipal
Tassi
Taylor
Temple Bar
Tombstone Municipal
Tuba City
Tucson International
Auweep
Valle
Whiteriver
Wickenburg
Williams Gateway
Window Rock
Winslow-Lindberg Regional
Yuma International

The Department hopes to have maps prepared for most of these airports when the new legislation becomes effective August 11.

Visit the Department's Web site at www.adre.org

Directory of 37,000 active licensees now available on the Department's Web site

A directory of Arizona's more than 37,000 active real estate, cemetery and membership camping licensees is now available through the Department of Real Estate Web site.

The directory, which can be searched with a Web browser, displays the data in the following format:

SMITH, JOHN A.
Employed by ABC REAL ESTATE, INC
Mailing Address:
PO BOX 1000
PHOENIX AZ 85000
Business Address:
123 CENTRAL AVE
PHOENIX AZ 85000
(602) 555-1212
Real Estate Salesperson
License expires 1/31/2000

The information will be updated on or about the 15th of each month.

The names and home addresses of inactive licensees are a matter of public record, but the Department requires anyone wishing this information make the request by fax or in writing. When the licensee's file has been retrieved, the person will be notified and may view the file at the Department's office in Phoenix. The person requesting the information is required to sign a log and to produce photo ID.

Commercial use of the information without first filing the required form and declarations (LI-214/215, Statement of Commercial Use) is prohibited by law. For more information, call the Customer Services Division at 602/468-1414. Form LI-214/215 is available in the Department's Publications Library at www.adre.org/library.html.

Using this form, information about active or inactive licensees may be obtained in paper or electronic form (ZIP disk) sorted by ZIP code or other parameters. The cost is $0.04 per name with a $40 minimum fee.

Apartment tenants may now receive finder's fees

The Governor has signed legislation which permits a property management firm or property owner to pay a tenant a finder's fee not to exceed $100 for a referral of a prospective tenant which results in the rental of an apartment. The fee may be paid as a $100 credit toward or reduction in the tenant's monthly rent.

Previously, such referral fees were prohibited by real estate statutes. The legislation adds A.R.S. § 32-2176 to the real estate statutes and contains these conditions:

- The property management firm or owner must maintain a record of all finder's fees for three years or until termination of the contract agreement.
- An unlicensed person is prohibited from advertising or promoting the person's services in order to assist prospective tenants.
- Exempts residential leasing agents and managers from receiving a finder's fee, but does not affect their ability to receive a bonus.
- A tenant may not receive more than six finder's fees in one year.

The legislation becomes effective on August 11, 1999.

Promotions

Continued from page 1

great help to the public."

Mary York has been promoted to Deputy Director of Operations for the Tucson office. In her new position she will supervise licensing and customer services.

Mary joined the Department in 1982 as a typist, was promoted to Examiner Technician in 1984, and became a Real Estate Representative in 1986.

"Mary has earned this promotion," said Bill Lucas, Director of Operations for the Tucson office. "In addition to supervising licensing and customer relations, she will be in charge of the office in my absence. I couldn't put the office in better hands."

‘Check images’ now accepted in lieu of canceled checks

Property management firms are required to keep canceled checks, among other financial records, for a period of three years and make them available to Department auditors.

The Department learned that some banks, especially in the Tucson area, do not return canceled checks to their customers. Instead, they will provide, on request, “check images” which are bank-generated photographic images of the canceled checks.

The Attorney General’s Office has decided that the Department may accept check images in lieu of canceled checks. Photocopies of checks made by the property management firm are not acceptable, however.

Property management firms should request images of all checks issued in connection with the management of real property on a monthly basis and keep them in the office just as they would canceled checks.

ADRE replaces voice-mail system to ensure Y2K compliance

With its more than 70 computers, two computer servers, three elevators and a Key-Card security system, one would think that the Department might have run into a significant Y2K problem.

But the only problem resided in the voice-mail portion of our telephone system.

“The old system would not recognize the year 2000,” said Fiscal Planner Curt Leaf, who is also responsible for keeping the telephone system working. “It would not have known when a voice-mail message was recorded.”

The new system, which was activated on May 10, is faster, friendlier and easier to use.

Department’s Fax Response System back on-line

The recent introduction of two new area codes in the Phoenix area caused a problem the Department did not anticipate: The software driving the Fax Response System, through which callers can have forms and other Department publications sent to their fax machines, insists on dialing a “1” before any area code other than 602.

This causes the phone company’s system to reject the calls, and the fax does not go through.

The software asks callers to enter the number of their fax machine, including the area code. If a caller enters 480 or 623, the system inserts the “1” before the fax machine telephone number.

The temporary solution has been to change the voice instructions in the software to ask callers to enter only 602 or 520 as their fax machine area code. This will resolve the problem until September 1 when using the new area codes will be mandatory.

Meanwhile, the Department is working with the Fax Response System software publisher to find a solution to the problem.

Renewal deadline extended to accomodate weekends, holidays

As you know, you must renew your license on or before the last day of the month in which it expires. In the past, the Department required licensees to renew on the *last business day* of the month. If the 31st of May, for instance fell on Saturday, the renewal deadline was May 30.

Now, if the last day of the month falls on a weekend, you may renew on the following Monday. If the Monday is a holiday on which the Department is closed, you may renew on the following Tuesday.

Late-Breaking News from www.adre.org

The following items appeared recently on the Late-Breaking News page, part of the Department’s Web site at www.adre.org.

• Often, people who ask to be added to our Late-Breaking News e-mail notification list give us an invalid e-mail address. If you asked to be added but have not been receiving e-mailings, please send your request again. Click on the link on the Late-Breaking News page.

• The Subdivisions Division will present two workshops to discuss new Commissioner's Rules affecting subdividers, and the new time frames in which the Department must act on applications for Public Reports and other subdivision documents.

A Subdivision Workshop for title insurance company personnel will be held from 9 to 11 a.m. on Thursday, June 17 at the Department's Phoenix office in the third-floor conference room. A Workshop for developers and homebuilders will be held on Thursday, June 24 .

RSVP to 602/468-1414, extension 100, or fax your reservation to 602/955-9361. Please indicate which presentation you wish to attend and the number of people in your group.

• The Tucson School of Real Estate has moved to 7360 E. 22nd Street. The telephone number remains the same, 520/885-1999.

• Most of the forms used by subdividers and developers to apply for or amend public reports are now available in Adobe Acrobat (pdf) format from our Forms Library at www.adre.org.library.html.

Education hours required for license renewal

One of the questions most frequently asked of our Customer Service Division is, "What hours do I need to renew my license?"

Commissioner's Rule R4-28-402, which was revised recently, requires a licensee to complete 24 credit hours at an accredited real estate school, of which a minimum of thre hours are completed in each of these categories:

- Agency Law
- Contract Law
- Commissioner's Standards
- Real Estate Legal Issues
- Fair housing

Continuing Education Waiver

Commissioner's Rule R4-28-402(B) states:

1. The Commissioner may waive all or a portion of the continuing education requirement when a salesperson or broker submits a written request to the Commissioner and shows good cause for the waiver, such as when:

a. A person employed by the state or political subdivision establishes to the satisfaction of the Commissioner that the person's employment during the prior license period involved real estate-related matters;

b. Any officer or employee of the state whose license is on an inactive status due to a possible conflict of interest or other employment requirement;

c. Any other extraordinary circumstances exist or are demonstrated;

d. A substitution for education is demonstrated.

e. An approved real estate instructor requests a waiver for a course the instructor has taught.

2. If the commissioner grants a salesperson or broker additional time to complete the continuing education hours under a conditional waiver, the salesperson or broker shall complete the continuing education hours within the time-frame prescribed in the waiver, unless additional time is granted.

When is disclosure of scorpions required?

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By Patricia A. Premeau

Arizona law requires sellers to disclose to buyers known material fact which might affect a buyer's decision to purchase the property. *See Hill v. Jones, 151 Ariz. 81, 725 P.2d 1115 (App. 1986)*. The question arises as to whether the presence and/or history of scorpions is a material fact that might affect a buyer's decision to purchase the property, and therefore must be disclosed by the seller. This question, in turn, raises issues as to the responsibilities of both list agents and buyers' agents. Although this article's focus is on scorpions, the principles discussed also apply to termites and other insects.

Seller disclosure obligation

Neither the current AAR Residential Resale Real Estate Purchase Contract and Receipt for Deposit (AAR Contract) nor the Seller's Property Disclosure Statement (SPDS) impose an express obligation to disclose the presence and/or history of scorpions. However, Line 39 of the SPDS does require a seller to disclose the following: "Is there, or has there ever been, a wood infestation, termite, insect or pest problem? Explain." Similarly, in Lines 133-134 of the SPDS, the seller is obligated to disclose "any other information concerning the property which might affect the decision of a buyer to buy, or affect the value of the property, or affect its use by a buyer." In addition, Lines 334-336 of the AAR contract state sellers have a contractual obligation to "disclose to Buyer and Broker(s)...any information concerning the Premises known to Seller, excluding opinions of value, which materially and adversely affect the consideration to be paid by Buyer."

In addition to their contractual obligations, sellers have a common law duty to disclose to buyers known material facts which might affect a buyer's decision to purchase the property. The seller's nondisclosure of material facts, "being equivalent to the assertion that the fact does not exist," constitutes fraud and misrepresentation. *Hillv. Jones, 151 Ariz. at 89, 725 P.2d at 1119.*

Similarly, Arizona's Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*, makes it unlawful for any person to use "concealment, supression or omission of any material fact with intent that the others rely upon such concealment, supression, or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived, or damaged thereby...." A.R.S. § 44-1522(A). Merchandise is defined under the Consumer Fraud Act to include real estate. A.R.S. § 44-1521(5). *Correa v. Pecos Valley Development Corp., 126 Ariz. 601, 617 P.2w 767 (App. 1980).*

Thus, a seller could be liable for breach of contract, negligent and/or intentional misrepresentation, fraud, and consumer fraud, should a court find that the seller failed to disclose material information the buyer did not know or have reason to know in connection with the sale of a home. The critical inquiry becomes, at what point may the presence and/or history of scorpions in a seller's home be deemed material to a buyer?

Is it material?

In determining whether a matter is material, Arizona courts have offered the following guidance: "A matter is material if it is one to which a reasonable person would attach importance in determining his choice of action in the transaction in question." *Hill v. Jones, 151 Ariz. at 85, 725 P.2d at 1120, quoting Lynn v. Taylor, 642 P.2d 131, 134-135 (Kan. App. 1982).*

Of course, such guidance simply begs the question. On the one hand, some insist that buyers have a right to make an informed decision as to whether they want to purchase a home with the presence and/or history of scorpions. On the other hand, others insist that scorpions are natural incidents to desert living, and there, people living in the desert should expect to see scorpions.

For homeowners who learn of scorpions in their home or their immediately surrounding neighborhood, the obligation to disclose this fact can seriously undermine the homeowner's ability to sell his home. Moreover, the disclosure of scorpions can radically affect the market value not only of the seller's

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home but of the neighborhood as a whole. If given the choice between a home with scorpions and without scorpions, most (if not all) buyers would choose the home without scorpions.

No Arizona case law (nor any other state of federal case law) has expressly decided the issue of whether the presence and/or history of scorpions would be deemed a material fact which must be disclosed to a buyer. Accordingly, such decisions must be decided on a case-by-case basis, depending upon the particular facts and circumstances surrounding the subject transaction. However, the following information may prove useful in answering this question:

• The number and frequency of scorpions

There is no "magic" number for determining the number or frequency of scorpions that rises to the level of a "material" fact, requiring disclosure. A hundred scorpions in the past year would likely be considered a material fact, but only one or two scorpions may also be material if the seller knows the buyer has small children who may have a more drastic reaction to a scorpion sting.

The fact that a seller previously had seen scorpions inside the house but has not seen any scorpions for several months, does not mean that the scorpions are gone. You can expect to see an increase in scorpion activity during the warmer months.

• The harm from scorpions

Unlike termites, scorpions will not cause structural damage to your home. However, a scorpion sting is very painful—similar to a bee sting. People often experience an initial burning sensation lasting approximately one hour. The person will also often experience a numbing or tingling sensation which can last for several days or more than a week.

Fortunately, most scorpions are not poisonous (although the sting is still extremely painful). In Arizona, the bark scorpion is the only species with a potentially lethal sting. Although the bark scorpion can be deadly, deaths are very rare from scorpion stings. In fact, there has not been a death associated with scorpion stings in Maricopa County for more than 40 years (although approximately 100 people are hospitalized each year for scorpion stings). Children under 10 and elderly adults tend to have a more dramatic reaction to scorpion stings.

• The difficult of effectively exterminating scorpions

Scorpions are very resilient creatures and are not susceptible to most insecticides. Insecticides will not work unless sprayed directly on the scorpion, which is complicated by the fact that scorpions are most active at night and tend to hide in cool places during the day. Thus, the best time to have an exterminator come to the house is at night, performing a "black light" search which causes the scorpions to glow.

In addition, scorpions have a long life span, averaging anywhere from two to 10 years. Scorpions can also go as long as a full year without eating anything. Moreover, a female scorpion gives birth to an average of 26 scorpions at a time. Thus, it is quite possible that if you see one scorpion, there are many more yet to be found. It is unlikely that you will be able to exterminate all scorpions in and around your house. Your best bet is to decrease the number to a manageable (or tolerable) level.

The guiding principle behind disclosure should be: If I were the buyer purchasing this home, would I want to know all the facts about the presence and/or history of scorpions?

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