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$247,100 cut from ADRE budget

After cutting $149,800 from the Department's current budget, and the budget for the 2002-2003 fiscal year beginning July 1, the Legislature has imposed another 3.125 percent cut on the 2002-2003 budget.

This means the Department will lose another $97,300, or a total of $247,100 for the coming fiscal year from its original appropriation of $3,297,200.

"We effected the savings for the present and the coming fiscal years in a number of ways," said Richard Simmonds, the Department's Business Services Officer. "We cut a lot of money out of operating expenses such as out-of-state travel and training. We've eliminated the purchase of all capital budgeted items such as replacement computers, and other equipment. The Deputy Director of our Tucson office resigned and will not be replaced."

Simmonds said other cuts will be necessary to effect the latest budget reduction of $97,300 but details have yet to be worked out.

Licensing Division changes designed to speed you on your way

Beginning June 3, visitors to our Phoenix office will find changes designed to minimize the time required to conduct business.

Upon entering the licensing "front counter" area, a licensee or applicant will take a numbered ticket from one of

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New CE requirement raises questions; here are some answers

By Edwin J. Ricketts
Reprinted from the May 2002 issue of the Arizona Journal of Real Estate & Business *with permission.*

As most everyone now knows, the Arizona Department of Real Estate has officially added "Disclosure" to the list of courses required for real estate license renewal. Not unexpectedly, there is widespread confusion and uncertainty among instructors and students alike. When will the new courses be available? Do I have to take 27 hours? Can I take the course before July 1? And so on. Answers to these questions and more are found in the Q&A below.

Background

Commissioner Holt formed a Disclosure Instructor Development Workshop (IDW) Committee more than a year ago. It comprised educators, brokers, Department staff and others, and discussed and debated the manner in which a Disclosure IDW might be conducted to help standardize the approach of instructors to disclosure issues.

In my opinion, and that of others too, disclosure law may well be the most systematically neglected area of the real estate code. In Arizona it has been treated a little like a tar baby: everybody knows it's there, but no one wants to get too near it. The Department's recognition of disclosure law as a body of law meriting treatment as a subject area in its own right is "cutting edge." I know of no other state that has recognized disclosure law the way we have. Commissioner Holt and Education and Licensing Director John Bechtold are true education trailblazers.

Importance of Disclosure Law

We are told that 70 to 80 percent of real estate lawsuits are filed by buyers. My observation is that almost all of those law suits allege some failure to disclose, for instance: property defects; business income; licensee acting as a principal; undisclosed referral profit, etc. Based solely on why real estate licensees or brokerages get sued, could there be a more important area that requires continuing education?

In the current required continuing education course categories, licensees get some exposure to disclosure law, for example, in agency, contract law and real estate legal issues. But nowhere did the licensee have to sit through a class devoted entirely to disclosure law issues. For the first time ever, now real estate licensees will get a concentrated dose of disclosure law.

The IDW

Attendance at a Disclosure IDW was required of all real estate instructors who teach courses that include a significant disclosure law integral. That means agency, contract law, Commissioner's Standards and real estate legal issues. So, even if the instructor does not intend to teach a disclosure law cource, if the instructor wishes to teach any other course that includes disclosure law, attendance at an IDW is required. Instructors whose teaching is limited to areas that do not include general disclosure law, like surveying or fair housing, are not required to attend an IDW if they apply for and receive a waiver from the Department.

The IDW has been held twice so far. The March 1 and April 5 IDWs were well attended—a total of 247 instructors. These IDWs generally received very good reviews from instructors. The IDWs were coordinated and hosted by the Real Estate Educators Association and held at the Arizona School of Real Estate & Business in Scottsdale.

A third IDW is scheduled for June 28 at the Hogan School of Real Estate

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Directory of ADRE Substantive Policy Statements

Substantive policy statements are written expressions of the Department's current approach to, or opinion of, the requirements of the real estate statutes under Title 32, Chapter 20 of the Arizona Revised Statutes, and/or of the Real Estate Commissioner's Rules under Title 4, Chapter 28 of the Arizona Administrative Code. The statements include, where appropriate, the Department's current practice, procedure or method of action concerning those statutes or rules. Substantive policy statements are advisory only. The statements do not include internal procedural documents concerning the Department's internal procedures, and do not impose additional requirements or penalties on regulated parties, confidential information or rules. See A.R.S. § 41-1001(20).

Acceptable Forms of Payment (No. 1)
Description of Practice/Procedure: Describes payment methods accepted by the Department.
Effective Date: June 18, 1999.

Agency Responsibility (No. 2)
Description of Practice/Procedure: Department's opinion on duties of a licensee acting as an agent.
Effective Date: June 18, 1999; revised June 1, 2001.

Attendance Requirements for Credit; Enforcement (No. 3)
Description of Practice/Procedure: Describes when a licensee is entitled to credit for a class.
Effective Date: June 18, 1999.

Broker Management Clinic Attendance (No. 4)
Description of Practice/Procedure: Describes when real estate brokers must attend a Broker Management Clinic and spells out consequences of not attending.
Effective Date: June 18, 1999; revised August 9, 2001.

"Contract Writing" Continuing Education Course Taken Before Licensure (No. 5)
Description of Practice/Procedure: Describes when real estate salespersons must attend a Contract Writing class and spells out consequences of not attending.
Effective Date: June 18, 1999.

Disciplinary Actions Published in Real Estate Bulletin (No. 6)
Description of Practice/Procedure: The Department's policy that administrative actions are published. Effective Date: June 18, 1999.

Disclosure of Licensee's Home Address (No. 7)
Description of Practice/Procedure: Describes circumstances under which a licensee's home address must be disclosed. Effective Date: June 18, 1999; revised December 6, 2001.

Fair Housing Course Substitute (No. 8)
Description of Practice/Procedure: Conditions under which attendance at the otherwise required Fair Housing course is not required. Effective Date: June 18, 1999; revised July 2, 2001.

Fees for Lists, Copies and Certified Copies of Department Documents (No. 9)
Description of Practice/Procedure: Schedule of fees for producing copies, certified copies, lists of licensees, etc. Effective Date: June 18, 1999.

(No. 10—Repealed)

Investigation of Cases Being Pursued Civilly (No. 11)
Description of Practice/Procedure: Investigation of complaints and pursuit of civil remedies. Effective Date: June 18, 1999.

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Directory of Commissioner's Rules

Title 4 Chapter 28, Arizona Administrative Code

Article 1. General Provisions
Contains definitions, sets fees, describes computation of filing deadlines, time frames and procedures for processing license applications.

Article 2. Repealed

Article 3. Licensure
Describes requirements and procedures for applying for licensure as a salesperson or broker, changes to name, address, license status, employer; and license renewal.

Article 4. Education
Provides guidelines and requirements for pre-license and continuing education instruction, including course content, administration of the state license examination, and approval of schools, courses, and instructors.

Article 5. Advertising Provisions
Describes permitted, restricted, or prohibited activities pertaining to advertising and promotional activities by salespersons, brokers and developers.

Article 7. Compensation
Disclosure requirement concerning compensation a broker may receive.

Article 8. Documents
Describes requirements for providing copies of documents and when certain contract disclosures and notices are required to be made.

Article 9. Repealed

Article 10. Franchises and Fictitious Names
Conditions and restrictions on the use of franchised or fictitious names by brokers and salespersons.

Article 11. Professional Conduct
Contains specific conduct that is required or prohibited to guide salespersons and brokers in their dealings with clients and customers.

Article 12. Developments

Part A. Application for Public Report, Certificate of Authority or Special Order of Exemption
Procedures to follow and information required to apply for a subdivision public report, to sell unsubdivided land, or exemption, or to operate a cemetery.

Part B. General Information
Permitted use of an expedited process, conditional sales and subsequent owner exemptions, changes to a development or cemetery, or to the owner or operator of a development or cemetery that require amendment of the license, certification of a development for filing with HUD, options and blanket encumbrances, partial releases, restrictions on developers' handling of earnest monies, and record keeping.

Article 13. Administrative Procedure
Describes service on the Department and licensees, investigative information, response to charges, procedures for an attorney to appear for a respondent licensee, describes for consolidation of similar matters, and rehearing requests, procedures, and rulings.

Article 14. Repealed

Jerry Holt

News From The Commissioner

Some of you have heard that I've had more heart problems. My health has been fairly good since my May, 2000 bypass surgery, but recently I've been having trouble with shortness of breath.

My physicians decided I needed to have a procedure done that prevents fluid buildup between the pleura and the lungs (which provokes the shortness of breath), and to have a cardiac defibrillator implanted.

The implantable defibrillator does the same thing as those paddle electrodes you see applied to the chest in Hollywood and television medical dramas, but in a less spectacular way.

I obtained the following information by Dr. Richard P. Abben from the Internet at http://www.cardio.com/articles/defibril.htm, and thought it a good idea to share it with you.

"The implantable defibrillator protects patients at risk from severe ventricular tachycardia—a runaway heartbeat that kills 500,000 people a year in this country.

"Heartbeat irregularities—arrhythmias—are fairly common, and many are harmless. But anyone experiencing lightheadedness, dizziness, fainting spells, shortness of breath and heart palpitations shouldn't simply assume that's the case. There may be little difference between the symptoms of the merely annoying arrhythmias and those stemming from serious underlying heart conditions that can cause sudden cardiac death.

"Medication and pacemakers are the most common treatment for arrhythmias, but, for a small proportion of patients, the implantable defibrillator is a literal life preserver—and an increasingly miniaturized and sophisticated one.

"Most patients take the minor annoyance of an occasional defibrillator firing in stride, since they know that it means a potentially life-threatening heartbeat irregularity has been detected and corrected. And the success of the device is truly striking. Untreated, the most severe form of ventricular tachycardia will recur, with deadly effect, within one year of its first appearance. Medication can reduce that mortality rate to 15 to 25 percent, while the implantable defibrillator can reduce it to perhaps two percent. And even more sophisticated versions are currently under development."

Needless to say, I'm extremely thankful that my physicians have decided to give me this life-saving device. It is causing me no discomfort and a lot of peace of mind. I'm told I can very likely return to the office in mid-June. I can't wait to get back to work.

Legislative Session

As noted in the April issue of the *Bulletin*, the amendments and additions we made to real estate statutes made their way through the Legislature virtually unscathed. The new laws go into effect on August 22. The changes can be reviewed on our web site at http://www.re.state.az.us/newleg.html.

The amendment that will affect all of you requires that, beginning August 22, 2002, you must provide copies of your continuing education certificates or the original certificates when you submit a renewal application; you no longer need to retain the original certificates unless you wish to. A list of classes you attended will no longer be sufficient to complete a renewal application.

Budget Cuts

We were able to accommodate the 4 percent budget cut imposed on the Department during the 2001-2002 fiscal year by being very careful about spending and leaving some personnel positions vacant; now we must somehow find a way by the end of this month to do without another 3.125 percent of our annual appropriation. We're going to have to make some tough decisions.

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

Do you know about the 10-day Disclosure Rule?

When you applied for or renewed your real estate license, you were required by Commissioner's Rule R4-28-301(A) to answer a series of "yes or no" questions. While a "yes" answer to any of the questions may or may not trigger automatic disqualification for licensure depending upon the facts, a yes answer does require the applicant to provide extensive documentation to justify the Department's issuance of a license.

What many licensees may NOT know is that if, during the term of their licensure, something occurs that would require a "yes" to any of the questions, Commissioner's Rule R4-28-301(F) requires that fact and all of the related details be reported to the Department within 10 days. Failure to report any change in the information furnished on the license application or renewal application has, in the past, and will in the future, result in disciplinary action.

What must be disclosed?
The Rule cited above requires disclosure of:
a. Conviction for a misdemeanor or felony, or deferral of a judgment or sentencing for a misdemeanor or felony;
b. Any order, judgment or adverse decision entered against the applicant involving fraud or dishonesty, or involving the conduct of any business or transaction in real estate, cemetery property, time-share intervals, membership camping contracts or campgrounds;
c. Restriction, suspension or revocation of a professional or occupational license, or registration currently or previously held by the applicant in any state, district or possession of the United States or under authority of any federal or state agency; any civil penalty imposed under the license, or any denial of a license; or
d. Any order, judgment or decree permanently or temporarily enjoining the applicant from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, time-share intervals, membership camping contracts, campgrounds, securities, or involving consumer fraud or the racketeering laws.

What documentation is required if you must disclose?
a. A certified copy of any police report and court record that pertains to each crime for which the applicant has been convicted or for which sentencing or judgment has been deferred. If the applicant is unable to provide documents for each crime, the applicant is to provide written documentation from the court or agency having jurisdiction, stating the reason the records are unavailable.
b. Three written references from individuals, 18 years or older and not related by blood or marriage to the applicant, who have known the applicant for at least 1 year before the date of receipt of the application;
c. A 10-year work history, reflecting the employer's name and address, supervisor's name and telephone number, and dates of employment, including any periods of unemployment;
d. A certified copy of any document, such as the findings of fact, conclusions of law, an order assessing a civil penalty or denying, suspending, restricting or revoking any professional or occupational license held or previously held by the applicant within the last 10 years;
e. A certified copy of any civil judgment awarded by a court of competent jurisdiction against the applicant that included findings of fraud or dishonest dealings by the applicant;
f. A certified copy of any document of a payment against, or repayment by, the applicant as a judgment debtor by any recovery fund administered by any state or professional or occupational licensing board. If an Arizona real estate or subdivision recovery fund matter, a written disclosure of the file number, approximate date, and approximate amount of payment and current repayment status satisfies this requirement.
g. A certified copy of any temporary or permanent order of injunction entered against the applicant;
h. Any other documentation that the applicant believes supports the applicant's qualifications for licensure

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

SUMMARY SUSPENSION

02A-063
David W. Locke
Tucson
DATE OF ORDER: May 9, 2002
FINDINGS OF FACT: On April 2, 2002, the Commissioner, under Consent Order 01A-147, granted Respondent a two-year provisional salesperson's license. Respondent had admited that he was convicted of theft in January 1991, and that he stole from his employer to support his cocaine addiction.

To obtain a provisional license, Respondent agreeded to submit to body fluid tests. Respondent tested positive for cocaine metabolite in a test performed on April 25, 2002.

Finding that Respondent has committed acts in violation of A.R.S. §§ 32-2153(A)(3), (A)(24) and (B)(9), and the public health, safety or welfare imperatively requires emergency action under A.R.S. § 32-2157(B), IT IS ORDERED that Respondent's provisional real estae salesperson's license is summarily suspended.

Respondent may request an administrative hearing to contest this Order by filing a Notice of Appeal within 30 days of receipt of this notice.

LICENSE DENIALS

01A-075
Andrew A. Carrera
Tucson
DATE OF ORDER: January 25, 2002
FINDINGS OF FACT: Petitioner applied for renewal of his real estate salesperson's license in April 2001. The Department determined that in October 1999, petitioner had pleaded guilty of one count of negligent homicide, a class 4 felony, in Pima County and sentenced to four years' probation.

The Department cannot issue a license to or renew the license of a person who is on probation for a felony.
DISPOSITION: License application denied.

01A-141
Marla Jinks, fka Marla Harris
Tempe
DATE OF ORDER: April 3, 2002
FINDINGS OF FACT: In her August 2001 application for a real estate salesperson's license, Petitioner disclosed that from 1992 to 1995, Petitioner operated an escort business in Phoenix, Ariz., and in other states, and that during this period she failed to file tax returns and pay taxes in the amount of $272,699.

In July 1998, Petitioner entered into a plea agreement with the United States of America. She pleaded guilty to and was convicted of the Willful Failure to File a Tax Return, a class a misdemeanor, in violation of 26 U.S.C. §7203.

The Court ordered that Petitioner be committed to the custody of the Bureau of Prisons for 12 months and placed Petitioner on supervised probation for 12 months after her release from confinement. The Court ordered Petitioner to cooperate with the IRS and pay all tax liabilities.

In January 2001, Petitioner was discharged from supervised probation by the U.S. District Court, District of Arizona, Probation Office.At the hearing in this matter, Petitioner testified that in April 2002 she will enter into an Offer and Compromise to satisfy the $272,699 in unpaid taxes.

At the hearing Petitioner testified she was very busy during the time she failed to file tax returns and pay taxes, and that she relied on her aunt to handle her account affairs while she was traveling. Petitioner also testified that her aunt was very ill during this time and ultimately passed away in 1996. Petitioner testified that her aunt failed to properly file her tax returns because of her illness.

It should be noted that in the pre-sentence investigation report guideline, a U.S. Probation Officer wrote that petitioner "stated it was her believe she did not have to file a tax return if she did not have the money to pay the outstanding tax. She believed she had seven years to pay any outstanding taxes. She admitted she did not fully understand the filing requirements." No mention was made of Petitioner's ailing aunt.

Petitioner testified that she does not believe her crime was an act of moral turpitude or dishonest dealing. She testified that a lot of people have failed to file tax returns. She testified that her failure to file tax returns occurred only because she had relied on her ailing aunt.
VIOLATIONS: Petitioner has been convicted in a court of competent jurisdiction of a crime involving moral turpitude in violation of A.R.S. § 32-2153(B)(2). Petitioner has been found guilty of violating a federal tax law involving dishonest dealings, in violation of A.R.S. § 32-2153(B)(5) and (10). Her criminal behavior shows she is not a person of honesty, truthfulness and good character, in violation of A.R.S. § 32-2153(B)(7).
DISPOSITION: License application denied.

CONSENT ORDERS

01A-022
In the matter of White Cliff Investments, an Arizona general partnership, and in the matter of the real estate brokers' licenses of Donald G. Millett and Don Millett & Associations, Inc.
Mesa
DATE OF ORDER: March 21, 2002
FINDINGS OF FACT: At all material times, Don Millett & Associates, Inc., was an Arizona corporation engaged in the business of real estate. At all material times Donald G. Millett was licensed as a real estate broker in Arizona and was employed as the designated broker of Millett Associations.

White Cliff Investments is an Arizona general partnership formed in 1986 by and between Heber Properties, an Arizona general partnership, and Cardon-M illett, an Arizona general partnership now known as Groombridge Limited Partnership, and Arizona limited partnership, for the purpose of acquiring approximately 408 acres of real property, located in the vicinity of Heber and Sitgreaves National Forest, for investment.

On March 25, 1985, and prior to the formation of White Cliff, a survey had been recorded dividing the property into 11 parcels to be known as White Cliff Ranches. The owners then were W. Dayton Crane, John N. Gardner and Kenneth N. Gardner.

On May 22, 1985, Heber Properties, of which Crane and John Gardner were general partners, filed an application on the property for a public report for unsubdivided lands. That application was never completed.

White Cliff purchased the property in February 1987 and executed a deed of trust in favor of Cardon Millett (Groombridge).

In October 1999, a new survey was recorded identifying existing interior roads and easements, identified the 11 parcels referenced in the earlier survey as "Tract 1 through 11, White Cliff Ranches," and added "Parcel 2" to the survey. Parcel 2 was approximately five acres adjacent to Tract 11.

In April 2000, Millett, as managing partner of White Cliff, filed an application with the Department's Phoenix Office for a public report for unsubdivided lands. The application did not include the five-acre adjoining parcel described above. Respondents provided the Department with the October 1999 survey which did include that parcel in the single development to be called White Cliff Ranches.

On June 7, 2000, Millett recorded the first revision to the survey which recalculated Tracts 7 and 8 to allow for access.

In September 2000, Millett caused the second revision to be recorded which combined the five acres comprising "Parcel 2" with Tract 11, thereby making all parcels greater than 36 acres in order to comply with the statutory definition for unsubdivided lands.

In October 2000, while the application for public report was pending with the Department, Millett and Lewis N. Tenney, Jr., executed a "Letter of Understanding" for the sale of Tracts 1 and 6, White Cliff Ranches, to Tenney. The letter stated the purchase price as $400,000 with $80,000 down and the remaining $320,000 to be carried by White Cliff. The letter also required White Cliff to provide a four-acre site in Lot 2 suitable to Tenney for a waste-water treatment plant which would be transferred to Tenney only if and when he formed a corporation to construct and operate the plant. Finally, the letter provided escrow was to close on or before January 15, 2001. Escrow instructions, a note and deed of trust, and a special warranty deed conveying the subject property to Tenney and his wife were all prepared on December 19, 2000.

Millett executed the special warranty deed on January 8, 2001. The Navajo County Recorder recorded the deed on January 10, 2001, thereby conveying title to the Tenneys.

On January 30, 2001, the Department requested an updated title report and any copies of contracts or transfers of parcels in White Cliff Ranches. On January 31, 2001, Millett responded to that request by providing the documents described above together with an ac-

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count servicing agreement dated January 5, 2001, and a final settlement statement reflecting the settlement date of January 10, 2001.

On December 19, 2000, while the application for public report was pending with the Department, Millett and White Cliff Investments sold Tracts 1 and 6, White Cliff Ranches, to Tenney and his wife. The sale closed escrow and was recorded on January 10, 2001.

Another final settlement statement was prepared reflecting the settlement date of March 15, 2001.

On February 16, 2001, the Department received a letter on "Borgada Development" letterhead, signed by Kyle Hyatt, a real estate salesperson employed by Silver Ridge Realty, Inc., requesting the withdrawal of the application for public report for White Cliff Ranches.

On August 9, 2001, Millett filed an application on behalf of White Cliff for public report for unsubdivided lands with the Department's Tucson Office. The application was on behalf of White Cliff and under the development name, "Northwood Pines." Millett provided the Department with a new survey dated July 3, 2001, platting the same portion of 13 identified as White Cliff Ranches in the September 12, 2000 revision to survey, except that it omitted Tracts 1 and 6 sold to Tenney, and renumbered the remaining nine parcels as "Lots 1 through 9." The Northwood Pines application for public report was incomplete and was closed by the Department on September 24, 2001.

VIOLATIONS: Respondents by their actions are "developers" within the meaning of A.R.S. § 32-2101(21). Respondents purchased, owned or had an ownership in unsubdivided lands within the meaning of A.R.S. § 32-2101(58) for the purpose of sale or lease, either immediate or in the future.

The parcels comprising White Cliff Ranches, as recorded in September 2000, and that portion thereof comprising Northwood Pines, as recorded in July 2001, constitute a single "development" within the meaning of A.R.S. § 32-2101(22).

The sale by Respondents to Tenney was not at the time of sale and is not presently exempt from the public report requirements of A.R.S. § 32-2195 et seq.

Respondents sold or offered for sale parcels in the Development, which constitute unsubdivided lands, without first obtaining a public report and failed to furnish each prospective customer a copy thereof, in violation of A.R.S. §§ 32-2195.03(A) and (D).

Millett's participation in developing the property and in the sale to Tenney constitutes a violation of the provisions of Arizona Revised Statutes, Title 32, Chapter 20, within the meaning of A.R.S. § 32-2153(A)(3). Millett's conduct constitutes negligence within the meaning of A.R.S. § 32-2153(A)(22).

DISPOSITION: Respondents shall cease and desist from selling, offering for sale, transferring or conveying any parcel or fractional interest in the property until Respondents demonstrate compliance with all applicable subdivision or unsubdivided lands laws and rules, and all orders contained herein.

Millett and Millett Associate's real estate brokers' licenses are suspended for 30 days to begin upon entry of this Order. Millett, Millett Associates and White Cliff Investments, jointly and severally, shall pay a civil penalty in the amount of $1,500.

Respondents shall provide Tenney with an offer to rescind the purchase.

Millett shall attend nine hours of approved continuing education classes in the categories of Real Estate Legal Issues or Commissioner's Standards, which focus on subdivision law.

Respondents shall cooperate with Navajo County to complete requirements, if any, for the development including road and utility easements and permanent access to all existing parcels, and shall obtain and submit to the Compliance Officer a written statement by the Navajo County Planning Director that they have complied with all applicable county requirements for subdivided or unsubdivided land, including applicable floodplain regulations and road engineering and construction standards with respect to the property within one year.

Respondents shall, within one year of entry of this Order and before transferring title to or offering for sale any subdivided or unsubdivided land, lot or parcel, submit an application for a public report to the Department.

02A-016
Angel Dawn Grimmett fka Angel Dawn Robinson
Peoria

DATE OF ORDER: March 28, 2002

FINDINGS OF FACT: In her November 2001 application for a real estate salesperson's license, Petitioner disclosed a 1995 conviction for Retail Theft in Pennsylvania.

Petitioner is sincerely remorseful and regrets her decision that resulted in the conviction, which is seven years old. The Department has no reason to believe that Petitioner has had any subsequent criminal convictions or any other civil or administrative judgments entered against her since the conviction stated above.

VIOLATIONS: Petitioner's conduct showed she was not a person of honesty, truthfulness and good character, in violation of A.R.S. § 32-2153(B)(7). She violated Pennsylvania laws that involve theft, in violation of A.R.S. § 32-2153(B)(10).

DISPOSITION: The Department shall issue Petitioner a two-year provisional real estate salesperson's license. Petitioner shall comply with the following terms and conditions during all periods of active and inactive status.

Within 10 days of entry of this Order, or prior to or concurrent with hiring and submitting any license change form and fee to the Department, whichever occurs first, each designated broker desiring to employ Petitioner shall also submit a signed statement to the Department's Compliance Officer, together with the forms and fees for Petitioner's employment by such broker, if required. This signed statement shall certify that the broker has received and read a copy of this Consent Order, agrees to act as Petitioner's practice monitor or appoints an associate broker who qualifies under the terms hereof, and agrees to comply with the following requirements;

A. The proposed practice monitor may not have been a party to any prior disciplinary action by the Department.

B. The proposed practice monitor may not be an affiliate as defined in A.R.S. § 32-2101(#), or a business associate, employee, employer, manager, partner, member, owner, co-owner, stockholder, director or officer in any business enterprise with Petitioner, and may not be a relative of, or have any other relationship with Petitioner that may create, or create the appearance of, a conflict of interest or bias.

C. An associate broker may act as practice monitor only if the associate broker is employed at the same location as Petitioner, has been appointed by the designated broker with full written authority under A.R.S. §§ 32-2151.01(G) and 32-2127, and has agreed in writing to act as practice monitor and comply with the requirements set forth herein.

D. The proposed practice monitor is subject to the review and written approval of the Compliance Officer. This written approval may be withdrawn in the sole discretion of the Compliance Officer at any time upon written notice from the compliance Officer to Petitioner and the practice monitor.

E. The practice monitor shall submit quarterly written reports to the Compliance Officer that attest to Petitioner's workload, as well as the quality of Petitioner's services and client relationships.

F. The practice monitor shall immediately submit a written report to the Compliance Officer when the practice monitor becomes aware of any behavior or conduct in which Petitioner has engaged that violate real estate statutes or rules.

G. If the practice monitor is an associate broker, the designated broker shall sign and date all reports required under this Order, noting that the designated broker has accepted and approved the associated broker's report.

H. No practice monitor shall be required if Petitioner changes to inactive status or allows the license to expire; however, Petitioner's license may not be activated until a new practice monitor complies with the terms herein.

I. In the event Petitioner changes employment, Petitioner shall immediately notify the Compliance Officer and obtain a new practice monitor who qualifies under the terms and conditions herein. The new practice monitor must qualify and be approved by the Compliance Officer prior to Petitioner's hire by the new employing broker.

J. In the event Petitioner's practice monitor is no longer eligible to act as such, or ceases to perform the duties required under the terms of this Order, or there is a new designated broker for Petitioner's existing employer, Petitioner, the practice monitor and designated broker shall immediately notify the Compliance Officer. Unless Petitioner obtains a new practice monitor who qualifies and is approved under the terms and conditions hereof, termination of Petitioner's employment shall be required within 72 hours of the time Petitioner loses the practice monitor.

K. In the event Petitioner's license becomes inactive or Petitioner fails to obtain a new practice

monitor, Petitioner shall immediately cease and desist from engaging in any activity authorized by Arizona Revised Statutes, Title 32, Chapter 20, and shall notify the Compliance officer that Petitioner's license is inactive. Petitioner shall obtain a new practice monitor prior to reactivating the license.

L. The practice monitor requirement shall be stayed during periods of inactive licensure or expiration of license.

During the term of this provisional license, Petitioner is prohibited from being a signatory on, or having access to or authority over, any real estate broker's trust account or any other account which contains client funds.

At all times during which Petitioner holds an active license, or prior to activating her license, Petitioner shall post a surety bond in the amount of $2,500.

02A-031
Nichold S. Ridberg
Tempe

DATE OF ORDER: April 15, 2002

FINDINGS OF FACT: In her December 2001 application for a real estate salesperson's license, Petitioner disclosed a 2000 conviction in Scottsdale for shoplifting.

The Court entered a Motion to Suspend Prosecution allowing Petitioner to participate in a diversion program. After several requests for additional time to complete the program, Petitioner failed to complete the program. In December 2000 Petitioner pleaded guilty to shoplifting, a class 1 misdemeanor. The Court suspended imposition of sentenced and placed Petitioner on unsupervised probation for one year.

Petitioner was in high school and very young at the time of her conviction. The conviction involved a very small amount of money. The Department has no reason to believe that Petitioner has had any subsequent criminal convictions or any other civil or administrative judgments entered against her since the conviction listed above.

VIOLATIONS: Petitioner was convicted of a crime of theft and a crime of moral turpitude in violation of A.R.S. § 32-2153(B)(2). Petitioner's conduct that led to the conviction demonstrated she as not a person of honesty, truthfulness and good character, in violation of A.R.S. § 32-2153(B)(7). Petitioner violated Arizona laws that involve theft, in violation of A.R.S. § 32-2153(B)(10).

DISPOSITION: The Department shall issue Petitioner a two-year provisional real estate salesperson's license effective upon entry of this Order. Petitioner shall comply with the following terms and conditions during all periods of active and inactive statutes:

Each designated broker who wishes to employ Petitioner shall file with the Department's Compliance Officer a signed statement certifying that the broker has received and read a copy of this order and agrees to act as Petitioner's practice monitor. The practice monitor shall submit quarterly written reports to the Department's Compliance Officer which attest to Petitioner's workload as well as the quality of her services and client relationships. The practice monitor shall be responsible for reporting any behavior or conduct which violates real estate statutes. The Department shall issue Petitioner a two-year provisional real estate salesperson's license. Petitioner shall comply with the following terms and conditions during all periods of active and inactive status.

Within 10 days of entry of this Order, or prior to or concurrent with hiring and submitting any license change form and fee to the Department, whichever occurs first, each designated broker desiring to employ Petitioner shall also submit a signed statement to the Department's Compliance Officer, together with the forms and fees for Petitioner's employment by such broker, if required. This signed statement shall certify that the broker has received and read a copy of this Consent Order, agrees to act as Petitioner's practice monitor or appoints an associate broker who qualifies under the terms hereof, and agrees to comply with the following requirements;

A. The proposed practice monitor may not have been a party to any prior disciplinary action by the Department.

B. The proposed practice monitor may not be an affiliate as defined in A.R.S. § 32-2101(#), or a business associate, employee, employer, manager, partner, member, owner, co-owner, stockholder, director or officer in any business enterprise with Petitioner, and may not be a relative of, or have any other relationship with Petitioner that may create, or create the appearance of, a conflict of interest or bias.

C. An associate broker may act as practice monitor only if the associate broker is employed at the same location as Petitioner, has been appointed by the designated broker with full written authority under A.R.S. §§ 32-2151.01(G) and 32-2127, and has agreed in writing to act as practice monitor and comply with the requirements set forth herein.

D. The proposed practice monitor is subject to the review and written approval of the Compliance Officer. This written approval may be withdrawn in the sole discretion of the Compliance Officer at any time upon written notice from the compliance Officer to Petitioner and the practice monitor.

E. The practice monitor shall submit quarterly written reports to the Compliance Officer that attest to Petitioner's workload, as well as the quality of Petitioner's services and client relationships.

F. The practice monitor shall immediately submit a written report to the Compliance Officer when the practice monitor becomes aware of any behavior or conduct in which Petitioner has engaged that violate real estate statutes or rules.

G. If the practice monitor is an associate broker, the designated broker shall sign and date all reports required under this Order, noting that the designated broker has accepted and approved the associated broker's report.

H. No practice monitor shall be required if Petitioner changes to inactive status or allows the license to expire; however, Petitioner's license may not be activated until a new practice monitor complies with the terms herein.

I. In the event Petitioner changes employment, Petitioner shall immediately notify the Compliance Officer and obtain a new practice monitor who qualifies under the terms and conditions herein. The new practice monitor must qualify and be approved by the Compliance Officer prior to Petitioner's hire by the new employing broker.

J. In the event Petitioner's practice monitor is no longer eligible to act as such, or ceases to perform the duties required under the terms of this Order, or there is a new designated broker for Petitioner's existing employer, Petitioner, the practice monitor and designated broker shall immediately notify the Compliance Officer. Unless Petitioner obtains a new practice monitor who qualifies and is approved under the terms and conditions hereof, termination of Petitioner's employment shall be required within 72 hours of the time Petitioner loses the practice monitor.

K. In the event Petitioner's license becomes inactive or Petitioner fails to obtain a new practice monitor, Petitioner shall immediately cease and desist from engaging in any activity authorized by Arizona Revised Statutes, Title 32, Chapter 20, and shall notify the Compliance officer that Petitioner's license is inactive. Petitioner shall obtain a new practice monitor prior to reactivating the license.

L. The practice monitor requirement shall be stayed during periods of inactive licensure or expiration of license.

During the term of this provisional license, including any interim periods of inactive licensure, Petitioner is prohibited from being a signatory on, or having access to or authority over, any real estate broker's trust account or any other account which contains client funds.

Petitioner shall post a surety bond in the amount of $2,500.

01A-040
In the matter of the subdivision violations of David Fay, Kenai, Alaska; Mary Fay, Bouse; and Basil Bolstridge, Sterling, Alaska

DATE OF ORDER: April 2, 2002

FINDINGS OF FACT: Respondents do not presently hold and have never held real estate licenses in Arizona.

In May 1994 Respondents purchased 40 acres comprising the Development for the purposes of initially developing and selling 12 one-acre lots and thereafter developing and selling the remaining acerage.

In July 1996, Respondents filed with the Department an application for subdivision public report seeking authorization to sell lots one through 12 of the development. The Department sent Respondents a deficiency notice on or about October 15, 1995, in response to the application. Respondent failed to adequately respond to the notice. The application was incomplete and closed by the Department with no further action taken by Respondents and no public report was issued.

Despite Respondents' failure to secure the required public report or an exemption, Respondents sold and closed escrow on nine lots between April 19, 1999 and February 26, 2001.

Respondent own the three remaining lots and desire to sell them. Upon notification of il-

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legal subdivision lot sales from the Department, Respondents immediately and voluntarily discontinued all sales. Respondents have been cooperative with the Department in reaching a resolution of this matter.

Respondents maintain that the development was their first subdivision and that they retained and relied upon advice from and engineer with a consulting group to split the property in the development and ensure compliance of the development with all applicable statutes, regulations and rules.

Respondents maintain that they secured Board of Supervisors of La Paz County approval of the final plat map for lots one through 12 and the final plat map was recorded in La Paz County.

Respondents maintain that they mistakenly assumed that they had complied with the Department's Deficiency Notice and that they never received notice from the Department that their application was incomplete and closed.

Respondents maintain that they intended at all times to comply with all applicable laws, regulations and rules pertaining to developing and selling lots in the development and believed that they were in full compliance until they contacted the Department in or around January, 2000.

Respondent have filed a new application for subdivision public report covering lots one through 12 of the development which is presently pending and under review by the Department.

VIOLATIONS: Respondents by their actions are a "developer" within the meaning of A.R.S. § 32-2101(21). The development is a "subdivision" within the meaning of A.R.S. § 32-2101(54). Each of the Respondents is a "subdivider" within the meaning of A.R.S. § 32-2101(53).

The sales by Respondents were not exempt from the public report requirements pursuant to A.R.S. §§ 32-2181.01 or 2181.02. Respondents sold the nine lots without obtaining a public report from the Commissioner, and failed to furnish each prospective purchaser a copy thereof, in violation of A.R.S. § 32-2183(A) and (F).

DISPOSITION: Respondent shall cease and desist from selling, offering for sale or transferring any of the remaining lots of those lots numbered one through 12 in the development until Respondents demonstrate compliance in full with this Order, secure a public report, and comply with all applicable Arizona laws and rules.

Respondent shall cease and desist from selling, offering for sale or transferring all other lots adjoining or included in the development until Respondents secure an amended public report for those additional lots and comply with all applicable Arizona laws and rules.

Respondents shall obtain a public report from the Department covering all lots in the development before offering lots for sale and selling any lots in the development.

Respondents shall provide all purchasers of lots in the development including, without limitation, those purchasers referenced above, with a copy of the public report and shall receive a receipt.

Respondent shall offer written notice of rescission to each of the purchasers listed above.

Respondents to pay, jointly and severally, a civil penalty in the amount of $1,000.

01A-033
Gary F. Weiss
Tucson

DATE OF ORDER: April 22, 2002

FINDINGS OF FACT: Respondent was issued an original real estate broker's license in September 1998. At all times material to this matter, Respondent has owned and has been the president and designated broker of Tompkins Realty, Inc. Respondent purchased Tompkins from the prior owner and designated broker, Pat Stokoe.

After receiving a complaint from one of Tompkin's property management clients, the Department audited Tompkins' property management trust accounts.

The audit disclosed the existence of trust account shortages in the amount of $10,772; monthly reconciliations of Tompkins' property management trust accounts had not been undertaken for at least for a year prior to the audit; and the existence of numerous errors, property management irregularities and violations, including charging property management clients quarterly inspection fees based upon verbal approvals by clients or by client written approvals in Customer Service Surveys but not included in the property management agreements; failing to secure and/or retain copies of all records for the hiring and severing of former and current employees; and failing to provide property management clients written reminder notices at least 30 days prior to automatic renewal dates.

Respondent disclosed to the Department the following mitigating factors:

1. In spite of Stokoe's contractual obligation to provide Respondent management services for one year, including, without limitation, training, mentoring, the temporary ongoing services as the designated broker, and the monthly reconciliation of the property management trust accounts, Stokoe breached his contract with Respondent by failing and refusing to provide these services.
2. Respondent lacked computer software training for the corporation's property management accounts because the computer software company discontinued all business operations and failed to provide Respondent with the necessary training, maintenance and ongoing support.
3. Respondent purchased new computer software in 2000 but significant software and technical support problems immediately developed. Respondent learned that this new software was not a fully released program but was a test program. Respondent switched computer software again in November/December 2000 and has been satisfied with this software and technical support.
4. On January 26, 2001, Respondent reimbursed the property management trust accounts eliminating the shortage by withdrawing these funds from his business operating account.
5. No client incurred any loss from the temporary property management trust account shortage.
6. Reconciliations of the property management trust accounts are now done every month.
7. All property management fees and costs charged to Respondent's property management clients are now referenced in the property management agreements.
8. Respondent now retains copies of all records for the hiring and severing of former and current employees.
9. Written reminders to clients of the automatic renewal of property management agreements are mailed to each client at least 30 days in advance of any automatic renewal.
10. Respondent admits responsibility for the failure to undertake and complete monthly property management trust account reconciliations, the related shortage and that he was negligent in carrying out these responsibilities.
11. Respondent hired an experienced licensed real estate broker to provide Respondent with management support, training and mentoring and hired a bookkeeper to undertake and complete monthly property management trust account reconciliations subject to Respondent's further review.

VIOLATIONS: Respondent failed to complete monthly property management trust account reconciliations in violation of A.R.S. § 32-2151(B)(2). Respondent failed to secure and retain employment hiring and severing records in violation of A.R.S. § 32-2151.01(A). Respondent failed to include in the property management agreements all material terms in clear and unambiguous language, including terms of compensation for all services in violation of A.R.S. § 32-2173(!)(1) (a and i).

Respondent failed to provide clients with the required reminder notice at least 30 days before the automatic renewal of the property management agreement in violation of A.R.S. § 32-2173(A)(2)(a). Respondent disregarded or violated provisions of Arizona Revised Statutes, Title 32, Chapter 20 within the meaning of A.R.S. § 32-2153(A)(3). As a result of the conduct and actions referenced above and in the Findings of Fact, Respondent demonstrated negligence in the conduct of the corporation's real estate business and as the designated broker in violation of A.R.S. § 32-2153(A)(22).

Respondent failed to exercise reasonable supervision and control over the activities for which a real estate license is required of a corporation on behalf of which Respondent acts as the designated broker in violation of A.R.S. § 32-2153(A)(21). Respondent failed to protect and promote the interests of his clients and fulfill his fiduciary duties to his clients in violation of A.A.C. R4-28-1101(A).

The commissioner has jurisdiction to assess a civil penalty against Respondent of up to $1,000 per violation pursuant to A.R.S. § 32-2160.01.

DISPOSITION: Respondent is assessed a civil penalty in the amount of $3,000.,

Respondent to attend 12 hours of approved continuing education classes in any of these categories, Commissioner's Standards, Agency Law, Contract Law or Real Estate Legal Issues, within 120 days after the entry of this Order.

Respondent shall notify, in writing, each of the property management clients of the corporation within 30 days of the entry of this Order of this settlement and provide each client a copy of this Order.

01A-032
Gary Fung
Phoenix
DATE OF ORDER: April 29, 2002
FINDINGS OF FACT: In his January 2002 application for a real estate salesperson's license, Petitioner disclosed a 1999 felony conviction for solicitation to possess marijuana for sale.

Petitioner was young at the time of his conviction. He regrets his decision that resulted in the conviction. He is presently attending Arizona State University as a computer science major and is employed at his parent's restaurant.

The Department has no reason to believe Petitioner has had any subsequent criminal convictions or any other civil or administrative judgements entered against him since the conviction listed above.
VIOLATIONS: Petitioner was convicted of a felony in violation of A.R.S. § 32-2153(B)(2). He failed to demonstrate he is a person of honesty, truthfulness and good character, in violation of A.R.S. § 32-2153(B)(7).
DISPOSITION: The Department shall issue Petitioner a two-year provisional real estate salesperson's license effective upon entry of this Order subject to the following terms and conditions:
Each designated broker who wishes to employ Petitioner shall file with the Department's Compliance Officer a signed statement certifying that the broker has received and read a copy of this order and agrees to act as Petitioner's practice monitor. The practice monitor shall submit quarterly written reports to the Department's Compliance Officer which attest to Petitioner's workload as well as the quality of her services and client relationships. The practice monitor shall be responsible for reporting any behavior or conduct which violates real estate statutes. The Department shall issue Petitioner a two-year provisional real estate salesperson's license. Petitioner shall comply with the following terms and conditions during all periods of active and inactive status.

Within 10 days of entry of this Order, or prior to or concurrent with hiring and submitting any license change form and fee to the Department, whichever occurs first, each designated broker desiring to employ Petitioner shall also submit a signed statement to the Department's Compliance Officer, together with the forms and fees for Petitioner's employment by such broker, if required. This signed statement shall certify that the broker has received and read a copy of this Consent Order, agrees to act as Petitioner's practice monitor or appoints an associate broker who qualifies under the terms hereof, and agrees to comply with the following requirements;
A. The proposed practice monitor may not have been a party to any prior disciplinary action by the Department.
B. The proposed practice monitor may not be an affiliate as defined in A.R.S. § 32-2101(#), or a business associate, employee, employer, manager, partner, member, owner, co-owner, stockholder, director or officer in any business enterprise with Petitioner, and may not be a relative of, or have any other relationship with Petitioner that may create, or create the appearance of, a conflict of interest or bias.
C. An associate broker may act as practice monitor only if the associate broker is employed at the same location as Petitioner, has been appointed by the designated broker with full written authority under A.R.S. §§ 32-2151.01(G) and 32-2127, and has agreed in writing to act as practice monitor and comply with the requirements set forth herein.
D. The proposed practice monitor is subject to the review and written approval of the Compliance Officer. This written approval may be withdrawn in the sole discretion of the Compliance Officer at any time upon written notice from the compliance Officer to Petitioner and the practice monitor.
E. The practice monitor shall submit quarterly written reports to the Compliance Officer that attest to Petitioner's workload, as well as the quality of Petitioner's services and client relationships.
F. The practice monitor shall immediately submit a written report to the Compliance Officer when the practice monitor becomes aware of any behavior or conduct in which Petitioner has engaged that violate real estate statutes or rules.
G. If the practice monitor is an associate broker, the designated broker shall sign and date all reports required under this Order, noting that the designated broker has accepted and approved the associated broker's report.
H. No practice monitor shall be required if Petitioner changes to inactive status or allows the license to expire; however, Petitioner's license may not be activated until a new practice monitor complies with the terms herein.
I. In the event Petitioner changes employment, Petitioner shall immediately notify the Compliance Officer and obtain a new practice monitor who qualifies under the terms and conditions herein. The new practice monitor must qualify and be approved by the Compliance Officer prior to Petitioner's hire by the new employing broker.
J. In the event Petitioner's practice monitor is no longer eligible to act as such, or ceases to perform the duties required under the terms of this Order, or there is a new designated broker for Petitioner's existing employer, Petitioner, the practice monitor and designated broker shall immediately notify the Compliance Officer. Unless Petitioner obtains a new practice monitor who qualifies and is approved under the terms and conditions hereof, termination of Petitioner's employment shall be required within 72 hours of the time Petitioner loses the practice monitor.
K. In the event Petitioner's license becomes inactive or Petitioner fails to obtain a new practice monitor, Petitioner shall immediately cease and desist from engaging in any activity authorized by Arizona Revised Statutes, Title 32, Chapter 20, and shall notify the Compliance officer that Petitioner's license is inactive. Petitioner shall obtain a new practice monitor prior to reactivating the license.
L. The practice monitor requirement shall be stayed during periods of inactive licensure or expiration of license.

Petitioner shall also comply with the following terms and conditions for 24 consecutive months:
A. Petitioner shall completely abstain from the use of any and all alcohol, illegal drugs or controlled substances unless taken under a valid prescription and order of a medical doctor.
B. Before traveling out of town, Petitioner shall notify the Compliance Officer in writing of the date and time he intends to leave, his destination, at least one local phone number where he may be reached, and the date and time he expects to return.

02A-050
Robert L. Beebe
Snowflake
DATE OF ORDER: May 2, 2002
FINDINGS OF FACT: In his August 2000 application for a real estate salesperson's license, Respondent failed to disclose a 1996 misdemeanor battery conviction in Wyoming. He was sentenced to 36 days in the Hot Springs County Jail with credit for six days previously served, and placed on 6 months unsupervised probation with the remaining 30 days of jail time suspended contingent upon successful completion of probation.

Respondent maintains that when he filed the license application he answered all questions honestly and truthfully to the best of his knowledge at that time. He states he was not aware of the charges against him or that there was anything on his record, that he never served any related jail time or probation, but acknowledges that he did appear before the judge in the Hot Springs County Court proceeding referenced above, was represented by an attorney and paid $300 court costs.

When asked to provide certified copies of all documents relating to his conviction, Respondent failed to provide the Department with the documents and said the Court was not cooperating by failing to provide the certified documents. The Department did not encounter any difficulties in securing certified documents directly from the Court.
VIOLATIONS: Respondent's failure to disclose the conviction constitutes procuring or attempting 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). His conduct in failing to disclose his conviction in his license application does not show he is a person of honesty, truthfulness or good character within the meaning of A.R.S. § 32-2153(B)(7). Respondent failed to provide the Department with documents relating to his conviction in violation of A.R.S. §§ 32-2108(C) and 2153(A)(3).
DISPOSITION: Respondent's salespersons license shall be suspended for 90 days. Respondent to pay a civil penalty in the amount of $3,000. Respondent to attend 12 hours of approved continuing education classes in the categories of Commissioner's Standards, Agency Law, Contract Law or Real Estate Legal Issues.

02A-057
In the matter of the subdivision violations of William Lyon Southwest, Inc., an Arizona Corporation, and Willian Lyon Homes, Inc., a California Corporation.

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Scottsdale

DATE OF ORDER: May 2, 2002

FINDINGS OF FACT: William Lyon is a wholly-owned subsidiary of Willian Lyon Homes. On August 2, 2001, William Lyon entered into an option-to-purchase agreement with William Lyon Homes to purchase lots 1 through 115 in Country Place Parcel 1 and 10 from William Lyon Homes.

On December 6, 2001, a Special Order of Exemption was issued to William Lyon authorizing the conditional sales of lots 1 through 115 in the development. On February 6, 2002, an Application for Arizona subdivision public report was submitted by William Lyon to the Department for the development.

During the Department's Administrative Completeness Review of the application on February 15, 2002, the Department observed that the title report showed that lots 44 and 45 were vested in Wlyone, Inc. On the same day, the Department issued a Deficiency Notice to Security Title Agency, acting on behalf of William Lyon, requesting an explanation why lots 44 and 45 were vested in Wlyone and not in William Lyon.

On February 25, William Lyon advised the Department that lots 44 and 45 were sold to Wylone in a "model sale leaseback" program by William Lyon Homes to provide a source of financing and are leased back by William Lyon Homes.

One January 31, 2002, a deed was recorded transferring lots 44 and 45 from William Lyon Homes to William Lyon. On the same day, a deed was recorded transferring the lots from William Lyon to Wlyone.

William Lyon Homes has represented to the Department that lots 44 and 45 were sold along with all of the other model home lots that the company owns in California, Arizona and Nevada and that only lots 44 and 45 in the development were sold as an oversight without a public report.

William Lyon Homes has not, as of this date, filed an application with the Department for a public report or an exemption.

Respondents have been cooperative with the Department in this matter by promptly submitting all requested information and documentation.

VIOLATIONS: William Lyon Homes failed to obtain a public report or special order of exemption to sell lots 44 and 45 in the development prior to the sale in violation of A.R.S. §§ 32-2181(A) and 2183-(F). William Lyon failed to obtain a public report or special order of exemption to sell lots 44 and 45 in the development prior to the sale in violation of A.R.S. §§ 32-2181(A) and 2183-(F).

DISPOSITION: William Lyon Homes and William Lyon are each individually assessed a $1,000 civil penalty. Respondents represent and agree that they, along with Wlyone, shall jointly secure a public report from the Department and are prohibited from selling or transferring any lots in the development until they secure the public report.

Disclosure IDW to be held for instructors in Tucson

The Department has scheduled a third presentation of its mandatory Disclosure Instructor Development Workshop for June 28, 2002 at the Hogan School of Real Estate, 4023 E. Grant Road, in Tucson.

A map depicting the location of the school can be found on the Late-Breaking News page of the Department's web site at www.re.state.az.us.

The IDW is required for every approved real estate instructor who teaches a course that includes a significant amount of content in general disclosure topics, as well as those courses approved in the Disclosure Law category. For instance, virtually every agency, contract law, real estate legal issues and Commissioner's standards course does include such an integral, as do portions of the sales and broker prelicense courses. If you teach a course in any one of these categories, you are probably required to attend the IDW.

School administrators must notify any of their instructors who have not yet taken the IDW. After December 31, 2002, all instructors who teach a course or courses containing disclosure law must have taken this IDW or met the alternative equivalency requirement. School administrators should be diligent in notifying any instructors who must take the IDW.

The Department has decided all instructors are automatically required to attend the IDW, unless granted a waiver. Examples of courses that may qualify for the IDW waiver are bankruptcy, 1031 exchanges, fair housing, technology and forms of business structure. As a rule of thumb, however, if you are unsure if your course material includes disclosure law, you are probably not exempt from the IDW. Someone approved as a special guest speaker or one-time instructor may also qualify for the waiver. Even if your courses are Internet based, an instructor identified as teaching a course containing disclosure is required to attend the IDW.

If you believe the course or courses you teach qualify for a waiver, you should direct a waiver request to John Bechtold, Director of Education & Licensing. The request should state the reason why you do not believe any course you teach contains disclosure information, and state the general content of courses you are teaching. You may also reach Mr. Bechtold by telephone at 602-468-1414 X345.

The Arizona Real Estate Educators Association has been asked to coordinate this all-day IDW. Registration begins at 7:30 a.m. The IDW begins at 9 a.m. and ends at 4:30 p.m. The cost is $60, paid in advance, which includes a catered lunch.

Instructors who attend will receive three hours of continuing education credit in Commissioner's Rules and three hours in Real Estate Legal Issues.

This IDW is limited to 50 attendees who will be registered on a first-come, first-served bases.

The IDW will provide a comprehensive review of salient disclosure issues, case law and examples. The distinguished instructor panel members are all real estate lawyers: Michelle Lind, James Eckley, Dan Kloberdanz and Richard Mack.

You may download a registration form from the Department's web site at www.re.state.az.us. Click on "Late-Breaking News."

If you have questions regarding registration or attendance issues, please send email to Ed Ricketts at ejretal@fastq.com or call him at 602-277-4332

Licensing changes

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three dispensers:

• A red ticket if the person needs to effect a simple license change such as severing from one broker and being hired by another, or a change in residential address.

• A green ticket for simple renewals, those which do not include any changes in license information, and have no disclosures.

• A blue ticket for all other matters.

The licensee will then proceed to the red, green or blue window when his or her number is called.

The goal of the system is to expedite service to the Department's customers. Those able to use the red or green windows should spend considerably less time conducting their business.

Don't fall victim to this hoax

A cruel hoax is making the rounds. If you believe this email and do what it says, you will damage your operating system. Here's the hoax email message:

> I just had a message warning me that I may have a sleeper virus called jdbgmgr.exe infecting my address book. On checking I did indeed find it. It was sent to me by a friend when she e-mailed me some information.
>
> This virus is not detected by normal antivirus software like McAfee or Norton. It stays quiet for 14 days before damaging the system. The virus is sent automatically by the Messenger and by the address book, whether or not you sent e-mails to your contacts.
>
> 1. Go to Start, Find or Search Option
> 2. In the Files/Folder option, write the name jdbgmgr.exe
> 3. Search in your C: drive
> 4. Click "Find Now"
> 5. DO NOT OPEN IT!
> 6. Right click and delete it
> 7. Go to recycle bin and delete it from there also.
>
> If you find the virus like I did, you must contact all the people in your address book with these instructions!!

Stop! Do not delete the file. Do not send the message to all the people in your address book.

For more information about the hoax and instructions for repairing the damage caused if you follow the instructions and delete the file, please see this Microsoft web page, http://www.microsoft.com/, and calick on "Warning: Don't touch that file."

For information about virus hoaxes in general, see this McAfee page, http://dispatch.mcafee.com/, and click on "Find out more abour viruses" on the right side of the page.

Directory of Substantive Policy Statements

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Non-commercial Requests to Inspect/for Copies of Department Records (No. 12)
Description of Practice/Procedure: Availability of Department records and estimated time for production. Effective Date: June 18, 1999.

(No. 13—Repealed)

Payment of Commission after License Expiration or Transfer (No. 14)
Description of Practice/Procedure: Department's position concerning commission payment to licensee after license has expired. Effective Date: June 18, 1999.

Recognition of Industry Liaison Councils (No. 15)
Description of Practice/Procedure: The Commissioner's position concerning input and feedback from interested groups in the real estate and related industries. Effective Date: June 18, 1999.

Refund of Overpayment (No. 16)
Description of Practice/Procedure: Procedures for requesting a refund in the case of overpayment of fees. Effective Date: June 18, 1999.

Responsibility for Continuing Education (No. 17)
Description of Practice/Procedure: Clarifies requirement for retaining continuing education certificates applied for license renewal. Effective Date: June 18, 1999; revised July 7, 1999.

Stakeholder Notice List (No 18)
Description/Purpose: Procedure for being included on list of persons notified of proposed rulemaking, legislation, and other substantive issues. Effective Date: June 18, 1999.

Subject Categories for Course Approval (Continuing Education) (No. 19)
Description of Practice/Procedure: Describes the topics that fall within the various categories of mandatory continuing education classes. Effective Date: June 18, 1999.

Unlicensed Assistants (No. 20)
Description of Practice/Procedure: Department's interpretation of tasks that can be delegated to an unlicensed assistant. Effective Date: June 18, 1999; revised February 17, 2000; revised April 3, 2000.

(No. 21—Repealed)

Unlicensed Activity by a Licensee (No. 22)
Description of Practice/Procedure: The Department's position and policy on "unlicensed activity" by licensees. Effective Date: September 16, 1999.

Access to Arizona Real Estate Law Book via the World Wide Web (No. 23)
Description of Practice/Procedure: Availability of real estate laws and rules on Department's Web page via the Internet. Effective Date: December 6, 1999.

Electronic Record Keeping (No. 24)
Description of Practice/Procedure: Conditions under which brokers may be keep required records electronically. Effective Date: August 15, 2000.

(No. 25—Repealed)

Continuing Education Disability Program (No. 26)
Description of Practice/Procedure: Circumstances and procedure for taking classes by alternative methods due to a licensee's temporary or permanent disability. Effective Date: October 19, 2000.

Requests for Continuing Education Credit (No. 27)
Description of Practice/Procedure: Clarifies that classes offered for pre-license or continuing education is by licensed schools only, and how to request an individual review of real estate classes attended out-of-state.
Effective Date: October 19, 2000; revised November 8, 2001.

Auction of Real Property (No. 28)
Description of Practice/Procedure: Clarifies that although a broker's license is required to auction real property, the Department does not interpret that to preclude a broker from engaging an auctioneer to actually "chatter" at the auction and call for bids, providing certain conditions are met. Effective Date: November 28, 2001

Visit the Department's web site at
www.re.state.az.us
where you'll find a wealth of
information of interest to
real estate professionals
and consumers.

What is broker's right to receive commissions?

By Thomas A. Stoops
Reprinted from the May 2002 issue of the Arizona Journal of Real Estate & Business *with permission.*

While the real estate community in general has become far more sophisticated regarding an agent's legal responsibilities in transactions, it has been my observation that this increase in legal sophistication has come at the cost of a reduced focus on the basic right of agent to receive real estate commissions.

Requirements of a written listing agreement

Most licensees recognize that in order to have an enforceable listing agreement for the payment of a commission, that agreement must be in writing.

Obviously, it is advisable to have a separate written listing contract, however, escrow instructions signed by the seller providing the specifics of the obligation to pay a commission may be sufficient to satisfy the statute of frauds. *Realty Exchange Corporation v. Cadillac Land and Development Company*, 13 Ariz.App. 232, 475 P.2d 522 (App. 1970). Moreover, because the listing agreement is a contract for services, not a contract for the sale of real property, the signature of a single spouse will suffice to bind the community. *Phoenix Title and Trust Co. v. Grimes*, 101 Ariz. 182, 416 P.2d 979 (1976).

Even where a listing agreement would otherwise meet the statute of frauds, the courts have held that the failure of such listing agreement to comply with the Arizona Department of Real Estate Commissioner's Rules is fatal to the enforceability of the contract. (See *Red Carpet-Barry & Associates, Inc. v. Apex Associates, Inc.*, 130 Ariz. 302, 635 P.2d 1224 (App. 1981) (Listing agreement not enforceable because it had no definite expiration date.) These requirements have now been incorporated into statutory provisions of A.R.S. § 32-2151.02 (all real estate sales or rental agreements, and all buyer's broker employment agreements shall:

- Be written in a clear and unambiguous language;
- Fully set forth all material terms;
- Have a definite duration or expiration date showing dates of inception and expiration; and
- Signed by all parties to the agreement.)

Surprisingly, although the requirements for valid listing agreements are quite stringent, the statute of frauds does not even apply to an oral contract between brokers to share a commission. *Natter v. Bechtel*, 6 Ariz.App. 501,433 P.2d 993 (App. 1967).

When is the commission earned?

Assuming a standard exclusive listing agreement, the broker earns his commission when the buyer and the seller enter into a purchase contract, even if the parties mutually rescind the purchase contract. *Campbell v. Mahany*, 127 Ariz. 332,620 P.2d 711 (App. 1980). There is a common misconception that the transaction must close escrow in order for the broker to be entitled to receive a commission. It does not matter that the buyer defaults under the purchase contract. Demand v. Foley, 11 Ariz..App. 267, 463 P.2d 851 (App. 1970). Nor does it matter that the seller refuses or is unable to honor the purchase contract. *Bass Investment Co. v. Banner Realty, Inc.*, 103 Ariz. 75, 436 P.2d 894 (1968).

The broker will also earn his commission where an offer is presented to the seller which is contingency free for the full list price, even where the seller declines to accept such contract. However, even where the offer on the property is for the full amount of the list price, a broker is not entitled to a commission where the offer is subject to contingencies and the seller refuses the contract. *Timmer v. Ludtke*, 105 Ariz. 260, 462 P.2d 809 (1969) (Broker had not earned his commission by presentation of an offer contingent upon the buyer obtaining a "new mortgage to the buyer's satisfaction." Neither is a broker entitled to commissions where the terms of the sale were conditioned upon events which never occurred. *Diamond v. Haydis*, 88 Ariz. 326, 356 P.2d 643 (1960). These cases dealing with the effect of contract contingencies are very important because most of the standard form agreements have numerous contingencies the buyer may take advantage of in order to cancel the contract. If that occurs, the broker is not entitled to receive his commission. However, as noted above, once the contingencies have been removed (or the contingency periods have passed) the broker is entitled to receive commissions, even if the transaction does not close or even if the parties mutually agree to cancel the agreement.

Where this is an exclusive listing agreement, the broker need not demonstrate that the broker was the "procuring cause of the sale," even where the seller of the property finds the buyer by himself. *J.D. Land Co. v. Killian*, 158 Ariz. 210, 762 P.2d 124 (App. 1988) (The broker with an exclusive listing was entitled to the full commission where the sellers executed a purchase contract before the listing expired, even though the broker did not procure the buyers and the sale closed six months after the listing expired.)

Moreover, if the seller transfers the property to another party within the exclusive listing period, even where such transfer does not technically constitute a sale, it does constitute a withdrawal of the property from the market which entitles the broker to receive the full commission on the transaction. *Larson-Hegstrom & Associates, Inc. v. Jeffries*, 145 Ariz. 329, 701 P.2d 587 (App. 1985).

A broker who breaches his fiduciary duty to his principal is not entitled to receive a commission. *Coldwell Banker Commercial Group, Inc. v. Camelback Office Park*, 156 Ariz. 226, 751, P.2d 542 (1988). There are cases holding that failure to disclose dual agency deprives the broker of commissions even where there is no damage to the principal arising from the nondisclosure.

Obviously, there mere fact that the broker has the right to sue for a commission in a given situation does not mean that it would be wise for the broker to do so. Many considerations, including the potential for countersuits for professional liability and the cost of litigation should be taken into account. Nonetheless, it is critically important that brokers know what their rights are with regard to the receipt of a commission so that an appropriate judgment call may be made in an individual case.

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Disclosure Q&A

Continued from page 1

in Tucson (See story on page 10). For those who have legitimate conflicts and are unable to attend any of the IDWs, and for new instructors, the Department intends to require an alternative approval method yet to be determined.

Here are questions most frequently asked about the new CE requirement:

Q. When do students have to begin to take the new Disclosure course?
A. The effective date for the new course is July 1, 2002.

Q. Do I now have to take 27 hours?
A. No. The new course uses three hours of the current nine elective hours. The total of renewal hours remains at 24.

Q. When will schools begin offering Disclosure courses?
A. Schools may offer Disclosure courses now if they wish. The Department opened its doors to receiving applications for Disclosure course approval effective March 21, 2002. Schools were advised they could either apply for new course approvals for Disclosure, or "convert" a current approved course (assuming it qualifies) to Disclosure. It is anticipated Disclosure courses will soon be available *[They already are at some schools. Ed.]*

Q. My license expires before July 1. Do I have to take a Disclosure course if I don't want to or if it is not conveniently available?
A. No. The 24 renewal hours, for someone whose expiration date is prior to July 1, include only these five required courses: Agency, Contract Law, Fair Housing, Commissioner's Rules and Real Estate Legal Issues.

Q. May a course be approved for both Disclosure and some other category? For instance, if a school has a course approved for Real Estate Legal Issues that is entirely disclosure law oriented, can that course be approved for both Real Estate Legal Issues and Disclosure Law?
A. No, and no. The Department will approve a course in only one category at a time regardless of the fact that its content could otherwise easily qualify in more than one category.

Q. What if I take a disclosure course in May that is approved for Real Estate Legal Issues, and I somehow end up taking the same course again in July, after it has been re-categorized as Disclosure? May I use the course twice in that very unlikely scenario?
A. No. You cannot take the same course two times and receive credit for it twice, even if it is offered as a different course number.

Q. My license expires June 30, 2002. If I take a Disclosure course in June and timely renew my license, can I receive Disclosure credit for the course?
A. Yes. Disclosure credit will be given for Disclosure courses taken to timely renew a license that expires prior to July 1, 2002.

Q. My license expires in October 2002, but I have already taken my 24 hours of continuing education at one of those great "renewathons." Do I now also have to take a Disclosure course? That seems unfair.
A. No, you're in luck. If the renewal requirements change during your 24-month license period, the law allows you to choose between the original and the new renewal rquirements. A.A.C. R4-28-402(A)(5) reads:
"If any change in the continuing education course requirements falls within a renewal applicant's license period, the renewal applicant may fulfill the continuing education requirements by satisfying the requirements in effect at the beginning or the end of the license period."

Q. What do I do if my license expires in July, and I am going to be out of the state from June 1 until August? I have already completed my CE and want to send in the renewal. Do I need a Disclosure course?
A. No. You may satisfy the CE requirements in effect at either the beginning or the end of your license period. See A.A.C. R4-28-402(A)(5) quoted above.

Q. I absolutely think this new Disclosure requirement is the height of nonsense. I want to put off taking it as long as I can. My license expires in May 2002. I will renew in May. Do I have to take the Disclosure course in my next 24-month license period?
A. Although technically you may beat the system under current rules by not having to take the course until your license period that begins June 2004, the Disclosure course is meant to provide a concentrated dose of disclosure-related law issues to licensees to enable them to better serve the buying and selling public. You should take the course, even if you might technically be able to avoid it for an additional two years. Watch for rule changes that might affect this situation.

Q. I understand that a person who is newly licensed after July 1, 2002, must take the Disclosure course. But what about someone who is new licensed in June?
A. You just identified the cut-off under current rules. The person licensed in June does not have to take the course for renewal in June 2004.

Q. My license is inactive. It will expire June 30. I always go over the expiration date because I can never seem to find time to get my CE classes in before then. If I take my CE courses after expiration of my license, do I need to take the Disclosure course?
A. It doesn't matter whether you are active, inactive or expired when you take your CE courses. What matters is your license period.

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Can changing employers cost you commissions?

By Stephanie M. Wilson
Reprinted from the May 2002 issue of the Arizona Journal of Real Estate & Business *with permission.*

Real estate sales agents switch real estate companies all the time. Often, the change occurs while escrows are pending. If you are like most real estate agents, you expect to receive a commission check from that transaction even though you moved to a new real estate company. However, have you ever considered you have no right to demand that the title company pay you the commission, even if there are instructions to pay you the commission? A recent Arizona Court of Appeals Division Two case, *Sherman v. First American Title Insurance Co.*, 365 Ariz. Adv. Rep. 28 (2002), addressed this issue. The court held the real estate salesperson, Laura Sherman, had no cause of action against the title company who, instead of paying her the commissions, as previously instructed, paid the commission directly to her former broker who unilaterally amended the escrow instructions.

Case Facts

Sherman was a real estate salesperson employed by All Pros L.L.C., dba Re/Max All Pros. Sherman was the salesperson on five residential transactions while employed by All Pros. All Pros' broker/owner originally instructed First American Title, Inc., and Fidelity National Title Agency, Inc., the escrow agents for the transactions, to make the commission checks payable directly to Sherman. However, before escrow closed, Sherman left All Pros. All Pros' broker amended the instructions and directed the title companies to make the commission checks payable directly to All Pros, and both title companies paid the broker without Sherman's consent. When Sherman did not receive any commissions for these transactions, she sued All Pros and its designated broker, and the title companies. For the reasons explained below, the Court of Appeals affirmed the trial court's decision to grant summary judgment in favor of the title companies.

The salesperson's arguments

Sherman made three different arguments for her contention the title companies could not change the escrow instructions without her consent.

1. Third-Party Beneficiary. Sherman first argued she was a third-party beneficiary of the broker's original escrow instructions to the title companies, and therefore, the broker could not amend the escrow instructions without her consent. The Court of Appeals held that for a person to recover as a third-party beneficiary in Arizona, the contracting parties, here the broker and the title companies, must intend to directly benefit that person and must indicate that intention in the contract itself. Plus, it must appear the parties intended to recognize this person as the primary party in interest. The Court of Appeals stated it did not appear that All Pros' broker and the title companies intended Sherman to be the primary party in interest of the original escrow instructions.

The escrow instructions to the title companies directed them to pay Sherman all of the real estate broker's commissions due at the close of escrow, but that all commission checks were to be delivered to All Pros and the sales associates were not authorized to pick up checks or have their checks delivered to them individually. The Court of Appeals held that this restrictive provision in the escrow instructions not only conformed to, but was required by the relevant Arizona statutes, including A.R.S. §§ 32-2101, 32-2155 and 32-2153.

A.R.S. § 32-2101(46) defines a real estate broker as a person other than a salesperson, who engages in real estate transactions for compensation. A.R.S. § 32-2155(A) states a real estate salesperson may accept compensation only from the legally licensed broker from whom the salesperson is licensed. The court found A.R.S. § 32-2155 flatly prohibits a real estate salesperson from accepting commissions from anyone but the broker. The court also relied on A.R.S. § 32-2153(A)(7) which provides for suspension or revocation of a salesperson's license for accepting compensation from someone other than the licensed broker to whom the salesperson is licensed. Applying these statutes and applicable Arizona case law, the Court of Appeals held Sherman had no right to look to the title companies for payment.

2. Assignment. Sherman's next argument was the original escrow instructions amounted to an assignment of the broker's commissions to her. The court rejected this argument because the escrow instructions did not contain words relating to any assignment. There was no evidence to suggest the original escrow instructions were intended to assign the broker's commissions to Sherman. Further, even if Sherman was an assignee, her cause of action would lie not against the title companies, but rather against those obligated under the sales contracts to pay the broker's commissions.

3. Estoppel. Sherman also argued she relied upon the title companies' practice of making commission checks payable to salespersons, and thus, the title companies were estopped from contending A.R.S. § 32-2155 barred her claim for the commissions. The court held that a claim for estoppel not only required Sherman to prove she relied upon the title companies' conduct, but that as a result of such reliance, she changed her position for the worse. The court ruled there was no evidence to support this argument.

In sum, the court held the title companies acted properly according to Arizona law by following the amended escrow instructions of Sherman's previous broker and paying the commissions directly to All Pros.

Conclusion

What does this mean for you, the salesperson, who may during your career switch real estate companies when escrows are pending? You need to remember that under Arizona law, real estate salespersons can only be paid commissions from their broker. Your right to collect a commission is not based on any agreement with a title company, but based on your agreement with your broker. It is very common for real estate agents to switch real estate companies while escrows are pending. As this case demonstrates, a salesperson cannot rely on the original escrow instructions to receive payment directly from the title company. You will need to address this issue with your broker prior to leaving the company, and in fact, this issue should be addressed when you begin working for a real estate company.

The result of this case may seem

Continued on next page

A brief history of real estate from 1066 until last week

We receive many phone calls from people who are not licensees. Some are strange, some are stranger, and one was the strangest: "I've gotta do this paper so would you tell me the history of real estate, I mean, like, uh, when did it all start?"

We asked the young caller if she was familiar with the Internet's "Google" search engine (www.google.com). She was not. We suggested that she visit Google and enter "history of real estate," with the quotation marks, as the search term.

Curious to see exactly what that search might produce, we tried it and were pleasantly surprised. The fifth item in the list of results took us to the World Wide Legal Information Association in Victoria, British Columbia, and a page titled, "History of Real Estate Law: Old English Landholding System." The page is found at http://wwlia.org/rehist1.htm

It was, indeed, what the young caller was looking for. We thought you might find it interesting, too, so we've reprinted it here with permission.

* * *

English real-estate law was imported, through colonization, into the earlier forms of law in the U.S.A., Canada, Australia and New Zealand. Many of these states, or their territories, have since modified this historical law, to varying degrees. A study of the old feudal land system of England provides us with an invaluable glimpse of legal history regulating the most valuable asset of them all: land. In medieval times, land was the sole form of wealth.

Land ownership in ancient England, as with most objects, depended primarily on possession. You had it, you owned it. You wanted it, you fought for it. You found it, you kept it. There were no courts or police force ready to recognize or enforce "legal rights" as we know them today.

All this changed with the conquest of England in 1066 by the Norman conquest. William decreed that he owned all of the land in England by right of conquest. Not one acre of England was to be exempted from this massive expropriation. This sudden vacuum of privately-held land was promptly filled by a variety of huge land grants given by the new King to either his Norman officers or to those of the English who were ready to recognize him as king.

The underlying principle of the system was that nobody owned land but the king. The expressions dominion directum and dominion utile are often used to describe the relative ownership of king and lords; the former as landlord the latter as tenant.

This represents a significant difference between real estate and chattels. Chattels can be owned outright. It can also be contrasted with those countries that have an allodial system (absolute ownership of land). Even today, in those countries that have inherited the tenurial system, all land belongs to the Crown; persons only own an estate in the land.

The device used by the king to control and administer his land was that of tenure. Tenure was the key component of the feudal system. The king struck a bargain with a lord for a large chunk of land. The lords that held their tenure directly from the king were called tenants-in-chief or in capite.

After the conquest of 1066, it was this group of persons who formed the basis of English aristocracy and began, by the process of subletting the king's land, the implementation of the feudal system. A lord would contract with commoners, to whom he would subgrant the exclusive possession and use of part of the royal tenure in exchange for goods or services. This subdivision of the king's land was known as *subinfeudation* and a long chain of tenure took root, with the king always being at the head of the chain. Significant rules of feudal law relating to the rights and obligations of lords and tenants can be found in the 1215 Magna Carta.

The tenures granted by the king and lords were exchanged for a wide variety of goods or services such as Knight service (the tenant agreeing to serve as a knight in the king or lord's army) or "free and common socage", which referred to service or goods other than those military. A good example is the provision of a certain amount of food from a tenant's annual crop. Religious bodies could also hold land from a lord, in exchange for prayers; this was called "frankalmoigne" or "free alms."

Tenure also implied a series of incidental obligations. A tenant was required to take an oath of "fidelity" to the lord. This solemn ceremony formed the basis for the legal relationship between the lord and the tenant. The lord was entitled to emergency taxes when for example, he was kidnapped, to pay the ransom. The lord was allowed to insist from a tenant's eldest son, as heir of the tenure, on a special estate tax called "relief" to effect the transfer of responsibilities. If the tenant died with an infant son as heir, the land went into wardship. If the heir was female, the lord could veto the marriage of the woman. See the text of the 1215 Magna Carta for more on these incidents.

The most important of the incidents is the concept of "escheat" which allowed the land to revert back to the lord. There were two causes for escheat. The first was the death without heirs of the tenant. The second was the conviction of the tenant of a felony. The loss of one's land, not only for oneself but also for one's heirs, led to a cruel and unusual punishment called peine forte et dure (see discussion in The Law's Hall of Horrors at http://www.duhaime.org/horror.htm). A person pleading guilty to a felony lost his land to the lord. But if he died without a plea, the next of kin remained eligible to claim the property by paying relief as discussed above.

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Commissions

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harsh in light of the customary practices, but it is important to remember Arizona statutes specifically require only the broker can be paid a commission. Therefore, title companies must follow the broker's escrow instructions and cannot pay commissions directly to a real estate salesperson who is no longer with the same real estate company when the transaction began. If you want to protect yourself, you must take steps to ensure you have addressed this issue with your broker prior to switching real estate companies.

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Brief history

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The system changed somewhat in 1290, when the Statute Quia Emptores was passed to prohibit further subinfeudation and allowing tenants to sell their rights without requiring the prior consent of the lord. From this point on, the number of tenures was frozen except that the king was exempt from the Statute and he could grant additional tenures. Eventually, incidents were prohibited and socage of all kind were eliminated and replaced only by free and common variety.

Tenures were of a variety of duration known as "estates":

• The fee simple estate was the most extensive and allowed the tenant to sell or to convey by will or be transferred to the tenant's heir if he died intestate. In modern law, almost all land is held in fee simple and this is as close as one can get to absolute ownership in common law.

• Fee tail estate meant that the tenure could only be transferred to a lineal descendant. If there were no lineal descendants upon the death of the tenant, the land reverted back to the lord.

• The life estate was granted only for the life of the tenant, after which it reverted automatically to the lord.

It was in this context that the British began their dominion over the seas and their explorations which led to the modern nations of Australia, Canada, New Zealand and the United States of America. To a varying degree, the laws of these countries part company with the old English land system and on different dates. Although imposed on the colonies to start with, colonial laws quickly changed the essence of it such that the laws of all these countries are similar only to the extent of their origin in old English land-ownership law. Major legislative changes in England in 1926 did not affect the law of many former colonies who, as separate states, had already accepted or rejected remnants of old English land ownership law.

But one aspect that does remain is that land titles in the older British colonies, can usually be traced back to the point of ownership by the British sovereign.

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