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REAL ESTATE BULLETIN

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1999 Rulemaking package filed with Secretary of State

The Department has filed proposed changes to the Commissioner's Rules with the Secretary of State. The text of the proposed changes, which have been revised after the preliminary rules package was published in July, is available on the Department's Web site at www.re.state.az.us.

Public meetings will be held November 17 in Phoenix and on November 18 in Tucson to provide the public with an opportunity to comment on the proposed Rules Package. Written comments may be submitted to Deputy Commissioner John King before 5 p.m. on November 19.

Here is a brief description of the

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Lender fee programs

Are they too good to be true?

By Christopher A. Combs and K. Michelle Lind

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A few lending companies have been soliciting real estate licensees to become employees of their companies. These lending companies offer programs in which the real estate licensee will be paid a fee, often the loan origination fee of one to two percent of the full loan amount, for assisting the lender in the loan process (Lender Fee Program). The lending companies involved promote these programs as a quick and

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Helen Alt retires after more than 16 years with ADRE

Helen Alt, who has served as the Department's liaison with the state's more than 100 real estate schools, retired October 1.

Helen's work was praised by educators and by the Department's Director of Education and Licensing. Fred Brodsky, owner of the Brodsky School of Real Estate in Tucson, one of the state's busiest schools, said "Helen understood what we needed to do and the problems we had, she was great. She cut through the bureaucratic red tape and was a real asset to the State of Arizona and to the Department of Real Estate."

At a reception held for Helen after her last day at work, Bill Gray, whose Arizona School of Real Estate and Business is the largest in the state, told Helen "You are one of those very special people. You were not only dedicated but extremely competent. You raised the level of real estate education in Arizona during the years you were here."

Director of Education and Licensing John Bechtold said that if anyone could be considered indispensable, it was Helen. "Her integrity, knowledge and communication skills will be sorely missed."

Helen Alt

Helen's replacement has yet to be named. Those wishing to contact the Department regarding school matters should call Judy Kisselburg at 602/468-1414, extension 230 or John Bechtold at extension 345. E-mail may be sent to

<jkisselburg@re.state.az.us> or
<jbechtold@re.state.az.us>

ADRE picks Experior as new real estate exam administrator

Tests to be offered in Phoenix, Tucson and Flagstaff

Candidates for licenses issued by the Arizona Department of Real Estate will be able to take examinations in two locations in Phoenix, and in Tucson and Flagstaff, beginning in mid-November. Examinations will no longer be given in Las Vegas, Nevada. The addresses of examination sites will be announced soon.

The change is the result of the selection of Experior Assessments, L.L.C. of Salt Lake City to administer the Department's examinations. Experior replaces Assessment Systems, Inc., who has administered the examinations since March 1992. ASI's contract with the Department will expire in Novem-

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Lender fee

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easy way for a real estate licensee to make more money on every transaction.

Are these Lender Fee Programs too good to be true? It depends. To help you evaluate Lender Fee Programs, this article will answer some of the frequently asked questions about these programs and discuss some of the many issues these programs raise.

Frequently asked questions

Q. Do these Lender Fee Programs comply with RESPA?

A. Some may and some may not. RESPA, an acronym for the Real Estate Settlement Procedures Act, is a federal statute originally enacted in 1974 to require disclosure to consumers about closing costs and to prohibit kick-backs or referral fees in a real estate transaction. Generally, the paying and receiving of any fees, or anything of value, for referring a buyer to a lender is a RESPA violation.

However, RESPA does not prohibit a lender from paying the lender's agent or contractor for services actually performed in the origination or processing of a loan. Thus, if the real estate licensee is actually providing loan services, the appropriate RESPA required disclosures are made, and the buyer is notified that the buyer is not obligated to use the real estate licensee as their loan originator, the program may comply with RESPA.

Q. Are there any other laws that should be considered in evaluating these Lender Fee Programs?

A. Yes. First, the Lender Fee Program must comply with the Arizona State Banking Department statutes and rules. For example, mortgage brokers must be licensed. A.R.S. 56903. Second, the Lender Fee Program must comply with the Arizona Department of Real Estate statutes and rules. Specifically, pursuant to A.R.S. §32-2155(C) a real estate licensee may not collect compensation for rendering services in negotiating mortgage loans unless the real estate licensee has a mortgage broker's license or is an employee, officer, or partner of a corporation or partnership which holds a mortgage broker license. Thus, any real estate licensee participating in one of these Lender Fee Programs must hold a mortgage broker's license or actually be employed by the lender. A.R.S. 532-2155(C) also requires that a real estate licensee disclose that the licensee is receiving compensation for both real estate brokerage and mortgage brokerage services.

Q. Does a buyer's broker have any potential civil liability to a buyer if the buyer's broker is collecting a fee from the buyer's lender?

A. A real estate licensee has the duty to exercise reasonable due care and diligence to effect a sale to the principal's best advantage. *Haldiman v. Gosnell Development Corp., 155 Ariz. 585, 588, 748 P. 2d 1209, 1212 (App. 1987).* A buyer who was directed to a lender by the buyer's broker may claim that the buyer's broker breached the buyer's broker's duty to effectuate the transaction to the buyer's best advantage, if the buyer could have obtained a mortgage loan at a lower rate or at a lower cost than the rate and costs procured by the buyer's broker. Further, a buyer's broker is prohibited from taking advantage of a fiduciary relationship with the buyer for the buyer's broker's own benefit. Therefore, if the buyer claimed that the buyer's broker took advantage of their fiduciary relationship for the buyer's broker's benefit because of the Lender Fee Program, the buyer's broker may have the burden of proving that the transaction was fair.

Q. Must a buyer's broker obtain the buyer's consent if the broker intends to accept compensation from a lender in connection with a Lender Fee Program?

A. Yes. A real estate licensee shall not accept any compensation, rebates, or profit for transactions made on behalf of a client without the written consent of the client. A.A.C. R4-281101 (G); see also Lyle Moore v. Moore, 599 P.2d 336, 338 (Mont. 1979). (A broker has a duty to reveal the nature and extent of the broker's fees to the client.)

Q. Does the designated broker have liability for claims arising out of a salesperson's acceptance of compensation in connection with a Lender Fee Program?

A. Generally, the designated broker is vicariously liable for the behavior of a salesperson who is acting within the course and scope of the salesperson's employment. See e.g., A.A.C. R4-28-302(H). However, when a salesperson is acting solely on the salesperson's own behalf, and not acting on behalf of the designated broker, the designated broker should have no liability for the salesperson's actions. See e.g., Pruitt v. Pavelin, 141 Ariz. 195, 206, 685 P.2d 134 7, 1356 (App. 1984). However, because of the potential liability and the possibility that loan processing activities on behalf of a buyer could be construed as being within the course and scope of the salesperson's employment, many employing brokers, as a matter of policy, limit or prohibit a salesperson's involvement in Lender Fee Programs.

Q. Will the real estate licensee's errors and omissions (E&O) insurance cover any claims by a buyer arising out of the acceptance of fees in connection with a Lender Fee Program?

A. Probably not. The E&O policy of one of Arizona's largest real estate insurance companies specifically states that the policy will not cover loss resulting from any activity as a mortgage banker or mortgage broker. Further, most E&O insurance coverage is generally limited to conduct as a real estate agent or broker. Thus, any real estate licensee considering becoming involved with a Lending Fee Program should obtain additional E&O insurance to cover the mortgage loan activities.

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Experior

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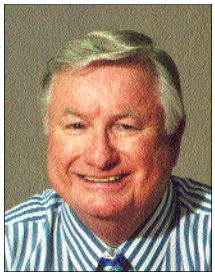
ber.

"Three companies, Experior, ASI and PSI Examination Services, bid on the contract to administer the exams," said John Bechtold, ADRE's Director of Education and Licensing. "We contacted 10 other states who currently use one of the three companies, and we found that those who use Experior, including the largest state using an outside contractor, Texas, could not have been more enthusiastic about Experior. In fact, Texas just renewed its contract with the firm."

Mr. Bechtold said the "Arizona specific" portion of the test will not change. "I've also looked at the national portion, and I couldn't see much difference between the ASI version and Experior's version," he said.

The Department will meet with Arizona real estate school owners in the first part of October to explain the details of the new examinations, and to assure the owners that there will be a smooth transition to the Experior examinations. A new Candidate Handbook will be distributed to schools and available to the public before the change to Experior is made, Mr. Bechtold said.



Jerry Holt

News From The Commissioner

NEWLY PROPOSED RULES
As you may have noticed on page 1, the Department has submitted its 1999 Rulemaking Package to the Secretary of State, and public hearings to solicit public input on the proposed changes will be held in Phoenix and Tucson in November.

I encourage you to review the proposed changes and to voice your comments at the public hearings.

In addition to the rule changes, the Department is drafting legislation with input from the Arizona Association of Realtors® and others which will be introduced during the next legislative session. Details will be published in the next issue of the *Bulletin* and on the Department's Web site at www.re.state.az.us.

You will have ample opportunity to review the proposed legislation and to give me your suggestions and comments before anything is finalized.

Arizona-Mexico Commission
I'll be in Puerto Peñasco on November 11, 12 and 13 at a meeting of the Arizona-Mexico Commission. Here's the agenda of the Financial and Business Services Committee which I co-chair:

- Continued discussions about the establishment of a Department of Real Estate in Sonora patterned closely after the Arizona Department of Real Estate;
- Review of the progress on a 32-page manual describing the process foreigners go through and the liabilities inherent in buying or leasing real estate in Mexico;
- "Securitization," wherein U.S. lenders will accept property in Mexico as security;
- Mortgage loans to Americans by Mexican banks; and
- The possibility of inadvertent double-taxation on *La Industria Maquiladora* (U.S. companies operating plants in Mexico near the U.S. border) by the U.S. and Mexican governments.

Helen Alt
I am sorry to see Helen Alt leave the Department, but her retirement (see page 1) is richly deserved. Few employees of the Department have made as great an impression on real estate school instructors as has Helen. Her devotion to her job and the way in which she has provided support and help to Arizona's more than 100 real estate schools is a rare thing.

I wish her well in her retirement years. May they be extended and fun-filled. Helen, we'll all miss you very much. *Vaya con Dios.*

Can we talk? Yes!
For some reason, some licensees have the perception that if you have a problem with the Department, if you think you're being treated badly by a staff member or if you are the subject of an investigation or an administrative action, talking to the Commissioner is off limits.

This is not true. My door is always open and I welcome your telephone calls, e-mail or personal visits.

You should know, however, that if the matter involves possible disciplinary action by the Department and I discuss it with you, the law says I become "tainted." As such, I must recuse myself and will not be the person who will make the final decision in your case. In such circumstances, the final decision would be made by my designee, a Division Director who has no prior knowledge of the case.

Nominally, the law provides for the system to work this way: I am kept out of the loop about disciplinary matters and/or investigations until a Consent Order or the recommendation of an Administrative Law Judge is placed on my desk. I can then review the case with fresh, unbiased eyes and make a judgment as to whether the case has been properly decided.

I sometimes disagree with the initial terms of a Consent Order and I don't always agree with the recommendations of the Administrative Law Judge. When this happens, it usually works in favor of the licensee.

With these conditions in mind, if you think it is proper for me to intercede in a case and you are willing to have the final decision made by a Division Director, by all means contact me. I will listen with an open mind and do what I can to help you.

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1999 - 2000 Schedule of Broker Audit Clinics

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

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

The following is the schedule of Clinics to be offered in Phoenix and Tucson during the remainder of 1999 and in 2000. Additional clinics may be scheduled from time to time at other locations in Phoenix and in rural areas.

PHOENIX Industrial Commission Auditorium 800 W. Washington	**TUCSON** State Office Building 400 W. Congress Room 222
1 p.m. to 4 p.m.	**1 p.m. to 4 p.m.**
1999	**1999**
October 14 (filled)	October 20
October 21 (filled)	November 17
November 18 (filled)	December 15
December 16 (filled)	
2000	**2000**
January 20	January 19
February 17	February 16
March 16	March 15
April 20	April 19
May 18	May 17
June 15	June 14
July 20	July 19
August 17	August 16
September 21	September 20
October 19	October 18
November 16	November 15
December 14	December 13

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-1982
Jesus E. Briones, Jr., dba Del Bac Realty and Management Services
Tucson
DATE OF ORDER: August 13, 1999
FINDINGS OF FACT: In a Notice of Hearing and Complaint, the Department alleged that Respondent, a licensed real estate broker, entered into property management agreement with two property owners, and failed to remit monies to the owners and violated other provisions of Arizona Revised Statutes, Title 32, Chapter 20.

Department auditors determined that the whereabouts of Respondent is unknown and his property management and trust account records cannot be located.

Respondent failed to appear at the Administrative Hearing.
DISPOSITION: Respondent's real estate broker's license revoked. Respondent to pay a civil penalty in the amount of $4,000.

SUSPENSIONS

98A-H-1962
Mitchel D. Gladstone
Phoenix
DATE OF ORDER: August 30, 1999
FINDINGS OF FACT: The Department issued Respondent a real estate broker's license in September 1991. Until June 1, 1995, Respondent served as the designated broker and director of marketing for Laurelcreast Homes.

Laurelcrest was a partnership holding a real estate broker's license issued in June 1991. The partnership was in the business of building and selling new homes in Phoenix. Genesis S.W. Inc. was the general partner of Laurelcrest. William Dykes served as president of Genesis. Richard Presley served as vice-president, and Steve Turkal served as secretary.

Dykes and Presley were the principals of Laurelcrest. Jeri Irwin served as Laurelcrest's designated broker before Respondent. R. David Maddux, Dykes' sun-in-law, replaced Respondent as Laurelcrest's designated broker in June 1995 and served until November 1995.

Laurelcrest ceased operations in November 1995 after building more than 500 homes. The company subsequently filed for bankruptcy protection. As a result, numerous buyers filed complaints with the Department seeking refunds of deposits and other payments.

Respondent was appointed "assistant secretary" of Genesis in September 1992, however the record is void of direct, credible evidence that the appointment was more than a mere ministerial title.

This matter arises out of the Department's investigation of Laurelcrest and its operations which began late in 1995 and focused on three subdivisions: Pecan Groves Village III, Park Promenade, and Traditions East. As a result of the investigation, Laurelcrest, Dykes and Presley entered into a Consent Order with the Department in which they admitted violations of real estate statutes and rules including misrepresentation, failing to advise purchasers of Laurelcrest's inability to perform and failing to obtain purchasers' initials or signatures indicating approval of Laurelcrest's use of earnest monies for general operations.

The order compelled restitution payments for the benefit of certain buyers. It is worth noting, however, that Respondent was not a party to the Consent Order nor are the above findings products of an independent, formal administrative hearing.

While Respondent was part of the Department's investigation of Laurelcrest and its principals, the Department did no formally charg Respondent with any violation of state law for his involvement with Laurelcrest until July 17, 1998. Upon completion of the hearing in this matter, the Department summarized its allegations against Respondent:

1. Laurelcrest and Respondent failed to obtain purchasers' signatures or initials on a contract provision authorizing Laurelcrest to use earnest monies in its general account rather than in an escrow account.
2. Laurelcrest and Respondent used purchase contract amendments which misrepresented that earnest monies would be placed in escrow. Contrary to these amendments, earnest money deposits were not placed in escrow except in limited cases.
3. Laurelcrest and Respondent failed to advise buyers of the company's potential inability to follow through on its contractual agreements, i.e., the risk that houses might not be completed, and the risk that Laurelcrest would be unable to refund earnest money deposits.

In the course of conducting business, Laurelcrest utilized numerous forms. The record is void of direct, credible evidence that Respondent actually created, materially altered or formally approved any of the forms at issue in this matter.

The Department of Real Estate Public Report for Laurelcrest subdivisions stated that earnest money deposits, down payments and other advanced monies would not be placed in a neutral escrow account, but would be paid directly to the seller and could be used by the seller. The report also stated, "This means the purchaser assumes the risk of losing such monies . . ."

None of the buyers who appeared as witnesses at the Administrative Hearing testified specifically to actually reading the public report.

The purchase contract used by Laurelcrest stated that purchaser's deposits and earnest monies (except for VA purchasers' funds) could be used by the company.

In most instances, a buyer executed an amendment to the contract at the same time the purchase contract was executed. The amendment states that the earnest money check would be cashed upon acceptance of the contract.

An additional form R-20, was used for further amendments to the purchase contract to reveal a change in the total purchase price, Laurelcrest's actual receipt of additional earnest deposits, the sum and due date of future deposits, and a change in the amount the buyer must finance.

Form R-20 stated that earnest monies and other deposits would deposited in a neutral escrow account.
VIOLATIONS: Respondent failed to require buyers to sign or initial any provision providing that a down payment or earnest money would be paid directly to seller in violation of A.A.C. R4-28-803(D). Respondent allowed Laurelcrest's use of form R-20 while he served as its designated broker, and Laurelcrest should not have used the form for the purpose it intended. Respondent tacitly approved use of the form which constitutes violations of A.R.S. §§ 32-2153(A)(3), (21), and (22), and A.R.S. § 32-2164.
DISPOSITION: Respondent's real estate broker's license suspended for five days from the date of this order. Respondent assessed a civil penalty in the amount of $2,000.

99A-012
Gregory Gadek, dba Marketplace Realty
Mesa
DATE OF ORDER: July 27,. 1999
FINDINGS OF FACT: Respondent was issued an Arizona real estate broker's license in April 1995. The license expired on April 30, 1999. On March 19, 1999, the Department summarily suspended Respondent's license. Respondent requested an administrative hearing.

Respondent, who is 37, received a real estate salesperson's license in Michigan when he was 18, and was issued a Michigan broker's license when he was 21. He testified that he was involved in more than 100 real estate transactions in Michigan, and that no complaints were ever filed against his license.

After moving to Arizona and becoming licensed as an Arizona real estate salesperson, he became involved in small residential construction projects. As his experience with these small projects grew, he incorporated a business known as Gadek Homes, Inc. Gadek Homes obtained a residential contractor's license. Respondent was the president, a director and a principal shareholder of Gadek Homes, and was the corporation's statutory agent.

Respondent obtained an Arizona real estate broker's license to assist with the sale of the homes the company built.

Gadek Homes flourished between 1993 and 1996, but according to Respondent the company overextended itself by construction borrowing and by building many houses which did not sell expeditiously.

Eventually, the Registrar of Contractors revoked Gadek Homes' contractor's license and ordered the firm to pay subcontractors $52,867.50. The Registrar of Contractors also paid homeowners $66,023.37 from the Residential Contractors' Recovery Fund for damages sustained as a result of Gadek Homes' acts or omissions.

Gadek Homes has not paid any of the liabilities owed to subcontractors, any of the civil penalties imposed by the Registrar, and has not made any reimbursement to the recovery fund.
VIOLATIONS: Disciplinary actions by the Reg-

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istrar of Contractors show Respondent violated A.R.S. § 32-2153(A)(3). Respondent's actions show he is not a person of honesty, truthfulness or good character, a violation of A.R.S. § 32-2153(B)(7).
DISPOSITION: Respondent to pay a civil penalty in the amount of $750. Respondents' real estate broker's license is suspended for 18 months, retroactive to March 19, 1999.

LICENSE APPLICATIONS DENIED

99A-039
David M. Samaniego
Tucson
DATE OF ORDER: July 9, 1999
FINDINGS OF FACT: In his January 1999 application for a temporary cemetery salesperson's license, Petitioner disclosed four misdemeanor convictions to the Department.

He had been convicted of reckless driving, assault, domestic violence/assault and criminal trespass.

The Department denied Petitioner's application. Petitioner requested an administrative hearing, but did not appear at the hearing.
DISPOSITION: Petitioner's license application denied.

99A-030
Thomas Jefferson McKenzie
Goodyear
DATE OF ORDER: August 3, 1999
FINDINGS OF FACT: In his February 1999 application for a real estate salesperson's license, Petitioner disclosed five convictions for shoplifting. Evidence shows that although Petitioner pleaded guilty in two of the shoplifting cases, and admitted during the Administrative Hearing in this matter to having shoplifted in certain stores, and those acts formed the basis for the above-mentioned convictions, all of the convictions were either dismissed, vacated and/or expunged.

However, when Petitioner was licensed in the State of Washington as a real estate agent, as a result of two of the convictions and his failure to notify the Real Estate Program Manager within 20 days of the convictions, that license was suspended for two years, and the suspension stayed for five years on the condition that no further violations of real estate statutes or rules occurred during the five-year period.

The Administrative Law Judge found that other than his own testimony, Petitioner did not present credible corroborating evidence as to his good character. Further, documents submitted during the Administrative Hearing shows that Petitioner strongly harbors ill will toward the Department in denying his application. This, the Administrative Law Judge found, shows additional evidence of Petitioner's bad character.
VIOLATIONS: Petitioner is not a person of good character within the meaning of A.R.S. § 32-2153(B)(7).
DISPOSITION: Petitioner's application denied.

CIVIL PENALTIES

99A-038
Allan D. Doty, Sr.
Phoenix
DATE OF ORDER: August 23, 1999
FINDINGS OF FACT: In his 1998 application for a real estate salesperson's license, Respondent failed to disclose a 1975 conviction for battery upon his 22-year-old wife, and a 1988 conviction for domestic violence upon his second wife.

In addition, he was not aware of a conviction, and a resulting warrant for his arrest on bad check charges. After being advised of the warrants by Department investigators, he retained legal counsel and within three months had resolved the matters.

Respondent testified that he did not recall the 1975 or 1988 misdemeanor convictions due to a memory loss resulting from a motorcycle accident. When he completed his license application, he first checked "yes" to the question on the application form which asks if the applicant has ever been convicted of a misdemeanor, but changed the answer to "no" and initialed the change.
VIOLATIONS: Respondent violated A.R.S. § 32-2153(B)(3) in that he did not report the convictions in a timely manner as required by A.A.C. R4-28-301(C). Respondent procured or attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application which was false or misleading in violation of A.R.S. § 32-2153(B)(1). Respondent made substantial misrepresentation in violation of A.R.S. § 32-2153(B)(3).
DISPOSITION: Respondent assessed a civil penalty in the amount of $2,000.

CEASE AND DESIST ORDER

CD-99-0001
Gordon McLeod, Charlotte McLeod, Julie McLeod, David McLoed, Danielle McLeod, Deniese McLoed
Spaulding, Michigan
DATE OF ORDER: June 15, 1999
FINDINGS OF FACT:
1. Respondents own or did own 20 acres of land in Pinal County. 2. Respondents divided or proposed to divide the property into six or more lots and, by their actions, have created a subdivision within the meaning of A.R.S. § 32-2101(54).
3. Respondents, through divisions and conveyances between and among various family members, have attempted or are attempting to evade compliance with Arizona real estate subdivision statutes in violation of A.R.S. § 32-2181 et seq., and contrary to the public health, safety and welfare.
4. Respondents have made misrepresentations to purchasers and prospective purchasers concerning the property, including statements that the property is appropriate for residential purposes, which is inconsistent with the property's Commercial Use zoning designation.
5. Respondents have failed to demonstrate the availability of an approved water supply, the suitability of the property for installation of septic systems, legal and permanent access to the lots, the availability and cost of utilities to the lots, and otherwise to demonstrate compliance with municipal, county and state requirements for a subdivision and for issuance of a subdivision public report, in violation of A.R.S. § 32-2181 et seq.
6. The sales and offers for sale by Respondents are not exempt from the subdivision public report requirements pursuant to A.R.S. §§ 32-2181(E), 32-2181.01 or 32-2181.02.

NOW, THEREFORE, the Real Estate Commissioner finds the public health, safety or welfare imperatively requires immediate action. Accordingly, pursuant to A.R.S. §§ 32-2154 and 2183(I),

IT IS ORDERED that Respondents immediately cease and desist from the sale or offer to sell lots in the subdivision without first complying with applicable laws and rules.

IT IS FURTHER ORDERED that Respondents immediately provide notice to persons to whom they have sold lots in the property of the purchasers' right to rescind the purchase, pursuant to A.R.S. § 32-2183(F). No appeal was filed.

CONSENT ORDERS

99A-020
Dorothy Kondor Paxton and G.M.R. Realty, Inc., dba Century 21 El Camino Realty
Bullhead City
DATE OF ORDER: June 23, 1999
FINDINGS OF FACT: Respondent was issued an original real estate broker's license in November 1989. Her current license will expire November 30, 1999.

G.M.R. was issued an original corporate real estate brokers license in December 1987. That license will expire November 30, 1999.

From May 1994 to the present, Respondents have maintained a trust account used in connection with property management accounts. In May and November 1994, the Department audited the trust account. The audits revealed a shortage of $27,000.

In February and September 1998, additional audits were conducted. The February audit revealed a shortage of $17,631.39 and the September audit revealed a shortage of $14,794.14.

Between November 1994 and September 1998, Paxton failed to correct the shortages despite her verbal and written promises to the Department to do so. The present shortage is believed to be $12,294.14,

The September 1998 audit further revealed that Paxton did not maintain receipt and disbursement journals for the trust account, nor did she perform regular reconciliations between the monthly trust account balance and the client ledge balances.
VIOLATIONS: Paxton breached her fiduciary duty to her clients and failed to protect and promote her clients' interests, in violation of A.A.C. R4-28-1101(A) and A.R.S. § 32-2153(A)(3).

Paxton and G.M.R. failed to maintain a complete record of all monies received in connection with real estate transaction pursuant to generally accepted accounting principles, as required by A.R.S. § 32-2151(B)(2) and in violation of A.R.S. § 32-2153(A)(18).

Paxton demonstrated negligence in main-

taining client funds entrusted to her care in violation of A.R.S. § 32-2153(A)(22).
DISPOSITION: Paxton's real estate broker's license is suspended for one year beginning February 26, 1999 through February 29, 2000. G.M.R.'s real estate license is revoked.

Upon completion of her period of suspension, Paxton may apply for reinstatement as a real estate associate broker provided she satisfies the following conditions:
1. She shall not act as a branch manager while licensed as an associate broker.
2. She shall not be a signer on or have access to or authority over a real estate broker's trust account.
3. She shall not be issued a designated real estate broker's license.
4. Any designated real estate broker employing Paxton shall file with the Department's Compliance Officer a signed statement certifying that the broker has received a copy of this Consent Order. The broker's statement shall accompany the forms and fees required for Paxton to be employed by the broker.
5. Paxton must apply for reinstatement as a real estate associate broker no later than November 30, 2000.

Paxton and G.M.R. to pay a civil penalty in the amount of $2,000. Prior to applying for reinstatement as a real estate associate broker, Paxton must pay the civil penalty in full and eliminate the $12,294.14 trust-account shortage.

99A-068
Aaron Clay Carson
Gilbert
DATE OF ORDER: July 7, 1999
FINDINGS OF FACT: Respondent was issued an original real estate salesperson's license in 1994.

In 1996, Respondent was arrested by DPS and charged with Aggravated DUI, a class 6 felony, two counts of Endangerment, class 6 felonies, and Possession of Marijuana, a class 6 felony.

On August 24, 1998, Respondent was found guilty in Maricopa County Superior Court of Aggravated DUI, a class 4 felony, and placed on probation for four years. He was also sentenced to prison for four months.

Respondent did not disclose the felony charges pending against him when he submitted his 1996 and 1998 license renewal applications.

In January 1988, Respondent pleaded guilty to and was convicted of Theft in the First Degree, a class C felony, in Washington County Circuit Court. He was placed on probation for three years.

In March 1990, respondent admitted to violating the terms of his probation. The court extended his probation for three years.
VIOLATIONS: Respondent has been convicted of a felony, within the meaning of A.R.S. § 32-2153(B)(2), and is currently on probation as a result.
DISPOSITION: Respondent's real estate salesperson's license is revoked. Respondent shall not reapply for a license for five years from the date of this order.

99A-063
Gary David Sterner
Tucson
DATE OF ORDER: July 9, 1999
FINDINGS OF FACT: In his September 1998 application for a real estate salesperson's license, Respondent failed to disclose a May 1995 conviction for domestic violence.
VIOLATIONS: By failing to disclose his conviction, Respondent procured or attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-3153(B)(1).
DISPOSITION: Respondent's real estate salesperson's license is suspended for two years to begin 10 days after entry of this order.

99A-036
Holley Hillcrest Memorial Gardens, and Mavis Daley, its president.
Miami
DATE OF ORDER: July 22, 1999
FINDINGS OF FACT: In February 1985, Howard Holley and Holley Hillcrest Memorial Gardens were issued cemetery broker's licenses. Holley was the designated broker for Holley Hillcrest Memorial Gardens. In July 1988, Holly Hillcrest Memorial Gardens was issued a Certificate of Authority to operate a cemetery.

Daley is currently, and all times material to this matter was, president and operator of the cemetery. She is not licensed as a real estate or cemetery broker or salesperson, but as owner of the cemetery may offer lots for sale and sell lots.

In July 12, 1988, Holley, as designated broker and majority shareholder of the cemetery, was ordered to make monthly payments of $1,000 to correct a shortage of approximately $34,807 in the cemetery's endowed care trust fund. He was also ordered to make specific deposits in the trust fund for each grave, niche and crypt sold.

In October 1992, the Department revoked the cemetery's Certificate of Authority and summarily suspended Holley's and the cemetery's broker's licenses. The order cited false and misleading reports by Holley of purported deposits to the trust account; his failure to maintain an appropriate balance in the endowed care trust fund; his repeated failure to comply with applicable statutes and to respond to correspondence concerning non-compliance; and tax liens filed against the cemetery. The order was not appealed. The broker's licenses issued to Holley and the cemetery expired in February 1993.

In July 1993, Holley brought the trust account balance into compliance with a payment of $3,125.89.

In January and February 1994, Daley advised the Department that she had purchased Holley's interest in the cemetery; that she was the sole owner as of October 1, 1993; that the cemetery's books were in order and any shortages in the trust fund had been corrected; and that a fire had destroyed the cemetery buildings and damaged some records, but they had been restored as of August 1993.

In March 1994, The Department audited the records and endowed care trust account. The audit revealed that:
1. The condition of the office premises and grave sites had been improved since an inspection and audit in 1991;
2. The balance in the trust fund was within approximately $100 of the required balance and was considered fully funded;
3. Consumer fraud litigation in Gila County against the cemetery had been dismissed;
4. Daley now owned 100 percent of the cemetery; and
5. Delinquent property taxes had been paid and the tax liens removed.

As a result of the audit, the Department reinstated the cemetery's Certificate of Authority.

In August 1998, the Department audited the cemetery which was then operating under the name Mountain Breeze Memorial Gardens. The audit revealed a trust account shortage of $8,893.38. The Department auditor advised Daley that she was not depositing the proper amount into the trust fund for each sale consummated. Daley told the auditor that she would make up the shortage, but was unable to do so in one lump sum.
VIOLATIONS: Holley Hillcrest Memorial Gardens, by and through Daley, demonstrated negligence within the meaning of A.R.S. § 32-2153(A)(22) by failing to keep and maintain complete records of interment and by failing to deposit the correct amount into the trust account for each sale consummated.

Holley Hillcrest Memorial Gardens, by and through Daley, did not deposit the required amount for each sale into the trust fund in compliance with A.R.S. §§ 32-2194.28(A)(1) through (A)(3).

Holley Hillcrest Memorial Gardens and Daley have operated as a cemetery and have offered for sale or sold cemetery lots under the name "Mountain Breeze Memorial Gardens, Inc." The use of this name is inconsistent with the information contained in the notice of intention filed by Holley Hillcrest Memorial Gardens pursuant to A.R.S. § 32-2194.01, in violation of A.R.S. § 32-2194.05(C).

Holley Hillcrest Memorial Gardens and Daley have violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, within the meaning of A.R.S. § 32-2153(A)(3) and (B)(10).

Daley, as officer and owner of Holley Hillcrest Memorial Gardens, has disregarded or violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, within the meaning of A.R.S. § 32-2194.03(B)(9)(e).
DISPOSITION: Daley shall bring current the balance in the cemetery's trust fund and shall provide proof to the Department's Compliance Officer of monthly deposits of $500 or more until the shortage is fully repaid, and the account is properly funded pursuant to applicable statutes.

Daley shall purchase and maintain in the cemetery office a current copy of the Arizona Real Estate Law Book.

She shall operate the cemetery and maintain the trust account in accordance with all applicable laws and rules.

Daley and Holley Hillcrest Memorial Gardens to pay a civil penalty in the amount of $3,000.

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99A-094
Paul J. Parker
Apache Junction
DATE OF ORDER: August 11, 1999
FINDINGS OF FACT: In July 1998, Respondent was issued areal estate salesperson's license.

In February 1998, he was charged with two counts of DUI, class 1 misdemeanors, and Possession of Marijuana, a class 6 felony. In April 1999, he pleaded guilty in East Mesa Justice Court and was convicted of Possession of Marijuana and DUI, class 1 misdemeanors.

In June 1999, he advised the Department of his convictions. He represents that he did not disclose the pending charges in his license application upon written advice from his attorney.
VIOLATIONS: Respondent did not disclose the charges pending against him in his license application which constitutes the filing of a false or misleading application within the meaning of A.R.S. § 32-2153(B)(1). He failed to disclose his 1999 convictions to the Department in writing within 10 days in violation of A.A.C. R4-28-301(C). Respondent disregarded or 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).
DISPOSITION: Respondent's real estate salesperson's license is suspended for three months. Respondent to pay a civil penalty in the amount of $500.

99A-096
Daniel T. Milton and Commercial Real Estate Services, LLC
Scottsdale
DATE OF ORDER: August 11, 1999
FINDINGS OF FACT: In August 1991, Milton was issued an original real estate broker's license. The license expired on August 31, 1997. On August 21, 1998, Respondent submitted a renewal application. The license was renewed.

On June 4, 1999, Milton applied for a broker's license on behalf of Commercial Real Estate Services, LLC (CRES), and an application for Milton to be licensed as the designated broker for CRES.

As a part of CRES' license application, Milton disclosed that he "was tried, and found guilty." Documents provided by Milton with the applications revealed that in November 1996 he was convicted of DUI and DUI with BAC of 0.1 or more, class 1 misdemeanors.
VIOLATIONS: By failing to disclose the December 1996 convictions when he filed his August 1998 renewal application, Milton procured or attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1). He did not disclose the 1996 convictions to the Department in writing within 10 days, in violation of A.A.C. R4-28-301(F), formerly (C). Milton disregarded or 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).
DISPOSITION: Milton to pay a civil penalty in the amount of $500. Milton's real estate broker's license is suspended for 10 weeks, from June 4, 1999 through August 12, 1999. The application for a real estate license filed by CRES is granted.

99A-086
Steven R. Dexheimer
Wickenburg
DATE OF ORDER: August 18, 1999
FINDINGS OF FACT: In his August 18, 1998 application for a real estate salesperson's license, Respondent failed to disclose a 1974 conviction for Petty Theft, a 1975 conviction for Grand Theft, and a 1985 conviction for Possession of a Controlled Substance for which he was fined $10 and sentenced to seven days in jail.
VIOLATIONS: By failing to disclose the convictions, Respondent procured or attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(3).
DISPOSITION: Respondent's real estate salesperson's license is suspended for three months. Respondent to pay a civil penalty in the amount of $500.

99A-080
Regina Horten
Tucson
DATE OF ORDER: August 19, 1999
FINDINGS OF FACT: In her December 1998 application for a real estate salesperson's license, Respondent failed to disclose a 1975 conviction for "simple larceny" for which she was placed on probation for three months.
VIOLATIONS: By failing to disclose her 1975 conviction, Respondent procured or attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1).
DISPOSITION: Respondent to pay a civil penalty in the amount of $500.

99A-109
Brian W. Corris
Scottsdale
DATE OF ORDER: September 7, 1999
FINDINGS OF FACT: In his April 1999 application for a real estate salesperson's license, respondent failed to disclose a 1987 conviction for Indecent Exposure.
VIOLATIONS: By failing to disclose his 1987 conviction, Respondent procured or attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1).
DISPOSITION: Respondent to pay a civil penalty in the amount of $300. Respondent shall attend six hours of approved continuing education classes in addition to hours required for license renewal.

99A-076
Juanita Cruze
Phoenix
DATE OF ORDER: September 13, 1999
FINDINGS OF FACT: The Department issued Cruze an original real estate salesperson's license in May 1991. That license expired May 31, 1999. At all times material to this matter, Cruze was employed by AVI Realty International, Ltd., a licensed Arizona real estate broker.

At all times material to this matter, Robert Ronhovde was AVI's designated broker.

On August 28, 1998, Cruze wrote a purchase contract on behalf of Mateo Garcia for the purchase of a home in Phoenix. Cruze received an earnest money deposit of $5,000 from Garcia which was to be deposited with ATI Title Agency of Arizona.

The seller made a counter offer on September 1, 1998 which provided that in addition to the $5,000 earnest money, an additional $9,500 was to deposited at close of escrow.

According to Garcia, his wife gave Cruze $5,000 cash as earnest money and down payment, and two weeks later gave Cruze and additional $5,000 in cash.

Cruze represents that garcia wanted to pay a large cash down payment and that she advised him "it would be in his best interest not to give that amount." She stated that she "...returned the file with Mr. Garcia's documents for (the) loan along with funds given to her..." but that she "did not receive a receipt for funds and...proceded by depositing $500 earnest money with the title company instead of the complete $10,000."

On September 8, 1998, a money order for $500 was received by ATI as earnest money.

Garcia's loan application was declined, escrow was canceled, and ATI refunded the $500 to Garcia on October 15, 1998. Garcia visited the AVI Realty office on November 17, 1998, and talked with Ronhovde concerning the balance of the $10,000 down payment.

According to Ronhovde, on November 28, 1998, Cruze advised him that she had collected the money but had returned it to Mrs. Garcia who had then gone to Mexico.

In a letter to Ronhovde dated December 15, 1998, Cruze stated that she was responsible to repay the $9,500, plus the $500 if the escrow deposit was not returned to Garcia, and that she would "have the money at AVI Realty on 12/16/98 at 1 p.m. — no later" in the form of a cashier's check to Garcia.

On December 22, 1998, Ronhovde paid Garcia $9.500 from AVI Realty's business account. Cruze did not repay the money.
VIOLATIONS: Cruze, within a reasonable time, failed to account for or to remit any monies, within the meaning of A.R.S. § 32-2153(A)(9). She failed to keep an escrow or trust account or other record of funds deposited with her relating to a real estate transaction, within the meaning of A.R.S. § 32-2153(A)(15).

Cruze has commingled money of her principal or client with her own, or has converted the money or property to her or another, in violation of A.R.S. § 32-2153(A)(16). She did not promptly place all cash, checks or other items of value she received in connection with a real estate transaction in the care of her designated broker, in violation of A.R.S. § 32-2151.01(D).

Cruze failed to give a copy of the Garcia purchase contract and confirmation that the earnest monies of other monies were handled according to instructions given by or agreed to by the parties to the transaction to her designated broker for retention in a sales transaction folder, in violation of A.R.S. § 32-2151.01(F)(1). She did not maintain a complete copy of the es-

crow account receipt as required by A.R.S. § 32-2151.01(F)(2). Her conduct and actions constitute violations of 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).
DISPOSITION: Respondent's real estate license is suspended for three years effective upon entry of this Order. If Respondent applies for relicensure following the suspension period, it shall be as an original applicant pursuant to A.R.S. § 32-2131(A)(5)(b)(ii).

99A-105
Kenneth Moss
Phoenix
DATE OF ORDER: September 14, 1999
FINDINGS OF FACT: In his April 1998 application for a real estate salesperson's license, Respondent disclosed charges pending against him in Texas. The Department issued Respondent a license which expires April 30, 2000.

On June 18, 1998, Respondent advised the Department that he had pleaded guilty to bank larceny, a felony, in U.S. District Court in Texas.

On October 20, 1998, Respondent was found guilty of one count of bank larceny. He was sentenced to four months in prison and placed on home detention, to be followed by three years' supervised release, and ordered to pay $48,430 in restitution.
VIOLATIONS: Respondent has been convicted of a felony or a crime of forgery, theft, extortion, conspiracy to defraud, a crime of moral turpitude or any other like offense, within the meaning of A.R.S. § 32-2153(B)(2). Respondent has been found guilty of conduct which constitutes fraud or dishonest dealings, within the meaning of A.R.S. § 32-2153(B)(5). Respondent has failed to demonstrate that he is a person of honesty, truthfulness and good character, within the meaning of A.R.S. § 32-2153(B)(7).
DISPOSITION: Respondent's real estate salesperson's license is revoked.

99A-099
Pamela N. Novy
Phoenix
DATE OF ORDER: SEPTEMBER 14, 1999
FINDINGS OF FACT: In her February 1999 application for a real estate salesperson's license, Respondent failed to disclose that she had been convicted in January 1996, in Prescott City Court, of Disorderly Conduct.

She was fined $175, but her check bounced and a warrant was issued for her arrest in February 1996 by City of Prescott Magistrate Court for Contempt of Court.

On being advised by the Department of the outstanding warrant, Respondent paid the fine. The warrant was quashed by the Court.
VIOLATIONS: By failing to disclose her conviction, Respondent attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1).
DISPOSITION: Respondent to pay a civil penalty in the amount of $500. Respondent's real estate salesperson's license is suspended for three months.

99A-108
In the matter of the Application for Public Report by Roundhouse Resort Vacation Plan Owners Association
Payson
DATE OF ORDER: September 16, 1999
FINDINGS OF FACT: Roundhouse Resort is a time-share project governed by Arizona Law. Petitioner filed an Application for Public Report. The application was denied the application based on the oversold condition that Petitioner indicated exists at the time-share project. In addition, an "order To Preserve the Status Quo" was entered by Maricopa County Superior Court. The order states, *inter alia*, that Petitioner "shall not conduct any sales, foreclosure sales, or any other dispositions of any timeshare interests or intervals" pending an evidentiary hearing to be held at an undetermined future date.

Sales and conveyances have exceeded vacation plans available for certain plan types at the resort.

Petitioner represents that there is sufficient capacity to accommodate occupancy by all of the eligible owners at some time in the year. Demand for reservations at particular dates requires that some owners be accommodated in a type of accommodation, or during a season of the year, that does not coincide with the type and season shown on the deed issued to the owner.

Petitioner agrees that it will not conduct mass marketing to promote the sale of vacation plans owned by Petitioner until the oversold condition is remedied and an amended public report is issued.
DISPOSITION: Petitioner shall not sell, offer or market time-share intervals to Arizona residents except in compliance with the terms of this Consent Order and the public report issued for this time-share project.

Petitioner may foreclose on liens for unpaid assessment fees of vacation plan owners who are in default of their obligations to Petitioner, in conformance with the procedures set forth in the Declaration of Vacation Plan of Roundhouse Resort and as permissible by law.

Petitioner may offer for sale and sell to its members and their families vacation plan interests that Petitioner owns, provided such vacation plan is not of a type that is oversold.

Petitioner shall not conduct mass marketing to promote the sale of vacation plans owned by Petitioner until the oversold condition is remedied and an amended public report is issued.

Petitioner's application for public report is approved.

The foregoing provisions notwithstanding, Petitioner shall not sell, offer or market time-share intervals where prohibited from doing so by court order.

Real Estate Recovery Fund pays victims $47,000

On October 20, 1998, Maricopa County Superior Court Judge John Sticht ordered payment of $7,000 against the license of John A. Longo.

The plaintiff, Mr. Pat Bowler, obtained default judgment against Longo in October 1996. Longo, designated broker of former corporate real estate licensee Profit Realty, Inc., had managed rental property for Bowler. Longo failed to turn over net rent proceeds to Bowler in excess of $5,500. The Department stipulated to pay attorney's fees and costs to Mr. Bowler, which brought the amount paid out to $7,000.

Longo and Profit Realty had entered into a Consent Order with the Department on June 25, 1996, (Administrative Action No. H1787), suspending their real estate licenses and ordering restitution to Bowler and others. Longo failed to pay the restitution, and several suits, including this one, resulted.

In another situation involving property mismanagement, Mohave County Superior Court Judge Richard Weiss directed the Recovery Fund to pay $40,000 against the broker's license of Larry J. Ogden. Ogden was designated broker for Sun Ranch Realty, dba The Laughlin Connection, and managed numerous properties in Lake Havasu City and Bullhead City.

After shortages in his trust account were discovered, Ogden fled the state, leaving 20 or so victims behind. Ogden appeared to have skimmed over $220,000 from his various property management accounts. Since losses far exceeded the amount available, the Department initiated proration proceedings.

Three victims lost most of the money: Jerry Mitchell of Wyoming lost over $150,000, and California residents Gerald and Margaret Enochs and Harry and Margaret Marinow lost in excess of $16,500. Mitchell, the Enochs and the Marinows are also the only ones who completed the steps necessary to obtain civil judgments and to apply to the Fund.

Arizona statute limits maximum recovery from the Fund to $40,000 against the license of any one individual, with a cap of $20,000 per transaction. Recovery against corporate licenses is not available. Judge Weiss' February 4, 1999, order awarded $20,000 to Mitchell, and the remaining $20,000 available went to the Enochs and Marinows in shares proportionate to their respective losses.

Rulemaking

Continued from page 1

proposed changes:

R4-28-101, Definitions.

The term "distance learning" has been added to identify a specific method of instruction.

R4-28-103, Licensing Time-frames.

Adding the phrase "unless the applicant requests an extension" in subsection (C) makes the language consistent with subsection (B)(3) and Department practice.

Table 1, Time-frames. The last Department rulemaking did not allow an applicant applying for exemption a specific number of days to respond to a request for additional information. If the Department is going to determine when an exemption application is considered withdrawn, it is necessary to grant a period of time for an applicant to reply.

The time-frames for branch offices have been added.

R4-28-301, General License Requirements.

This Section is being amended to eliminate the requirement that license certification questionnaires must be notarized or witnessed by Department personnel.

R4-28-303, License Renewal; Reinstatement; License Changes.

Requesting a broker to provide information concerning the 'opening, closing, or relocation of a broker's trust account' on a Change Form, as required in subsection (E)(3)(i) is not correct. The request for this information has been moved to subsection (E)(2), where the broker simply informs the Department in writing of the change.

The subsection cited in subsection (F) is incorrect and has been changed. Subsection (F) deals with requirements of both the salesperson or associate broker. This responsibility was not followed through in subsections (F)(1)(c)(ii) and (F)(2)(c)(ii) when only the broker was required to submit a Certificate of Good Standing from the Arizona Corporation Commission. This oversight has been corrected.

R4-28-402, Continuing Education Requirements; Waiver; Distance Learning.

This Section provides the applicant with a detailed description of the continuing education course requirements and establishes the criteria for approval of distance learning courses.

R4-28-701, Compensation Sharing; Disclosure.

This Section requires that a real estate broker representing a party in a transaction must disclose to all parties in the transaction the identity of any licensee receiving compensation. The Section is being repealed because it is unworkable in practice and serves no useful purpose in protecting the public interest.

The word "substantially'" was deleted from R4-28-803, Contract Disclosures and R4-28-804, Rescission of Contract in the last rulemaking. This deletion allows businesses no variation in the contract language no matter how minor or insignificant. This was not the Department's intent and the word has been reinserted.

R4-28-A1205, Water Supply.

A.R.S. § 32-2195(H) provides that certain disclosure requirements must be satisfied if a water availability report has been issued by the Department of Water Resources. If no report has been issued, then disclosure must be made. This change eliminates the implication that the water availability report must be obtained for all unsubdivided land applications.

R4-28-A1211, Assurances For Completion and Maintenance of Improvements.

The list of assurances in this Section was never intended to be an exhaustive list of possible assurances. This list is only a sampling of the traditional assurances seen by the Department over time. New and creative methods of demonstrating adequate assurances will continuously evolve. This rulemaking allows the Department to be flexible.

R4-28-B1203, Material Change; Public Report Amendments.

Subsections (C) and (D) have been reversed to make the Section easier to follow and understand.

R4-28-B1207, Subsequent Owner.

Subsection (E) deals with the new owner of a property, not the subsequent owner and has been changed accordingly. This Section makes clear to businesses that pending applications cannot be taken over by new owners of the land.

Lender fee

Continued from page 2

Conclusion: In examining any lender's solicitations to become involved with a Lender Fee Program, a real estate licensee must first insure that the lender's program complies with federal and state law.

Second, when a buyer's broker accepts compensation for loan services involving the buyer, this compensation must be disclosed to the buyer and accepted only with the buyer's written consent.

Further, at a minimum, the disclosure to the buyer must inform the buyer that the buyer is not obligated to utilize the services of the buyer's broker in connection with the loan and that the buyer should market the loan to obtain the best terms possible. Otherwise, the buyer's broker may be held liable for breaching the duty to obtain the best terms available.

Third, the real estate licensee should discuss the Lender Fee Program with the designated broker to determine whether the brokerage company permits its salespersons to engage in these Programs.

Finally, the licensee should obtain mortgage loan E&O insurance.

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