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Real Estate • Estate Planning • Commercial Transactions

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**Summer Fieldtrip to the Scottsdale Association of Realtors’
Expo and the Warning Issued by the New Arizona
Department of Real Estate Commissioner**

During the summer, I enjoy attending conventions and expos!!! You arrive and the greeter hands you a tote bag full of goodies. Next, you enter a large room and are overwhelmed by vendor booths. Admittedly, it has been awhile since I ate chocolates at 10:00am or picked-up a new coffee thermos. But my favorite part of any trade show is speaking to people. Familiar faces and new friends alike, I enjoy a good conversation. Unfortunately on Monday, not a single person engaged me in conversation until just prior to lunch. It was later explained to me that a room full of brokers and real estate agents did not want to be seen chatting with one (1) of the four (4) attorneys in Arizona that specializes in defending brokers and realtors against Arizona Department of Real Estate complaints.

In the wake of the housing collapse, there are two (2) types of brokers and realtors: those that have their license and those that either will lose, or have lost their license. But it would have been nice to talk to someone. There are only so many times that I could check out last year’s Tommy Bahama line at the resort gift shop. Fortunately, I attend these conventions and expos to hear the speakers and properly advise my clients. If you could not attend, here is a synopsis of the important remarks offered:

Judy Lowe, Commissioner, Arizona Department of Real Estate – Mrs. Lowe was appointed the Commissioner about seven (7) weeks ago, and this was one of her first opportunities to share with realtors what ADRE’s focus would be during her tenure. She mentioned that the number of ADRE employees had been trimmed from sixty eight (68) to forty four (44). (Editor’s note: Think about that for a minute. They average ADRE employee makes less than Thirty Thousand Dollars (\$30,000) annually. The pay raise they received two (2) years ago was discretionary and therefore canceled when the State started to lose money. Moreover, the complaints filed with ADRE have increased exponentially. More work – Fewer people to assist in the case volume – Less pay. Not good news for brokers and realtors.). Here are the three (3) major areas Mrs. Lowe said that ADRE will direct its focus with respect to licensees:

1) **Brokers Involved in Property Management, Beware. ADRE Investigations Against You Have Begun.**

Mrs. Lowe informed the attendees that due to the slowdown in the commercial real estate market, brokers are now turning their focus to property management. She expressed concern that brokers have not sought the necessary education to act as property managers and ADRE has already received numerous complaints. As a result, ADRE will make complaints against brokers dealing in property management its top priority. Additionally, ADRE will demand random audits from each Arizona property manager and/or management company. The propensity for stealing and/or mismanaging property funds is on the rise. ADRE seeks to be proactive in its fraud prevention.

2) **Realtors Representing Sellers on Short Sales and Loan Modifications Will Be Targeted for Suspensions and/or Termination of Their License**

Based on Mrs. Lowe's remarks, the May/June article written in the Arizona Journal of Real Estate and Business by general counsel for the Arizona Association of Realtors did an incredible disservice to the licensee community. In an attempt to speculate how realtors could best represent short sale and loan modification clients, the author rambled on about the risks of committing the unauthorized practice of law and consequences for failing to register with the Arizona Department of Financial Institutions. Due to the article's ambiguous conjecture, it was necessary and appropriate for Mrs. Lowe clarified ADRE's position on licensee representation for sellers contemplating short sales and loan modifications.

Mrs. Lowe clearly stated that any realtor holding a license for fewer than two (2) years had no business representing sellers in short sale transactions. I believe the quote from her was, "ADRE is sick and tired of the complaints about inexperienced realtors involved in short sales. The days of someone passing the exam and hitting the streets to earn commissions on short sales are over. New licensees have no idea of what they are doing." (Please note that this is not a direct quote, but rather paraphrasing. I was enjoying my chocolate cake and did not copy down her exact words. I suspect that SAAR records these speakers, and you could request a copy of the video.) Still the message is clear: **If you were not a realtor during the last real estate crash, representing parties on short sales may inevitably result in termination of your license.**

Mrs. Lowe's comments in this area were as much about better realtor education and mentoring, as they were punitive action. For some reason, when Mrs. Lowe made these particular comments, everyone at my table immediately asked for my business card.

3) Realtors Must Immediately Adopt High Standards for Professionalism and Encourage Others to Act with the Same Standards

This was the bomb that Mrs. Lowe dropped in the room. However I am uncertain that everyone read between the lines. She stopped short of telling realtors that they have the green light to file complaints against other realtors that they suspect are committing violations. But the action was unofficially and indirectly encouraged. Commissions scarce and your competitors have clients. Then get rid of your competitors.

I would also predict, based on Mrs. Lowe's comments, that the four (4) year licenses will either disappear, or all licensees will have to pay increased, annual monies to ADRE. Mrs. Lowe reminded everyone that ADRE is required to pay certain monies to Arizona's General Fund, and ADRE must find more ways to raise said revenue. With a depleted staff; rise in complaints; and edict from the State to raise more money, ADRE will soon be coming after you.