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ADRE budget cut results in three resignations

Three key ADRE employees were asked to resign on July 1 after the Legislature imposed a $97,300 cut in the Department's 2002-2003 budget. The cut in funding was in addition to $183,200 the Legislature cut from the Department's 2001-2002 appropriation, a reduction that carries over into the 2002-2003 fiscal year.

The employees are John King, Deputy Commissioner, Director of Education and Licensing John Bechtold, and the Director of the Department's Investigations Division, James Duke.

Each year the Legislature advances the Department money with which to operate. The money is paid back into the general fund with money generated mainly by licensing and subdivision fees.

The law, A.R.S. § 32-2103(B), states that if the fees generated by the De-

Continued on page 12

Sedona couple ordered to cease reselling time-shares

The Department has issued a Cease and Desist Order to Dean Phelan, Connie Phelan and Timeshare Resale Bargains (TRB) based in Sedona, Ariz.

The Department alleges that the Phelans and TRB have sold time-share intervals on the resale market to Arizona residents without an Arizona real estate license.

Dean Phelan held a real estate broker's license that expired on November 30, 2001. He advised the Department that he would not apply for renewal of

Continued on page 12

Terry Zajac named 'Instructor of the Year' by Real Estate Educators Association

Terry Zajac, an instructor at the Arizona School of Real Estate and Business in Scottsdale, has been named as the first recipient of the national "Instructor of the Year" award from REEA, the Real Estate Educator's Association.

Mr. Zajac, who has more than 26 years of classroom experience, teaches real estate sales, prelicensure and continuing education courses at the school, as well as courses on appraisal and mortgage brokerage.

He holds a Distinguished Real Estate Instructor designation from REEA, a designation awarded only to those who demonstrate outstanding knowledge of their profession, experience, and classroom performance. He is a national past-President of REEA, and an instructor for REEA's Instructor Development Workshop.

Donald E. Bodley, Ph.D., Professor Emeritus of Real Estate Studies at Eastern Kentucky University, Donor of the Award, said "The REEA Propriety School Instructor Award was established to recognize and encourage outstanding educational activity by members of REEA who serve on Proprietary School faculties. Terry Zajac, the first recipient of this award, is exemplary of the highest quality of classroom teaching and student interaction that the award is designed to recognize. He has set a high standard for those being considered for this recognition in the fu-

'Educator of the Year' Terry Zajac

ture."

Licensed as an Arizona real estate broker since 1979, Mr. Zajac is the designated broker for Rent.Com Arizona Brokerage LLC, an internet company providing data and matching services for multifamily property owners and tenants.

REEA is an international organization fostering quality real estate education. Its members are teachers and trainers, authors and publishers, college and university faculty, and school owners and operators in the United States, Canada and Australia.

In Arizona, 1,075 people are authorized to teach real estate courses by the Department. Of these, 128 are members of REEA.

Rule change guides brokers in 'reasonable supervision' of employees

A rule change which became effective on August 6, 2002, provides guidance as to a broker's "reasonable supervision" of licensees and others in the broker's employ. Based on statutory requirements found throughout A.R.S. Title 32, Chapter 20, the rule distills the various areas a broker must address to demonstrate that the broker is fulfilling the broker's statutory obligation to supervise licensees and

Continued on page 8

Anchorage case puts cold chill on dual agency

by Blanche Evans
Reprinted with permission from the July 30 and 31 issues of Realty-Times *at www.realtytimes.com*

Part One

Disclose, disclose, disclose may soon become a more important real estate catchphrase than location, location, location.

An Alaskan judge has awarded $200,000 to a buyer whose dual agent failed to provide proper disclosure of her agency status which resulted in the buyer overpaying for his home.

And that was only one misdeed in a long list of behaviors by Realtor Bonnie Mehner that the judge called "outrageous." But failure to disclose agency is a problem that could keep haunting Mehner long after she and her broker pay their civil fines. She could face industry sanctions as well.

Joe Columbus, Jr. and his agent Robert Holbrook and McAlpine Investments, Inc. sued Mehner and her broker Prudential Jack White when Columbus discovered that he overpaid for his new home. Columbus made a full-price offer of $585,000, because the listing agent, Mehner, had tricked him into using her services to buy the home from her instead of his own agent. She was successful because she failed to disclose what her role as a dual agent would mean to Columbus as the buyer.

From the findings of the court, Anchorage Realtor® Bonnie Mehner:

- Poached the buyer from her agent:
- Tricked him into believing that he could not secure the home without her help:
- Told the buyer that his initial offer was too low, and then failed to tell the seller of the buyer's offer. The buyer's first offer was closer to comparables than what the buyer ultimately paid for the home
- Told the buyer there were multiple offers on the home when there were not to encourage him to pay more for the home
- Failed to show him existing comparables that would have illustrated that he was overpaying for the home
- admitted in court that she did not follow state law with regard to dual representation.

The court ruled in April that Mehner behaved unethically and violated state law by not informing the seller of Columbus' initial offer, misleading him about other offers on the house, failing to properly inform him about her dual agency status, and unfairly leading him to believe he could buy the house only if he made his offer through her, said an account of the story in the Anchorage Daily News when the ruling became public on Sunday, July 28th, 2002.

Columbus' broker also benefited from the ruling. As a state-licensed agent, but not a member of the Anchorage Board of Realtors, agent Holbrook and the firm he represents McAlpine Investments, Inc., were able to collect half of the $35,040 commission paid to Mehner and her firm for the dual representation of both the buyer and seller in the transaction. If Holbrook had been a member, he would not have been able to collect commissions via a civil suit. Realtors are precluded in their codes of ethics from suing one another. They instead have to petition their boards in "procuring cause" hearings to collect disputed commissions.

Mehner was a 27-year veteran, an award-winning agent whose earnings topped $600,000 a year. However, between 30 and 60 percent of her earnings came from sales in which she performed as a dual agent, according to court records, and that's the real crux of the case—not the rogue behavior of one agent, but the implications for dual agents at large.

The real estate industry has so far been protective of the dual-dip transaction, because brokers and agents can work half as hard to get results - one transaction closed; two commission sides collected. This as evidenced by the development of alternative business models to dual agency such as transactional brokerage and designated agency.

But as cases such as Mehner's come to light, how will the industry and large brokers such as hers continue with the practice if it means the expense of consumer goodwill?

"Agents are going to have to do a better job in complying with their disclosure requirements and obligations to the consumer," says Charlie Sandberg, broker for ERA Real Estate Center, in Anchorage.

Sandberg is a national director of the National Association of Realtors and a member of the NAR's professional standards committee. He also served as an expert witness for the plaintiff.

Sandberg believes this case will resonate with consumers.

"This is a big story," says Sandberg. "The point is that it is important that the consumer understand and agents understand who they work for and that the agent has the obligation to tell the consumer who they are working for and under what circumstances changes might take place.

"What we'll see is consumer awareness over representation," continues Sandberg. "Buyers will want their issues represented, and you'll see more buyers being represented to minimize conflicts of interest and that could pose some economic challenges for offices dependent on dual transactions, not to mention the liability issues and statutory liability."

Mehner's worst misstep could be one of timing. In an increasingly intolerant-of-miscreants political and economic environment, she could become the next "example."

Mehner could face a hearing and disciplinary actions from her board's professional standards committee. According to insiders, the Alaska Real Estate Commission is already looking into her case as well. While a variety of sanctions could apply, in the worst case, Mehner could lose her license to practice real estate.

Part Two
Why Dual Agents Are Reluctant To Disclose Their Agency Status

An Anchorage judge has laid the gavel down on the head of a dual agent who failed to properly disclose her client and causing him to overpay for his home. Yet statistics across the country show that other agents are doing the same thing. Why aren't some double-dip agents providing proper disclosures?

Agent Bonnie Mehner could not be reached for comment, but she defended some of her actions in court with the following statement: "I'm afraid that I'm one of a thousand (real estate agents) who don't quite live up to the standard because it is not practical."

Practical for whom? Mehner or her customers?

Alaska state law clearly says that a licensee should "disclose in writing the licensee's agency relationship with the seller to each prospective buyer at the time that the licensee begins to provide specific assistance to locate or

Continued on page 11

Jerry Holt

News From The Commissioner

Education Rule Changes
The initial response from the Arizona Real Estate Educators Association (AZREEA) to proposed changes in rules addressing education matters was quite negative. We agreed with many of the suggestions and have published a revised draft of the proposed rules. The new draft is available on the Late Breaking News page on the Department's web site. At the request of AZREEA, the deadline for the comment period has been extended to October 1. We encourage you to review the draft and send your comments to Cindy Wilkinson at cwilkinson@re.state.az.us or by mail to Cindy at the Department's Phoenix office.

Progress in Sonora
The Legislature of the State of Sonora, Mexico, has passed a law to establish a State Registry of Real Estate Agents. This is the first step in creating real estate regulation in Sonora that mirrors Arizona's real estate regulatory structure.

The law requires agents to register in the State Registry of Real Estate Agents. To register, agents must:

- Present personal identification and information relating to their business and its location;
- Accredit their professional training, specialized knowledge and experience in real estate sales;
- Agree to enroll in training programs on a regular basis and provide proof of completion; and
- Prove they have not been convicted of any crime of fiscal malfeasance or of any other serious crime.

Registry information created by the new law will be available to the public.

I've been working on this project along with about 15 Mexican experts and 15 fellow Gringos since 1991 so it is particularly gratifying to see our efforts come to fruition before my departure as Commissioner now scheduled for December 30, 2002. Thanks also to Governors Symington, Beltrones, Lopez Nogales and, of course, Jane Dee Hull without whose diligent support victory would have not happened.

And then came the tough part
Asking for and accepting the resignations of three of the Department's key people to comply with budget cuts imposed by the State Legislature, was one of the toughest things I have ever had to do in my 22 years in public service.

"It's a hellava way to run a railroad," but it was the lesser of about three "evils" (choices) with which I was presented. So, the deed has been done, the budget cutting orders have been carried out and we're still here.

Of the people still standing at the Department, all are doing what they can to fill in the gaps and three, in particular, Ira Feldman, Cindy Wilkinson and Rose Fraze, are taking on directly the jobs of Acting Deputy Commissioner, Acting Director of Education and Acting Director of Licensing, respectively, and doing admirably at this juncture.

The irony is that A.R.S. § 32-2103(B) requires the Commissioner to lower all fees because the projected revenue generated will likely exceed 110 percent of the amount of the final appropriation granted the Department by the Legislature for the budget year beginning July 1, 2002 and ending June 30, 2003.

The only "saving graces" are that nobody can read, understand and interpret A.R.S. § 32-2103(B) (because of the word "anticipated"—read it and you'll see what I mean.) *[See below. Ed.]* Secondly, the Legislature is scheduled to convene in January 2003 and that provides an opportunity for someone to propose a new way of funding the Department's operation.

As the general said to the troops about to climb over the side into landing craft headed for the beachhead, "I had hoped to be with you boys as you hit the beach under heavy enemy firepower, but unfortunately I'm needed elsewhere…."

Congratulations to Terry Zajac for being selected as the nation's "Instructor of the Year" by the Real Estate Educators Association. He's clearly one of the best real estate educators in the nation and an all-around nice guy to boot.

[This is the text of A.R.S. § 32-2103(B) Ed.]
"Each year the commissioner shall revise all fees collected under this chapter within the limits prescribed by this chapter in such a manner that the revenue derived from such fees equals at least ninety-five per cent but not more than one hundred ten per cent of the anticipated appropriated budget for the department for the succeeding fiscal year. If the revenue derived from the fees exceeds one hundred ten per cent of the anticipated appropriated budget for the department for the succeeding fiscal year, the commissioner shall lower the fees in the succeeding year in proportion to the

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

Things you should know

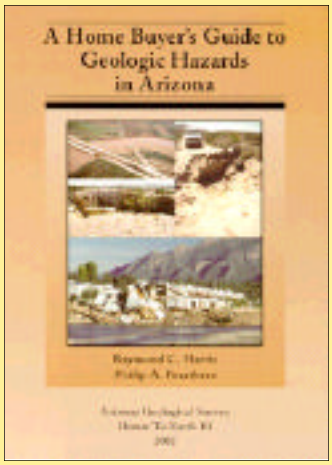
▶ A.A.C. R4-28-502(B) states that "any salesperson or broker advertising the salesperson's or broker's own property for sale, lease, or exchange shall disclose the salesperson's or broker's status as a salesperson or broker, and as the property owner in the advertisement."

We see advertising where "owner/agent" is abbreviated "O/A." *This is not satisfactory* and might not be interpreted by a reasonable person to mean "owner/agent." "Owner/Agent" must be spelled out in all advertising.

▶ We understand that some licensees believe it is acceptable to use or recommend a home inspector who has not applied for certification by the Board of Technical Registration as long as the fact that the person has not applied for certification is disclosed to all parties to a transaction.

Wrong. A person who conducts home inspections and has not applied for certification could face a $2,000 civil penalty. A licensee who recommends or uses such a home inspector could face disciplinary action by the Department. For more information about home inspector certification, see
www.btr.state.az.us

▶ The *Home Buyer's Guide to Geologic Hazards in Arizona* is now available from the Arizona Geological Survey.



This new publication can assist those who are considering buying a house or raw land. The publication describes the most widespread and common geologic hazards such as floods, earthquakes, mass movement (landslides), subsidence and fissures, radon and other factors to consider before buying or building.

The publication may be purchased for $6.95 (plus tax for Arizona residents and shipping charges for mail orders) from the Arizona Geological Survey at
www.azgs.az.gov/Home%20Buyers%20Guide.htm
You may also order the publication by calling the Arizona

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

CEASE AND DESIST ORDER

02A-092
Dean Phelan, Connie Phelan and Timeshare Resale Bargains
Sedona
DATE OF ORDER: July 22, 2002
The Department alleges that Respondents have jointly engaged in unlicensed time-share real estate activity in Arizona. Each of the Respondents' conduct constitutes activity for which an Arizona real estate license is required.
IT IS ORDERED that Respondent immediately cease and desist from engaging in any real estate activity, as defined by A.R.S. § 32-2101 *et seq.*, as employees, agents, officers, principals, or in any capacity whatsoever, director or indirectly, within the state of Arizona without first complying with all applicable laws and rules.

Respondents shall make full restitution, jointly and severally, to all purchasers of timeshares.

Respondent have requested an administrative hearing which will be held in late September.

SUMMARY SUSPENSION

02A-058
Brian Michael Bereit
Tempe
DATE OF ORDER: June 4, 2002
Respondent was issued a real estate salesperson's license in June 2000.

In May 2000, Respondent was indicted by a Maricopa County Grand Jury on two counts of molestation of a child, class 2 felonies, and dangerous crimes against children.

In October 2001, Respondent was convicted of aggravated assault, a class 6 undesignated offense. The Court suspended imposition of sentence and placed Respondent on three years' supervised probation and incarceration for 90 days.

Respondent failed to report the conviction to the Department as required by A.A.C. R4-28-301(F), in violation of A.R.S. § 32-2153(A)(3).

The Department requested a notarized statement of the circumstances related to the criminal charges, but Respondent failed to respond, in violation of A.R.S. § 32-2108(C).

Respondent has been convicted of a felony within the meaning of A.R.S. § 32-2153(B)(2). His conduct and actions show he is not a person of honesty, truthfulness and good character, in violation of A.R.S. § 32-2153(B)(7). Respondent violated the terms of a criminal order or sentence, in violation of A.R.S. § 32-2153(B)(9). Respondent has violated state law that relates to violence against another person, in violation of A.R.S. § 32-2153(B)(10).
DISPOSITION: Respondent's real estate license is summarily suspended. Respondent may request an administrative hearing to contest this action.

LICENSE APPLICATIONS DENIED

01A-149
Tadd L. Ford
Anthem
DATE OF ORDER: April 23, 2002
FINDINGS OF FACT: In his application for a real estate salesperson's license, Petitioner disclosed 1998 felony convictions involving charges of theft and of manipulating an automobile odometer to reflect reduced mileage.

Petitioner was placed on probation and agreed to submit to random drug testing. Soon after, Petitioner twice tested positive for prohibited substances.
DISPOSITION: License application denied.

01A-060
Carol A. Tidmarsh
Cave Creek
DATE OF ORDER: JUNE 17, 2002
FINDINGS OF FACT: In her May 2001 application for a real estate salesperson's license, Petitioner disclosed a 1993 DUI conviction and a 2001 shoplifting conviction.

Based on her convictions, the Department notified Petitioner that her application had been denied. Petitioner requested an administrative hearing but Petitioner did not appear at the hearing, and the administrative law judge recommended that the denial of the application be upheld.

In January 2002, the Commissioner set aside the Final Order denying Petitioner's application and ordered a new hearing.

Meanwhile, Petitioner was convicted of Extreme DUI in August 2001 and DUI in October 2001.

Petitioner acknowledges that she has an alcohol abuse problem and has attended Alcoholics Anonymous meetings for the past five years. Petitioner is still on probation for the 2001 DUI and Extreme DUI convictions.
DISPOSITION: Petitioner's application for a real estate salesperson's license is denied.

REVOCATIONS

01A-063
Todd L. Hochstedler
Mesa
DATE OF ORDER: July 11, 2002
FINDINGS OF FACT: As a result of violation of several provisions of the real estate statutes, Respondent was issued a two-year provisional license based on certain terms and conditions. Respondent has failed to comply with any of the conditions imposed by the provisional license.
VIOLATIONS: Respondent has failed to even marginally comply with six terms and conditions of the provisional license. The prior and ongoing course of conduct displayed by Respondent serves to further demonstrate that he does not satisfy the good character requisite for licensure set forth in A.R.S. § 32-2153(B)(7).
DISPOSITION: Respondent's real estate salesperson's license is revoked.

01A-052
Raul R. Martinez
Chandler
DATE OF ORDER: July 29, 2002
FINDINGS OF FACT: In his April 2001 application for a real estate salesperson's license, Respondent disclosed a 1989 felony conviction for possession of a narcotic drug and a 1994 misdemeanor conviction for DUI.

Respondent was issued a two-year provisional salesperson's license with the condition that Respondent abstain from the use of alcohol, illegal or controlled substances, and that Respondent submit to body fluid tests ordered by the Department's Compliance Officer.

In February 2002 Respondent tested positive for amphetamine and methamphetamine.

The Department summarily suspended Respondent's license on March 18, 2002, and Respondent requested an administrative hearing. Respondent failed to appear at the hearing.
VIOLATIONS: Respondent violated A.R.S. §§ 32-2153(A)(24) and (B)(9) which prohibit a licensee from violating an order of the Commissioner.
DISPOSITION: Respondent's real estate salesperson's license is revoked. Respondent to pay a civil penalty in the amount of $1,000. The Commissioner finds that it is in the best interest of the public and for the protection of the public welfare to enter this Order effective immediately as a final administrative decision. No further motion for review or rehearing will be considered by the Department.

CONSENT ORDERS

02A-057
In the matter of the subdivision violations of William Lyon Southwest, Inc., an Arizona Corporation, and William Lyon Homes, Inc., a California corporation
Scottsdale
DATE OF ORDER: May 2, 1002
FINDINGS OF FACT: William Lyon is a wholly-owned subsidiary corporation of William Lyon Homes. In August 2001, William Lyon entered into an option to purchase agreement with William Lyon Homes to purchase lots 1 through 115 in Country Place Parcel 1 and 10 from William Lyon Homes.

During the Department's Administrative Completeness Review of William Lyon's application for a public report, the Department observed that the title report showed that lots 44 and 45 were vested in Wlyone, Inc. William Lyon Homes represented to the Department that lots 44 and 45 were sold as an oversight without a public report.
VIOLATIONS: William Lyon Homes failed to obtain a public report or special order of exemption to sell lots 44 and 45 in the Development prior to the sale in violation of A.R.S. §§ 32-2181(A) and 32-2183(F).,
DISPOSITION: William Lyon Homes and William Lyon are each individually assessed a civil penalty in the amount of $1,000. Respondents represent that they along with Wlyone shall jointly secure a public report from the Department for the development, and are prohibited from selling or transferring any lots in the development until they secure a public report.

Continued on page 6

Continued from page 5

02A-050
Robert L. Beebe
Snowflake
DATE OF ORDER: May 2, 2002
FINDINGS OF FACT: In his August 2000 application for an original real estate salesperson's license, Respondent failed to disclose a 1996 misdemeanor battery conviction in Wyoming.
VIOLATIONS: Respondent failure to disclose the conviction constitutes procuring or attempting to procure a license by filing an application that was false or misleading within the meaning of A.R.S. § 32-2153(B)(1). His conduct in failing to disclose the battery conviction does not show that he is a person of honesty, truthfulness or good character within the meaning of A.R.S. § 32-2153(B)(7). Respondent failed to provide the Department the requested certified documents relating to his convictions in violation of A.R.S. §§ 32-2108(C) and 32-2153(A)(3).
DISPOSITION: Respondent's real estate salesperson license shall be suspended for 90 days. Respondent to pay a civil penalty in the amount of $3,000. Respondent to attend 12 hours of approved continuing education classes in addition to those required for license renewal.

02A-055
John C. Calhoun
Phoenix
DATE OF ORDER: May 15, 2002
FINDINGS OF FACT: Respondent was issued an original real estate salesperson's license in 1995. In February 2002, Respondent was convicted of DUI, a class 1 misdemeanor, and Endangerment, a class 6 felony.

Respondent disclosed the convictions to the Department in a timely manner. Respondent was sentenced to be incarcerated for four months beginning on February 11, 2002. Respondent is currently on supervised probation for two years beginning February 11, 2001.
VIOLATIONS: Respondent was convicted of a felony in violation of A.R.S. § 32-2153(B)(2). Respondent's conduct which resulted in the convictions does not demonstrate that he is a person of honesty, truthfulness and good character in violation of A.R.S. § 32-2153(B)(7).
DISPOSITION: Respondent's salesperson's license shall be suspended until he is no longer on probation, under the supervision of a parole or community supervision officer, in the work furlough program, or incarcerated as a result of the felony conviction, whichever occurs later.

01A-036
Thomas A. Cady
Phoenix
DATE OF ORDER: May 16, 2002
FINDINGS OF FACT: Petitioner was issued an original real estate broker's license in February 1992.

In November 1999, Petitioner entered into a Stipulation and Order with the Department of Building and Fire Safety in which he was placed on probation for two years and fined $500.

In June 2000, Petitioner entered into a Consent Agreement and Order with Building and FIre Safety to voluntarily surrender his license and not apply to sell or broker manufactured homes for five years.

In June 2000, Petitioner changed his real estate broker license status to inactive, but did not disclose the orders entered against him by Building and Fire Safety until an investigation by the Department began.

Between October 31, 2000 and November 21, 2000, Building and Fire Safety issued several orders for payment from the Consumer Recovery Fund in the amount of $65,196.

In October 2001, the Department of Insurance revoked Petitioner's insurance license.

In August 2001, Petitioner entered into a consent order with the Banking Department placing Petitioner's mortgage broker's license on inactive status until September 2002 and ordered Petitioner to pay a civil penalty in the amount of $2,500.
VIOLATIONS: Petitioner disregarded or violated provisions of Arizona Revised Statutes, Title 32, Chapter 20 and Commissioner's Rules in violation of A.R.S. § 32-2153(A)(3). Petitioner failed to demonstrate that he is a person of honesty, truthfulness and good character in violation of A.R.S. § 32-2153(B)(7). He failed to disclose the orders issued against him by the Department of Building and Fire Safety as required by A.A.C. R4-28-301(F).
DISPOSITION: Petitioner's real estate broker's license is revoked.

02A-046
Martin T. Sweeney
Phoenix
DATE OF ORDER: May 28, 2002
FINDINGS OF FACT: In his March 2002 application for a real estate salesperson's license, Petitioner disclosed a March 1999 conviction for Theft.
VIOLATIONS: Petitioner was convicted of a crime of theft in violation of A.R.S. § 32-2153(B)(2). His conduct that led to his conviction did not demonstrate that he is a person of honesty, truthfulness and good character in violation of A.R.S. § 32-2153(B)(7). Petitioner violated Arizona laws that involve theft, in violation of A.R.S. § 32-2153(B)(10).
DISPOSITION: Petitioner shall be issued a two-year provisional real estate salesperson's license subject to certain terms and conditions.

02A-059
Kenneth E. Renken
Dewey
DATE OF ORDER: May 31, 2002
FINDINGS OF FACT: Respondent was issued an original real estate salesperson's license in 1974. He was subsequently issued an Arizona real estate broker's license which expires on August 31, 2003.

Respondent violated various sections of the Securities Act of Arizona. As a result, the Securities Division of the Arizona Corporation Commission issued a Cease and Desist Order requiring Petitioner to permanently cease and desist from violating the Securities Act and pay an administrative penalty in the amount of $10,000.
VIOLATIONS: Respondent was adjudged to have violated A.R.S. §§ 44-1841, 1842 and 1991 of the Securities Act in violation of A.R.S. §§ 32-2153(B)(5) and (B)(10). Respondent failed to pay the administrative penalty required by the Cease and Desist Order, in violation of A.R.S. § 32-2153(B)(9).
DISPOSITION: Respondent's real estate broker's license is revoked.

02A-072
In the matter of the subdivision violations of Butterfield Trail Investments, Ltd., an Arizona Corporation; Sand Tank Construction, Inc., an Arizona Corporation; and Rutisha Merrit and Tony Davis.
Gila Bend
DATE OF ORDER: June 12, 2002
FINDINGS OF FACT: Butterfield is an Arizona corporation owned by Ron Henry and Tony Davis. Sand Tank is an Arizona Corporation owned by Henry, Davis and David Mendez.

Between May 1998 and October 2001, Respondents, acting in concert, sold many lots in a development without first securing a pubic report or exemption from the Department.

In March 2002, Butterfield and Merrit submitted an application for a public report for the remaining unsold lots. In April 2002, Butterfield and Sand Tank advised the Department that they had sold various lots in the Development, and were not aware of the public report requirement.
VIOLATIONS: The sales by Respondent in the Development were not exempt from the public report requirements pursuant to A.R.S. §§ 32-2181.01 or 2181.02. Respondent's sale of the lots without obtaining a public report, and failure to furnish each prospective purchaser with a copy of the report are violations of A.R.S. § 32-2183(A) and (F).
DISPOSITION: Respondents shall cease and desist from selling, offering for sale, transferring or closing escrow on any lots in the Development until they demonstrate compliance in full with this order and all applicable subdivision laws and rules. Butterfield and Merrit shall within one year of the entry of this Order obtain a public report from the Department. Sand Tank shall within one year of entry of this Order apply for an obtain a public report from the Department before offering lots for sale and selling any lots in the Development, or join Butterfield and Merritt as joint applicants in an application for a public report.

Respondents shall offer written notice of rescission to each of the purchasers of lots in the Development.

Butterfield and Merrit are assessed, jointly and severally, civil penalty in the amount of $2,500. Sand Tank is assessed a civil penalty in the amount of $2,500.

01A-145
Consent order of Steven R. Ball in the matter of the subdivision violations of Steven R. Ball; Legacy Real Estate, L.L.C., an Arizona Limited Liability Co.; MPB Holdings, L.L.C., and Arizona Limited Liability Company
Chandler
DATE OF ORDER: July 1, 2002
FINDINGS OF FACT: Ball was the designated broker for Legacy Real Estate. MBP Holdings was an Arizona limited liability company. Ball was a

managing member of MPB Holdings.

Between March 1997 and May 2000, Respondents acted individually and/or in concert to subdivide and sell lands located within the state of Arizona in violation of A.R.S. §§ 32-2181 et seq., County Planning and Zoning Statutes A.R.S. §§ 11-801 *et seq.*

VIOLATIONS: The division of a 30-acre parcel into six or more lots, parcels or fractional interests for the purpose of sale created a subdivision within the meaning of A.R.S. § 32-2101(54). Respondents acted in concert with each other and others to divide the 30 acres by using a series of owners and conveyances that resulted in a subdivision in violation of A.R.S. § 32-2181(D). Respondents participated in a common promotional plan to offer subdivided lands for sale within the meaning of A.R.S. § 32-2101(14). Respondent Bell acted as a subdivider by causing land within the 30 acres to be divided into a subdivision for himself or for others within the meaning of A.R.S. § 32-2101(53) and(54).

Respondents failed to file for or obtain a public report and failed to disclose and furnish each prospective purchaser with a copy thereof, in violation of A.R.S. § 32-2183(F).

DISPOSITION: Ball's and Legacy's real estate licenses shall be placed on probation for a period of two years subject to these terms:

a. None of the Respondents may engage in the purchase and division of land on their own behalf. Respondent may purchase and sell whole parcels which are not divided.

b. Ball shall not advise any person or client in how to evade or attempt to evade application of the subdivision laws by purchasing land and engaging in serial splitting or engaging in other acts in an attempt to evade application of the subdivision laws.

Respondent shall cease and desist from offering or selling lots in violation of the subdivision laws of this state now, or in the future.

Ball and Legacy shall reimburse the Department for investigative expenses in the amount of $1,000. Ball and Legacy shall pay a civil penalty in the amount of $2,000.

Ball and Legacy shall together pay $20,000 to the Maricopa County General Fund. Ball shall attend six hours of approved continuing education in addition to hours required for license renewal.

01A-107
R. Gary Hall and MCO Realty, Inc.
Fountain Hills

DATE OF ORDER: July 17, 2002

FINDINGS OF FACT: Hall was issued an original real estate broker's license in 1995. MCO is licensed as a corporate real estate broker and employed Hall as an associate broker.

In December 1996, Sam and Roberta Olsen purchased vacant property in Fountain Hills through MCO. MCO was the dual agent representing the Olsens as buyers and R. Bonetti as seller.

The Olsens expressed their intention of building a custom home on the property to Hall and asked him to provide them with the names of some home builders. Hall represents that he explained to Mr. Olsen that Hall would receive a 3 percent commission for the referral.

The Olsens represent they were not advised by Hall or MCO in writing that they would be charged a 3 percent referral fee or commission for the introduction to the builder, Doug Jeffrey.

The Olsens signed a construction agreement with Jeffrey Homes, Inc., to build a home on the property. Neither the construction agreement nor the construction loan agreement disclose a 3 percent referral fee or commission to be paid to MCO or Hall.

When the Olsens received the payout schedule, it disclosed that MCO/Hall received a referral fee.

VIOLATIONS; MCO and Hall disregarded or violated the provisions of Arizona Revised Statutes, Title 32, Chapter 20 and Commissioner's Rules in violation of A.R.S. § 32-2153(A)(3). MCO and Hall accepted compensation or profit for a transaction made on behalf of a client without the written consent of the client, in violation of A.A.C. R4-28-1101(G).

DISPOSITION: MCO to pay a civil penalty in the amount of $1,000. Hall to pay a civil penalty in the amount of $5,000.

02A-076
Shawn P. Kelly
Scottsdale

DATE OF ORDER: July 24, 2002

FINDINGS OF FACT: In his May 2002 application for a real estate salesperson's license, Petitioner disclosed a 1999 DUI conviction and convictions in 2000 for Endangerment, a class 6 undesignated felony, and misdemeanor DUI.

VIOLATIONS: Petitioner was convicted of a felony, in violation of A.R.S. § 32-2153(B)(2). His conduct that led to the convictions did not demonstrate that he is a person of honesty, truthfulness and good character, in violation of A.R.S. § 32-2153(B)(7).

DISPOSITION: The Department shall issue Petitioner a two-year provisional real estate license subject to certain terms and conditions.

01A-137
Cesar D. Cuevas
Phoenix

DATE OF ORDER: July 24, 2002

FINDINGS OF FACT: In his September 2001 application for a real estate salesperson's license, Petitioner disclosed a 1994 conviction for Grand Theft and 1990 convictions for DUI and Minor in Possession of Alcohol.

The Department granted Petitioner a two-year provisional real estate salesperson's license subject to various terms and conditions, one of which was that Petitioner "shall abstain completely from the use of any alcohol, illegal drugs or controlled substances..."

In June 2002, Petitioner submitted to a body fluid test ordered by the Department's Compliance officer. Petitioner tested positive for methamphetamine.

VIOLATIONS: By failing to comply with the terms of the Consent Order granting a provisional license, Petitioner disregarded or violated the provisions Arizona Revised Statutes, Title 32, Chapter 20, in violation of A.R.S. § 32-2153(A)(3). Petitioner violated the terms of the Commissioner's Order, in violation of A.R.S. § 32-2153(A)(24). Petitioner violated the terms of an Administrative Order in violation of A.R.S. § 32-2153(A)(24).

DISPOSITION: Petitioner's real estate salesperson's license is revoked.

02A-082
C. Larry McKay
Tempe

DATE OF ORDER: August 2, 2002

FINDINGS OF FACT: Respondent was issued an original rel estate broker's license in 1987. He is currently employed as an associate broker by Advanced Properties Management.

In his October 1999 application for license renewal, Respondent failed to disclose an order issued by the Oregon Real Estate Commissioner which stated that Respondent violated Oregon real estate statutes by engaging in real estate activity without a license.

In his 1988 application for an original Arizona real estate salesperson's license, he failed to disclose a judgment involving failure to perform under a real estate purchase agreement and failure to make payments on a promissory note and escrow instructions. The Department suspended Respondent's real estate license for three months and required him to pay a civil penalty in the amount of $500.

VIOLATIONS: Respondent disregarded or violated provisons of Arizona Revised Statutes, Title 32, Chapter 20 and the Commissioner's Rules in violation of A.R.S. § 32-2153(A)(3). As a result of Respondent's failure to disclose the Oregon Order in his 1999 renewal application, he 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 in failing to disclose the Oregon order does not show that he is a person of honesty, truthfulness or good character within the meaning of A.R.S. § 32-2153(B)(7). He failed to disclose the Oregon Order as required by A.A.C. R4-28-301(F).

DISPOSITION: Respondent's real estate broker's license is revoked.

00A-113
Daniel F. Scanlon
Scottsdale

DATE OF ORDER: August 9, 2002

FINDINGS OF FACT: In his August 2000 application for renewal of his real estate salesperson's license, Petitioner disclosed a 1998 conviction for threatening, a misdemeanor, and a 1997 charge for possesion of dangerous drugs.

In November 2000, Petitioner entered into a Consent Order granting renewal of his license, and issuing him a two-year provisional license subject to certain terms and conditions, among them that Petitioner was to abstain completely from the use of illegal drugs or control substances.

In July 2002, Petitioner notified the Compliance oFficer that he is unab le to comply with the requirements of his consent order, and that he is entering an in-patient alcohol and drug program.

DISPOSITION: Petitioner's real estate salesperson's license is revoked.

Rule change

Continued from page 1

unlicensed employees.

The rule identifies the areas in which a policy is required under statute and requires that it be in writing. Besides providing guidance for brokers and their employees, it provides a standard for the Department to use in evaluating complaints of a broker's negligence or lack of supervision.

In addition to minor changes to existing Sections to be consistent with current rulewriting standards and to improve clarity, this rulemaking amends A.A.C. R4-28-1101 to describe a licensee's standard of care and disclosures that may be required.

Clarifying what types of disclosures are required to be made by a broker or salesperson will have a positive impact on both consumers and the licensees. Behavior that previously fell short of the expected standard but was merely deemed unethical will now clearly be a violation of the rules. Brokers and salespersons will have a better understanding of what disclosures they must make, as well as how and when they are to make them. Consumers will benefit from the additional disclosures they are entitled to receive. Misunderstandings will be reduced, and disputes that lead to expensive and time-consuming litigation are expected to decrease.

A minor change to R4-28-1101(E) will require a salesperson or broker with an interest in a transaction to disclose that interest to consumers up front, and not merely require disclosure when the licensee is acting as a principal. Consumers will have this information when evaluating the advantages and disadvantages of a prospective transaction, which will allow them to make more informed decisions.

The new Section, R4-28-1103, identifies the areas a broker is to address with licensed and unlicensed persons in the broker's employ in order to demonstrate that the broker has taken or is taking reasonable steps to supervise these persons in the course of their employment with the broker. This responsibility to supervise is not new. What is new is setting out in one Section the areas over which the broker is expected to supervise licensees and other employees, and the requirement that office policies and procedure be established in writing.

Here is the text of the amended rules:

Article 1. General Provisions

R4-28-101. Definitions

In addition to the definitions listed in A.R.S. § 32-2101 the following terms apply to this Chapter:

"ADEQ" means the Arizona Department of Environmental Quality.

"ADWR" means the Arizona Department of Water Resources.

"Closing" means the final step of a real estate transaction, such as when the consideration is paid, all documents relating to the transaction are executed and recorded, or the deed is delivered or placed in escrow.

"Credit hour" means 50 minutes of instruction.

"Course" means a class, seminar, or presentation.

"D.b.a." means "doing business as."

"Distance learning" means a course of instruction outside a traditional classroom situation consisting of interactive instructional material, such as computer-based or audio-visual, requiring completion in the course hours specified. A course that requires a student to read text, listen to audio tapes, or view video material without student participation, feedback, and remedial instruction is not a distance learning course.

"Fictitious name" means any name used to conduct business other than a person's legal name, and includes a d.b.a. name or trade name.

"Franchise" means a contract or agreement, either express or implied, oral or written, between 2 two or more persons by which:

a. A franchisee is granted the right to engage in the business of offering, selling, and distributing goods or services under a marketing plan or system prescribed in substantial part by a franchiser; and

b. The operation of the franchisee's business pursuant to the plan or system is substantially associated with the franchiser's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchiser or its affiliate; and

c. The franchisee is required to pay, directly or indirectly, a franchise fee.

"Immediate family" means persons related to an individual by blood, marriage, or adoption, including spouse, siblings, parents, grandparents, children, and grandchildren.

"Individual" means a natural person.

"Material change" means any significant change in the size or character of the development, development plan, or interest being offered, or a change that has a significant effect on the rights, duties, or obligations of the developer or purchaser, or use and enjoyment of the property by the purchaser.

"Property interest" means a person's ownership or control of a lot, parcel, unit, share, use in a development, including any right in a subdivided or unsubdivided land, a cemetery plot, a condominium, a timeshare interval, a membership camping contract, or a stock cooperative.

(The rest of Article 1 was not changed.)

Article 7. Compensation

R4-28-701. Compensation Sharing Disclosure

A real estate broker shall disclose to all the parties in a transaction, in writing before closing, the name of each employing broker who represents a party to the transaction and who will receive compensation from the transaction.

Article 8. Documents

R4-28-802. Conveyance Documents

A. Upon execution of any transaction document a salesperson or broker shall, as soon as practical, deliver a legible copy of the signed document and final agreement to each party signing the document.

B. During the term of a listing agreement, a salesperson or broker shall promptly submit to the salesperson's or broker's client all offers to purchase or lease the listed property. Upon receiving permission from the seller or lessor, the salesperson or broker acting on behalf of the seller or lessor may disclose to all offerors or their agents the existence and terms of all additional offers on the listed property. The salesperson or broker shall submit to the client all offers made prior to closing and is not released from this duty by the client's acceptance of an offer unless the client instructs the salesperson or broker in writing to cease submitting offers or unless otherwise provided in the listing agreement, lease, or purchase contract. The salesperson or broker may voluntarily submit offers to the seller or lessor regardless of any limitations contained in the listing agreement and may submit offers after the listing agreement is terminated.

C. Transaction statements. In addition to the requirements of A.R.S. §§ 32-2151.01 and 32-2174, the broker shall retain true copies of all receipts and disbursements, or copies of the exe-

cuted and delivered escrow closing statements that evidence all receipts and disbursements in the transaction. (The rest of Article 8 was not changed.)

Article 11. Professional Conduct

R4-28-1101. Duties to Client

A. A licensee owes a fiduciary duty to the client and shall protect and promote the client's interests. The licensee shall also deal fairly with all other parties to a transaction.

B. A licensee participating in a real estate transaction shall disclose in writing to all other parties any information which the licensee possesses that materially and adversely affects the consideration to be paid by any party to the transaction, including:

1. Any information that the seller or lessor is or may be unable to perform;
2. Any information that the buyer or lessee is, or may be, unable to perform;
3. Any material defect existing in the property being transferred; and
4. The possible existence of a lien or encumbrance on the property being transferred.

C. A licensee shall expeditiously perform all acts resulting from an agreement authorized by the holding of a license. Any delay in performance, either intentional or through neglect, is prohibited.

D. A licensee shall not allow a controversy with another licensee to jeopardize, delay, or interfere with the initiation, processing, or finalizing of a transaction on behalf of a client.

E. A real estate salesperson or broker shall not act directly or indirectly in a transaction without informing the other parties in the transaction, in writing and before the parties enter any binding agreement, of a present or prospective interest or conflict in the transaction, including that the:

1. Salesperson or broker has a license and is acting as a principal.;
2. Purchaser or seller is a member of the salesperson's, broker's, or designated broker's immediate family;
3. Purchaser or seller is the salesperson's or broker's employing broker, or owns or is employed by the salesperson's or broker's employing broker; or
4. Salesperson or broker, or a member of the salesperson's or broker's immediate family, has a financial interest in the transaction other than the salesperson's or broker's receipt of compensation for the real estate services.

F. A salesperson or broker shall not accept compensation from or represent more than one party to a transaction without the prior written consent of all parties.

G. A salesperson or broker shall not accept any compensation including rebate or other consideration, directly or indirectly, for any goods or services provided to a person if the goods or services are related to or result from a real estate transaction, without that person's prior written acknowledgement of the compensation. This prohibition does not apply to compensation paid to a broker by a broker who represents a party in the transaction.

H. The services that a salesperson or broker provides to a client or a customer shall conform to the standards of practice and competence recognized in the professional community for the specific real estate discipline in which the salesperson or broker engages. A salesperson or broker shall not undertake to provide professional services concerning a type of property or service that is outside the salesperson's or broker's field of competence without engaging the assistance of a person who is competent to provide those services, unless the salesperson's or broker's lack of expertise is first disclosed to the client in writing and the client subsequently employs the salesperson or broker.

I. A salesperson or broker shall exercise reasonable care in ensuring that information material to a client's interests and relevant to the contemplated transaction is obtained and accurately communicated to the client. A salesperson or broker is not required to have expertise in subject areas other than those required to obtain the salesperson's or broker's license.

J. A salesperson or broker shall not:

1. Permit or facilitate occupancy in a person's real property by a third party without prior written authorization from the person; or
2. Deliver possession prior to closing unless expressly instructed to do so by the owner of the property or property interest being transferred.

K. A salesperson or broker shall recommend to a client that the client seek appropriate counsel regarding the risks of pre-possession or post-possession of a property.

(R4-28-1102 was not changed.)

R4-28-1103. Broker Supervision and Control

A. An employing broker and a designated broker shall exercise reasonable supervision and control over the activities of brokers, salespersons, and others in the employ of the broker. Reasonable supervision and control includes the establishment and enforcement of written policies, rules, procedures, and systems to:

1. Review and manage:
   a. Transactions requiring a salesperson's or broker's license; and
   b. Use of disclosure forms and contracts and, if a real estate broker, real estate employment agreements under A.R.S. § 32-2151.02.
2. Manage:
   a. Filing, storing, and maintaining documents pertaining to transactions under subsection (A)(5)(a);
   b. Handling of trust funds; and
   c. Use of unlicensed assistants by a salesperson or broker;
3. Oversee delegation of authority to others to act on behalf of the broker;
4. Familiarize salespersons and associate brokers with the requirements of federal, state, and local laws relating to the practice of real estate, or the sale of cemetery property or membership camping contracts; and
5. Review and inspect:
   a. Documents that may have a material effect upon the rights or obligations of a party to a transaction; and
   b. Advertising and marketing by the broker and by salespersons, brokers, and others in the broker's employ.

B. A broker shall establish a system for monitoring compliance with the broker's policies, rules, procedures, and systems. A broker may use the services of employees to assist in administering the provisions of this Section but shall not relinquish overall responsibility for supervision and control.

You may view and print the amended rules at the Department's web site in MSWord or Adobe Acrobat format. Look for "Commissioner's Rules" in the Table of Contents.

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

New Substantive Policy Statement allows brokers to operate 'Service Centers'

The Department has published Substantive Policy Statement No. 29 which allows a broker to establish "Service Center" offices. Here is the text of the statement:

As provided by A.R.S. § 32-2127, a branch office is a place of business, in addition to the principal office, maintained by a broker and staffed by licensed and unlicensed employees, has a branch manager and is usually open during what are considered regular business hours. Consumers can determine from required signage that it is one of a broker's places of business.

In recognition of the continuing population growth of Arizona, some brokers wish to establish "service centers" in different parts of the cities or counties which they serve. In contrast to a branch office, these offices are unstaffed offices which will usually contain a desk, telephone, fax, copier, and perhaps a computer for limited use on an as-needed basis. Having a satellite service center can reduce time and fuel used by licensees, their clients and customers that would otherwise be spent driving to the main or a branch office in another part of the city to prepare or fax a contract, download new listings, preview available homes on-line, prepare and copy documents, or meet with clients.

These service centers are not deemed to be branch offices within the meaning of A.R.S.§ 32-2127, providing that none of the service centers is the principal place of business (main or branch office) for any of the broker's employees, and is an unstaffed facility used on an as-needed basis for transient activities such as those described above. If one or more employees begins to utilize the service center as a principal place of business, the broker must immediately establish it as a branch office.

If signage at the service center identifies the employing broker, it should also contain the designated broker's name and telephone number. Signage at a service center is not required.

Authority: A.R.S. § 32-2102 authorizes the Commissioner to administer the real estate department for the purpose of protecting the public interest through licensure and regulation of the real estate profession in Arizona. A.R.S. § 32-2127 requires a broker to license additional places of business as branch offices, and to appoint a manager for each branch office.

Widow awarded $30,000 from Recovery Fund

An order entered on June 14, 2002, in Maricopa County Superior Court gave $30,000 to 85-year old Georgia Anderson as partial reimbursement for damages awarded to her and the estate of her late husband in a judgment for breach of contract and fraud. The judgment included $75,000 in compensatory damages and $25,000 in punitive damages against defendants Jacob Stahlecker, a licensed real estate broker, and his wife Becky of Mesa.

On September 15, 1998, before Becky became a licensed real estate salesperson, the Stahleckers entered into a purchase contract to buy the Anderson's property located on Broadway in Mesa, Arizona,. They agreed to pay $5,000 as earnest money. Seventy-five thoursand dollars was to be paid to the Andersons.

Mr. Stahlecker prepared the purchase contract which provided that Stahleckers would record a first deed of trust against the property in favor of the Andersons, and make monthly interest payments of $629; a $10,000 payment on September 1, 1999; and a balloon payment of the balance due on September 1, 2000. The contract also provided that Stahleckers could extend the loan by making an additional payment of $20,000 by September 1, 2000. The Andersons intended to use money from the sale as retirement income.

Mr. Anderson, who has worked as a real estate agent until 1980, was in failing health. He and Mrs. Anderson trusted Stahleckers to execute the necessary documents to carry out the intent of the purchase contract, and to protect their security interest. The loan was risky because there was a low down payment and the Stahlekers were not going to occupy the property.

Stahlecker did not go through a title company and did not record a note or first deed of trust to protect Andersons' security interest, as a title company would have. Instead, Stahlecker recorded a quit-claim deed from Andersons and an Affidavit of Property Value on or about December 21, 1998 which stated that the property would be purchased with a loan from seller that was "secured by other security." Stahleckers did not explain what that meant, and did not disclose that they intended to borrow $78,000 from other persons, and would be in first position because Stahleckers never recorded the necessary documents to secure Anderson's purported first position security.

On June 1, 1999, Mr. Anderson passed away at the age of 87. After his death, Mrs. Anderson, who was counting on the proceeds from the sale of their Mesa property to support her in her senior years, attempted to collect the delinquent monthly payments and the $10,000 payment due on September 1, 1999. Mrs. Anderson learned that, in November 1999, Stahleckers obtained a loan for $78,000 secured by her property from another lender.

Stahleckers represented to the mortgage broker involved in that transaction, who was also a real estate broker, that they owned the Mesa property free and clear and wanted to borrow money against it to rehabilitate another property they owned on West Van Buren in Phoenix. Stahleckers defaulted on that loan and a notice of trustee's sale was recorded on July 27, 2000.

When Mrs. Anderson could not collect anything and discovered that Stahleckers had not secured her interest in the property, she filed a lawsuit against Stahleckers. Anderson obtained judgment against the Stahleckers in April 2001, but was unable to collect anything from them. She filed application for payment from the Arizona Real Estate Recovery Fund in November 2001.

An order for payment was entered in January of this year. However, the Stahleckers had filed for bankruptcy just before payment was ordered from the Recovery Fund, so Mrs. Anderson had to appear in bankruptcy court to have her judgment declared nondischargeable and to get permission to pursue her civil lawsuit.

It took five months for the bankruptcy court to declare Stahleckers' debt nondischargeable. Armed with a nondischargeable

Continued on page 11

Dual agency

Continued from page 2

acquire real estate for the buyer, and obtain from each prospective buyer a signed acknowledgement that the buyer is aware of the agency relationship between the licensee and the seller."

When acting as a buyer's agent the licensee may "act as an agent for both a prospective seller and a prospective buyer of real estate only after the licensee informs both the seller and the buyer of the dual agency and obtains written consent to the dual agency from both principals."

When a change occurs, such as when Mehner went from being the seller's agent to a dual agent, "during a transaction that makes a prior written disclosure required by this section incomplete, misleading, or inaccurate, the licensee shall make a revised disclosure, in writing, to all parties to the transaction as soon as possible."

Mehner did not disclose her buyer (or her seller, for that matter) until after she had shown him several homes, two of which were her own listings. The buyer had presented a contract once through another agent which Mehner declined to show her seller, an action which got her in deeper hot water. But, it was only when the buyer, thinking he could not secure the house otherwise, presented a contract through her, did she disclose the nature of her dual agency.

For these actions and more, Mehner and her broker were fined over $200,000. In addition, Mehner may face statutory and professional standards sanctions. In the worst case, she could lose her license to practice real estate.

Risk of sanctions may appear remote to agents who feel that "everybody does it."

According to a previous Realty Times story by Broderick Perkins, fewer than 10 percent of Massachusetts' real estate agents fully comply with agency disclosure law, according to a study by the state's real estate regulatory agency, the Board of Registration of Real Estate.

"Likewise, John Pinto, a real estate broker and expert witness in San Jose, CA says nearly all real estate agents violate California's disclosure laws by not fully disclosing to consumers who they represent—the buyer, the seller or both," writes Perkins.

"And the Washington, D.C.-based Consumer Federation of America says because many consumers aren't even aware they have a right to know by whom and how they are represented, they are underrepresented to the tune of $10 billion a year in higher home costs."

In these agents defense, are disclosure laws not written clearly enough or is the concept of dual agency simply too risky to properly explain to consumers? According to AS 08.88.396. Disclosure of Agency to Prospective Buyers and Sellers, click here, agency disclosure should be given to a consumer "at the time the licensee begins to provide specific assistance to locate or acquire real estate...." If you are an agent who bends the rules to get both sides of a sale, that all depends on when "begins" begins and what "specific assistance" is.

Sandy Forrest, executive officer of the Anchorage Board of Realtors, says, "We do have a state law and an agency statute. The Anchorage Board has formed an agency task force to review this particular statute to decide if something needs to be changed. We're still meeting with the committee to see if the statute needs to be rewritten. I did put in a request to NAR to get some information from them, so we are trying to see what other states are doing."

Says Charlie Sandberg, a director of the NAR and an expert witness in the Mehner trial, "When you read the definition of informed consent, you have to present all of the risks and give the consumer an understanding of the risks of a dual agency arrangement. Our obligation is to give the consumer a knowledge of what alternatives are open if they don't want to enter into it (dual agency agreement) and one alternative is go get another agent.

"Losing income is a powerful issue," he continues. "When you make $600,000 a year as in Mehner's case, 30 to 60 percent of her income was dual agency income. She would have to statistically work twice as hard to make the same income. The other issue is that by nature real estate agents are marketing properties and get it purchased for their buyers and sold for their sellers. Their focus isn't their legal issues under agency, they just want to do the best job for their people, and sometimes you lose sight of how to get from beginning to closing."

The real estate industry, so far, has been protective of the dual-dip transaction. This case asks the question - will the industry continue to protect dual agency at the expense of consumer goodwill? A lot depends on how much consumers latch onto cases like Mehner's and what the risk/reward is for brokers who condone practices such as Mehner's. Before she landed in court, Mehner was acknowledged as the top agent in her brokerage.

One observer noted that the industry may have benefitted with a temporary reprieve. The Mehner case was settled before punitive damages were awarded by the judge.

"There is no errors and omissions insurance payoff for fraud," says the observer.

[Additional RealtyTimes articles about dual agency may be found at http://www.realtytimes.com Enter the text "dual agency" in the search term space. Ed.]

Recovery fund

Continued from page 10

judgment and an order staying the bankruptcy so she could proceed in her civil lawsuit, Mrs. Anderson entered into a joint petition with the Department in June for payment from the Recovery Fund.

An amended order was then entered that allowed the Department to pay Mrs. Anderson a maximum award of $30,000.

This is the last award to be paid under the old statutes which were amended effective August 22, 2002. Please see "New Recovery Fund Statutes."

New Recovery Fund statutes effective August 22

New Real Estate Recovery Fund legislation provides that applications for payment from the fund are filed with the Commisioner rather than with the court beginning August 22, 2002.

Among other things, the new statutes change the application process:

- Notice to the Recovery Fund of a potential claim will no longer be required when the lawsuit is filed.
- In most cases, applications must now be filed with the Department using Form RF-107 instead of through the court. The form is available on the Department's web site (click on Download Forms) or by calling the Customer Service Division at 602-468-1414 extension 100.

Applicants whose claims are denied will have an opportunity to

Continued on page 12

Statutes replace Substantive Policy Statements 4 and 17

Substantive Policy Statements No. 4 and No. 17 were repealed August 23 when amendments to real estate statutues enacted by the 2002 Legislature become law.

SPS 4, which addresses Broker Management Clinic Attendance, is unnecessary because the subject is addressed by A.R.S. § 32-2136. The statute was amended to require a licensee to attend a clinic before becoming a designated broker "unless the broker has attended a clinic during the preceding 23 months," rather than "during the broker's current license period."

Substantive Policy Statement No. 17 was repealed because A.R.S. § 32-21235(B) has been amended to require licensees to submit a copy of continuing education certificates with renewal applications.

The requirement that licensees retain continuing education certificates for five years is repealed.

Budget Cuts

Continued from page 1

partment fall below 95 percent of the appropriation, fees must be increased in the following year to make up the difference. If fees exceed 110 percent of the appropriation, fees must be reduced.

Because the Legislature has cut $297,000 from the Department's 2002-2003 appropriation of $3,115,000, fees are projected to easily exceed 115 percent. This means the new real estate commissioner, who will be appointed by the new governor in January 2003, will have to reduce fees to compensate for the reduction in the appropriation unless the law is changed during the 2003 legislative session.

Cease and desist

Continued from page 1

his license until he was released from probation for a recent felony conviction.

It was ordered that Dean Phelan, Connie Phelan and TRB immediately cease and desist from engaging in any real estate activity within the state of Arizona without first complying with all applicable laws and rules.

The Phelans and TRB were also ordered to make full restitution to all purchasers of time-share intervals.

Respondents have requested an administrative hearing to be held in late September.

Recovery Fund statutes

Continued from page 11

reapply to the courts. Licensees will have an opportunity to object to the Commissioner or appeal to the court before a claim is paid. To view the new legislation, please go to the ADRE website and select "Consumer Information" from the buttons on the home page, then scroll down to "Recovery Fund.".

FInd late-breaking news about the Department at www.re.state.az.us

ARIZONA
REAL ESTATE BULLETIN
Arizona Department of Real Estate
2910 N 44th Street, Phoenix AZ 85018-7256