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On-line Edition

Governor signs 1997 Real Estate Omnibus Bill

Legislation streamlines public report process, decriminalizes violations

Senate Bill 1133, the 1997 Real Estate Omnibus Bill, which becomes effective July 21, 1997, makes significant changes to Arizona real estate statutes. Other legislation affects licensees, as well.

For instance:

- A developer of an improved lot subdivision or unsubdivided land may submit a complete public report to the Department and have it approved within 15 days.
- It is no longer a felony to fail to renew your license on time.
- Applicants for an original real estate salesperson's license must complete a six-hour continuing education contract writing course before they can activate their license.
- Buyer's broker employment agreements must be in writing and contain the same information as a listing agreement.
- No Arizona state agency may disclose a licensee's home address and telephone number unless that is the only information of record (House Bill 2399).

To learn how to obtain copies of all of the bills affecting real estate licensees, see the end of this article. The following is a summary of the changes.

ADMINISTRATIVE PROVISIONS

A.R.S. § 32-2108(A)
Gives the Department the authority to request a Superior Court to order a person to comply with a Department subpoena.

A.R.S. § 32-2108(B)
Specifically authorizes the Commissioner to establish a certification and enforcement unit and authorizes the unit to have access to the Arizona Department of Public Safety criminal justice computer system.

A.R.S. § 32-2136(A), (B) and (C)
Clarifies that the Department may not charge a fee for a broker audit clinic. It also specifies the subject matter to be taught in a broker audit clinic, provides for clinics which may be designed to address property management activities, sales activities or both. It requires a person who becomes a designated broker to attend a broker audit clinic within 90 days after becoming a designated broker, unless the broker has attended an audit clinic during the broker's current licensing period, *and requires all designated real estate brokers* (but not associate brokers) to attend an audit clinic once during every four period after initial attendance.

A.R.S. § 32-2152(B)
Prohibits the Commissioner from entertaining complaints regarding commission disputes [previously prohibited by Commissioner's Rule A.A.C. R4-28-701(B)].

PROVISIONS AFFECTING LICENSEES

A.R.S. § 32-2121(A)(1)
The amendment to this license exemption replaces "officer" of a corporation with "a person exercising control over the corporation" when exempting someone dealing in the entity's own property. The exemption will also no longer apply to someone acting on behalf of an entity when the preponderance of that person's activities would otherwise require licensure.

A.R.S. § 32-2121(A)(9)(b)
Provides a licensing exemption for persons employed by a designated broker whose duties are limited to soliciting interest in engaging the services of a

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Does your advertising comply with FTC, RESPA, Arizona law and rules?

The Federal Trade Commission has alerted the Department that it is receiving complaints about real estate advertising which violates provisions of Regulation Z, the Truth in Lending Act.

Real estate brokers and mortgage brokers should review their advertising to ensure that it is in compliance with the Act. Regulation Z requires certain disclosures whenever one of the following trigger terms are used in an advertisement:

- Amount or percent of down payment.
- Number of payments or term of loan.
- Amount of payment.
- Amount of finance charge, including the word "points."

When any above the above terms are included in an advertisement, the following must also be disclosed:

- Amount or percent of down payment.
- Terms of repayment.
- Annual Percentage Rate (APR).

Regulation Z also requires that the APR must be displayed in at least the

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licensee or gathering demographic information for use by a licensee.

Note: Although the language of this statute, and that of several others, refers to "persons employed by a designated broker," the Department maintains that persons can be employed only by an employing broker, and that a designated broker supervises employees of an employing broker, but does not employ them. The Department will attempt to correct the language of affected statutes in a bill to be introduced during the 1998 legislative session.

A.R.S. § 32-2121(A)(12)
Provides a licensing exemption for a person who offers to sell or lease property that constitutes a security (as defined in A.R.S. § 44-1801) if it is sold in compliance with the Arizona security laws, and the person is a registered securities dealer or salesperson.

A.R.S. § 32-2121(A)(13)
Provides a licensing exemption for a person who manages a hotel, motel or recreational vehicle park. The exemption does not pertain to membership campgrounds or mobile home parks.

A.R.S. § 32-2121(A)(14)
Provides a licensing exemption for a person who, on behalf of another, solicits, arranges or accepts reservations or money, or both, for occupancies of 31 or fewer days in a dwelling unit in a common interest development.

A.R.S. § 32-2123(B)(7)
Applicants for a license issued by the Department are required to furnish their Social Security Number. This new provision permits a person who does not have a Social Security Number (for bona fide religious convictions or other bona fide reasons documented to the satisfaction of the Commissioner) to use a federal tax identification number in lieu of a Social Security Number.

A.R.S. § 32-2124(A)(4) and (5)
Includes cemetery and membership camping license applicants among those who are disqualified from obtaining a license issued by the Department if they have been denied a license in the past year, or had a license revoked in the past two years, pursuant to Arizona statutes or a similar statute in any other state.

A.R.S. § 32-2124(M)
Prohibits the Commissioner from issuing a license to a person convicted of a felony and who is currently incarcerated, paroled or under community supervision, or on probation as a result of the conviction.

A.R.S. § 32-2125(B)
Provides that a real estate, cemetery or membership camping license will be issued to a professional corporation or professional limited liability company only if its shareholders, members or managers hold active and appropriate licenses.

A.R.S. § 32-2125(F)
Clarifies that license fees and education credits are not required for entity licenses.

A.R.S. § 32-2125(G)
This new statute incorporates existing requirements of the Commissioner's Rules for notifying the Department within 10 days when a corporation, limited liability company or partnership makes changes in its officers, directors, members, managers or partners or any change in control of the entity; any amendment to its articles of incorporation, organization or partnership agreement; and, if a corporation, when a person becomes an owner of 10 percent or more of the stock of the corporation.

A.R.S. § 32-2125.01(B)
Allows real estate associate brokers and salespersons, through their employing broker, to engage in cemetery or membership camping sales activities without being separately licensed. However, a licensee may not be employed by more than one employing broker.

A.R.S. § 32-2125.01(C)
Allows designated or employing real estate brokers to engage in cemetery or membership camping sales activities and allows them to employ cemetery and membership camping salespersons and associate brokers without being separately licensed as a cemetery or membership camping broker or salesperson.

See note at A.R.S. § 32-2121(A)(9)(b) in this summary.

A.R.S. § 32-2126(A)
Provides for automatic severance of licensed employees if an employing broker abandons the broker's office.

A.R.S. § 32-2130(C)
Provides that the license period for a late renewal license commences the day after the expiration date of the expired license.

A.R.S. § 32-2133(A)
Authorizes the Commissioner to issue a temporary broker's license to a licensed or unlicensed person for the purpose of winding up the existing or pending business of a deceased or incapacitated licensed broker.

A.R.S. § 32-2135(B)
Real estate schools will now issue certificates of attendance using a school form rather than a Department form. An applicant for license renewal will no longer be required to submit certificates of attendance; instead, the applicant must certify to the Department (under penalty of perjury) that he or she has attended the required number of hours of course of study in the subjects required for renewal. The applicant must retain the certificates of attendance issued by the school and used for renewal for five years.

A.R.S. § 32-2151.01(A)
Employing brokers must keep employment records, including copies of employment status, for all current and former employees for at least five years after the date of termination of employment. Formerly, the records were to be kept by the designated broker.

A.R.S. § 32-2151.02(A)
Buyer's broker employment agreements must be in writing and contain the same information as a listing agreement (seller's broker employment agreement).
The Department interprets this amendment to mean that if a buyer's broker relationship is established, an "agreement" has been reached, and the agreement must:
(1) Be written in clear and unambigous language.
(2) Fully set forth all material terms.
(3) Have a definite duration or expiration date, showing dates of inception and expiration.
(4) Be signed by all parties to the agreement.

The question has be raised regarding situation where a buyer's broker relationship is diclosed in the sales contract or other documentation.

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Jerry Holt

News From The Commissioner

The detailed summary of the 1997 Real Estate Omnibus Bill, which begins on page 1, came close to never being written. That's because the bill barely survived its tortuous trek through the Legislature.

The much-needed changes to many of our real estate statutes began life as Senate Bill 1256, but died in the Senate Commerce and Economic Development Committee on February 20.

Senator Carol Springer (R-Prescott), who had a special interest in the bill, resurrected it as Senate Bill 1231 in the Senate Government Reform Committee on February 21 but added amendments defining "acting in concert" and "contiguous" that would have severely hampered the Department and the Office of the Attorney General in prosecuting illegal subdivision activities. S.B. 1231 was then passed by the Senate.

The bill was then assigned to the House Government Reform/State's Rights Committee and was passed out on a 10-0 vote (with one member absent) with an amendment which struck Senator Springer's "acting in concert" and "contiguous" definitions. A floor amendment reinserted Senator Springer's definitions and the bill passed the House by a vote of 31-29. Upon reconsideration (a second vote), the measure was killed by a 30-30 tie vote.

On Saturday, April 19, Senator Springer reintroduced the bill as a striker amendment to Senate Bill 1133. Again, the problem was the definition of "acting in concert." For purposes of prosecution, it would have required the Department and its attorneys to read the minds of illegal subdividers, or uncover a written record of their plans to thwart subdivision statutes. A second provision would have redefined "barrier" and "contiguous" to mean that any parcel of land in Arizona traversed by an old mining dirt road, a jeep track — or even (I was advised) an animal trail — would become two parcels, allowing the owner to divide the parcel into 10 parcels instead of the five presently allowed by statute before triggering the need for a public report prior to offering the lots for sale. Ned Warren clones would have flocked to Arizona from all over the country.

Had the bill passed containing the ominous amendments, the Department would have most likely terminated its investigation of 17 illegal subdivision cases which were pending, and the Attorney General's office would have been hard-pressed to prosecute any further cases involving illegal subdivisions.

After a great deal of persuasion, Senator Springer agreed to accept a revised definition of "acting in concert" in a way that was acceptable to the Department and the bill passed out of the Government Reform/State's Rights Committee. But the problem with the definition of "contiguous" remained. When the bill reached the House, Representative Jake Flake introduced an amendment in which the definition of "contiguous" would not aid illegal subdividers, and the bill passed in the House by a 47-13 vote, then went back to the Senate for concurrence where it passed by a vote of 24-4.

Strangely, except for a casual allusion to the legislation by Howard Fischer on Channel 8's "Horizon" program, all of this went unreported by the media. Perhaps it was too complex to make interesting news. We came very close to having a subdivision statute disaster on our hands and having to torpedo our own Omnibus Real Estate Bill.

But, thankfully, that didn't happen. Thanks to Senator Springer's willingness to work with us, we have a far better body of real estate law and we can still hold the line against the Ned Warrens of the world.

I urge you to read the summary of the legislation carefully. It covers every change in the statutes as well as amended and new legislation which, although not in the body of the real estate statutes, will also affect the way in which you conduct business.

I believe you'll find these parts of the bill to be of particular interest:

• Improved lot subdividers and developers of unsubdivided land may now prepare their own public reports and submit them to the Department. The Department must, within 15 days, certify the report as being administratively complete or deny the application. If certified, a registration number will be issued, and the developer may begin selling the property. The Department reserves the right to later do a complete examination of the report and the property, and has the power to suspend the public report if serious problems are found.

• Newly-licensed real estate salespersons must complete the six-hour contract writing course *before* they may activate their license. Previously, new licensees had 90 days *after* they were licensed in which to complete the course.

•The course may be taken in conjunction with the required 90 hours of prelicensure education and before a person applies for a license. The course may be used as six hours of credit towards the 24 hours of continuing education required for license renewal. Real estate statutes and Commissioner's Rules do not address the issue of granting continuing education credit for a course taken before licensure. The Department will publish a Commissioner's Rule in the future which will clarify the Department's authority to grant continuing education credit for the Contract Writing Course (but no other continuing education course) if taken before licensure.

• The Commissioner is prohibited from issuing a license to an individual convicted of a felony and who is currently incarcerated, paroled or under community supervision, or on probation as a result of the conviction. (Hmmm…seems reasonable.)

• Licensees are no longer required to submit continuing education certificates with renewal applications. Instead, the applicant must certify, under penalty of perjury, that the courses required for renewal have been completed. The real estate school will print and issue continuing education certificates of attendance. The licensee then must retain the certificates for five years for Department audit purposes.

• Many statutes have been "decriminalized." For instance, it is no longer a felony to fail to renew your license on time.

At the suggestion of many real estate professionals who do not deal in residential property, I have issued a Substantive Policy Statement that will interest licensees who specialize in such fields as commercial real estate, farm and ranch sales and business brokerage. Once you have taken at least *one course* in fair housing, you may then petition the Commissioner for a waiver of this requirement in a letter stating:

• Your business is exclusively operated in a specialty field in which fair housing is not an issue.

• You propose a substitute course more applicable to your real estate activities.

• You are enclosing proof (or have provided proof) of having attended a Department-approved fair housing course prior to the petition.

Finally, according to a provision in House Bill 2399 which contained an emergency clause and therefore became Arizona law on April 4, 1997 when the Governor signed it, the Department may not disclose a licensee's home address and telephone number unless no other information (a business address and phone number) are on record. Previously, licensees had to request, for good cause, that this information be kept confidential. The Department must now make the home address and telephone number of inactive licensees available to the public, but the request for such information must be in writing so that there is a record of "who wants to know."

To say the least, the 1997 legislative session provided, for me, several "firing-line" lessons on keeping one's "cool," shuttle diplomacy (I shuttled myself across town more times that I can count — and that was just the first day!), urgent (really urgent) hallway meetings, phone tag, and how to totally articulate your position including the background, potential horror stories if you don't get your way and all the good things that will happen if you *do* get your way, all in the course of an elevator ride which began on the ground floor of the Arizona Senate Wing at the Capitol and ended when the doors opened on the third floor. Having done this several times, I finally got it down pat and used it successfully in the House Wing as well.

Remember, Senate Bill 1133 becomes Arizona law on July 21, 1997. Be ready!

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1997 Schedule of Broker Audit Clinics

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

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

The following is the schedule of Clinics to be offered in Phoenix and Tucson during the remainder of 1997. Additional clinics may be scheduled from time to time at other locations in Phoenix and in rural areas.

PHOENIX	TUCSON
Industrial Commission Auditorium	State Office Building
800 W. Washington	400 W. Congress
	Room158
Noon - 3 p.m.	**8:30 a.m. - 11:30 a.m.**
June 27	June 26
July 18	July 17
August 29	August 28
September 19	September 18
October 24	October 23
November 21	November 20
December 19	December 18

THE *BULLETIN* WAS NOT PUBLISHED IN APRIL

Due to scheduling problems, we did not publish an April issue.
Subscribers will receive one extra issue at no charge.

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

ADMINISTRATIVE ACTIONS

REVOCATIONS

H-1843
Steve A. Veresvary, dba Accent Realty Co.
Phoenix

DATE OF ORDER: March 4, 1997

FINDINGS OF FACT: Respondent was origInally licensed as a real estate broker in July 1979. That license expired July 31, 1996.

COUNT I

Carl B. Johnston, a licensed California real estate broker, was the owner of an undeveloped commercial property at Sweetwater and Cave Creek Roads in Phoenix. Johnston was contacted by Respondent late in 1989 to list the property for sale. In January 1990, Johnston sent a letter to Respondent in which he agreed to pay a 7 percent commission if Respondent sold the property. Johnston testified that by writing the letter he intended to provide Respondent with an open listing for the property and that he regarded Respondent to be acting as his agent. The letter did not contain a definite duration or expiration for the listing period and was not signed by Respondent.

On November 21, 1994, Respondent submitted an offer from A.L.H. Holding Company/Cactus (ALH) for the purchase of the property for $120,000 with $20,000 cash down, and a 10 percent commission to Respondent. On November 25, Johnston submitted a written counteroffer for a $160,000 purchase price with $40,000 down. The counteroffer was rejected.

On December 2, 1994, Clifford Fugate, a licensed Arizona salesperson employed by Symida Capital Corp., prepared an offer to Respondent to purchase the property on behalf of Sweetwater One, L.L.C. The offer included a cash purchase price of $162,000 with a $9.500 commission to be paid to Symida by Johnson on close of escrow. Sweetwater was formed as part of a joint venture. Bills Carpets was a partner. Respondent sent the Sweetwater offer to Johnson, and on December 8, Johnston submitted a counteroffer in which he would accept $175,000 cash with a $9,500 commission to Symida, or a cash price of $165,000 with no commission.

After receiving the counteroffer, Fugate requested further information about the property. Respondent prepared an information sheet which described the property as approximately 30,000-square-feet of commercial land being offered for the price of $160,000 or $5.33 per square foot. The sheet also stated, "There is a utility easement of 20' x 280' on the West and North side of the property that could be abandoned, and if so, the buyer will get an additional 6,000 square feet of property free worth $30.000. Ask for details!"

Approximately three months before receiving the Sweetwater offer, Bill's Carpets had requested information about the property from Respondent and received an information sheet which listed the price as $150,000, and also mentioned the easement. Fugate testified that prior to submitting the Sweetwater offer, he had receive the information sheet from Bill's Carpets.

After receiving Johnston's counteroffer and reviewing the different purchase prices on the information sheets prepared by Respondent, Fugate contacted Respondent inquiring about the disparity between the asking price as represented by Respondent and the amount of Johnston's counteroffer. Tow or three days later, Fugate contacted Johnston directly to inquire about the asking price and for additional information about the utility easement which Respondent represented could be abandoned. Johnston directed Fugate to discuss these matters with Respondent.

Fugate contacted Respondent again to inquire whether Respondent had a listing agreement with Johnston and said he wanted to review it to determine Johnston's asking price and to see whether it contained any information regarding the utility easement. During that conversation, Respondent represented that he had an exclusive listing agreement with Johnston, and agreed to produce a copy.

After receiving the listing agreement, Fugate spoke again with Johnston who informed him that Respondent was not his exclusive agent for the property, but that Respondent had an open listing. Fugate gave Johnston a copy of the exclusive listing agreement produced by Respondent and which bore Johnston's signature. Because Respondent had apparently forged Johnston's signature to the document, Johnston terminated all further business dealings with Respondent.

The evidence established that in 1990 Respondent was authorized by Johnston to market the property in the range of $8 to $9 a square foot. In 1994, Respondent marketed th property to Bill's Carpets for $150,000 or $5 per square foot and also marketed the property to Sweetwater for $160,000 or $5.33 per square foot.

Respondent testified that he made the "assumption" that Johnston agreed to market the property for $160,000 because of the counteroffer made in November 1994 to ALH. Johnston testified that the ALH counteroffer was based on the particular circumstances related to the ALH contract, and that Respondent was never authorized to offer the property for less than $8 per square foot. Johnston also testified that Respondent was never authorized to market the utility easement as "free" property and that until being notified by Fugate, Johnston was unaware of Respondent's marketing activities.

COUNT II

A few days before Thanksgiving in 1994, Walter Clark saw Respondent's real estate sign on the property and contacted him to discuss renting the property as a Christmas tree lot. Respondent informed Clark that the rent would be $350 and that Clark would be required to obtain $1 million in insurance coverage. On November 23, Clark gave Respondent a check for $350.

On December 20, 1994, Johnston learned that Christmas trees were being sold from his property. He asked William Marti, a mortgage broker who shared office space with Symida, to determine who was selling the trees and to attempt to collect rent for the property.

On December 19, the day after Johnston terminated his business relationship with Respondent, Respondent gave Clark a check for $350 (a refund of the rent Clark had paid), but did not tell Clark to vacate the property or that Clark's lease was not accepted by Johnston. While he had Clark's $350, he commingled it with his personal funds.

Respondent admitted that he did not inform Johnston that he had rented the property to Clark, that he had received $350 for rent, and that he had refunded the $350. Respondent testified that he refunded the $350 because he was unable to contact Johnston for approval of the rental, however his testimony was not supported by the evidence.

When Marti met Clark at the property on December 21, Clark informed Marti that he had rented the property from Respondent. Marti informed Clark that he would have to pay $1,500 rent or be evicted. Clark then contacted Respondent concerning the demand for rent, and Respondent agreed to discuss the matter with Marti. Marti agreed that Clark could continue to sell trees from the property through December 29 provided that he pay $500 rent by December 22.

Respondent agreed with Clark that Respondent would pay Marti the $500 subject to an agreement with Clark for partial reimbursement. Marti signed an agreement which permitted Clark to use the property until December 31.

Respondent testified that he has been licensed by the Department for approximately 20 years without any disciplinary action, and that no complaints had been filed against him during the past 12 years as a member of the Board of Realtors®. However, Department records show Respondent's real estate broker's license was suspended in November 1981 for eight months, and placed on probation for one year.

VIOLATIONS:

COUNT I: Respondent violated A.A.C. R4-28-801(A) by entering into a listing agreement which lacked the requisites for a valid listing agreement. He failed to protect or promote the interests of Johnston and failed do deal fairly with all parties regarding the proposed sale to Sweetwater within the meaning of A.A.C. R4-28-1101(A). Respondent pursued a course of misrepresentation while acting in the role of agent in a transaction, in violation of A.R.S. § 32-2153(A)(1). He violated the provisions of Arizona Revised Statutes, Title 32, Chapter 20 and the Commissioner's Rules within the meaning of A.R.S. § 32-2153(A)(3). Respondent demonstrated negligence within th meaning of A.R.S. § 32-2153(A)(22). Respondent violated State laws and rules relating to real estate in violation of A.R.S. § 32-2153(A)(25). Respondent made substantial misrepresentations in violation of A.R.S. § 32-2153(B)(3). His conduct and actions constitute dishonest dealings, in violation of A.R.S. § 32-2153(B)(5). The actions and conduct of Respondent show that he is not a person of honesty, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7).

COUNT II: Respondent failed to protect and promote the Johnston's interests, and failed to deal fairly with all parties to a transaction within the meaning of A.A.C. R4-28-1101(A). Respondent violated the provisions of Arizona Revised Statutes, Title 32, Chapter 20, and the Commissioner's Rules, within the meaning of A.R.S. § 32-2153(A)(3). He failed, within a reasonable time, to account for or remit monies to Johnston with respect to Clark's rental of the property within the meaning of A.R.S. § 32-2153(A)(9). Depositing Clark's check into his personal checking account shows that Respondent commingled client's money with his own in violation of A.R.S. § 32-2153(A)(16). Respondent demonstrated negligence in violation of A.R.S. § 32-2153(A)(22). Respondent violated State laws and rules relating to real estate or dishonest dealings in violation of A.R.S. § 32-2153(A)(25). Respondent's conduct and actions constitute dishonest dealings within the meaning of A.R.S. § 32-2153(B)(5). His actions and conduct show he is not a person of honesty, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7).
DISPOSITION: Respondent's real estate broker's license revoked. Respondent to pay a civil penalty in the amount of $1,000.

H-1810
Benjamin S. Kahn
Tucson
DATE OF ORDER: March 14, 1997
FINDINGS OF FACT: In his application for an original real estate salesperson's license, Respondent disclosed a felony conviction for Conspiracy to Possess With Intent to Distribute less than 50 kilograms of marijuana. In exchange for a provisional real estate salesperson's license, Respondent entered into a Consent Order with the Department on June 24, 1996, in which he agreed to abstain from the use of alcoholic beverages, illegal drugs or controlled substances unless taken pursuant to a valid prescription and the orders of a medical doctor.

Respondent tested positive for marijuana as the result of a body fluid test conducted on November 20, 1996.

The Department summarily suspended Respondent's license and notified him of the right to an Administrative Hearing. Respondent requested the hearing, but subsequently withdrew his request.
DISPOSITION: Respondent's real estate salesperson's license revoked.

H-1839
William H. Ridgeway, Jr.
Durango, CO
DATE OF ORDER: April 7, 1997
FINDINGS OF FACT: Respondent was first license as an Arizona real estate broker in September 1975. He was convicted of four DUI offenses between 1988 and 1991, and two alcohol-related disorderly conduct charges in September 1996. He failed to establish rehabilitation from his alcohol dependency problems. Although he testified that he attends Alcoholics Anonymous meetings, he peresent no evidence to establish how often he attended. He presented no evidence that he is currently undergoing any treatment, educational or therapy programs related to his problem.
VIOLATIONS: Respondent's actions and conduct show he is not a person of good character within the meaning of A.R.S. § 32- 2153(B)(7).
DISPOSITION: Respondent's real estate broker's license revoked. Respondent assessed a civil penalty in the amount of $1,000.

H-1865
Mario Duran
Phoenix
DATE OF ORDER: April 15, 1997
FINDINGS OF FACT: On February 18, 1997, the Department summarily suspended Respondent's real estate salesperson's license. It was alleged that while employed by two designated brokers (at different times), Respondent wrote purchase contracts for several clients but failed to submit the offers to his brokers, or to place earnest money funds in his brokers' care.

The order summarily suspending his license notified him of his right to request a hearing which he did not do.
DISPOSITION: Respondent's real estate salesperson's license revoked.

LICENSE APPLICATIONS GRANTED

H-1834
Kelly C. Wilson
Tempe
DATE OF ORDER: December 20, 1996
FINDINGS OF FACT: In April 1996, Petitioner applied for an original real estate salespersons license. The Department denied the application and Petitioner requested an administrative hearing.

In April 1996, Petitioner was convicted of Shoplifting, a class 1 misdemeanor, stemming from an incident which occurred in April 1992. In mitigation, Petitioner testified that the conduct which led to her arrest for shoplifting occurred more than four years earlier when she was experiencing medical and financial difficulties as the result of an automobile accident. She has not been arrested for or convicted of any other criminal offense.

Character witnesses, including the owner of the real estate firm where Petitioner is employed as an administrative assistant, testified to Petitioner's good character and honesty.
VIOLATIONS: Petitioner's conviction represents a crime of moral turpitude within the meaning of A.R.S. § 32-2153(B)(2). However, Petitioner established that she is a person of honest, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7).
DISPOSITION: Petitioners application for a real estate salesperson's license granted.

CONSENT ORDERS

H-1838
Tommy Frits and Arizona Property Rental and Management, Inc.
Tucson
DATE OF ORDER: January 27, 1997
FINDINGS OF FACT: Frits was originally issued a real estate broker's license in June 1985. Arizona Property Rental and Management (Arizona Property) was issued a corporate real estate license in May 1984. Frits was the president and owner of, and licensed as designated broker for, Arizona Property.

in June 1995, the Department received two complaints from property owners in which the owners alleged that upon terminating a property management agreement with Frits, he failed to return monies belonging to the owners in addition to tenant security deposit funds. The Department conducted an audit of Arizona Property in September 1995. In May; 1996, Frits submitted a timely license renewal application. Based on information obtained during the audit, the application was denied. Frits requested an administrative hearing.

The audit revealed that in managing rental property for three clients, Frits and Arizona Property utilized tenant funds from trust accounts for purposes other than which the funds were deposited.
VIOLATIONS: Respondents failed to protect and promote the interests of the client and failed to deal fairly with all parties to a transaction, within the meaning of A.A.C. R4-28-1101(A) (three counts). Respondents disregarded or violated provisions of A.R.S. Title 21, Chapter 20, and the Commissioner's Rules, in violation of A.R.S. § 32-2153(A)(3) (three counts). Respondents failed, within a reasonable period of time, to remit monies, in violation of A.R.S. § 32-2153(A)(9) (three counts). Respondents received a rebate, profit, compensation or commission in violation of A.R.S. Title 32, Chapter 20, within the meaning of A.R.S. § 32-2153(A)(10) (three counts). Respondents commingled or converted money of clients to themselves, within the meaning of A.R.S. § 32-2153(A)(16). Respondents demonstrated negligence in performing an act for which a license is required, in violation of A.R.S. § 32-2153(A)(22). Respondents conduct constitute dishonest dealings, in violation of A.R.S. § 32-2153(B)(5).
DISPOSITION: Respondents Arizona Property's and Frits' application for renewal are approved provided that Respondents satisfy all conditions as set forth by the Department.

Respondents shall pay a civil penalty in the amount of $1,200. Respondents shall return $128.05 to Linda and Douglas Gates and their respective tenants, and $160.10 to Craig F. Kasal and/or his respective tenants.

Frits shall attend 12 hours of approved real estate continuing education in addition to hours required for license renewal.

H-1701
Heath Allison Gruwell and
Jane Ann O'Mara
Tucson
DATE OF ORDER: January 27, 1997
FINDINGS OF FACT: O'Mara was a licensed real estate broker dba Best Seller's Realty, and after March 22, 1994, the designated broker for Best Sellers Realty, a limited liability company licensed as a real estate broker. Her license expired March 31, 1994 and was summarily suspended January 25, 1995.

Gruwell was licensed as a self-employed real estate broker dba Oracle Realty.
THE CONSERVANCY PARCEL

On September 21, 1992, Gruwell purchased, through O'Mara, a 36-acre parcel of land in Pima County from the Nature Conservancy for $259,200. Escrow was scheduled to close November 18, 1992. Prior to the close of escrow, O'Mara took a listing from Gruwell to

offer the parcel for sale as three 12-acre parcels, one of which was sold to Sylvia Moon for $162,000, one to Ronald Denton for $162,000 (both licensed real estate salespersons), and one to Melissa Middleton, Gruwell's sister, for $161,000. Although the purchase contracts negotiated with Moon and Denton indicated a check for $500 was received from each as earnest money, no money was receipted into escrow. The sale to Middleton was made with no earnest money.

On the same day Moon contracted to buy the 12 acres, and before close of escrow, she listed her 12 acres for sale with O'Mara as three 4-acre parcels which were subsequently sold through O'Mara.

Prior to close of escrow on his purchase, Denton also split his 12 acres into three parcels which were subsequently sold through O'Mara.

Prior to the close of escrow on her purchase, Middleton listed her parcel for sale with O'Mara as three 4-acre parcels.

There is no record that Moon, Denton or Middleton put any money into the transactions. The proceeds from the sale of their 4-acre parcels paid for the purchase of their respective 12-acre parcels. This, in turn, funded Gruwell's purchase of the original 36-acre Conservancy Parcel.

THE MAMCHUR PARCEL

On February 11, 1993, Gruwell contracted to purchase approximately 100 acres of land in Pima County from Harriet Mamchur. An Addendum to the purchase contract provided for partial releases for 10 contiguous parcels.

Before March 10, 1993, when escrow closed on the purchase, Gruwell split the 100 acres into three parcels. She sold one to O'Mara, one to Tony McKennon (a licensed real estate salesperson who would later work for Gruwell at Oracle Realty), and the third to Dessie Lee Green (an unlicensed person).

O'Mara split her 45-acre parcel and sold portions of it to Moon, to Gruwell's niece, Marguerite O'Driscoll, and to Middleton, all of whom subsequently split their purchases to numerous buyers

In May 1994, O'Mara was indicted by the Pima County Grand Jury for Fraudulent Scheme and Artifice, a class 2 felony, and Unlawful Sale of Subdivided Lands, a class 5 felony. She pleaded guilty to Attempted Unlawful Sale of Subdivided Lands, a class 1 misdemeanor, sentenced to one year probation and fined $15,000.

In July 1995, Gruwell was indicted by the Pima County Grand Jury for illegal subdividing and fraud. She pleaded guilty to Attempted Unlawful Sale of Subdivided Lands, a class 1 misdemeanor, and was sentenced to two years probation and to surrender her real estate license.

VIOLATIONS: O'Mara assisted Gruwell, a subdivider, in the offer or sale of subdivided lots or parcels for which a public report had not been issued, in violation of the provisions of A.R.S. Title 32, Chapter 20. She participated in the offering for sale lots or parcels in a subdivision without first obtaining a public report in violation of A.R.S. §§ 32-2164 and 2183(E). She acted in concert with real estate licensees and others to avoid the subdivision laws of this state, in violation of A.R.S. § 32-2181(D). Her actions constitute negligence within the meaning of A.R.S. § 32-2153(A)(22). She has committed numerous violations of the provisions of Title 32, Chapter 20, within the meaning of A.R.S. § 32-2153(A)(3). She has been found guilty of violating A.R.S. §§ 32-2181 and 2185.04 by a court of competent jurisdiction for violation subdivision laws, thereby violating A.R.S. § 32-2153(A)(25), Her conduct in structuring and assisting Gruwell in structuring the double escrows without advising the principals, her actions to avoid the subdivision requirements and her misdemeanor conviction constitute fraud and dishonest dealings within the meaning of A.R.S. § 32-2153(B)(5).

Gruwell disregarded or violated A.R.S. § 32-2181(A) by failing to notify the Commission of her intention to offer subdivided lands for sale or lease. She offered for sale and sold lots or parcels in a subdivision without first obtaining a public report, in violation of A.R.S. §§ 32-2153(B)(6) and 2183(E). She acted in concert with real estate licensees and others to avoid the subdivision laws in this sate, in violation of A.R.S. § 32-2181(D). Her actions in selling or offering to sell subdivided land without obtain a public report, and, therefore, in violation of the laws, constitute negligence within the meaning of A.R.S. § 32-2153(A)(22). She has committed numerous violations of the provisions of Title 32, Chapter 20, within the meaning of A.R.S. § 32-2153(A)(3). She has been found guilty of violating A.R.S. § 32-2185.04 by a court of competent jurisdiction, for violating subdivision laws, thereby violating A.R.S. § 32-2153(A)(25). She knew or should have known that her offer to sell and the sale of the various parcels as described above were unlawful, in violation of A.R.S. § 32-2164.

DISPOSITION: The real estate broker's licenses of Heath Allison Gruwell and Jane O'Mara are revoked.

H-1848

John A. Rupe, William M. Welch and Horizon Real Estate Group, Inc.

Phoenix

DATE OF ORDER: January 29, 1997

FINDINGS OF FACT: Rupe is an associate real estate broker. In October 1994, he placed his broker's license on inactive status. It expired on March 31, 1995, and he made an untimely renewal application on March 29, 1996, which is pending disposition of this matter. In his renewal application he disclosed the illegal receipt of a $3,900 referral fee and disclosed a 1995 DUI conviction.

Welch is the designated broker for Horizon, a licensed corporate real estate broker.

In February 1995, a friend of Rupe's asked Rupe to act in the capacity of a referring agent and to sign over any referral fee Rupe received, thereby reducing the amount the friend would have to pay for a commercial building in Scottsdale he wished to purchase.

In April 1995, Horizon paid directly to Rupe $3,900 for referring the buyer to Horizon. There is no evidence that Horizon or Welch knew about Rupe's agreement to sign over the referral fee to his friend, the buyer. Rupe attests he did sign over the $3,900 check to his friend.

In January 1996, Rupe was convicted of DUI in California.

Rupe attests he believed he could legally receive a referral fee for real estate activities in Arizona because he was an active California real estate licensee. Rupe further attests he was unaware of any requirement to report his DUI conviction to the Department.

VIOLATIONS: Rupe received compensation while his license was inactive, in violation of A.R.S. §§ 32-2153(A)(10) and 32-2155(A). He accepted compensation from a broker by whom he was not employed, in violation of A.R.S. § 32-2153(A)(7). He failed to report his DUI conviction to the Department within 10 days as required by A.A.C. R4-28-301(C)(1). He violated provisions of A.R.S. Title 32, Chapter 20, in further violation of A.R.S. § 32-2153(A)(3), and has demonstrated negligence in actions requiring a real estate license, in violation of A.R.S. § 32-2153(A)(22).

Welch and Horizon paid compensation to an inactive licensee in violation of A.R.S. §§ 32-2153(A)(10) and 32-2155(A) and (B). They demonstrated negligence in actions requiring a real estate license, in violation of A.R.S. § 32-2153(A)(22). Welch, as Horizon's designated broker, failed to exercise reasonable supervision and control over Horizon's actions, in violation of A.R.S. § 32-2153(A)(21).

DISPOSITION: Rupe shall pay a civil penalty in the amount of $2,000. His real estate broker's license shall be renewed upon entry of this Consent Order and immediately suspended for 30 days. He shall take 12 hours of continuing education classes in addition to those required for license renewal. Welch and Horizon shall each pay a civil penalty in the amount of $500. Welch shall take six hours of continuing education classes in addition to those require for license renewal.

H-1797

Consent order of West USA Realty in the matter of the subdivision law violations of Gary R. Bradley; and in the matter of the real estate broker's licenses of Clayton E. Fouts and West USA Realty, Inc.; and in the matter of the real estate salesperson's licenses of Jay W. Frost., Kim Renee Frost and Donald L. Vise.

Phoenix

DATE OF ORDER: February 12, 1997

FINDINGS OF FACT: In November 1994, Bradley and his wife, through their agent, United Title Agency of Arizona, Inc., submitted a public report application to the Department for The Vistas at Ocotillo, an improved lot subdivision. The Vistas was issued a Public Report in May 1995, and an amended report in January 1996 to extend the date of completion of improvements from August 30, 1995 to March 31, 1996. The public report was issued for improved lots only and reflected title to the subdivision lots as vested in Bradley and his wife as joint tenants with right of survivorship.

Submitted with the application, and approved by the Department for use at The Vistas, was a sample contract wish stated that "escrows will not close and the City of Chandler will not issue occupancy clearance permits until such time as all off-sites and subdivision improvements have been completed."

In May 1995, Bradley's wife,by disclaimer

deed, transferred her ownership in certain lots and tracts in the subdivision to Bradley as his sole and separate property. Bradley did not notify the Department of this material change nor did he file a notice as required by A.R.S. § 32-2181.02(B)(2)(I) of his intent to use the existing public report.

From May 1995 until March 1996, Bradley closed escrow on 10 lots although subdivision improvements had not been completed. Upon its discovery of the incomplete improvements on March 11, 1996, the Department notified Bradley, who immediately ceased sales.

Further investigation revealed that:

a. Bradley, through sales agents, had initially represented to buyers that effluent hook-ups would be available to the lots, although those plans were later dropped.

b. Of the 10 lots which closed escrow, nine were sold as unimproved lots using a vacant land contract. The required addendum to the contract which had been approved by the Department, as well as the approved residential real estate contract, were not used.

c. Bradley did not disclose to the Department in his December 1995 public report amendment application that some lot sales at The Vistas has already closed escrow.

d. Of the 12 lots sold in violation of various real estate requirements, sales agents of West USA were either seller's agents or dual agents. Additionally, 11 lots sales were made using the wrong contract, and 10 lot sales were made without obtaining a signed receipt for the public report.

e. West USA. in reviewing and approving sales documentation in this matter, did not catch the violations enumerated in (d) above.

West USA attests it exercised due diligence in reviewing all documentation in this matter.

VIOLATIONS: West USA, as a licensed corporate real estate broker, failed to exercise reasonable supervision over its agents, in violation of A.R.S. § 32-2153(A)(21), and, therefore, in violation of A.R.S. § 32-2153(A)(3).

DISPOSITION: West USA shall pay a civil penalty in the amount of $500 and shall hereafter include in its broker review of subdivision lot sales the use of the proper contract and buyer receipt of the appropriate public report.

Clayton E. Fouts, Jay W. Frost, Kim Renee Frost and Donald L. Vise are hereby dismissed from this matter.

H-1858
Pointe Marketing Corporation and
Steven D. Adelson
Scottsdale

DATE OF ORDER: February 12, 1997

FINDINGS OF FACT: Pointe Marketing Corporation was issued an original real estate broker's license on December 23, 1991. The license expired December 31, 1995. A renewal application was submitted on July 1, 1996.

Adelson was issued an original real estate broker's license on July 15, 1991. From December 23, 1991 until December 31, 1995, Adelson was vice president and designated broker for Pointe Marketing. His license expired on December 31, 1995.

In May 1996, while Pointe's license was expired, Ray Brennan, an associate broker for Pointe Marketing, negotiated the sale of residential property in Phoenix. The sale closed on June 14, 1996. Pointe Marketing and Adelson attest that neither received a commission on the transaction.

VIOLATIONS: Point Marketing and Adelson:

a. Failed to pay the biennial renewal fee before the time specified in violation of A.R.S. § 32-2153(A)(14).

b. Continued to conduct activities for which a license is require after Pointe's license had expired, in violation of A.R.S. § 32-2122.

c. Demonstrated negligence by failing to maintain a current and valid real estate broker's license, in violation of A.R.S. § 32-2153(A)(22).

d. Violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, in further violation of A.R.S. § 32-2153(A)(3).

DISPOSITION: Neither Pointe Marketing nor Adelson shall accept a real estate commission for the transaction described above. Pointe Marketing and Adelson shall each pay a civil penalty in the amount of $1,000. Adelson shall take 12 hours of continuing education in addition to hours required for license renewal.

H-1852
Theresa Germany
Apache Junction

DATE OF ORDER: February 19, 1997

FINDINGS OF FACT: Germany was issued a real estate salesperson's license in May 1992. The license expired on May 31, 1996, and she has not submitted a renewal application.

From April 14, 1994 until June 14, 1995, Germany was employed by Friendship Realty. During this time, she managed the rental of a property in Apache Junction. on June 2, 1995, the property owner terminated his management agreement with Friendship Realty.

After termination of the agreement, and after she left Friendship Realty, Germany arranged with the property owner to manage the property although her license had expired. She attests she believed she could do this without a license because it was a single property.

From August 1995 until January 1996, Germany accepted rents on behalf of the property owner but did not submit all the rents to the owner. Upon discovering the non-payments in January 1996, the owner terminated his agreement with Germany, and was subsequently paid the monies owed in the amount of $1,402.42.

Documentation received from Germany's physician indicates she is suffering from Alzheimer's Disease.

VIOLATIONS: Germany failed to protect and promote the interests of her client, in violation of A.A.C. R4-28-1101(A). She commingled monies of a client and converted the monies to her own use, in violation of A.R.S. § 32-2153(A)(16). She demonstrated a lack of mental competence necessary to reasonably accomplish the responsibilities and duties of a license, in violation of A.R.S. § 32-2153(A)(24). She engaged in real estate without a license in violation of A.R.S. § 32-2153(B)(6).

DISPOSITION: Germany's real estate license revoked. If, after two years from the entry of this order, Germany reapplies for a license, she shall be required to demonstrate mental competence prior to issuance of the license.

H-1870
Daniel A. Duran
Gilbert

DATE OF ORDER: February 20, 1997

FINDINGS OF FACT: In his application for an original real estate salesperson's license, Petitioner disclosed that in December 1994 he had been convicted of Aggravated DUI, a felony, in Illinois.

In mitigation, Petitioner attests that he has had no prior arrests, that he is the sole supporter of a wife and new-born baby, that he has employment pending licensure, that he has been released from the Illinois jurisdiction by court order, and that he has cooperated fully with the Department regarding this matter.

VIOLATIONS: Petitioner has been convicted of a felony within the meaning of A.R.S. § 32-2153(B)(2). His conduct leading to his conviction demonstrates he was not a person of honesty, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Petitioner shall be issued a two-year provisional real estate salesperson's license. Each designated broker who wishes to employ Petitioner shall acknowledge receiving a copy of this Consent Order, and agree to act as Petitioner's practice monitor [see note below}.

Petitioner shall abstain from the use of any illegal drugs or controlled substances unless taken pursuant to a valid prescription and the orders of a medical doctor.

Petitioner shall submit to urine or blood tests at the request of the Compliance Officer.H-

H-1854
Richard H. Conner
Scottsdale

DATE OF ORDER:February 24, 1997

FINDINGS OF FACT: From 1990 through 1992, Respondent served as an area property management broker for the U.S. Department of Veteran's Affairs (VA) while president and designated broker of IDC Associates, Inc. As an area property management broker, Respondent awarded contracts to entities to perform various maintenance and repair services on VA properties.

In his capacity as property management broker, Respondent awarded contracts to KMB Enterprises, a business owned and operated by his wife, in which he had direct involvement, both administratively and financially.

VA policy and regulations required management brokers to fully disclose any interests in businesses that were under contract with the VA to perform services when the management broker was required to make compliance inspections of work performed or supervise the services of contractors.

Respondent not only awarded contracts to KMG, he also inspected and approved the work performed. By doing so, Respondent allowed a conflict of interest to arise between IDS Associates, in his capacity as a management broker for the VA, and KMG Enterprises.

Respondent informed his VA supervisor that his wife was performing work for the VA but failed to provide full disclosure in writing, and failed to obtain prior written consent from the VA as required pursuant to A.A.C. R4-28-1101(F). Respondent also failed to obtain prior written approval from the VA to award contracts to a

business in which he had a financial interest as required by 18 U.S.C. § 208.

As a consequence of his actions, the VA imposed a Limited Denial of Participation against Respondent, precluding him from participating directly or indirectly in the Loan Guaranty Program within the jurisdiction of the Phoenix VA Regional Office.

VIOLATIONS: Respondent failed to provide full disclosure in writing to the VA and to obtain prior written consent from the VA to award contracts to a business in which he had a financial interest, in violation of A.A.C. R4-28-1101(F). He disregarded or violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, and the Commissioner's Rules, in violation of A.R.S. § 32-2153(A)(3). His failure to provide full written disclosure of his business interest in KMG to the VA and to obtain prior written approval to award contracts to KMG constitutes negligence within the meaning of A.R.S. § 32-2153(A)(22).

He violated A.R.S. § 32-2153(A)(25) by failing to provide full disclosure to the VA and failing to obtain prior written approval to award contracts to a business in which he had a financial interest in violation of 18 U.S.C. § 208.

DISPOSITION: Respondent's application for renewal of his broker's license is approved provided that he satisifes all conditions of this Order. The Department shall issue him a two-year provisional real estate broker's license and Respondent shall comply with the following terms and conditions:

a. He shall be licensed only as an associate broker during the two-year period.

b. Each designated broker who employ's respondent shall acknowledge receipt of a copy of this order and agree to act as Respondent's practice monitor. [See note below.]

Respondent shall pay a civil penalty in the amount of $1,000 and shall take 12 hours of continuing education in addition to hours required for license renewal.

H-1862
Sharlene E. Pollard
Glendale

DATE OF ORDER: March 14, 1997

FINDINGS OF FACT: In her October 1995 application for an original real estate salesperson's license, Petitioner disclosed an October 1991 misdemeanor conviction for DUI and an August 1993 Aggravated DUI felony conviction. Petitioner attests she has abstained from alcohol consumption since approximately January 1993.

VIOLATIONS: As a result of her conduct and convictions, Petition has been convicted of a felony and/or other crimes of moral turpitude, in violation of A.R.S. § 32- 2153(B)(2). Her conduct, actions and convictions shows she was not a person of honesty, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: The Commissioner shall issue Petitioner a two-year provisional real estate salesperson's license. Petitioner shall comply with the following terms and conditions:

a. Petitioner shall abstain completely from the use of any alcohol, illegal drugs or controlled substances unless taken pursuant to a valid prescription and the orders of a medical doctor.

b. She shall submit to body fluid tests, not to exceed two original tests in 30 days, at the request of the Department.

d. Petitioner shall submit, for approval by the Department, the name of a person who will function as her sobriety monitor and shall enter into a contract with the sobriety monitor for attendance at Alcoholics Anonymous meetings.

e. Within 10 days of employing Petitioner, each employing broker shall acknowledge of this order and agree to act as Petitioner's practice monitor *{See note below — Ed.]*

f. Petitioner shall not transport clients for real estate purposes unless and until her driver's license is reinstated.

NOTE; Duties of the Practice Monitor: The practice monitor shall submit bimonthly written reports to the Compliance Officer which attest to the licensee's workload, as well as the quality of the licensees's services and client relationships. The practice monitor shall be responsible for reporting any behavior or conduct which violates real estate statutes or Commissioner's Rules, or any precepts or standards as prescribed by the National Association of Realtors® Code of Ethics.

Summary of H.B. 1133

Continued from page 2

The Department strongly recommends that a separate buyer's broker agreement, as described above, should be used whenever a buyer's broker relationship is established.

A.R.S. § 32-2153(A)(13)
Clarifies grounds for disciplining licensees for promotional solicitations of a speculative nature involving a game of chance or risk, or through a lottery or contest, not specifically authorized by statute.

A.R.S. § 32-2153(A)(17)
Clarifies grounds for disciplining licensees who fail or refuse to produce, on demand by the Department, documents in their possession as required by law.

A.R.S. § 32-2153(A)(25)
A licensee can be disciplined for signing the name of another person on any document or form without the express written consent of that person.

A.R.S. § 32-2153(B)(9)
A licensee can be disciplined for violating the terms of any criminal or administrative order, decree or sentence.

A.R.S. § 32-2156 (part of House Bill 2408) is amended to include property located "in the vicinity of a sex offender" among disclosures which are not required to be made by a transferor of real property or a licensee.

See CRIMINAL CODE OMNIBUS BILL (Sex Offender Notification) below.

A.R.S. § 32-2165(A) and (C)(1)
Unlicensed activity by a broker or salesperson remains a class 6 felony, but this provision no longer applies to a person who fails to timely renew because of "unintentional neglect" or administrative untimeliness by the Department.

A.R.S. § 32-2165(B)
A person, other than a broker or salesperson, who performs acts which require a subdivision public report or other Department approval without obtaining the required report or approval, is still guilty of a class 5 felony.

A.R.S. § 32-2165 (C)(3)
Penalties prescribed by A.R.S. § 32-2165 will not apply to a person who discovers a license, public report or other approval is required, and before the issuance of a cease and desist order notifies the Department of the person's intent to comply, applies for the license, public report or other approval, and ceases the prohibited activity.

A.R.S. § 32-2175(A)
The retention period for records of residential rental agreements and related documents is reduced from three years to one year.

SUBDIVISION PROVISIONS

A.R.S. § 32-2151.01(J)
If real property in a development is sold or leased by a developer without the services of a listing or selling broker, the developer shall keep all records required for five years.

A.R.S. § 32-2181(E)
Clarifies that the exceptions to the public report requirements apply to the act of creating six or more lots, not to the lots themselves. Also clarifies that the language of the subsection includes "lots" and "parcels" as well as "fractional interests" to conform to Department interpretation.

A.R.S. § 32-2181.02(B)(4)
This new provision automatically exempts from § 32-2181, under certain conditions, the sale or lease by a person of individual contiguous lots or parcels that were separately acquired

Continued on page 10

by the person from different persons.

A.R.S. § 32-2181.02(B)(5)
This new provision exempts from the requirement of an Arizona public report, under certain conditions, the sale of an improved lot in a subdivision located outside of Arizona but within the United States. The primary condition for this exemption is that the situs state has required the subdivider to deliver a public report or its equivalent to the purchaser.

A.R.S. § 32-2183(B)
Subdividers who offer for sale improved lots (lots with dwellings) have the option to prepare their own public report and provide a copy to the Department rather than obtaining a public report under existing law. If the subdivider chooses this filing option and so notifies the Department when making application, the Department shall have 15 business days in which to certify the application and public report as administratively complete or deny issuance of the certificate if it appears that the application or project is not in compliance with all legal requirements, that the applicant has a background of violations of state or federal law or that the applicant or project presents an unnecessary risk of harm to the public. The subdivider may commence sales or leasing activities after obtaining a certificate of administrative completeness.

The Department may examine any public report, subdivision or applicant that has received the certificate. If the Commissioner determines that the subdivider or subdivision is not in compliance with any requirement of state law or that grounds exist under Title 32, Chapter 20, Arizona Revised Statutes to suspend, revoke a public report, the Commissioner may commence an administrative action under §§ 32-2154 or 32-2157. If the subdivider immediately corrects the deficiency and comes into full compliance with state law, the Commissioner shall vacate any action that the Commissioner may have commenced.

Note that A.R.S. § 32-2195.03(B) (below) makes the same provision for unsubdivided land.

A.R.S. § 32-2183.04(A)
Makes requiring a surety bond from certain subdividers discretionary (on the part of the Department) rather than mandatory.

A.R.S. § 32-2185.04
Violation of any of the subdivision laws is no longer a class 5 felony.

CEMETERIES

A.R.S. § 32-2194.14
Violation of any of the cemetery laws is no longer a class 5 felony.

A.R.S. § 32-2194.17
Reworded to add authority for limited liability companies, in addition to corporations, to conduct cemetery business.

A.R.S. § 32-2194.24
New cemeteries and those making a material change to the plan under which the plots are offered for sale are required to establish an irrevocable trust fund for the maintenance and operation of the cemetery.

UNSUBDIVIDED LAND

A.R.S. § 32-2181.03(A)
Allows lot reservations to be taken on unsubdivided land.

A.R.S. § 32-2195.03(B)
Applicants for unsubdivided land public reports may prepare their own public reports (see A.R.S. § 32-2183(B) above).

MEMBERSHIP CAMPING

A.R.S. § 32-2198.12
Violating any of the membership camping statutes is no longer a class 6 felony.

TIME-SHARES

A.R.S. § 32-2197(8)
Time-share projects are redefined to exclude a project divided into fewer than 12 use or occupancy periods.

A.R.S. § 32-2197(18)
Violation of any of the time-share statutes is no longer a class 5 felony.

DEFINITIONS

A.R.S. § 32-2101.1
A new definition intended to clarify the meaning of "acting in concert."

A.R.S. § 32-2101.2(a)
Press releases are excluded, under certain conditions, from the definition of "advertising."

A.R.S. § 32-2101.4
Clarifies the authority of an associate broker.

A.R.S. § 32-2101.5
Defines "barrier," which is used in the definition of "contiguous."

A.R.S. § 32-2101.16
Expands the definition of "contiguous" so that lots, parcels or fractional interests are not contiguous if they are separated by a barrier, or certain types

Licensees suspended for failure to attend Contract Writing class

Commissioner's Rule R4-28-401(E) currently requires each newly licensed real estate salesperson to take six hours of continuing education in real estate contract law and contract writing within 90 days of licensure.

A.R.S. § 32-2124.01 currently requires all real estate brokers to attend a Broker Audit Clinic within 90 days of original licensure, and once during every four year period after initial attendance.

Contract Writing classes are offered by most Arizona real estate schools. Broker Audit Clinics are conducted by the Department in Phoenix and Tucson, and by special arrangement in rural communities. A schedule of Broker Audit Clinics can be found on page 4.

Licenses of those who fail to meet these education requirements are summarily suspended. The suspension is lifted when satisfactory evidence of attendance is furnished to the Department within 30 days.

The following licensees received summary supensions on the dates and for the reason indicated. A list of such suspensions will be published in each issue of the *Arizona Real Estate Bulletin*:

Name	Suspension Date	Reason
Bartholomew, Patricia Ann	3/4/97	Contract Writing
Blanton, Paul E., Jr.	3/4/97	Contract Writing
Borst, Kristina A.	3/4/97	Contract Writing
Clayton, Jason	3/4/97	Contract Writing
Crelly, Cheryl	3/4/97	Contract Writing
Draper, Linda Sue	3/4/97	Contract Writing
Katt, Rick W.	3/4/97	Contract Writing
Kaymen, John Charles	3/4/97	Contract Writing
Moher, Colleen Lynn	3/4/97	Contract Writing
Peightel, John S.	3/4/97	Contract Writing
Saban, Steve A.	3/4/97	Contract Writing
Tackitt, Ellen M.	3/4/97	Contract Writing
Vaccaro, Pamela M.	3/4/97	Contract Writing

of roads, streets or highways.

A.R.S. §§ 32-2101.21 and 32-2101.22
"Developer" and "development" are defined because of their frequent use throughout statute and rule, and by industry.

EDUCATION

A.R.S. § 32-2124(B), (C)
The number of Arizona specific course hours required for a waiver has been corrected from 12 to 27 to conform with other sections of the statute.

A.R.S. § 32-2124(L)
A newly licensed real estate salesperson must complete a six-hour course in real estate contract law and contract writing before becoming actively licensed (employed by a broker). Previously the course had to be completed within 90 days of licensure. Technically, because continuing education courses may be taken for credit only during the two-year licensure period, a person would have to pass the state examination, obtain an inactive license, take the contract writing class, then return to the Department to activate the license. In practice, the Department will honor a contract writing course taken before an applicant passes the state examination, enabling an approved real estate school to offer the contract writing course in conjunction with 90 hours of prelicensure education.

A.R.S. § 32-2135(B)
Real estate schools will now issue certificates of attendance using a school form rather than a Department form. An applicant for license renewal will no longer be required to submit certificates of attendance; instead, the applicant must certify to the Department (under penalty of perjury) that he or she has attended the required number of hours of course of study in the subjects required for renewal. The applicant must retain the certificates of attendance issued by the school for five years.

A.R.S. § 32-2136(A), (B) and (C)
Clarifies that the Department may not charge a fee for a broker audit clinic. It also specifies the subject matter to be taught in a broker audit clinic, provides for clinics which address property management activities, sales activities or both, and describes when a real estate broker must attend a broker audit clinic.

RECOVERY FUND

A.R.S. § 32-2190 (Repealed)
It is no longer a class 2 misdemeanor to make a false or untrue claim on the Real Estate Recovery Fund.

OTHER LEGISLATION AFFECTING REAL ESTATE LICENSEES

Home Owners Associations
House Bill 2495, Chapter 40

A.R.S. § 33-1248(C)
Home owners association (HOA) condominium boards of directors must give members at least 48 hours advance notice of a board's planned meetings.

A.R.S. § 33-1256(B) and (I)
A HOA lien on a unit for failure to pay an HOA assessment is now subordinate to any first mortgage or deed of trust.

A HOA statement issued to a lienholder, unit owner or other person setting forth the amount of unpaid assessment is not required to be in recordable form, but must be provided within 15 days after the request for the statement is received. The statement is now binding on the HOA, the board and the unit orders only if requested by a licensed escrow agent. Failure to provide a statement within 15 days extinguishes any lien for unpaid assessments.

A.R.S. § 33-1260(A) and (B)
Changes requirements in the written notice to a purchaser to include a statement disclosing alterations or improvements to the unit in violation of the declaration in the past six years. The notice must include a copy of the most recent existing HOA reserve study, a copy of the most recent annual HOA financial report (or a summary if the annual report exceeds 10 pages) and a copy of the current HOA operating budget.

A.R.S. § 33-1803(A) and (B)
Presently, HOA assessments may not be more than 20 percent greater than the year before. This amendment provides that the assessment must be lower if "limitations in the community documents would result in a lower limit for the assessment..." Reduces the grace period for payment of an assessment from 30 days to 15 days before it is deemed late.

A.R.S. § 33-1803(A) and (B)
Planned community HOA boards of directors must give members at least 48 hours advance notice of board of directors' meetings.

A.R.S. § 33-1806
Mirrors A.R.S. § 33-1260 (above) for planned communities.

A.R.S. § 33-1807
(A) A HOA lien, which is automatically established when an assessment comes due, may be foreclosed in the same way as a real estate mortgage.

(B) A HOA lien is subordinate to a first mortgage or deed of trust.

(F) A planned community HOA lien is extinguished three years after the full amount of an unpaid assessment becomes due (was one year) unless the HOA institutes proceedings to enforce the lien prior to that time.

(I) HOA statement requirements for unpaid assessments are now the same as for condo HOAs. See A.R.S. § 33-1256(I) above.

CRIMINAL CODE OMNIBUS BILL

(Sex Offender Notification)
House Bill 2408, Chapter 136

A.R.S. § 13-3825
Within 45 days of notification by the sheriff, a local law-enforcement agency shall (was "may") notify the community of an offender's presence in the community pursuant to the guidelines established by the community notification guidelines committee (described below).

A.R.S. § 13-3826
A community notification guidelines committee is established to adopt community notification guidelines which shall provide for levels of notification based on the risk that a particular sex offender poses to the community, and describes the levels of notification.

A.R.S. § 32-2156(A)
Presently, no criminal, civil or administrative action may be brought against a transferor of real property or a licensee for failing to disclose that the property being transferred is or has been the site of a natural death, suicide or homicide or other crime classified as

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a felony, or that the property was owned or occupied by a person exposed to HIV or diagnosed as having AIDS. This amendment adds property "located in the vicinity of a sex offender who is subject to notification pursuant to Title 13, Chapter 38, Article 3."

A.R.S. § 341-1719
The sex offender community notification coordinator is established in the Department of Public Safety. It shall, among other things, oversee the Arizona sex offender community notification process, and provide information to the community notification guidelines committee on a quarterly basis including the number of sex offenders, type of offense, and the county and agency which entered the name in the Arizona Criminal Justice Information System.

A.R.S. § 41-1750
Confidentiality and limitations on use of criminal history information maintained by the Department of Public Safety does not apply to "computer databases …which are specifically designed for community notification of an offender's presence in the community…"

AIRPORT INFLUENCE AREAS

House Bill 2491, Chapter 163
A.R.S. § 28-8485
The state, a city, town or county may establish an "airport influence area," (AIA) for any airport it owns or operates, including all property subject to an average day-night sound level of 65 or more decibels or which is exposed to aircraft noise and overflights.

If an AIA is established, details must be recorded with the county recorder and "shall be sufficient to notify owners or potential purchasers of property in the AIA that property in the area is currently subject to aircraft noise and overflights."

PRIVACY RIGHTS PROTECTION

House Bill 2399, Chapter 38
A.R.S. § 32-3801
This new statute prohibits a professional board (the Department of Real Estate, for instance) from disclosing "a professional's residential address and residential telephone number" unless the address and telephone number are the only address and number of record. As a result, the Department will not disclose a licensee's home address or telephone number if the licensee has a business address and telephone number. This new statute, signed with an emergency clause, was effective April 4, 1997, and supersedes A.R.S. § 32-2125.03 which granted such confidentiality to licensees who requested it for good cause. The residence address and telephone number of an *inactive* licensee will continue to be available upon written request or in person.

LEAD-BASED PAINT ABATEMENT

House Bill 2032, Chapter 264
A.R.S. § 36-1671
Many new definitions are added to clarify new lead-based paint abatement and certification requirements.
A.R.S. § 36-1677
Directs the Department of Health Services to adopt agency rules for accreditation of training programs, work practice standards, administrative sanctions, violation investigation and correction, et al.

A.R.S. § 326-1678
Outlines certification, training and accreditation requirements.

A.R.S. § 36-1679
Directs the Department of Health Services (DHS) to establish rules for the assessment and collection of non-refundable fees for original and renewal accreditations and certifications for lead-based abatement personnel and firms.

A.R.S. § 32-1680
A person performing lead-based abatement without DHS approval is guilty of a class 2 misdemeanor.

Note: DHS shall implement lead-based paint abatement rules by September 1, 1998 and enforce the new statutes by rules by September 1, 1999. If the Legislature does not provide DHS funding for these programs, for fiscal year 1998-1999, the new statutes will be repealed on July 1, 1998.

The complete text of these bills may be obtained free of charge from the Office of the Secretary of State, 1700 W. Washington Street, Phoenix AZ 85007. Request First Regular Session, Forty-Third Legislature, and the appropriate chapter number.

You may also obtain the bills from www.azleg.state.az.us. *Click on the Session Law link, and select the appropriate chapter number.*

Advertising

Continued from page 1

same size type as the interest rate whenever an interest rate is included in an advertisement.

The Federal Trade Commission requires that the phrase "rates subject to increase after settlement" be included in an adjustable rate (ARM) advertisement.

The Superintendent of Banks has determined that the phrase "rates subject to change" should be used in all advertisements which include a fixed rate of interest.

If charges of violating Regulation Z are brought by a federal agency against an Arizona real estate licensee, the Department may also take administrative action against the licensee.

DOES IT CONFORM TO THE COMMISSIONER'S RULES?

Example 1:
A.A.C. R4-28-502(D) states, "All advertising by licensees, including but not limited to, newspapers, magazines, circulars and business cards, shall include either the name in which the employing broker' license is held or the fictitious name contained on the real estate or cemetery license" An ad (including advertising on the Internet) showing "Listing Agent: Mary Smith 555-1212" does not conform to the rule. If it displayed "Listing Agent: Mary Smith, Century 21-Bottom Line Realty, 555-1212,"it would conform.

An ad promoting the services of "John Smith, Sales Associate, Century 21" does not conform to the Rule. "John Smith, Sales Associate, Century 21-Bottom Line Realty" does.

The Department would also like to see (but does not require) "Harry Green, Designated Broker" somewhere in each example. Although not required, it would also seem that the advertiser would want to include the address of the real estate office from which the ad originated.

Example 2:
R4-28-502(F) states, "All advertising shall be under the direct supervision of the employing and, if applicable, the designated broker."

In one of the clearest violations of this Rule that the Department has seen, an Arizona real estate salesperson created an Internet web page which listed only his name and e-mail address — no employing broker, no designated

broker. He changed the page to show his employing broker after receiving a phone call from the Department.

In another example, a salesperson set up an office located outside his broker's office, complete with a secretary and a phone system which was independent of the broker's phone system. The Department became aware of the situation when it received complaints that the salesperson was operating his own real estate business. He had created an unlicensed branch office with the broker's knowledge and permission. Because the office was physically removed from the employing broker's office, and had a separate phone system, there was no way the employing broker could "directly supervise" the activities of this salesperson.

After the broker was admonished by the Department, the necessary branch office license was obtained, and other infractions were corrected.

If an advertisement contains a telephone number other than the employing or designated broker as shown in Department records — a salesperson's or associate broker's home phone, for instance — the ad must also display the telephone number of the employing or designated broker. For instance, if Sally Black wanted to run ads listing her home phone number, the ad should state:

Sally Black, Sales Associate
(602) 555-1234.
Middle Ground Realty
(602) 555-9876.

TEAM AND GROUP ADVERTISING

When using "Team" or "Group" in any advertising, the full name of each team member must be displayed. For instance, you could display "The Action Team, Peter, Paul and Mary" if you show Peter, Paul and Mary's last names positioned in such a way that the connection is obvious. An Internet web page should show the last name on each page on which the "team" name is displayed. The bottom of each web page would be acceptable.

ABOUT TITLE COMPANIES

Under Section 9 of RESPA:

(a) No seller of property that will be purchased with the assistance of a federally related mortgage loan shall reauire directly or indirectly, as a condition to selling the property, that title insurance covering the property being purchased by the buyer from any particular title company.

(b) Any seller who violates the provisions of subsection (a) shall be liable to the buyer in an amount equal to three times all charges made for such title insurance.

If you encounter a situation where the seller (or MLS listing) requires the buyer use a certain title company, it would be very prudent for you to explain to the seller and buyer that buyers have the right to use whatever title company they wish.

Make sure you are not doing something that will lock buyers into a specific title company without giving them the opportunity to choose a different title company.

Western Home Services may no longer sell home warranty contracts in Arizona

The Arizona Attorney General has signed an Assurance of Discontinuance with Western Home Services, a California corporation which sold home warranty contracts in the Mesa and Phoenix areas, and with Western Home's corporate officers, James K. Hoffman, Quinton E. Stewart and Britt H. Whiteaker.

Western Home and its officers have agreed not to sell home warranty contracts to the general public and to reimburse any purchaser or service technician who has filed or who files a complaint with the Attorney General's Office within six months of the acceptance of the Assurance by the Court, which occured February 18, 1997.

Contract holders have already filed complaints totaling more than $11,000 and vendors who serviced the home warranty contracts have filed more then $39,000 in claims with the Attorney General's Office.

Western Home is presently insolvent but has agreed that any proceeds received as a result of a lawsuit they have filed in a California Superior Court against potential investors would be used to pay purchasers and vendors in Arizona.

The Assurance of Discontinuance is valid for six years and allows the Attorney General to initiate immediate enforcement of the Assurance if Western Home becomes solvent but fails to pay purchasers and vendors as previously agreed.

Complaint forms may be requested by calling (602) 542-5763 or, in Arizona, (800) 352-8431.

Commissioner issues 3 Substantive Policy Statements

Commissioner Holt has issued three Substantive Policy Statements (SPS).

SPS No. 37 effective March 1, 1997, exempts certain licensees from the need to take a three-hour fair housing continuing education course for license renewal.

Licensees who conduct business exclusively in a specialty field in which federal and Arizona fair housing statutes are not applicable may petition the Licensing Division to allow them to substitute a three-hour course more applicable to their real estate activities. The petition may take the form of a letter addressed to

John Bechtold
Assistant Director,
Education Division
Arizona Department of Real Estate
2910 N. 44th Street
Phoenix AZ 85018

SPS 38, effective March 1, 1997, was issued to clarify the meaning of Commissioner's Rule R4-28-503 which was written to protect consumers from advertising which fails to fully state all conditions for receiving a product or service.

A narrow reading of the rule would appear to absolutely prohibit the use of such terms as "free," "no obligation," "complimentary," etc., in any advertising by a licensee or in connection with a development. In practice, however there may be a condition or conditions for obtaining a "free" product or service.

According to SPS 38, advertising by a licensee in connection with a sales promotion or a development may use

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Policy Statements

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such terms as described above if:

• All conditions for the receipt of the offer are fully, clearly, boldly and unambiguously stated in the advertising.

• No condition for the receipt of the offer is withheld or hidden.

• An expiration date for the offer is stated.

• The offer complies with Commissioner's Rule R4-28-1101(G), RESPA and any other applicable real estate statute or other statutes.

SPS 39, effective May 7, 1997, requires applicants for a temporary cemetery salesperson's license or a membership camping salesperson's certificate of convenience (temporary license) to appear in person to fill out a license application and answer questions without the benefit of an interpreter. Applications for these temporary licenses received in the mail will no longer be processed.

Applicants for these temporary licenses are not required to pass an examination, but they must demonstrate an appropriate knowledge of the English language, including reading, writing, spelling and elementary arithmetic [A.R.S. §32-2124(F)].

Substantive Policy Statements describe the way in which the Department interprets and implements certain statutes and rules. Every real estate professional should be familiar with them.

All 39 Substantive Policy Statements may be obtained from the Department's Fax Response Service or from the Department's web site at www.adre.org.

Before you send us e-mail . . .

The Department publishes the e-mail addresse of key employees on our web page, and we welcome e-mail correspondence. But before using this method of communication, you should understand that e-mail messages are retrieved by the Department several times a day, printed, then sent to the recipient by interoffice mail.

It may be hours after a message is retrieved from our web site, or even the next day, before the recipient receives it.

If your correspondence is urgent, we suggest you to pick up the phone and call the Department rather than sending e-mail.

How to contact ADRE by phone, fax and modem

PHOENIX OFFICE

(602) 468-1414

Fax Numbers
Administration
(602) 468-0562

Education and Licensing
(602) 955-6284

Subdivisions
(602) 955-9361

Phoenix Office Extensions
Customer Services 100
Administration Division 135
Auditing and Investigations 500
Subdivisions 400
Education and Licensing 345
Public Information Office 168

TUCSON OFFICE
(520) 628-6940
fax (520) 628-6941

FAX RESPONSE SERVICE
(602) 468-1414, Extension 3

WORLD WIDE WEB
www.adre.org

E-MAIL
cdowns@adre.org

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2910 N. 44th St., Suite 100
Phoenix AZ 85018