

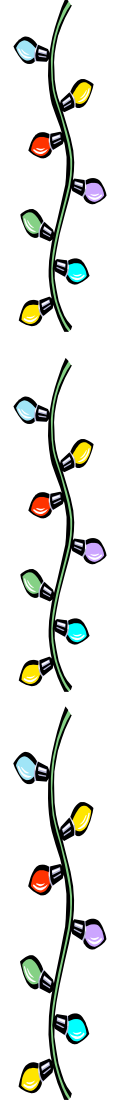
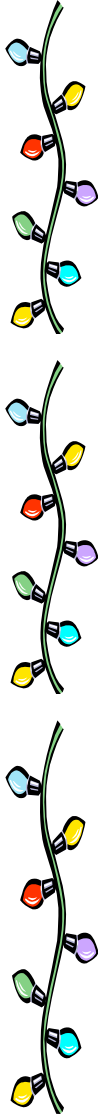


Did you know that...

Arizona Department of Real Estate BULLETIN

REMINDER: CONVICTIONS MUST BE DISCLOSED!

- Licensees are reminded that Commissioner's Rule R4-28-301(F) requires that any licensee who is convicted of any misdemeanor or felony offense must disclose in writing that conviction to the Department within TEN (10) DAYS of the date of the conviction. The date of the conviction occurs when the Defendant pleads guilty to the offense or is found guilty of the offense. The Department takes any violation of this disclosure Rule very seriously.
- Are you conducting **unlicensed activity**? (See article on page 10)



THE

Arizona Department of Real Estate

BULLETIN

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Our Mission

The mission of the Department is to protect the public interest through licensure and regulation of the real estate profession in the State of Arizona.

Dec/Jan. 2006

Volume 31-Issue 5

ADRE EMPLOYEE Highlights

Cindy Wilkinson



Licensing and Professional Education Division Director Honored by Governor

An Arizona native, **Cindy Wilkinson** has worked for 28 years in State Government service and 25 years with the Arizona Department of Real Estate. Cindy has a tremendous amount of institutional knowledge, skills and experience with ADRE based on her varied responsibilities over the years, including:

- Currently Director of the Department's combined Licensing and Professional Education Division. In this capacity Cindy has responsibility to oversee 18 employees, 76,346 licensees, 171 real estate schools, 2,500 courses as well as 1,300 instructors. Her division received 17,000 phone calls in October alone as well as 1,200 new applicants also in October.
- Prior Deputy Director of the ADRE's Administrative Actions Division .
- Prior Director the Customer Services Division.
- Rules Liaison for the ADRE.

Recently Cindy suggested sending licensees pink postcards in lieu of a 4-part renewal application as license renewal reminders, encouraging use of the On-Line Renewal System. This has saved postage, printing, paper, as well as countless hours for licensees and staff. It is an on-going savings.

Cindy is admired and well respected by her colleagues as well as other professionals in the real estate industry. She is an integral part of the management team and is instrumental in ensuring that the ADRE runs smoothly on a day-to-day basis.

Cindy was honored with special recognition by the Governor at the December 2005 Cabinet Meeting. ☐



Carla Randolph

Just Ask Carla!

BY

Mary C. Utley, Editor

As many of you can attest to, Carla Randolph, Commissioner's Assistant, is an invaluable resource to the Department. She has been with ADRE since 1985 and is knowledgeable on nearly every aspect of ADRE.

Despite being inundated with phone calls and requests, she always manages to have a smile and a positive attitude. Not only is she the Commissioner's Assistant, she is also the Department's Ombudsman. As the Commissioner's Assistant, she has duties that vary and keep her hopping every minute of the day.

In addition to her busy days, two precious daughters and a husband keep her busy at home. Our question to Carla is "HOW DO YOU DO IT?" ☐



Commissioner's Corner

By Commissioner Elaine Richardson

Recently I was asked, "Since becoming Commissioner, have you created more work?" What I was really being asked was had I added to the "bureaucracy maze." I did not have to think about the response for very long. My answer was "exactly the opposite"! Of course, I was asked to provide some examples. I did not hesitate to give examples where we have actually "streamlined" the processes at the Department. When I say streamline, I don't mean cutting corners or providing an inferior work product.

Here are some of the examples:

- **Online License Renewal System**-has eliminated the need for licensees to travel to the Department, making it more cost-effective and timesaving for both the licensees and the Department.
- **Pink Card**-renewal reminder instead of the four-part renewal form; saves Department money in postage, printing, paper and staff time.
- **Department's website** -more user-friendly. Easier access to Subdivision Public Reports (saving staff and industry time); Real Estate Law Book (more manageable) available on web as are the complaint forms, link to the Sonora Agent Registry (providing additional information to Arizona consumers seeking to purchase property in Mexico).
- **Customer Assistance Team (C.A.T. Team)**-created to provide consistency in responses as well as avoid having the caller being "ping ponged" from one person to another.
- **Late Breaking News**-re-instituted to provide more effective communication and keep licensees updated.
- **Stakeholder's Meetings**-a vehicle for licensees and industry to provide feedback to the Department as well as expertise on matters directly affecting them. Those groups are: Education Advisory Committee, Subdivision Task Force, Cross-Borders Transactions Committee and Industry Stakeholders (which resulted in consensus legislation).
- **Automated Body Fluid Testing**-time and cost saver for ADRE Compliance Officer. Paid for by the "provisional" licensees-not the Department or taxpayers.

- **Arizona Real Estate and You-A Consumer Guide**-a quick and easy to understand reference (available in English and Spanish) for consumers considering buying or selling property.
- **Broker Audit Declaration**-a self-audit for the brokers resulting in more audits being accomplished without increasing auditing staff.
- **Billing for Subdivision Inspections**-method shortened thus saving time and generating revenue for the Department.
- **Licensing Division Reconfigured**-open cubicles for staff creating a more open and effective working environment.
- **Utilization of Cease and Desist Orders**-provide protection for buyers and sellers.
- **Streamlined Subdivision Public Report Process**-developers in Mexico who market to Arizona consumers can apply for a Public Report and obtain one in a timely manner while saving financially. The consumer continues to be protected.

The Department continued to be effective, productive and focused on cost-saving in 2005 despite having staff shortages. As is frequently heard in the halls of the Department-we are dancing as fast as we can!

We are looking forward to continued progress in 2006 and remain committed to the licensees, industry and the public.☺





Real Estate Advertising Complaints on the Increase

By

*Tom Adams, Director, ADRE Investigations Division
K. Michelle Lind, AAR General Counsel*



The Arizona Department of Real Estate ("ADRE") receives numerous advertising complaints each month. The ADRE investigates advertising complaints and takes action against those licensees whose advertising violates the ADRE Commissioner's Rules, so it is important to be familiar with the advertising laws and ensure that your advertising is in compliance.

Advertising is broadly defined and highly regulated.

Advertising means "the attempt by publication, dissemination, exhibition, solicitation or circulation, oral or written, or for broadcast on radio or television to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in [property] and any photographs, drawings or artist's presentations of physical conditions or facilities existing or to exist on the property." A.R.S. §32-2101(2). Nearly anything salespersons or brokers do to circulate their names among people, other than "keep in touch" or "thank-you" items such as gifts or birthday cards to clients, falls under the definition of advertising.

The Commissioner's Rules, A.A.C. R4-28-502, set forth the rules for all advertising. A salesperson or broker acting as an agent is prohibited from advertising property in a manner which implies that no salesperson or broker is taking part in the offer for sale or lease. The designated broker must supervise all advertising, however, associate brokers and salespeople are responsible for insuring that their advertising is in compliance with the Rules.

The employing broker's name must be "clear and prominent" in all advertising.

All advertising must identify in a "clear and prominent manner the employing broker's legal name or the licensed dba name." The employing broker is the corporation, limited liability company, partnership or sole proprietorship licensed as a broker that has engaged the services of salespersons and associate brokers. The employing broker designates a natural person to act as the designated broker.

The requirement that all advertising identify the employing broker's name in a "clear and prominent manner" is by far

the most common subject of complaints. Although the Rules do not specify precisely what constitutes "clear and prominent," Webster defines prominent as "thrusts itself into attention" or "conspicuous in position or importance." A primary guideline to consider when creating an advertisement is that the employing broker represents the client in the transaction and the associate broker or salesperson represents the employing broker. This relationship must be indicated in the advertisement; that is, the ad must be clear that the employing broker is involved in the process. Consider the following guidelines:

- The employing broker's name must be included in all newspaper advertisements, including classified ads, real estate advertising guides, and other magazine ads.
- In advertising flyers, the employing broker's name may be located on either the top or the bottom of the flyer however the employing broker's name must be clearly legible.
- On any other promotional material the employing broker's name must be on the front page or front of the object.
- The employing broker's name must be spelled out in its entirety. For example, if an employing broker's legal or dba name on a license includes "Southeast Valley," that is what must appear in the ad; simply saying "SE" is not sufficient.
- If the brokerage is an office of a franchise, the office must be identified; simply displaying the franchise name alone is not sufficient.

The employing broker's name must be on each page of an associate broker or salesperson's web site.

Web sites or emails that target Arizona residents with the offering of a property interest or real estate service also constitute advertising and is a regulated activity. A.R.S. §32-2163(D) and A.A.C. R4-28-502(L). The employing broker's name must be visible on the first page of the web page, without the necessity of scrolling down, regardless of the screen size of the computer. Web pages should identify the broker on each page because it is possible to link to a single page and, if that is done, the broker's name needs to be



Continued from page 4

to be visible. In contrast, if the employing broker produces a magazine that includes only the broker's listings, the broker can be identified on just the front cover, not every page, because a consumer picks up the whole magazine, not just one page.

Teams must comply with the same advertising rules

A real estate salesperson or broker may use the terms "team" or "group" to advertise and promote real estate services if the team or group is comprised of licensed real estate salespersons or brokers who are employed by the same broker. When advertising as a team, the same advertising rules apply as when advertising as an individual broker or salesperson. All team advertising must identify the employing broker in a clear and prominent manner. For example, placing "*The (Team Name) Team*" at the top of the page in large letters with a much smaller brokerage symbol somewhere below (often at the bottom of the page) is not sufficient. The ad must be clear that the team is a part of the brokerage.

Other Advertising Rules

In addition, the Rules also require that:

- All advertising must contain accurate claims and representations, and fully state factual material relating to the information advertised.
- The licensee's name must be set forth in a manner that would enable a consumer to find the licensee's license information on the ADRE's records (including website). A.A.C. R4-28-302 (I).
- Licensees advertising their own property for sale must place the words "owner/agent" in the advertisement.
- A licensee who advertises property that is the subject of another's listing must display the name of the listing broker in a clear and prominent manner. Prominent is determined by the criteria discussed above.
- The term "acre," either alone or modified, may be used only if referring to an area of land representing 43,560 square feet.

Advertising Rule violations result in ADRE sanctions

When the ADRE determines that an advertisement is in violation of the Rule, the ADRE will hold both the salesperson or associate broker and the broker responsible. Penalties for advertising violations can include monetary fines, suspension or revocation of a license, denial of the issuance or renewal of a license, issuance of a Letter of Concern or issuance of a provisional license. The ADRE will often first issue both the salesperson or associate broker and the broker a Letter of Concern, which will be placed the salesperson's and broker's file. A "Letter of Concern" is an advisory letter to notify a licensee that, while the conduct or evidence does not warrant other disciplinary action, the Commissioner believes that the licensee should modify or eliminate certain practices and that continuation of the activities may result in disciplinary action against the licensee. A.R.S. §32-2153(F)(1). Further violations will generally result in disciplinary action, with the Letter of Concern as part of the evidence indicating the licensee was made aware of the violation and supporting the discipline.

Tip: The ADRE is interested in obtaining compliance, not in initiating discipline. Take an extra few minutes to review your advertisements to ensure they meet the requirements of the law. If you have any questions about the legality of your advertising, contact your broker or the ADRE for guidance. If you have any questions about the legality of your advertising on the Web, the ADRE will review it for compliance. Email Tom Adams at tadams@re.state.az.us and include your link, ad copy or URL. ☐

Editor's Note: Tom Adams is the Director of the Investigations Division of the Arizona Department of Real Estate. Michelle Lind is General Counsel to the Arizona Association of REALTORS® ("AAR") and a State Bar of Arizona board certified real estate specialist.

This article is of a general nature and may not be updated or revised for accuracy as statutory or case law changes following the date of first publication. Further, this article reflects only the opinion of the author, is not intended as definitive legal advice and you should not act upon it without seeking independent legal counsel.



Eminent Domain...Inherent Rights ...Constitution? By Samuel Aubrey



As your lobbyist, I take great pride in the opportunity I have to protect and ensure the continuation of your rights through communication and dialogue with those elected to uphold the U.S. and Arizona Constitutions. As a result of this effort and that of many of you—through your commitment of time and resources, we enjoy the benefits derived from a thriving and robust real estate market unencumbered by unnecessary and burdensome laws.

My gratitude comes in the form of encouragement to you to remain persistent and unwavering in your resolve to systematically identify those issues that threaten the very rights we have been granted. But first, I believe it is important to know and understand these rights and to grasp what is at stake each time lawmakers or judges of the law convene to revise or interpret laws.

In this age of rampant litigation and legislation the rights of citizens are slowly disintegrating. And, with new laws being formed through broad and sweeping interpretations from our judicial systems, government has joined in the fight to exercise its right over the very citizens who give it its power and authority.

For example, the recent U.S. Supreme Court case *Kelo vs. City of New London* essentially paved the way for cities to seize private property in the interest of private economic development under eminent domain. The court ruled 5-4 that people's homes and businesses—even those not considered blighted—can be taken against their will for private development if the seizure serves a broadly defined "public use."

Unfortunately, this ruling provides ample precedent for any municipal government to exercise their authority when faced with the obstacle of public interference regarding projects deemed beneficial for the common good. As in the *Kelo* case, the Supreme Court's interpretation of the law provides the necessary formula to invoke powers of eminent domain indiscriminately.

But, what about the Constitution?

The Constitution has served as the *supreme law* of the land due to the fact that:

No other laws may contradict any of its principles; and,

- No person nor the government is exempt from following it.

The Constitution has three main principles. They are:

- inherent rights
- government by the people; and,
- separation of powers, which grants each branch of government different powers and establishes a system of checks and balances amongst the three branches.

The United States' system of government has worked well under these set of principles for more than 200 years. No other form of government ensures as much for so many. Carefully crafted and constructed, each citizen and non-citizen's rights are granted, protected, and listed in the Constitution and its amendments.

Inherent rights were first written in the Declaration of Independence and explained as the basis for all other rights granted in the Constitution. The belief that life, liberty, and the pursuit of happiness are core, foundational elements that should be made available to all people, was the impetus behind the principle of inherent rights. Among these are the:

- right to freedom of religion;
- right to freedom of speech;
- right to bear arms, or to own weapons;
- right to a trial when accused of a crime, and to know of what crime one is accused; and,
- **right to own property and to expect the government to help protect private property.**

As Real Estate professionals, we must strive to understand and familiarize ourselves with the rights, protections, and guarantees provided in the U.S. and State Constitutions and laws of our state and local governments. We should do so to ensure equal rights and protection for our clients, ourselves, and every Arizonan and American at every turn. Our willingness to embrace the ideals of an ever-changing society should never require us to compromise on issues that challenge or call into question the inherent nature of our



most basic and fundamental rights—and the expectation for government to protect and not diminish them.

As REALTORS®, it is imperative that we uphold our commitment “to protect the individual right of real estate ownership and to widen the opportunity to enjoy it.” There are a variety of ways to uphold your commitment—however, the starting point is through your support and involvement in your Association and your community. Our voices must be raised to their highest levels regarding this issue or stand the risk of being forever silenced in our communities. ☐

For more information on the issue of eminent domain, and to learn more about available tools and resources, please see the eminent domain section of www.realtor.org at [Http://www.realtor.org/realtororg.nsf/pages/EminentDomain](http://www.realtor.org/realtororg.nsf/pages/EminentDomain)

Editor’s Note: Samuel Audrey is the SEVRAR Director of Government Affairs. He may be reached at (480) 505-6401 or saubrey@sevrar.com



A NOTE ABOUT GUEST COLUMN ARTICLES

Guest column articles do not reflect the policies or interpretations of law by the Arizona Department of Real Estate. They are meant to inform the public and provide variety to ADRE’s Bulletin. All articles are edited for space limitations.



The year 2005 has been one of change for the Licensing and Education Divisions. The most apparent change is that the two divisions were merged and a new division director was appointed. This summer we began weekly training sessions for staff before the office opens, and we are encouraging cross training in the various procedures and processes the division handles. We are standardizing and documenting procedures so that employees have appropriate reference resources.

A record-breaking 35,559 Arizona real estate license examinations were administered by Thomson-Prometric (formerly Experior), the vendor contracted to administer license examinations for the Department. The division had a record number of original applications filed, accompanied by a steady stream of renewals and an overwhelming number of telephone calls.

	Original Applications Filed	Renewal Applications Filed
Salespersons	11,382	11,322
Brokers	<u>802</u>	<u>3,746</u>
TOTAL	12,184	15,068

There are just over 76,000 current (active and inactive status) licensees, and another approximate 11,000 in their 'grace' year, who have the right to renew without reexamination. The 18-person division received 140,170 calls, the bulk of which were answered by two employees.

To date, the 5-member Education staff has reviewed 2,294 waiver requests, 930 course applications, 519 instructor applications, and 43 applications to open or continue to operate real estate schools. Division staff also verifies compliance with the continuing education requirement for renewal of a real estate license--whether filed on-line, in person or by mail.

Rapid acceptance of the On-line Renewal System (OLRS) has helped us come close to maintaining previous service levels despite record growth in the licensee population.



service levels despite record growth in the licensee population.

Use of the OLRS prompted clean up of the database of approved schools, courses and instructors.

Because of the availability of the OLRS, we have discontinued the courtesy mailing of 4-part renewal applications to licensees approaching their license expiration date and, instead, send a postcard encouraging use of the OLRS. This saves time and money on an ongoing basis by reducing paper usage, printing and postage costs, and freeing up resources otherwise needed to review, process, file and store renewal applications that are filed by mail or in person. Licensees save time and gasoline by renewing and making other license changes on-line. Phase II of the On-Line system will bring additional functionality and enhanced services.

The Department awarded the first *Business Brokerage Specialist (BBS)* designation to David D. Long, a real estate salesperson in Prescott, Arizona, and has awarded a total of thirteen BBS designations since the rule was adopted in March.

A nine-week delay in processing applications received through the mail has been reduced to six weeks, and we are proud of having resolved a 6-month backlog of unprocessed fingerprints.

The division has updated school, course and instructor approval application forms, and is working on updating and revising the many Licensing forms. We have developed a form to use to request a waiver of the license requirements. The form identifies the waivers available and supporting documentation required for each, making the process easier for license candidates and for staff.

The Licensing and Professional Education Division is committed to continual improvement in the quality of service provided to its licensees, and will work to further enhance its processes and procedures toward that end. ☐

Editor's Note: Cindy Wilkinson is the Director for the Licensing and Professional Education Divisions.

When asked to recap what happened in Subdivisions this past year, I could not help recalling the tune "I Will Survive" by Donna Summer. That title pretty much sums it up. With little time left in 2005, it appears we will survive the tremendous volume of land development and homebuilding activity in Arizona.

Much to the chagrin of developers and homebuilders, the processing time for Public Reports increased dramatically. Processing times have been on a gradual decrease since filling 3 vacancies over the past 6 months. The vacancies filled were 2 examiner positions and 1 administrative support position. We still have a long way to go, however, in getting this division properly staffed to handle the workload.

I spent a good amount of time in 2005 at the Department of Water Resources (DWR) representing the ADRE on the Governor's Drought Task Force and Department of Water Resources Assured Water Supply Committee. Earlier this year, the Drought Task Force came out with its plan for dealing with Arizona's drought conditions. The Assured Water Supply Committee is reviewing the assured and adequate water supply rules and will be proposing new rules early next year. I believe the new rules, if adopted, will be of great benefit to developers and homebuilders when it comes to obtaining Certificates of Assured Water Supply and Water Reports from DWR.

2005 has seen Cindy Ferrin (Deputy Director of Subdivisions) and I heavily involved with Arizona Mexico Commission (AMC) related issues. Cindy has been a regular at most AMC meetings, including various Plenarys, Real Estate Ad Hoc Committee and Cross Border Transactions Committee. We have been developing a Subdivision Public Report application that is tailored for use on subdivision developments located in Mexico. Earlier this year I traveled to Hermosillo, Sonora to visit with Sonora officials and learn about their regulatory process.

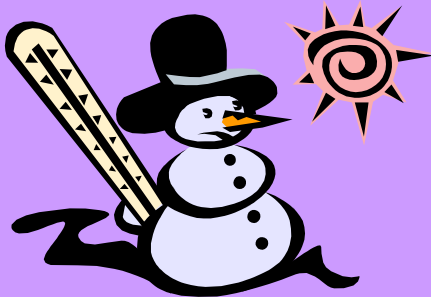
We have also been working on an update to our Subdivision Public Report Application used by Arizona subdividers. It has been a long and tedious process working with stakeholders and trying to reach agreement



on language. By the time you are reading this article, I hope the new application is final and available for use. Watch for it on our website.

My saying "it has been a very busy year" is an understatement. There have been no dull moments this year in Subdivisions and I know this is also true for the other ADRE divisions. I expect 2006 to be no different, but **we will survive.** ☐

Editor's Note: Roy Tanney is the Director for Subdivisions.



The Investigation Division of the Arizona Department of Real Estate investigates complaints against licensed brokers and salespeople, but it is involved in much more than just that. The division also investigates allegations of unlicensed persons participating in real estate activity, unlawful subdivisions, violations of statute or rule by lawful subdivisions, as well as cemetery, timeshare, membership camping and education-related violations (unlicensed schools or instructors, unapproved courses, etc.).

Statistically the Department is seeing an increase in both the number of complaints and severity of violations reported. In Fiscal Year 2004 the Department opened an average of 74 new cases per month; in FY2005 that number increased to 92 per month. The first four months of this fiscal year (FY2006), an average 132 new cases per month were reported. During FY2004 the Department opened a total of 1,112 cases, with 1,095 cases opened in FY2005. From July through October (the first 4 months of FY2006) the Department opened 528 new investigations – a rate that, if it continues, will equate to 1,584 investigations for the Fiscal Year.

During both FY2004 and FY2005 the Investigation Division closed an average of 91 cases per month, while FY2006 has shown an average of 137 cases closed per month.

Along with the increasing number of complaints investigated is the increasing number of serious violations. During calendar year 2003 the Investigation Division forwarded 67 cases to the Administrative Actions Division for possible disciplinary action. Calendar year 2004 saw 127 cases sent to Administrative Actions, while calendar year 2005 is on pace to refer over 200 cases for discipline.

Many investigations are much more complicated and involve significantly more time than in the past. Subdivision investigations are expanding from small situations involving 10 to 12 parcels to cases involving large tracts of land, sometimes including over 200 parcels. Each subdivision case requires extensive document gathering to show ownership, changes of ownership, relationships among the parties, and more.

The Department has a team of investigators dedicated to subdivision investigations and has been successful in issuing Cease and Desist orders or in suspending Public Reports on



several subdivision cases. Subdivision violations, either illegal subdivisions or lawful subdivisions involved in illegal activity, remain a priority of the Department.

Another area that has drawn significantly on Department resources is predatory agents. An article in last month's Bulletin by Investigator Henry Soza addressed this issue, however it is a matter of great concern to Commissioner Richardson and the Department. Predatory agents are involved in various schemes to obtain money and/or homes from lower income, less educated, or less sophisticated sellers and buyers. The Department has been successful in not only issuing summary suspensions for certain licensees involved in these practices but, working with the State Attorney General's Office, in prosecuting them for criminal fraud.

The Investigation Division has also increased its involvement in the investigation of unlawful license activity (licensees who continue to practice real estate after their license expires or without being properly licensed to a broker), and failure of licensees to timely report required information (criminal convictions, civil judgments, etc.) to the Department as required by rule. The Division is also much more involved in investigating, and forwarding for discipline, cases involving allegations of violations by schools or instructors (including unlicensed schools or instructors and unapproved classes).

The Department's goal is not to take disciplinary action against licensees (or others), but rather to have them comply with the statutes and rules governing real estate transactions in Arizona. Rest assured, however, that if and when violations are discovered, the Department will pursue them and will take action to correct the situation. ☐

Editor's Note: Tom Adams is the Director for the Investigation and Auditing Division for ADRE.

You could be conducting unlicensed activity. There are a number of things that occur which result in unlicensed activity, but one of the most common is brokers becoming confused about the distinction between their personal broker's license and the business license, and believe they both expire together. As a result, either the entity license or the designated broker's license is not renewed timely, causing the entity and all its licensees to become inactive and unable to legally perform real estate activity.

When the Department issues a license to an entity (employing broker) that license, like all other licenses, is governed by A.R.S. § 32-2129, which provides that it is valid for two years from the date issued. Renewal licenses are valid for a period commencing on the date of issuance, but no earlier than the first day after the expiration of the previous license. What this means is that the entity license always runs for two-year periods from the date first issued, no matter when it is renewed (early, late, or on time).

Entity licenses and designated broker licenses run on separate timeframes, however if either the entity or designated broker license is terminated, expired, suspended, or otherwise inactivated, the entire entity and all its employed licensees are inactive and cannot conduct real estate activity.

It is extremely important that designated brokers establish a system to ensure that all licenses affiliated with their entity, including the entity's and the designated broker's licenses are renewed timely. Failure to do so results in a delay of the renewal of the license while the Department conducts an investigation, which may result in disciplinary action.

The Department's intent in increasing the emphasis on unlicensed activity and in tightening the potential outcomes for such activity is to emphasize the importance of maintaining a valid license and to express the seriousness with which the Department views violations of the licensing statutes. ☐

Editor's Note: Tom Adams is the Director for the Investigation and Auditing Division for ADRE.

When is a Subdivision Report Required?

By
Roy Tanney

A frequently asked subdivision question is “Do I need a Subdivision Public Report? In order to arrive at an answer, you must first understand the definition of **Subdivider** (A.R.S. § 32-2101(54)). A Subdivider is any person who offers for sale 6 or more lots in a subdivision or who causes land to be subdivided into a subdivision. Subdivision is defined, in part, as land divided into 6 or more lots, A.R.S. § 32-2101(55).

The majority of individuals can accept that section of the Subdivider definition where the act of dividing land into 6 or more lots classifies them as a Subdivider but are astounded when informed of their Subdivider status when offering for sale 6 or more lots in an existing subdivision. The astonishment is a result of several factors, which include:

1. Someone else created the subdivision many years ago.
2. A Public Report has previously been issued.
3. Lots in the subdivision have been sold and resold for years.
4. The subdivision has completed infrastructure, i.e. roads and utilities.
5. Lot owners have received building permits.
6. Lots were acquired over a long period of time.
7. I never owned 6 lots at any one time.

None of the above factors matter. **A.R.S. §32-2183(F) provides that a subdivider shall not offer for sale any lots in a subdivision without first obtaining a Public Report. A.R.S. § 32-2183(A) requires a subdivider to furnish each buyer a copy of the Public Report before the buyer sign an offer to purchase.**

Relief from the burden of obtaining a Public Report may be found in various exemptions provided under A.R.S. § 32-2181.02. If such an exemption is not found to be available, an owner may petition for a Special Order of Exemption under the provisions of A.R.S. § 32-2181.01. The issuance of a Special Order of Exemption is discretionary and fees are non-refundable.

Editor's Note: Roy Tanney is the Director for Subdivisions.



DISCIPLINARY ACTIONS

Schreck and Associates Realty/Andy Schreck (Glendale)
File # 06F-DI-169-REL, Consent Order 10/21/05

On 6/12/03, the Department issued a real estate broker's license to Schreck and Associates Realty, which license expired on 6/30/05. On 6/15/05, the Department issued a broker's license to Schreck, which expires 6/30/07 and he was at all times material to this matter, the designated broker for Schreck and Associates Realty. From 7/1/05 through 9/29/05, Schreck and Schreck and Associates Realty continued to employ real estate licensees and conduct activity that required a real estate license even though Schreck and Associates Realty broker's license had expired, in violation of A.R.S § 32-2122 (B) and 32-2153 (A)(10). Schreck and Associates Realty's renewal application for brokers license is granted. Schreck and Schreck and Associates Realty's licenses are subject to a thirty (30) day suspension retroactive to 9/29/05. Schreck and Associates Realty and Schreck are jointly and severally assessed a civil penalty of four thousand dollars (\$4,000.00).

Pioneer Properties INV/Ellen Clark (Tucson)
File # 06F-DI-185-REL, Consent Order 11/3/05

On 6/7/89, the Department issued a real estate broker's license to Pioneer Properties INV, which license expired on 6/30/05. On 3/15/89, the Department issued a broker's license to Clark, which expires 4/30/07 and she was at all times material to this matter, the designated broker for Pioneer Properties INV. From 7/1/05 through 9/29/05, Clark and Pioneer Properties INV continued to employ real estate licensees and conduct activity that required a real estate license even though Pioneer Properties INV brokers license had expired, in violation of A.R.S § 32-2122 (B) and 32-2153 (A)(10). Pioneer Properties INV's renewal application for brokers license is granted. Clark and Pioneer Properties INV's licenses are subject to a thirty (30) days suspension retroactive to 9/30/05. Pioneer Properties INV and Clark are jointly and severally assessed a civil penalty of two thousand dollars (\$2,000.00).

Branding Iron Realty, LLC/Ronald Johnson (Carefree)
File # 06F-DI-184-REL, Consent Order 11/4/05

On 5/5/03, the Department issued a real estate broker's license to Branding Iron Realty, which license expired on 5/31/05. On 11/9/89, the Department issued a broker's license to Johnson, which expires 8/31/06 and he was at all times material to this matter, the designated broker for Branding Iron Realty. From 6/1/05 through 9/8/05, Johnson and Branding Iron Realty continued to employ real estate licensees and conduct activity that required a real estate license even though Branding Iron Realty brokers license had expired, in violation of A.R.S § 32-2122 (B) and 32-2153 (A)(10). Branding Iron Realty's renewal application for brokers license is granted. Johnson and Branding Iron Realty's licenses are subject to a forty five (45) days suspension retroactive to 9/8/05. Branding Iron Realty and Johnson are jointly and severally assessed a civil penalty of two thousand dollars (\$2000.00).

Eric Gonzalez (Phoenix)

File # 06F-DI-200-REL, Consent Order 11/14/05

Jerry Tuzil, the designated broker for Gonzalez, and Home One Real Estate Services, allowed Gonzalez to continue to be employed and to operate as a salesperson, after he failed to timely renew his license by 8/31/ 2005, in violation of A.R.S § 32-2122 (B), 32-2153 (A)(10)(22), (B)(6). Gonzalez's real estate salesperson's license is suspended for fifteen (15) days retroactive to 10/12/05, the date Gonzalez ceased conducting unlicensed activity and he is assessed a civil penalty of five hundred dollars (\$500.00). Gonzalez is eligible for reinstatement of his license after he has satisfied all terms of the consent order.

Michael D. Haller (Gilbert)

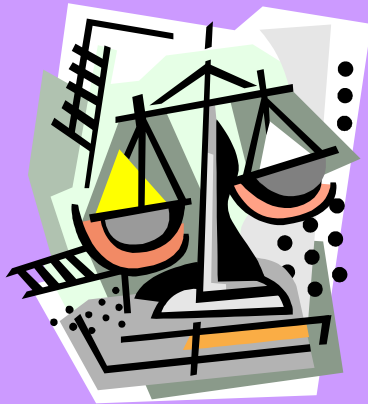
File # 06F-LI-071-REL, Consent Order 10/21/05

Jason Cleland, the designated broker for Haller, and CPA Advantage Realty, allowed Haller to continue to be employed and to operate as a salesperson, after he failed to timely renew his license by 5/31/ 2005, in violation of A.R.S § 32-2122 (B), 32-2153 (A)(10)(22), (B)(6). Haller's real estate salesperson's license is suspended for thirty (30) days retroactive to 5/31/05, and he is assessed a civil penalty of one thousand dollars (\$1,000.00). Haller's application for renewal of his license is granted, after he has satisfied all terms of the consent order.

Disciplinary Action

Continued page 12

Guy Sularz (Scottsdale)
File # 06F-LI-138-REL, Consent Order 11/14/05
Cathy Kelley, the designated broker for Sularz, and HFM Realty, allowed Sularz to continue to be employed and to operate as a salesperson, after he failed to timely renew his license by 2/28/2005, in violation of A.R.S § 32-2122 (B), 32-2153 (A)(10)(22), (B)(6). Sularz's real estate salesperson's license is suspended for sixty (60) days retroactive to 9/12/05, and he is assessed a civil penalty of five dollars (\$500.00). Sularz's application for renewal of his license is granted, after he has satisfied all terms of the consent order.



CONSENT ORDERS (APPEALABLE AGENCY ACTION)

Anthony Mason (Phoenix)
File # 06F-LI-083-REL, Consent Order 10/26/05
On 8/24/05, Mason applied for reinstatement of his real estate broker's license. Mason admitted on his application for reinstatement of his broker's license that the Department had canceled his license for Abandonment of his real estate office, when he failed to notify the Department of his change of business address. Mason's actions were in violation of A.R.S §§ 32-2126 and 32-2153 (A)(3). Mason is issued a broker's license and assessed a civil penalty of two thousand dollars (\$2,000.00).

Judy K. Kantautas (Chino Valley)
File # 06F-LI-073-REL, Consent Order 10/20/05
On 5/26/05, Kantautas applied for renewal of her salesperson's license. Kantautas admitted on her application that she had been convicted of a misdemeanor DUI, in 3/2004. Kantautas failed to notify the Department within 10 days of that conviction, in violation of A.R.S § 32-2153 (A)(3) and A.A.C. R4-28-301(F). Kantautas is assessed a civil penalty of one thousand dollars (\$1,000.00).

Neal A. Thompson (Phoenix)
File # 05F-LI-386-REL, Consent Order 10/21/05
On 4/25/05, Thompson applied for renewal of his salesperson's license. Thompson admitted on his application that he had been convicted of a misdemeanor DUI, in 1/2005. Thompson failed to notify the Department within 10 days of that conviction, in violation of A.R.S § 32-2153 (A)(3) and A.A.C. R4-28-301(F). Thompson is issued a 2-year provisional license, subject to specified terms and conditions. Thompson is assessed a civil penalty of one thousand dollars (\$1,000.00).

Carol Hodesh (Avondale)
File # 05F-LI-395-REL, Consent Order 11/1/05
On 9/30/05, Hodesh timely applied for renewal of her real estate broker's license. Hodesh has been the designated broker for Embassy Properties for the past 10 years. Hodesh admitted on her application that there had been city and health code violations at the Embassy Properties, for which the City of Phoenix Housing Preservation had fined Embassy Properties. Hodesh failed to notify the Department within 10 days of those violations, in violation of A.R.S § 32-2153 (A)(3), and demonstrated incompetence and negligence in violation of A.R.S § 32-2153 (A) (19)(22) and B(8). Hodesh is renewal of her broker's license is granted and is assessed a civil penalty of one

CONSENT ORDERS (APPEALABLE AGENCY ACTION)

thousand dollars (\$1,000.00), resulting from a settlement agreement.

Embassy Properties (Phoenix)

File # 05F-LI-395-REL, Consent Order 11/1/05

On 3/17/97, Embassy Properties was granted an original brokerage license, which was to expire on 3/31/05. Carol Hodesh has been the designated broker for Embassy Properties for the past 10 years. On 3/31/05, Hodesh timely applied for renewal of Embassy Properties real estate broker's license. Hodesh disclosed on the application that there had been violations at the Embassy Properties by the Neighborhood Zoning Preservation. Hodesh did not disclose that the City of Phoenix also found violations and had fined Embassy Properties. Hodesh failed to notify the Department within 10 days of those violations, in violation of A.R.S § 32-2153 (A)(3)(19)(22) and B(8). Embassy Properties application for renewal of its broker's license is granted and Embassy Properties is assessed a civil penalty of one thousand dollars (\$1,000.00).



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