ARIZONA
REAL ESTATE BULLETIN

Arizona Department of Real Estate • Vol XXV, No. 5

April 2000

On-line Edition

www.re.state.az.us

Arizona home inspectors must be licensed by Jan. 1, 2003

Home inspectors in Arizona will be required to be licensed by the state beginning January 1, 2003, as a result of legislation signed by Governor Jane Dee Hull. To become licensed, a person will have to attend a course of prelicensure education at an approved school, participate in a "home inspector-in-training program," and pass a state examination.

The education and training program requirements will not apply to home inspectors who have performed at least 250 home inspections for compensation by January 1, 2003, and who can produce five examples of home inspection reports they have prepared for examination by the state.

Home inspectors will be licensed by the State Board of Technical Registration. The Board will appoint a Home Inspector Rules and Standards Committee which will have six months in which to draft and recommend the following:

- Criteria for home inspector certification.
- Standards for home inspection reports.
- Standards for written examinations.
- Standards for educational programs including a course of study, home inspector-in-training programs and continuing education.
- Rules defining conduct.

Committee members will include three home inspectors selected from a

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'Acting in concert' amendment kills Department's Omnibus Bill

The Department's efforts to change Arizona's real estate statutes have been partially scuttled for the third year in a row by the introduction of an amendment which would have gutted the Department's ability to pursue illegal subdividers.

Senate Bill 1430, the "Real Estate Omnibus Bill," was allowed to die after efforts to remove a House amendment were unsuccessful.

Presently, A.R.S. § 32-2101 defines "acting in concert" to create an illegal subdivision as "evidence to pursue a concerted plan." As amended, the bill would have required the Department to prove that owners of unsubdivided land had entered into an "agreement" to violate subdivision statutes. "The Department would have been required to prove what was going on in the owners' minds," Real Estate Commissioner Jerry Holt said.

In the closing days of the legislative session, the more important provisions of the failed Senate bill were added to House Bill 2117 by Senator Tom Freestone,.The bill was signed by Governor Hull and will become law on July 19.

As amended, the legislation makes the following changes to real estate statutes:

- A.R.S. § 32-2104 is amended to increase the number of members of the Arizona Real Estate Advisory Board from seven to nine. Two of the nine members must have been engaged in residential real estate brokerage for the five years preceding their appointment. Not more than five members of the board may reside in the same county.
- A.R.S. § 32- 2136 is amended to change the name of the Department's Broker Audit Clinic to Broker Management Clinic. Previously, the statute required the Department to conduct the clinics. Now, instructors from approved real estate schools may conduct the clinics after Department approval. The Department will also determine the course content.

All designated real estate brokers will now be required to attend a Broker Management Clinic once during every two-year licensing period after initial attendance rather than once every four years.

- A.R.S. § 32-2151.02 is amended to change the term "sale or rental listing agreement" to "employment agreement," defined as "a written agreement by which a real estate broker is entitled to compensation for services rendered…" The agreement must include the terms of broker compensation. A real estate employment agreement is not required for a licensee to represent a party in a transaction.
- A.R.S. § 32-2153 is amended to provide the Department with statutory authority to issue a "provisional license," a license which allows a licensee to practice as a salesperson or broker subject to either a consent order or the Commissioner's terms, conditions and restrictions. Issuance of a provisional license is an alternative to license denial, revocation or suspension.

The Governor also signed House Bill 2069 which paves the way for state agencies to accept electronic signatures on documents transmitted by e-mail or from a Web site. The Department is exploring ways in which application forms which require a signature could be submitted electronically.

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Avoiding liability for negligent home inspections

by K. Michelle Lind, Esq

As a general rule, when a broker recommends a competent person to do work for a client and exercises no supervision or control over the work, the broker is not liable for negligence of the person performing the work.

This general rule applies to the recommendation of any home to a buyer. As long as the recommended inspector is competent, the broker should have no liability to the buyer, even if the inspector negligently fails to discover a defect that results in the buyer incurring unanticipated repair expenses.

However, if a broker fails to exercise reasonable care in recommending a competent inspector, a broker may be held liable for any resulting damages. Although the Arizona courts have yet to specifically address this issue, support for such a negligent referral cause of action can be found in the case law of many states.

However, to hold a broker liable for negligent referral, there must be evidence that the broker had some knowledge that the inspector was incompetent or lacked skill. In other words, to prevail in a lawsuit, a buyer must prove that the broker knew the recommended home inspector did not have the requisite skill to competently perform the inspection.

Similarly, a broker may be subject to liability for negligently hiring a home inspector. In *Thomson v. McGinnis*, 465 S.E. 2d 922 (W.Va. 1995), a West Virginia court found that a real estate broker may be liable to a buyer for negligent selection and retention of an inspector. In this case, the broker hired an inspector to inspect the heating system of a house. Unfortunately, the inspector hired by the broker was not certified to work on heating systems.

The "inspection" consisted only of listening to the furnace while it was running, after which the inspector signed a certification stating the furnace functioned properly. Having received the certification, the buyer purchased the home.

After close of escrow, the buyer discovered that the furnace did not function properly. A certified technician informed the buyer that the furnace had many problems and was unsafe to operate. The buyer then sued the inspector and the broker who had hired the inspector.

The broker argued that she could not be held liable for the actions of the inspector. However, the court stated that the broker may have been negligent in hiring the inspector, who was not certified to inspect heating equipment. The court stated:

"While a real estate broker bears no responsibility to conduct an independent investigation of a latent defect, when such broker volunteers to secure an inspection of the premises, or some part thereof, by retaining on behalf of the buyer a third party to conduct the inspection, then that real estate broker may be held liable to the buyer for civil damages if the broker in retaining said third party is negligent in the selection and retention of the third party and if such negligence proximately causes harm to the buyer."

An Ohio court came to a similar conclusion in *Lucore v. AID Pest Control*, 1998 Ohio App. LEXIS 5710. In this case, the court noted that the broker routinely selected termite inspectors for his clients.

However, the broker did not investigate the qualifications of the inspectors or request proof of insurance from them. At times, the broker would randomly select an inspector from the yellow pages, or use an inspector simply because the broker had been given the inspector's business card Thus, the court found that the broker could be held liable for the negligent selection and retention of the termite inspector.

The importance of obtaining a thorough home inspection before a buyer purchases a home cannot be over-emphasized. However, a broker should not incur unnecessary liability for a negligent inspection. Therefore, a broker should give the buyer the names of three qualified home inspectors. Additionally, the broker should insist that the buyer determine which inspector should be hired.

A broker should not undertake to directly hire any inspector on the buyer's behalf. A broker should also encourage the buyer to inquire as to the qualifications of the home inspector and to determine whether the home inspector has errors and omissions liability insurance coverage.

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Legislation

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Senate Bill 1164, which has been signed by the Governor, adds A.R.S. § 32-2107.01 and requires the Commissioner to record a disclaimer of unlawful restrictions in every Arizona county. The statute states, "The commissioner shall execute and record a document in the office of the county recorder in each county in this state that disclaims the validity and enforceability of certain restrictions and covenants. The document shall contain a disclaimer in substantially the following form:

"It is the law of this state that any covenants or restrictions that are based on race, religion, color, handicap status or national origin are invalid and unenforceable. If the invalid covenant or restriction is contained in a document that is recorded in this county, it is hereby declared void."

What's missing?

Among the provisions of the failed Senate bill not included in the amendments to House Bill 2117 are these:

• Applicants for an Arizona real estate salesperson's or broker's license who are licensed in another state may be exempt from taking the national portion of the Arizona real estate examination. An amendment to A.R.S. § 32-2124 would have required the applicant to have passed a national examination in another state within the preceding five years.

• Amendments to A.R.S. §§ 32-2184, 32-2195.10 and 32-2198.03 would have stiffened the language prohibiting changes in the plan under which a subdivision, unsubdivided land or a membership camping contract is offered for sale without notifying the Commissioner.

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Jerry Holt

News From The Commissioner

We have received an increasing number of complaints from brokers about other brokers who abbreviate the name of their brokerage in classified advertising to the point where a reasonable person would not be able to determine the actual name of the company. As a real estate professional, you would probably know that WUSA stands for West USA, but we don't think the average citizen would.

Commissioner's Rule R4-28-502 states that "all advertising shall include either the name in which the employing broker's license is held or the fictitious name contained on the license certificate."

While we understand the need to abbreviate words in classified ads to save money, we must protect the public and answer the complaints we are receiving about cryptic abbreviations.

Spell out the name of your company in your classified ads; no abbreviations, please.

False renewal applications can mean trouble

Random audits of renewal applications have disclosed that a disturbing number of licensees are falsifying the number of hours of continuing education they have completed when applying for license renewal. Some audits revealed that the licensee had not completed any of the 24 required hours. The usual excuse the licensee gives when found submitting such a false application is that the licensee "ran out of time" and "intended to complete the required continuing education hours as soon as possible" after renewing.

Filing a false application for license renewal is grounds for license revocation. Shortly after you submit your license renewal application, you may receive a phone call or letter asking you to fax copies of your continuing education certificates to our Education and Licensing Division. Do not be caught falsifying your renewal application. Prosecution for this offense will not be a pretty sight!

The new renewal application, Form LI-243 which has been in use since March, now requires a licensee to list each course category, course number, number of credit hours, the name of the school and the date the course was taken.

When good legislation goes bad

Proponents of the Ned Warren School of Subdivision once again tried to gut the Department's subdivision statutes with an amendment to Senate Bill 1430, the Department's 2000 "Real Estate Omnibus Bill." The amendment would have required the Department to prove in an illegal subdivision investigation that two or more people had "agreed" to act in concert to violate the statutes. We assume that such an agreement would have to be in writing, and that the violators would have carefully kept a copy of the agreement where Department investigators could find it. Faced with this amendment, we decided to ask Senator Tom Freestone, who introduced the bill, to scuttle it.

Fortunately, with the cooperation of the Real Estate Educators Association, we were able to salvage key provisions of the Omnibus Bill as an amendment to House Bill 2117. You can read about the effects of this bill, which was signed by the Governor, in the story on page 1.

One of the provisions privatizes the Broker Audit Clinic. Beginning July 19 when new legislation becomes effective, the new course will be called the "Broker Management Clinic" and will be expanded to include the subjects of advertising and promotions, and material disclosure. Designated brokers will be required to attend the course at their favorite real estate school every two years within the term of their license.

ARIZONA REAL ESTATE BULLETIN

An official publication of
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The Arizona Real Estate Bulletin is published six times each year and is available from the Department's World Wide Web site at http://www.re.state.az.us.
First-class mail subscriptions: $10/year.

Articles reprinted from other publications do not necessarily reflect the policies of or interpretations of the law by the Arizona Department of Real Estate.

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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. (See note below.)

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 2000. Additional clinics may be scheduled from time to time at other locations in Phoenix and in rural areas.

PHOENIX	**TUCSON**
Industrial Commission Auditorium 800 W. Washington	State Office Building 400 W. Congress Room 222
1 p.m. to 4 p.m.	**1 p.m. to 4 p.m.**
April 20	April 19
May 18	May 17
June 15	June 14

Note: Beginning July 19, the Broker Audit Clinic will be known as the Broker Management Clinic pursuant to A.R.S. § 32-2136 and will be offered only by approved Arizona real estate schools. A list of those schools will be published in this space in the June issue of the *Arizona Real Estate Bulletin*. All designated brokers will be required to attend a Clinic *once during every two-year licensing period* after their initial appearance rather than once every four years as before.

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

99A-073
Teresa M. Doyon, aka Teresa M. Crow, aka Teresa Maria Greiger
Tucson
DATE OF ORDER: December 9, 1999
FINDINGS OF FACT: In her application for an original cemetery salesperson's license, Respondent failed to disclose a 1989 conviction for DUI and Disorderly Conduct/Domestic Violence in Wichita, Kansas City Court, and a 1997 conviction in Tucson for Disorderly Conduct/Domestic Violence.
VIOLATIONS: Respondent obtained a cemetery salesperson's license by filing an application that was false or misleading, in violation of A.R.S. § 32-2153(B)(1). Her actions constitute substantial misrepresentation in violation of A.R.S. § 32-2153(B)(3). Her conduct establishes that she is not a person of honesty, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7).
DISPOSITION: Respondents license is revoked.

99A-H1981
George H. Wardner
Prescott
DATE OF ORDER: January 20, 2000
FINDINGS OF FACT: Wardner was a licensed real estate broker in California since 1986. In 1994, he moved to Arizona and wanted to make his California license inactive. He refused to submit a required form to the California Department of Real Estate (CDRE) because, he stated, he saw no reason for it.

In May 1995, CDRE issued an Accusation against Wardner and his California business, alleging that he had violated California law by unlawfully collecting advance fees that were not placed in a trust account or accounted for. In January 1996, CDRE revoked Wardner's license. Wardner did not appear at the hearing.

Sometime in early July 1996, Wardner learned his license had been revoked (he had not learned of it earlier because he had not informed CDRE of a change of address) and wrote CDRE for clarification. CDRE informed Wardner that he could seek reinstatement after one year.

Meanwhile, Wardner had applied for and received and Arizona real estate broker's license in January 1995. He was due to renew in January 1997 and filed a renewal application in December 1996. He did not disclose that his California real estate license had been revoked.

In late 1997, the Department discovered Wardner's California revocation. In January 1998, the Department requested that Wardner explain the circumstances behind his omission of the California revocation. Wardner responded that he " learned just recently" of the revocation and explained that he believed he had taken the required steps to change his address with CDRE. Not satisfied with Wardner's response, the Department brought this disciplinary action.

In January 1999, Wardner filed an application for renewal of his Arizona real estate license. Also in January 1999, CDRE denied Wardner's petition for reinstatement of his California license.

Wardner testified at the Department's Administrative Hearing in this matter in August 1999. He gave false testimony in two instances. First, he testified that he learned of the California revocation in 1997. The letter he sent to CDRE in July 1996, however, shows that he new of the revocation in late June or early July 1996. Second, Wardner testified that he never received a copy of the California decision revoking his license. Credible evidence shows that he received a copy of the California decision with CDRE's July 23, 1996 letter.

Wardner made false written statements to the Department in two instances. First, in December 1996 in his renewal application, he denied ever having a license revoked when he was fully aware of the California revocation. Second, in January 1998 in his notarized statement to the Department, he stated he had "just recently" learned of the revocation, when in fact he had known of the revocation since July 1996.
VIOLATIONS: Wardner procured a license by filing a renewal application that was false and misleading, in violation of A.R.S. § 32-2153(B)(1). He made substantial misrepresentations, in violation of A.R.S. § 32-2153(B)(3). He failed to exhibit honesty, truthfulness and good character, in violation of A.R.S. § 32-2153(B)(7). He failed to notify the Department within 10 days after learning of his revocation in violation of A.A.C. R4-28-301(C)(3), a violation of A.R.S. § 32-2153(A)(3).
DISPOSITION: Wardner's real estate broker's license is revoked. He is to pay a civil penalty in the amount of $1,000.

LICENSE APPLICATIONS DENIED

99A-009
Robert K Irland
Scottsdale
DATE OF ORDER: June 1, 1999
FINDINGS OF FACT: In November 1998, Petitioner submitted an original application for a real estate salesperson's license in which he disclosed a 1995 conviction for Lewd Conduct and that 1998 charges were pending for Lewd Conduct and Indecent Exposure. He was convicted of these charges in December 1998.

Based on these facts, an Administrative Hearing was conducted, and the Administrative Law Judge recommended that the Department issue Petitioner a "provisional license," something not permitted by statute, with the condition that Petitioner be counseled weekly by a state certified psychologist for two years.

The Commissioner ordered denial of the license.

Petitioner appealed the Commissioner's decision in Maricopa County Superior Court. The Court affirmed the decision.
DISPOSITION: Petitioner's license application is denied.

99A-129
Danny J. McGinn
Phoenix
DATE OF ORDER: January 6, 2000
FINDINGS OF FACT: In his July 1999 application for an original real estate salesperson's license Petition disclosed:
a. A December 1993 arrest for assault and criminal damage (charges dismissed);
b. An April 1994 arrest leading to conviction for assault/domestic violence;
c. A December 1994 arrest leading to conviction for assault/domestic violence;
d. An April 1997 arrest leading to conviction for assault/domestic violence;
e. An April 1997 arrest for issuing a bad check (charges dismissed);
f. A February 1998 arrest leading to conviction for DUI.
At the administrative hearing, Petitioner testified to a number of factors which led to his arrests and convictions, including a bad marriage and alcohol addiction. He testified that he has obtained a divorce, was granted sole custody of his children, and has undergone treatment for alcoholism. He testified that he is active in Alcoholics Anonymous and has not touched alcohol in more than 1-1/2 years.

In his Findings of Fact, the Administrative Law Judge stated that he found that Petitioner "appears to have set himself on a path which, if maintained, will lead (him) away from repeating the mistakes of his past." He added, however, "there simply has not been a sufficient lapse of time since Mr. McGinn's 1993-1998 arrests and convictions to affirmatively conclude that Mr. McGinn meets the necessary qualifications for a real estate salesperson's license."
DISPOSITION: Petitioner's application denied.

99A-123
Linda Rose
Green Valley
DATE OF ORDER: January 24, 2000
FINDINGS OF FACT: In her August 1999 application for an original real estate salesperson's license, Petitioner disclosed a January 1999 conviction in Pennsylvania for assault and disorderly conduct, misdemeanors. After having been taken into custody by several police officers, placed in restraints and transported to a hospital, she bit the hand of one of the officers.

She was placed on probation which will terminate in late May, 2000.

It was demonstrated that the actions of Petitioner, a recovering alcoholic at the time, were probably the result of her drinking with friends at a social gathering following a prolonged period of sobriety.

In his recommendations to the Commissioner, the Administrative Law Judge wrote, "Because of the nature, gravity and time of Petitioner's criminal activity and conviction, it must be held that she has not sustained her burden of proving that she is presently entitled to (a) real estate salesperson's license…"
DISPOSITION: Application denied.

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99A-126
Maria L. Galvan
Tucson
DATE OF ORDER: January 21, 2000
FINDINGS OF FACT: In her application for an original real estate salesperson's license, Respondent disclosed that she had been convicted of shoplifting in 1994 and again in 1995.

The Department notified her it intended to deny her application, and she requested an Administrative Hearing. She failed to appear at the hearing.
DISPOSITION: Application denied.

99A-127
Irene C. Martin
Mesa
DATE OF ORDER: February 3, 2000
FINDINGS OF FACT: In her August 1999 application for an original real estate salesperson's license, Petitioner disclosed two July 1995 convictions for the sale of drugs.

While on probation for the 1995 convictions, Petitioner tested positive for marijuana in two different urinalysis tests.

The Department denied her license application, and Petitioner requested an Administrative Hearing.

In his Conclusions of Law, the Administrative Law Judge wrote, "… a little more than a year has passed since she completed her probation, and about two years since she completed substance abuse counseling following a relapse. She was a user and seller of methamphetamines (user for three years and sale for at least one year prior to her arrest in September, 1994) and a user of marijuana (for over 20 years prior to her September 1994 arrest). One of her convictions was a felony for possession of dangerous drugs. During her probation, two urinalysis tests were positive for marijuana. It is premature to conclude with reasonable and fair certainty that Ms. Martin has fully overcome her problems and is ready and suited for a career in real estate."
DISPOSITION: Application denied.

99A-095
Mario A. Rana
Scottsdale
DATE OF ORDER: February 11, 2000
FINDINGS OF FACT: In his May 1999 application for an original real estate salesperson's license, Petitioner disclosed a 1982 conviction for criminal possession of a loaded weapon, a 1991 felony conviction for conspiracy to transport marijuana, a 1991 DUI confiction, a 1995 conviction for harassment, and a 1998 conviction for disorderly conduct.
VIOLATIONS: Petitioner has been convicted of a felony or crime of moral turpitude within the meaning of A.R.S. § 32-2153(B)(2). Petitioner has failed to demonstrate that he is a person of good character within the meaning of A.R.S. § 32-2153(B)(7). Petitioner has violated the terms of a criminal order (failed to complete 75 hours of community service ordered by the Criminal Court of New York) within the meaning of A.R.S. § 32-2153(B)(9).
DISPOSITION: Application denied.

99A-152
John R. Jenkins
Scottsdale
DATE OF ORDER: March 1, 2000
FINDINGS OF FACT: In his September 1999 application for an original real estate salesperson's license, he disclosed that in March 1995 he was charged with 12 counts of False Statement, a class 8 felony, one count Fraudulent Schemes and Practices, a class 5 felony, and one count Theft, a class 3 felony. In April, he was convicted of False Statement, a class 6 undesignated offense and was placed on supervised probation for three years. In April 1997, the Court discharged Petitioner from probation and designated the offense as a misdemeanor.

The charges and conviction stemmed from Petitioner claiming and receiving unemployment benefits while being employed.
VIOLATIONS: Petitioner has been convicted of a crime of moral turpitude within the meaning of A.R.S. § 32-2153(B)(2). He has been found guilty of conduct which constitute dishonest dealings within the meaning of A.R.S. § 32-2153(B)(2). His behavior shows he was not a person of honesty, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7). Petitioner failed to present any corroborating evidence showing that he has the required good character to hold a real estate salesperson's license. Petitioner's misdemeanor conviction involved dishonest dealings within the meaning of A.R.S. § 32-2153(B)(10).
DISPOSITION: Application denied.

CONSENT ORDERS

97A-030
In the matter of the subdivision violations and real estate broker's licenses of Lee I Larsen and Shatterbone Enterprises, Inc., dba Century 21 Charisma Real Estate
Lakeside
DATE OF ORDER: January 21, 2000
FINDINGS OF FACT: Larsen holds an Arizona real estate broker's license. Shatterbone Enterprises (Shatterbone) is an Arizona corporation wholly owned by Larsen and his wife, and holds an real estate entity broker's license. Shatterbone does business as "Century 21 Charisma Real Estate. Larsen is the designated broker.

Lee Neal was, during the relevant times herein, a licensed real estate salesperson employed by Shatterbone. He was subsequently terminated from employment with Shatterbone. Neal is now deceased, and further proceedings against him are therefore moot.

Larsen and Shatterbone filed applications for renewal of their real estate broker's licenses in March 1999. The Department notified Larsen of its intent to deny those applications. Larsen and Shatterbone filed a timely appeal with the Department in June 1999.

Government Lot 10 is located in Navajo County. The evidence shows that Shatterbone and Neal purchased a 15-acre parcel of Lot 10 in 1993, and that Larsen purchased another 5-acre contiguous parcel in 1995. The evidence further shows that Larsen and Shatterbone sold seven parcels of the property without obtaining a Subdivision Public Report.
VIOLATIONS: Respondents acted as subdividers within the meaning of A.R.S. § 32-2101(49) [now A.R.S. § 32-2101(53). Respondents failed to notify the Commissioner in writing of their intention to offer for sale or sell the parcels and failed to obtain the Commissioner's Prior approval as required by A.R.S. § 32-2183(F). Respondents offered for sale and sold lots in a subdivision without a Public Report and failed to disclose and furnish each prospective customer with a copy thereof, in violation of A.R.S. § 32-2183(F).
DISPOSITION: Respondents to pay a civil penalty in the amount of $4,000. Respondents to pay the Department's investigative expenses in the amount of $711.48. Larsen shall obtain a water adequacy report from the Department of Water Resources, pursuant to A.R.S. § 45-108. The application shall be made within 60 days of the date of this order.

Larsen shall file for and obtain from Navajo County a subdivision plat for the portions of Government Lot 10 involved in this action and shall comply with applicable county requirements under A.R.S. § 11-806.01 and the Subdivision Regulations of Navajo County. Respondents shall be financially responsible for meeting county subdivision requirements and shall post a bond or other form of assurance acceptable to Navajo County guaranteeing completion in an amount to be determined by the County.

Respondents shall obtain from Navajo County, and submit to the Department's Compliance Officer, within 18 months of the date of this order, a written statement that the portions of Government Lot 10 involved herein are in compliance with applicable county subdivision statutes, regulations and ordinances, and/or plat variance requirements if applicable.

Respondents' real estate broker's licenses are renewed upon entry of this order. Larsen's license shall be suspended for 30 days, effective 10 days from the date of this order.

Respondents shall make rescission offers to all persons to whom they sold lots in Government Lot 10 within 30 days after receipt of the Water Adequacy Report.

99A-124
Mariam M. Yousef
Scottsdale
DATE OF ORDER: February 7, 2000
FINDINGS OF FACT: Respondent is currently licensed as a real estate salesperson. That license will expire on July 31, 2000.

In April 1999, Respondent disclosed he had been convicted of Theft. He had been charged with Theft, a class 6 felony, paid restitution in the amount of $1,800.17 as part of a plea agreement, and was convicted of Theft, a class 6 undesignated offence. The court further ordered that the offense be designated as a misdemeanor.
VIOLATIONS: Respondent has been convicted of theft and/or a crime of moral turpitude in violation of A.R.S. § 32-2153(B)(2). He violated state laws in violation of A.R.S. § 32-2153(B)(10).
DISPOSITION: Respondent's real estate salesperson's license is suspended for two years

effective upon entry of this Consent Order. Respondent to pay a civil penalty in the amount of $1,000. He shall take 12 hours of approved continuing education within the two-year suspension period. The classes shall include six hours each in the categories of ethics and Commissioner's Standards.

Upon completion of the period of suspension, Respondent must qualify, test and apply as an original application for a real estate salesperson's license.

99A-107A
In the matter of the real estate broker's licenses of Forrest Properties, Inc. and Donald Schmitt, and in the matter of the real estate salesperson's license of Mary Schmitt, and in the matter of Affiliated Underwriters, Inc.
Scottsdale
DATE OF ORDER: February 7, 2000
FINDINGS OF FACT: Donald Schmitt is the designated broker for Forest Properties, Inc. Mary Schmitt, his wife, was employed as a real estate salesperson by Forest Properties, Inc.

Forest Properties is a corporation licensed as a real estate broker in Arizona. Donald and Mary Schmitt own 100 percent of the stock in Forest Properties.

Affiliated Underwriters, Inc. is a corporation owned by Donald and Mary Schmitt. It is not licensed as an entity real estate broker.

"Westview " is a parcel of land near Taylor in Navajo County. Respondents own, sold, and/or acted as a real estate broker in the sale of six or more lots in Westview.

"Antelope Acres" is located approximately six miles from Snowflake. Since 1995, Respondents, through a series of conveyances, have acquired, divided and/or sold six or more lots in Antelope Acres.
CONCLUSIONS OF LAW: Respondents are "subdividers" within the meaning of A.R.S. § 32-2101(53). Westview and Antelope Acres constitute "subdivisions" within the meaning of A.R.S. § 32-2101(54). Respondents actions constitute a subdivision offering under a "common promotional plan" within the meaning of A.R.S. § 32-2101(14). Respondents sold or offered for sale subdivided land without first obtaining a public report from the Commissioner, and failed to furnish each prospective customer a copy thereof, in violation of A.R.S. § 32-2183.

Respondents unknowingly at the time disregarded and violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, in violation of A.R.S. § 32-2153(A)(3).
DISPOSITION: Respondents to pay a civil penalty in the amount of $1,000. Respondents shall comply with Navajo County requirements for subdivided lots and shall be financially responsible for meeting county subdivision requirements for the lots which are the subject of this Action.

Respondents shall comply with any other subdivision requirements imposed by law or rule. Respondents shall make all reasonable efforts to meet all statutory standards for the offer and sale of subdivided land within one year of the date of this Order.

Respondents shall obtain a Public Report from the Department before offering any other subdivided lot or parcel for sale. Respondents shall cease and desist from any violation of the subdivision laws of this state.

Respondents shall provide each purchaser an offer to rescind the purchase.

99A-107B
In the matter of the real estate broker's license of Fred Schmitt, and in the matter of the real estate salesperson's license of Coralee Schmitt, and in the matter of Mountain States Compu-Net, Inc.
Scottsdale
DATE OF ORDER: February 7, 2000
FINDINGS OF FACT: Donald Schmitt is a real estate broker and designated broker of Forest Properties, Inc. which acted as the sales agent for both properties known as "Westview" and "Antelope Acres." Donald Schmitt and Mary Schmitt, who are husband and wife, own 100 percent of the stock in Forest Properties.

In June 1980, Fred Schmitt was issued an Arizona real estate broker's license. That license will expire November 30, 2000. At all times material to this matter, Fred Schmitt was licensed as a sole proprietor and dba Schmitt and Company. Fred Schmitt is Donald Schmitt'' brother.

In February 1977, Coralee Schmitt was issued a real estate salesperson's license. Her license expired on June 30, 1000. She is married to Fred Schmitt and is also Mary Schmitt's sister.

Mountain States Compu-Net is an Arizona corporation. Fred and Coralee Schmitt own 100 percent of the stock. The company is not licensed as an entity broker.

Respondents acquired six or more lots in Westview and own, sold and/or acted as real estate broker in the sale of more than six lots in Westview.

Respondents advertised and/or offered for sale six or more lots in Antelope Acres.
VIOLATIONS: Respondents, by their actions, are "subdividers" within the meaning of A.R.S. § 32-2101(53). Respondents' offering of lots as Antelope Acres and/or Westview constitutes a subdivision offering under a "common promotional plan" within the meaning of A.R.S. § 32-2101(14). Respondents have sold or offered for sale subdivided land in this state in a subdivision without first obtaining a public report from the Commissioner, and failed to furnish each prospective customer with a copy thereof, in violation of A.R.S. § 32-2183.
DISPOSITION: Respondents shall comply with Navajo County requirements for subdivided lots. They shall be jointly and severally financially responsible for meeting county subdivision requirements for the lots which are the subject of this Order. Respondents shall comply with any other subdivision requirements imposed by law or rule.

Respondents shall make all reasonable efforts to meet all statutory standards for the offer and sale of subdivided land within one year of the date of this Order. Respondents shall obtain a Public Report from the Department before offering any other subdivided lot or parcel for sale.

Fred Schmitt, Coralee Schmitt and Mountain States Compu-Net shall cease and desist from any violation of the subdivision laws of this state.

Respondents shall provide each purchaser to whom each sold a lot an offer to rescind the purchase.

Respondent Fred Schmitt shall place his real estate broker's license on inactive status, upon entry of this order, and agree not to place it on active status for the duration of his current license period. Respondents Fred Schmitt and Coralee Schmitt agree that neither shall seek renewal of their respective real estate licenses pursuant to A.R.S. § 32-2130.

00A-006
Gary R. DeGennaro
Phoenix
DATE OF ORDER: February 18, 2000
FINDINGS OF FACT: In his September1997 application for an original real estate broker's license, Respondent failed to disclose DUI convictions in Contra Costa County, California, in August 1995 and November 1997. He did disclose the convictions in his September 1999 renewal application. He did not disclose the November 1997 conviction within 10 days as required by A.A.C. R4-28-301(F).
VIOLATIONS: Respondent's failure to disclose the 1995 conviction on his original application constitutes procuring or attempting to procure a license by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1). His failure to notify the Commissioner of his 1997 conviction within 10 days constitutes disregard for, or a violation of, the Commissioner's Rules within the meaning of A.R.S. § 32-2153(A)(3).
DISPOSITION: Respondent's real estate broker's license is suspended for 10 days to begin upon entry of this order. Respondent to pay a civil penalty in the amount of $1,000. Respondent to attend 15 hours of continuing education in addition to hours required for license renewal in the category of Commissioner's Standards, Agency Law and Real Estate Legal Issues.

99A-164
Holly Penland
Gilbert
DATE OF ORDER: February 23, 2000
FINDINGS OF FACT: In her December 1998 application for a real estate salesperson's license, Respondent failed to disclose that in 1991 she was charged with one count Fraudulent Schemes, four courts of Forgery and Theft of a Credit Card. She was convicted of Theft, a class 6 undesignated offense.
VIOLATIONS: Respondent procured or attempted to procure a license by filing an application which was false or misleading in violation of A.R.S. § 32-2153(B)(1). She has been convicted of theft and/or a crime of moral turpitude in violation of A.R.S. § 32-2153(B)(5). She violated Arizona state laws involving theft in violation of A.R.S. § 32-2153(B)(10).
DISPOSITION: Respondent's real estate salesperson's license is revoked.

Continued on page 8

00A-012
Donald Foust
Bullhead City
DATE OF ORDER: February 28, 2000
FINDINGS OF FACT: In June1990, Respondent became the designated broker for Tri State Realty, Inc. In December 1998, Respondent submitted a renewal application for Tri State's entity broker license. He failed to disclose that a civil judgment was entered against Tri State in August 1997 in Mohave County Superior Court based on negligent misrepresentation by defendants Howard M. Shannon, Jr. and Tri State in connection with the listing and subsequent sale of real property.

In mitigation, Foust asserts that he was not the designated broker for Tri State at the time of the subject real estate transaction. Further, he asserts that he did not realize the judgment affected him or the licensed entity.
VIOLATIONS: Respondent's failure to disclose the judgment constitutes procuring or attempting to procure a license by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1).
DISPOSITION: Respondent to pay a civil penalty in the amount of $400.

99A-173
James A. Pallott
Glendale
DATE OF ORDER: February 29, 2000
FINDINGS OF FACT: Respondent was issued a real estate broker's license in February 1996. At all times material to this matter, Respondent was the designated broker for Lincoln Realty.

In February 1999, Respondent listed for sale a home owned by Lawrence and Barbara Berardi in Peoria. On April 1, Respondent prepared an offer for Nathaniel and Mercedes Tevens to purchase the home. This offer, which indicated that Respondent was acting exclusively as the seller's agent, showed $5,000 down as earnest money and the balance of the purchase price to be deposited as cash on or before close of escrow. The earnest money was to be deposited in an escrow account at a title company.

The offer, prepared for the buyer by Respondent, contained Respondent's signature acknowledging receipt of a $5,000 check for the earnest money deposit.

On April 1, Respondent also had the buyer and seller sign a dual representation agreement. The seller, who was relocating to Las Vegas, quickly purchased another home.

The buyer's check, post-dated April 14, was received and deposited in the escrow account on April 13. On April 23, the title company notified Respondent that the check had bounced. Respondent directed the title company to resubmit the check but did not mention the matter to the seller.

The title company representative asserts that on May 5 she notified Respondent that the check bounced a second time. Respondent denies this.

On May 26, the day scheduled for closing, the buyer, seller and Respondent conducted a walk-through of the home. Later that day, when signing documents at the title company, the seller learned there was no money in the escrow account and that the earnest money check had been returned by the bank.

When questioned by the seller about why he had not been informed of the status of the earnest money, Respondent assured him the buyer was financially able to purchase the property, however the buyer's funds were tied up in some high-yield investment accounts. Respondent requested, and the seller approved, a one-day extension for the buyer to close. On May 27, at Respondents request, the seller approved another one-day extension and was advised by Respondent that the funds would be deposited no later than 1 p.m. on May 28.

The seller contacted the title company on the afternoon of May 28 and learned that no funds had been received. The seller canceled the escrow.

On August 31, Respondent prepared a second purchase offer for the home with the same parties, again as seller's agent exclusively. This second offer, accepted by the seller on August 31 or September 1, provided for the purchase price, $320,000, to be deposited with the title company in certified funds upon the opening of escrow. The transaction was scheduled to close on or before September 15. Escrow was opened, however no funds were given to Respondent or deposited with the escrow company. Escrow was canceled September 22.

Respondent did not inform the seller that the funds had not been deposited with the title company upon the seller's acceptance of the second offer.

The documentation Respondent prepared pertaining to this transaction and his conduct described herein provided conflicting, contradictory information concerning whether Respondent was acting as the seller's agent or in a dual agency capacity.
VIOLATIONS: Respondent did not take steps to protect and promote his client's interests and to act in the client's best interests, whether represent the seller only or acting as a dual agent. He failed to fulfill his fiduciary duty, within the meaning of A.A.C. R4-28-1101(A). Respondent failed to deal fairly with all parties to the transaction, in violation of A.A.C. R4-28-1101(B). Pursuant to A.R.S. § 32-2152(A), a broker must place funds entrusted to him in a neutral escrow account or in the broker's trust account. Respondent was to deposit the earnest money in the escrow account. When he learned the check had bounced, he did not notify seller of the fact. Respondents 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 to pay a civil penalty in the amount of $2,000. Respondent shall take 12 hours of continuing education, in addition to hours required for license renewal, in the category of Commissioner's Standards and Broker Responsibilities.

00A-027
In the matter of Fulton Homes Sales Corporation, and in the matter of the real estate broker's license of Michael C. Gleave
Tempe
DATE OF ORDER: March 14, 2000
FINDINGS OF FACT: On February 4, 1999, a Special Order of Exemption was issued to Fulton Homes, Lots 1 through 128, of Sienna Heights subdivision. On May 24, a Public Report was issued to Fulton Homes for Lots 1 through 128. The report was amended on December 10.

At all times material to this matter, Douglas S. Fulton was president of Fulton Homes. Fulton Homes does not hold a real estate license in Arizona.

At all time material to this matter, Gleave was licensed as the designated broker for Fulton Homes.

To satisfy the financial assurance requirements of A.R.S. § 32-2181(A)(17) and A.R.S. § 32-2183(D), Fulton Homes agreed not to close escrow until all subdivision improvements had been completed. A site inspection on February 3, 2000 revealed that the improvements had not been completed. The completion date represented by Fulton Homes was December 31, 1999.

On February 16, 2000, Fulton Homes filed an application to amend the public report (Second Amendment) pursuant to A.R.S. § 32-2184.

Between January 1 and February 14, 2000, Fulton Homes closed escrow on eight lots.
VIOLATIONS: Respondents were responsible to ensure that a valid public report had been issued for all lots being sold or offered for sale, and that their representations to that effect were true. Respondents sold or offered for sale lots in a subdivision without obtaining an amended public report in violations of A.R.S. § 32-2184. Respondents sold and closed escrow on lots in violation of A.R.S. § 32-2183(D).
DISPOSITION: Each Respondent to pay a civil penalty in the amount of $500.

99A-161
William Cittadino
Phoenix
DATE OF ORDER: March 14, 2000
FINDINGS OF FACT: Respondent is currently licensed as a real estate salesperson. His license will expire on March 31, 2000. On July 2, 1999, Respondent disclosed a June 23 conviction for Public Sexual Indecency, a class 1 misdemeanor.
VIOLATIONS: Respondent has been convicted of a crime of moral turpitude or like offense in violation of A.R.S. § 32-2153(B)(2). His conduct tends to show he is not a person of good character, within the meaning of A.R.S. § 32-2153(B)(7).
DISPOSITION: Respondent to pay a civil penalty in the amount of $2,000. Respondent shall take 15 hours of continuing education, in addition to hours required for license renewal, in the areas of Ethics and Commissioner's Standards.

99A-168
Steve Nelson
Scottsdale
DATE OF ORDER: MARCH 21, 2000
FINDINGS OF FACT: In his June 3, 1999 application for a real estate salesperson's license, Respondent failed to disclose a January 12, 1999 conviction for DUI in New York City Criminal Court.

VIOLATIONS: Respondent procured or attempted to procure a license by filing an application which was false or misleading in violation of A.R.S. § 32-2153(B)(1). His conduct tends to show he may not be 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 suspended for 60 days upon entry of this order.

99A-114
Darlene Dewey
Mesa
DATE OF ORDER: March 22, 2000
FINDINGS OF FACT: Respondent is licensed as a real estate salesperson. Her license expires May 31, 2001.

On August 12, 1997, Thomas Crandall listed a home for sale in Chandler for Craig Rosenbaum. The property was listed as a "lease-purchase possibility" with a selling price of $126,900.

On September 16, Respondent prepared a purchase contract and receipt for deposit and a lease for Patricia and Michael O"Toole, the buyers. The lease was for one year and the buyer's offer was for the listed selling price with a $3,699 down payment as a non-refundable earnest money depost with an additional $1,311 earnest money payment due at move-in, and $5,000 more due on January 30, 1998.

Respondent gave the agreements to Crandall to present to the seller. The offer was accepted. Respondent filed to give disclosure to Crandall regarding the buyer's financial condition and prior bankruptcy.

On September 21, 1997, the buyers took possession of the property. Subsequently they did not pay rent as agreed. After several unsuccessful attempts to collect rent, the seller hired an attorney to evict the buyers. On February 1, 1998, the buyers vacated the property. The sale never closed escrow.

According to the seller, there was substantial damage to the home and he incurred attorney fees and costs for repairs to the property.
VIOLATIONS: Respondent failed to give adequate disclosure to Crandall of information she possessed regarding the buyers' financial condition and their prior bankruptcy, in violation of A.A.C. R4-28-1101(B) and A.R.S. § 32-2153(A)(3).
DISPOSITION: Respondent to take six hours of continuing education, in addition to hours required for license renewal, in the areas of Fiduciary Duties and Commissioner's Standards.

Legislation

Continued from page 2

Public Airport statute amended

• House Bill 2523, which has been sent to the Governor for her signature, requires public airports to record maps depicting the "territory in the vicinity of a public airport" with the county recorder. The requirement that these maps are to be provided to the Department and made available to the public will not change. The "territory in the vicinity of a public airport" is defined by A.R.S. § 33-8486 as "property within the traffic pattern airspace as defined by the Federal Aviation Administration [FAA] and includes property that experiences a day-night average sound level of 60 decibels or higher at airports where such an average sound level has been identified."

The legislation raises the sound level to 65 decibels in counties with a population of more than 500,000.

Legislation that didn't make it

Several other bills which would have affected real estate licensees appear to have failed at the time this issue of the *Bulletin* was published:

• House Bill 2118 would have required licensees to submit continuing education certificates with license renewal applications.

• House Bill 2469 would have permitted the Commissioner to delegate any function under Arizona Revised Statutes, Title 32, Chapter 20, Article 7, to a municipality if he believed the local authority could efficiently perform the function.

• House Bill 2573 would have required the seller of five or fewer parcels of land to provide disclosures of:
Whether there is legal access to the property.
Whether there is physical access to the property over terrain that can be traversed by a conventional motor vehicle.
Whether the county guarantees drainage, flood control, access to water utilities and fire protection.
Whether the property contains dirt roads that the EPA might required to be paved at the owner's expense.
Whether the property is adjacent to State Trust Land and that the State Land Department may sell the land to become private property.

• House Bill 2369 would have permitted a time-share developer to pay a finder's fee of up to $600 to a non-licensed person who owns a time-share.

• Senate Bill 1205 would have required real estate agents to provide, in writing, the name and phone number of a local law enforcement agency to enable the buyer to determine if the property was located in the vicinity of a sex offender. Failure to do so, however, would not have been grounds to terminate a purchase agreement.

• Senate Bill 1229 would have defined a "subdivision" as a land divided into four or more parcels rather than the present six parcels.

• Senate Bill 1373 would have required a seller or a seller's agent, or in the case of a developer, a title company, to disclose to the purchaser of residential property whether an avigation (aviation navigation) easement or written instrument relating to flight over the property exists. Failure to disclose could have voided the purchase agreement.

• Senate Bill 1540 would have defined a "subdivision" as land divided into three or fewer lots, and would have redefined "acting in concert."

The Governor's Office reminds you it is important to encourage your family, friends, neighbors and co-workers to fill out the Census 2000 form and return it to the Census Bureau.

As a real estate professional, you already know the importance of the census in documenting migration and population demographics needed for real estate planning and development during the next 10 years. Won't you take a few minutes to complete your questionnaire and drop it in the mail?

Home inspectors to be licensed

Continued from page 1

list of names of members of home inspector organizations, and two members of the Board of Technical Registration, one who is an architect or engineer, and one who is a public member.

The statute defines "home inspection" as the "rendering of a professional opinion based on a visual analysis of the building, reasonably accessible installed components and the operation of the building's systems, including heating, cooling, plumbing, electrical, structural components, the foundation, roof covering, exterior and interior components, and site aspects as they affect the building."

In Memorium

Charles Schulstadt, who served the Department as an auditor for 19 years until his retirement in 1994, died March 25, 2000, at Yavapai Regional Medical Center. He was 67.

Mr. Schulstadt moved to Phoenix from Michigan in 1958, and after his retirement resided in Prescott.

"Chuck was well-known in the real estate community as a fair but firm-minded auditor," said Commissioner Jerry Holt. " Our thoughts are with his wife and family."

ARIZONA
REAL ESTATE BULLETIN
Arizona Department of Real Estate
2910 N. 44th Street, Phoenix AZ 85018