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Peoria, Glendale actions require disclosure

A serious disclosure issue has emerged in the wake of two Peoria school districts' decision to shut the doors to new students at Sun Valley, Frontier and Las Brisas elementary schools.

Another disclosure issue has surfaced after the City of Glendale enacted an ordinance which will require buyers of new and used homes where children under 6 years of age reside to construct secondary barriers around pools.

School district actions

According to the Peoria Unified School District, only those families who close escrow on the purchase of their homes by November 26 will be allowed

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Duane Turner retires after 20 years with the Department

Duane Turner, Director of Operations of the Department's Tucson Office, has announced his retirement effective December 1.

Mr. Turner joined the Department in 1978 as an Investigator, was promoted to Real Estate Representative in 1981, and subsequently was named as Director of Operations for the Tucson office.

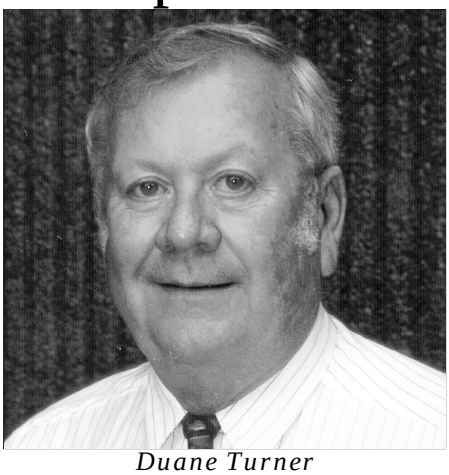
Replacing Mr. Turner will be Catherine England who is scheduled to assume her new duties on January 4.

She has served as a real estate paralegal with Del Webb Corporation and with Robson Communities, Inc, and was a legal assistant, operations manager and corporate officer for W.A. Dykstra & Associates, a Phoenix commercial real estate brokerage.

She received an associate degree in business administration and an associate degree in applied science in paralegal studies from Arizona State University.

"We are very pleased that Catherine has agreed to accept this position," said Commissioner Jerry Holt. "Her considerable experience in real estate development and real estate law make her a perfect choice to head up our Tucson operation.

"At the same time, we are sorry to see Duane leave the Department. He has served diligently for more than 20 years, working exceptionally well with professionals in the Tucson real estate industry, and with the public."



Duane Turner

Catherine England

Is mediation a waste of time?

Reprinted, with permission, from the December 1988 issue of the Arizona Journal of Real Estate & Business.

Since 1994 the Arizona Association of Realtors® (AAR) purchase contracts have contained a mediation clause. Thus, in most cases, every buyer and seller who enters into an AAR contract is obligated to mediate any dispute, claim, or alleged breach of contract before resorting to court action. Under Arizona law, an agreement in a written contract, such as the AAR contract, to submit a dispute or claim to mediation is valid and enforceable. 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. There are a few exceptions to this obligation to mediate in the AAR contract. These exceptions are an action in small claims court, and claims relating to foreclosure, forcible entry detainer, mechanic's lien, and probate.

Many times, the buyer and seller, and often the real estate agents involved in the dispute, are reluctant to

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Mediation

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tate agents may all think that mediation is just a waste of time. A party may feel that the mediation process will be used only for "free discovery," in other words, for the sole purpose of gathering evidence in support of the complaining party's claim. Real estate agents may be reluctant to participate in a mediation based on the belief that their legal interests will be jeopardized or that they are simply viewed as "deep pockets."

Some of these concerns are 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 decision as to who is "right" and who is "wrong." In a mediation, no such decision is made. If the parties do not reach an 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 meditations 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 "opening 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.

The concern that one party may use the mediation for the purpose of informal "discovery" to gather evidence to use against the opposing party is largely unwarranted. Anything told to the mediator in confidence should be kept confidential. The Arizona Rules of Evidence preclude the introduction of evidence of settlement negotiations in a trial for the purpose of proving liability, the validity of a claim, or its amount. Offers made during mediation should not be allowed as evidence in any trial or hearing regarding the matter.

There is little doubt that a real estate agent may be asked to participate in a mediation because the agent is viewed as a "deep pocket." However, even if the real estate agent agrees to participate in the mediation process, the agent is not obligated to make any monetary contribution to a settlement. Mediation generally occurs after negotiation fails. The real estate agent may decide to participate because mediation is less expensive and 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.

However, real estate agents involved in a dispute between the buyer and seller are not bound by the obligation to mediate imposed by the AAR contract. Nonetheless, real estate agents involved in a buyer/seller dispute should consider the possible benefits of mediation before refusing to participate. Agreeing to mediate does not mean the parties are agreeing to settle, but simply means the parties are trying to resolve a dispute without going to court. The parties do not give up any right to pursue other legal remedies if mediation is not successful.

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 also discuss whether you should participate in the mediation, and if so, 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. However, there are times when the risk is so low or the amount of the dispute is so small that legal representation during a mediation is unwarranted. Only you can make such a decision.

Is mediation a waste of time? It can be. But given the possible benefits, in this author's opinion, there is little, if any, "downside" to participation in the mediation process.

Michelle Lind is a certified real estate specialist with the law firm of Combs, Mack & Lind, PC. where her practice emphasizes the representation of clients in residential and commercial real estate transactions and litigation. She may be reached at 602/957-9810.

Firms agree to end homestead scam

Attorney General Grant Woods announced that his office has entered into Assurances of Discontinuance with Mary R. Hubner, dba County Recording Services and State Processing Center, Southwest Regional Office and Roger M. Glass, dba State Recording Services. Hubner and Glass owned and operated these respective businesses which solicited new homeowners in Arizona. The companies advertised service fees of $25 to $30 to prepare and record homestead declaration forms which are unnecessary under Arizona's automatic homestead exemption statutes.

The Attorney General found that the solicitations had the tendency to mislead consumers to believe that these were official forms sent by a governmental entity rather than a private business offering to perform a service for a fee. The solicitations also misrepresented to consumers that a residence is not protected by the homestead exemption unless a declaration of homestead form is immediately filed and recorded.

Under the agreement, Hubner and Glass assured that they had ceased doing business and closed the mail drop boxes they were using for these services. The agreed to refrain from engaging in the solicitation, preparation and recording of homestead documents. Each also agreed to issue full refunds to consumers who paid for the homestead forms. The Assurance also required Hubner and Glass to reimburse the Attorney General's Office for the costs of its investigation.

On October 19, 1998, Woods filed

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Jerry Holt

News From The Commissioner

Arizona-Mexico Commission

The results of the October meeting of the Arizona-Mexico Commission are encouraging. We may be very close to seeing a real estate regulatory agency in Sonora, Mexico which mirrors the Arizona Department of Real Estate.

Proposed real estate licensing statutes have been submitted to the Sonoran Congress and assigned to a committee. The only sticking point is debate over whether a Mexican real estate licensee should be bonded as are Mexican attorneys.

Because the proposed structure of real estate regulation in Sonora would include a recovery fund, I have argued that bonding is not necessary. The attorneys, who must be bonded, do not agree. We shall see. It is hoped that the Sonoran Congress will enact the legislation before the end of the year.

As you may know, foreigners are not allowed to own property in the "restricted zone" in Sonora, that area 50 kilometers inland from the ocean and 100 kilometers inland from the border with the U.S. and Guatemala. Instead, purchasers of property in the restricted zone enjoy the use of the property through a *Fideicomiso* (real estate trust) and have the right to build on the property, sell or lease it, or will it to heirs. But ownership is retained through the bank trust by the original owner.

Because the foreign owner cannot get fee-simple title to the property, lenders have been reluctant to finance the purchase of property in Sonora. To complicate matters, Mexico relies on the "abstract and opinion" system, still in use in some parts of the United States, to research the chain of title and to ensure that there is no cloud on the title to real property. The catch here is that an attorney (*Notario Publico*) furnishes the "opinion" that the owner has the right to sell to the buyer, and if subsequent problems arise and the attorney has died or cannot be located, well, you can see the problem.

The results of such title searches are maintained in Mexico by the *Escresón*, an arm of the state government, and the equivalent of our recorder's and assessor's offices.

This system has discouraged the increase of foreign investment in the restricted zone because lenders were not convinced they could repossess property if the buyer defaulted on a loan.

Now, a decision by two Arizona title companies, First American Title Insurance Company and Stewart Title Agency, to use their title plants to research the chain of title for Sonoran property purchased by foreigners should ease the minds of the lenders. What's more, these title companies have agreed to help *Escresón* update their title records, and to provide help with paperwork and to issue title insurance for foreign purchasers.

Now, lenders should be more inclined to make loans to creditworthy applicants because they will be assured that the real estate transaction will be handled properly, and that there are no clouds on the title.

To this end, the governors of Arizona and Sonora, the title companies and *Escresón* have signed a "securitization" agreement which makes the whole thing official.

In February 1997, the Arizona-Mexico Commission published a small pamphlet titled "Acquiring Property Rights in Sonora." Now, the Commission will publish a book, "How to Buy Real Estate in Sonora," which will go into far more detail regarding the ins and outs of acquiring Mexican real estate.

Bank One Arizona and others have made a preliminary commitment to fund the publication. The first draft, in English and Spanish, is due in six months.

Mock Trial in Tucson

More than 500 people attended the Fair Housing Mock Trial in Tucson in October presented under the auspices of the Tucson Association of Realtors® and the Hogan School of Real Estate. I was pleased by the turnout, but, as expected, the real estate broker who I portrayed lost the case and the plaintiff was awarded a seven-figure judgment. Guess I'm never going to win one of these things. My congratulations to the Tucson Association of Realtors for producing one of the best mock fair-housing trials ever presented. The large turnout supports our decision to retain the mandatory three hours of fair-housing education for real estate license renewal.

Tucson Director of Operations

I am most pleased to welcome Catherine England as the new Director of Operations for our Tucson office. Catherine brings to the Department extensive experience in real estate law and subdivision matters. We are very fortunate that she has decided to join us.

At the same time, I am sorry to lose Duane Turner who retired from that position December 1. Duane earned the respect and admiration of all of Tucson's real estate professionals, and was a valued and trusted employee. I wish him a happy retirement.

Have a happy and joyous holi-

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1998 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 Rules.

The following is the schedule of Clinics to be offered in Phoenix and Tucson during the remainder of 1998 and in 1999. Additional clinics may be scheduled from time to time at other locations in Phoenix and in rural areas.

PHOENIX Industrial Commission Auditorium 800 W. Washington	TUCSON State Office Building 400 W. Congress Room 222
1998 **Noon to 3 p.m.**	**1998** **8:30 a.m. to 11:30 a.m.**
December 18	December 17
1999 **1 p.m. to 4 p.m.**	**1999** **1 p.m. to 4 p.m.**
January 21	January 20
February 18	February 17
March 18	March 17
April 15	April 21
May 20	May 19
June 17	June 16
July 15	July 14
August 19	August 18
September 16	September 15
October 21	October 20
November 18	November 17
December 16	December 15

A Broker Audit Clinic will be offered in the Show Low area on October 14. For information call Michael Aroner, White Mountain Association of Realtors,® at 520/537-1107.

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-1968
John C. Hausner
Phoenix
DATE OF ORDER: October 14, 1998
FINDINGS OF FACT: Respondent was originally issued a real estate salesperson's license in September 1991. That license expired on September 30, 1995.

In his September 30, 1996 renewal application he failed to disclose that he was convicted of unlawfully acting in the capacity of a contractor on April 5, 1996 in Phoenix Municipal court.

He did disclose, however, that he was a 50-percent owner and the qualifying party for the Passey-Hausner Company, Inc. (PHC), which ceased doing business in December 1995 because of insolvency. In February 1996, the Registrar of Contractor's Office revoked PHC's license and paid out $100,000 from the recovery fund to cover claims against PHC's license.
VIOLATIONS: Hausner has disregarded or violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, in violation of A.R.S. § 32-2153(A)(3). As a result of his failing to disclose his criminal conviction he procured or attempted to procure a license by filing a renewal application that was false or misleading, in violation of A.R.S. § 32-2153(B)(1).
DISPOSITION: Respondent's real estate salesperson's license is revoked. Respondent shall not apply for a real estate license for five years from the date of entry of this Consent Order. Respondent to pay a civil penalty in the amount of $1,000.

H-1960
Natalie J. Hamlin dba Yarnell Realty
Yarnell
DATE OF ORDER: October 14, 1998
FINDINGS OF FACT: Respondent was issued an original real estate broker's license in June 1993. The license was to expire on June 30, 1999, but was canceled because Respondent failed to notify the Department of a change of business address.

In April 1997, the Department received a complaint from an attorney, George H. McKay, of Community Legal Services on behalf of Shelly Cooper. Respondent acted as Cooper's real estate agent for the purchase of real property and a mobile home in the Cordes Lakes Subdivision in Yavapai County.

Respondent failed to provide Cooper with a copy of the purchase contract or other documentation relating to Cooper's purchase. McKay and Cooper made repeated attempts to obtain the documents from Respondent, but Respondent refused to release them.

On April 9, 1997, the Department sent Respondent a second letter by certified mail requesting the documents. Although Respondent signed a receipt for the mail, she failed to respond to the Department's request.

On August 3, 1997, the Department issued a subpoena duces tecum to the Respondent requiring her to produce all documents pertaining to the transaction by August 15, 1997. The subpoena was personally served on Respondent who failed to comply.

Respondent failed to appear for the disciplinary hearing scheduled on August 16, 1998.

On January 8, 1998, the Department applied to the Maricopa County Superior Court for an order enforcing the subpoena. The Court issued an order requiring Respondent to appear and show cause for her failure to comply with the subpoena. Respondent failed to appear. The Court ordered that a civil arrest warrant be issued for Respondent's arrest.
VIOLATIONS: Respondent has failed to appear an present evidence supporting her position and was found to be in violation of Arizona Revised Statutes, Title 32, Chapter 20, within the meaning of A.R.S. § 32-2153(A)(3).
DISPOSITION: Respondent's real estate broker's license revoked. Respondent to pay a civil penalty in the amount of $2,000.

H-1963
Pearl M. Wilson
Peoria
DATE OF ORDER: November 18, 1998
FINDINGS OF FACT: Respondent was issued an original real estate salesperson's license in November 1988. Her current license expired on November 30, 1998. At all times relevant to this matter, she was employed as a real estate salesperson with Re-Max Sunset Valley Realty.
Count One:

On January 2, 1996, Respondent entered into a listing agreement with Brian and Deana Tomecek to sell their property in Phoenix. At that time the Tomeceks held a lease-purchase contract with Bryant and Jamie Knight. On February 9, 1996, the Tomeceks cancelled the lease and contract.

Wilson submitted the listing agreement with the Tomeceks to Re-Max Sunset Valley Realty and it was approved by the designated broker. The terms of the listing included a $4,000 commission to be paid at close of escrow to Re-Max Sunset Valley Realty.

On February 10, 1996, Respondent prepared a lease-purchase contract for the Tomeceks' property. The contract was accepted and signed by Bruce and Mary Hashimoto on February 10, 1996, and by Brian Tomecek on February 12.

Mary Hashimoto gave Respondent three checks totalling $7,000, payable to Respondent, as an earnest money deposit.

The Tomeceks executed a power of attorney, dated February 9, 1996, and an amendment thereto, instructing Respondent on the disbursement of the earnest money deposit. On February 15, the Tomeceks gave Respondent a promissory note for $3,000, payable to respondent on or after February 1997.

Respondent did not submit the power of attorney, the amendment to the power of attorney, the promissory note or any other documentation relating to the earnest money deposit to her designated broker. She failed to place the three checks issued by Mary Hashimoto in the care of her designated broker.
Count Two:

On December 13, 1995, Respondent entered into a listing agreement with Gary Hill to sell his property in Phoenix. Under the listing agreement, a $250 non-refundable retainer fee was due to the broker by January 31, 1996.

On February 8, Kathy Hill wrote a check for $250 payable to Respondent. Respondent did not submit the listing agreement or the check to her broker until February 20, 1996.
VIOLATIONS: Respondent failed to promptly place checks or other items of value received as payment in connection with a real estate transaction in the care of her designated broker, in violation of A.R.S. § 32-2151.01(D). She disregarded or violatied provisions of Arizona Revised Statutes, Title 32, Chapter 20, within the meaning of A.R.S. § 32-2153(A)(3). She accepted compensation as a salesperson from persons other than her licensed broker, in violation of A.R.S. § 32-2153(A)(7).
DISPOSITION: Respondent's real estate salesperson's license is revoked.

RENEWAL APPLICATION DENIED

H-1966
Bruce S. Spaulding
Camp Verde
DATE OF ORDER: November 4, 1998
FINDINGS OF FACT: In April 1998, Respondent submitted an application for renewal of his real estate salesperson's license. In the application, he disclosed a February 1998 conviction for Aggravated DUI with Minor in Vehicle, an undesignated class 6 felony.
VIOLATIONS: Respondent has been convicted of a felony within the meaning of A.R.S. § 32-2153(B)(2). He has been convicted of a felony and is presently on probation as a result of that conviction within the meaning of A.R.S. § 32-2130(E).
DISPOSITION: Respondents application for renewal denied.

RENEWAL APPLICATION APPROVED

H-1965

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Allen K. Creten
Phoenix
DATE OF ORDER: November 9, 1998
FINDINGS OF FACT: In May 1998, Petitioner submitted an application for an original real estate license in which he disclosed four felony and four misdemeanor convictions between 1984 and 1990

The Department denied the application. Petitioner requested an administrative hearing.

Petitioner, who is 42 years of age, admitted that he was convicted of these crimes which he committed because he was addicted to drugs. He testified that he successfully served or completed all of the ordered sentences pertaining to the crimes. He further testified that he paid all of the ordered civil and criminal fines and resitution, and back taxes amounting to $10,000.

He testified that he began his probation in early 1991. A condition of probation was that he attend the Adult Probation Community Punishment Substance Abuse Progra. which he attended three time a week for a year. He testified that he voluntarily attended Arizona Family, a residential treatment program for six months.

He testified that he had attended Narcotics Anonymous (NA) meetings at least every other night since 1991. He has served as a sponsor to 12 other NA members and currently sponsors four individuals. He testified that he voluntarily serves on NA's Hospitals and Institutions Committee which hold meetings once a month at St. Luke's Hospital for counseling drug addicts.

He testified that since 1995 he has frequently visited the Towers Jails in Phoenix to counsel inmates on drug addiction.

Petitioner testified that he was employed for four years with AT&T Phoenix Works and Cable Systems International where he served as union steward.

He quit his job with AT&T because he wanted to be a real estate agent. He enrolled in a real estate school and passed the State examination. When the Department denied his license application, Petitioner earned a living operating a painting and maintenance business.

Several character witnesses who appeared on behalf of Petitioner, among them a real estate broker, a property manager who holds a real estate license, and an Assistant Attorney General with the Arizona Attorney General's Office, testified that Petitioner has overcome his drug addiction problem.
VIOLATIONS: The Commissioner has the discretion to deny the issuance of a real estate salesperson's license if it appears that the applicant (1) has been convicted in a court of competent jurisdiction of a felony or a crime of theft or moral turpitude; or (2) is not a person of honesty, truthfulness and good character. A.R.S. § 32-2153(B)(2) and (7).

Shoplifting is a crime of moral turpitude. The Petitioner has been convicted of a felony or a crime involving theft and moral turpitude within the meaning of A.R.S. § 32-2153(B)(2)

Petitioner's behavior from 1984 thorough 1990 shows that Petitioner was not a person of honesty, truthfulness and good character during that time period within the meaning of A.R.S. § 32-2153(B)(7).

Petitioner's behavior from early 1991 to September of 1998 shows that he is now a person of honesty, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7). Petitioner has made a remarkable turnaround in his life and appears to be a positive influence and role-model in our society. In spite of having numerous opportunities to steal and deceive, Petitioner has led a responsible and productive life since 1991. More importantly, Petitioner has endured personal tragedies and stressful challenges since 1991 without relapsing into his pre-1991 criminal-oriented/drug-abusive life style.

In his Recommended Decision, the Administrative Law Judge stated: "Unfortunately, there is no magical rule or formula for determining when a person is fully reformed from drug addiction or criminal behavior. However, this Petitioner has been a model citizen since December of 1990 and has fully repaid his legal and financial debts owing to society for his prior criminal behavior. Grounds certainly do exist for denying this Petitioner's application. However, (I) recommend that the Commissioner approve the Petitioner's application.
DISPOSITION: Petitioner's application for a real estate salesperson's license is approved.

CONSENT ORDER

H-1952
Eric A. Willens
Phoenix
DATE OF ORDER: November 23, 1998
FINDINGS OF FACT: Respondent was originally issued a real estate salesperson's license in February 1995. In February 1997, Erica Stevens, a Colorado resident planning to relocate to Arizona, visited Phoenix to look for a house to purchase. James Stiely, a licensee with Desert States Realty, initially assisted Stevens. Stevens was subsequently referred to Willens, another real estate salesperson employed by Desert States Realty.

On April 11, 1997, Stevens received a call from Willens informing her that he had left Desert States Realty and was currently employed as a salesperson at a Century 21 office in Scottsdale.

On May 23, 1997, Stevens received a call from Willens informing her he had left his position at Century 21 and had accepted a position with Addem & Co., a real estate company.

From July 8, 1997 through July 16, 1997, Willens took Stevens to view houses. On July 16, 19976, Willens completed five purchase contracts for houses in which Stevens had shown an interest. Prior to returning to Denver on July 16, Stevens signed the purchase contracts.

Willens was to submit the purchase contracts in a previously agreed upon order. In the event the previous contract was rejected, Willens was to submit the next contract, numbered in order from one to five.

Willens was to submit the first pucrhase contract for a house located at 11033 N. 32nd Place, the second for a house located at 4746 E. Angela Drive, the third for a house located at 4067 E. Meadow, and the fourth for a house located at 4714 E. Angela drive.

There is a dispute as to which house was the subject of the fifth purchase contract. According to Willens, it was for a house located at 4742 E. Angela Drive. According to Stevens, it was for a house located at 4723 E. Angela Drive.

On July 16, 1997, Willens submitted the first purchase contract. The owners called Willens and presented a counter offer. Willens told the seller he knew Stevens would decline the counter offer.

On July 16, 1997, called a realty firm regarding the second purchase contract and asked whether the sellers could be out of the home within three days, and would accept $117,000 for the house. The real estate representing the sellers asked Willens to submit the contract in writing for the sellers' review.

The seller's agent testified that she never received the purchase contract from Willens.

Agents for sellers of the third and fourth purchase contracts testified that they never received the contracts from Willens.

Willens submitted the fifth purchase contract and it was accepted by the seller, but subsequently rejected by Stevens.

On July 17, 1998, Willens contacted Stevens and assured her he had submitted the purchase contracts in the agreed upon order, and that the first four offers were rejected.

Willens attests that he believes he submitted the purchase contracts in the agreed upon order and does not understand why the contracts were never received by the sellers' agents.
VIOLATIONS: Willens demonstrated negligence in performing acts for which a license is required, in violation of A.R.S. § 32-2153(A)(22). He breached his fiduciary duty to act in his client's best interest in violation of A.A.C. R4-28-1101(A).
DISPOSITION: Willens' real estate salesperson's license is suspended for a period of four months, to commence upon entry of this Consent Order. Willens is assessed a civil penalty in the amount of $1,500.

Homestead scam

Continued from page 2

a complaint in Maricopa County Superior Court against Brian Childes, dba Documents Services, et al., for violations of the Arizona Consumer Fraud Act. Childes, owner and operator of Document Services, solicited new homeowners in Arizona to prepare homestead documents for a $25 service fee. Childes also solicited consumers for the purpose of preparing a common law trust for approximately $239. The Attorney General alleges that Childes misrepresented to consumers that they needed to execute homestead documents in order to obtain the maximum protection of their homes. Childes also allegedly misrepresented that without a trust, a person's estate would be heavily taxed and this trust would eliminate all state and federal taxes and completely avoid the probate process.

In the complaint, the Attorney General asks the court to enjoin Childes from engaging in this business now, and in the future, and requests restitution for victims, attorneys' fees, investigative costs and maximum civil penalties.

Disclosure issues

Continued from page 1

to send their children to nearby Sun Valley and Frontier elementary schools. Instead, they will have to attend schools in other parts of the district.

The Deer Valley Unified School District announced that students moving to the Terramar subdivision will not be able to attend Las Brisas. Instead, they will be bussed to Park Meadows Elementary School at 20012 N. 35th Ave. in Phoenix.

Frontier Elementary, at 21258 N. 81st Ave., serves the area north of Union Hills Drive. Sun Valley Elementary, at 8361 N. 95th Ave., serves an area bordered roughly by Loop 101 and 115th, Olive and Glendale Avenues.

The Department considers the school districts' action a material fact which should be disclosed to buyers of new or resale homes in the vicinity of the schools.

Glendale Pool Barriers

The Glendale City Council passed an ordinance December 8 which will require buyers of resale homes in which children under 6 years of age will reside

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Where in the world is the territory in the vicinity of a military airport?

In 1995, the Arizona Legislature enacted a statute that defined the "territory in the vicinity of a military airport," and in 1997 required that sellers of property in such a "territory" for which a public report is required disclose that the property is in the "territory."

Perhaps this will shed some light on when disclosure is required.

A.R.S. § 28-8461(11) (former § 2-321) defines the "territory in the vicinity of a military airport as:

- Luke Air Force Base, Maricopa County: 10 miles to the north, south and west and four miles to the ease parallel from the center of the main runway.
- Davis-Monthan Air Force Base, Tucson: 4 miles to the northwest along a line extending from the end of the main runway, 1.5 miles to the northeast and southwest perpendicular to the main runway and 5 miles to the southeast along a line extending from the end of the main runway.
- Marine Corps Air Station, Yuma: 5 miles to the north, south and west and 10 miles to the east of the center of the main runway.

The stated purpose of the legislation is, in part, "to encourage the preservation of military airports and to promote the public health and safety in the vicinity of military airports by permitting and encouraging military airport planning and zoning regulations which assure uses of land compatible with the continued operation of military airports."

In 1996, the Legislature enacted A.R.S. §§ 28-8483 and 28-8484 which became effective October 1, 1997.

§ 28-8483 . Registry of military airport flight operations; public inspection A. The state real estate department and political subdivisions that have territory in the vicinity of a military airport shall request from the military airports in this state a registry of information including maps of military flight operations and a list of contact persons at each military airport who are knowledgeable about the impacts of military flight operations. The state real estate department shall maintain the registry and make the registry available to the public on request.

B. The registry of information required by this section shall be used to enforce the sound attenuation and public disclosure requirements of sections 28-8481 and 28-8482.

28-8484. Military airport disclosure; residential property

A. *Any transfer of residential real property, and any transfer of residential real property requiring a public report pursuant to section 32-2181 or 32-2195, that is located within territory in the vicinity of a military airport shall include a statement that the property is located within territory in the vicinity of a military airport.* [Italics added.]

B. On or before December 31, 1996, the state real estate department shall have and make available to the public on request a map showing the exterior boundaries of each territory in the vicinity of a military airport. The map shall clearly set forth the boundaries on a street map. The real estate department shall work closely with each military 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 military airport.

The maps are too large to be faxed or posted on our World Wide Web site, but they are available for inspection at our Phoenix office at 2910 N. 44th Street (at Thomas Road), Suite 100. You may make an appointment to inspect the maps by calling

Charles Downs
Public Information Officer
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In addition to the above statutes, the real estate statutes require this disclosure in an application for a Subdivision Public Report:

§ 32-2181(A)(23) A true statement as to whether all or any portion of the subdivision is located in territory in the vicinity of a military airport.

Department modifies Substantive Policy Statement addressing 'Team' and 'Group' advertising

Substantive Policy Statement No. 35, which addresses the use of the words "Team" and "Group" in real estate advertising, has been amended.

The Statement now reads:

A real estate licensee may advertise and otherwise promote real estate services by use of the terms "team" and/or "group," and such advertising shall not constitute the use of a fictitious name or trade name, if all of the following apply:

1. The team or group comprises only real estate licensees. No unlicensed person may be a member of the team or group.
2. All team or group members are employed by the same employing broker.
3. The designated broker maintains and files with the Department a current list of all members of each group or team in the broker's employ.
4. The advertising otherwise complies with statutes and rules.

If all of the above conditions are met, the use of team or group shall not be construed to be a violation of A.A.C. R4-28-301(D) or R4-28-1001(A).

Peoria and Glendale disclosures

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to construct a secondary pool or spa barrier within 30 days of close of escrow.

All new pools (and new homes with pools) must be constructed with secondary barriers.

Homeowners with children under 6 who remodel the home to increase its livable space will be required to retrofit an existing pool or spa with an approved secondary barrier.

Before the ordinance was passed, the city required only a primary barrier, such as a concrete block wall, surrounding the perimeter of a residence.

Approved secondary barriers include interior fencing around pools, self-closing doors, door alarms and pool or spa covers.

Existing homes with small children are exempt from the ordinance.

The Department considers the ordinance a material fact which should be disclosed to prospective buyers with children under the age of 6.

More information about the pool ordinance may be obtained from the Glendale Fire Department Community

How to contact ADRE by phone, fax and modem

PHOENIX OFFICE
(602) 468-1414

Division Extension Numbers
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Auditing and Investigations 500
Customer Services 100
Education & Licensing 345
Subdivisions 400
Public Information Office 168

Division Fax Numbers
Administration (602) 468-0562
Auditing/Investigations (602) 468-3514
Education and Licensing
(602) 955-6284
Customer Services (602) 468-0562
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TUCSON OFFICE
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WORLD WIDE WEB
www.adre.org
E-MAIL
cdowns@adre.org

Have you visited our Web pages lately?

The Department's World Wide Web pages, at www.adre.org, contain a wealth of information of interest to the real estate professional and the public as well.

Our "Late-Breaking News" page is updated frequently. There is a link to the on-line edition of the *Arizona Real Estate Law Book* where you can search the text of this 365-page publication for text strings and statute or rule numbers.

The Department's most-often requested forms, and this publication, the *Arizona Real Estate Bulletin*, are available in Adobe Acrobat (PDF) format. The site also contains information on the complaint process, obtaining and renewing a real estate license, our office locations and hours (including maps).

On average, more than 1,000 people visit the site each day. We hope you will be among them.

Arizona Department of Real Estate
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Phoenix AZ 85018