



REAL ESTATE LICENSEE UPDATE



WASHINGTON STATE DEPARTMENT OF
LICENSING

Christine Gregoire, Governor
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Elizabeth Luce, Director
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Thinking About Engaging in Short Sales or Loan Modifications?

As the depressed economy continues to put pressure on many homeowners' ability to make mortgage payments, many turn to mortgage loan modifications or short sales as an alternative to foreclosure. But real estate licensees should be forewarned on the amount of rigid regulations that follow when choosing to engage in short sales and loan modification as well as the disciplinary actions that result if one fails to abide by these regulations. Accordingly, real estate licensees should become familiar with new regulations and licensing requirements set by the Department of Licensing (DOL) and the Department of Financial Institutions (DFI) involving mortgage loan modifications and short sale transactions.

If the property owner wants to remain in the home and has the ability to make reasonable mortgage payment, they should work with their loan originator and attempt to negotiate a modification on their loan. Homeowners in these situations should have counseling from a real estate attorney or a financial counselor prior to making any decisions regarding the sale of their property. Short sales transactions require the broker and seller to negotiate at least two separate agreements. One is the purchase and sales agreement with the buyer and the other is the agreement with the creditor(s) to accept

less than the amount owed and secured by the property. Each may have its own licensing requirements.

State Licensing Requirements

In order to negotiate short sales in Washington State, the DOL and the DFI require that a person have either a (1) mortgage loan originator license, a (2) real estate license, or (3) be an attorney licensed to practice law in Washington.

“real estate licensees should be forewarned on the amount of rigid regulations that follow when choosing to engage in short sales and loan modification as well as the disciplinary actions that result one fails to abide by these regulations.”

Entities engaging in short sale negotiations for compensation must obtain a license under the Washington Consumer Loan Act (CLA) or the Mortgage Broker Practices Act (MBPA). Short sales conducted as part of the negotiation of a real estate transaction by a licensed real estate broker do not require licensure under the CLA or the MBPA, **unless the real estate broker is paid separately for the short sale negotiation**, in addition to receiving a commission for the real

estate transaction. However, real estate brokers who engage **only** as third-party short sale negotiators or loan modification service providers must obtain a mortgage originator license. Real estate licensees must be providing real estate brokerage services for the transaction in order to negotiate a short sale on behalf of either

See "Short Sales" on page 3

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Washington's Newest Real Estate Commissioner

Governor Christine Gregoire appointed Federal Way real estate managing broker Jess Salazar as the newest member of the Washington Real Estate Commission. Jess's term on the Commission became effective on October 14, 2010 and expires on August 14, 2016.

Salazar has been involved in various segments of the real estate industry over the last 25 years, including a career as a broker and owner of Benchmark Realty, LLC. In addition to his knowledge of real estate industry, Salazar intends to bring knowledge of technology and training experience to the Commission as well. He is the creator, administrator, and owner of AlientoAcademy.com, an online real estate school, and Protasso.com, a website that provides a suite of tools for the real estate industry. Salazar received his Trainer Specialist Certificate from the University of Washington.



With his passion and experience in technology and training, Salazar hopes to improve the licensees' education by working with his fellow commissioners in making suggestions for higher quality continuing education. In addition, he intends to influence the delivery methods presently being used by so many educational companies. According to Salazar, "much of the offerings are mind-numbing and I know that there are ways to enhance the delivery process so that more Adult Learning Principles are employed such as with videos and scenarios presented by actual actors so that the learner is not relegated to just reading and brutal memorization."

Given the current state of the real state market as well as the trend of social networking and the Internet, Salazar believes that "real estate companies are going to have to change their business models because what worked in the past, 'during the good times', simply will not work today." He believes that if the sales continue to be slow for a few more years then the revenue will simply not support the present real estate model. Instead he stresses the importance of agencies adapting to new trends in the digital world, and notes that a high percentage of real estate agents are currently working strictly as virtual agents, which is leading into a totally new business paradigm within the real estate industry. "Analog companies will not be able to survive in today's digital real estate world," Salazar goes on to say, and "I believe agents and consumers are going to benefit from the lessons learned and I'm glad that I'm going to be a part of this transformation."



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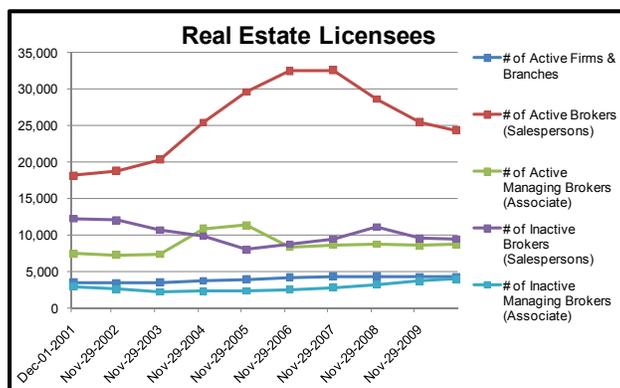
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How Much Has The Economic Recession Impacted The Real Estate Licensee Profession?



Leading up to 2006, otherwise known as the "good times" in the real estate industry, the total number of active real estate licensed brokers between 2001 and 2006 had increased by 78%. Since the collapse of the housing bubble, the total number of active real estate licensed brokers between 2007 to 2010 has decreased by 25%.

Paragraph 9 Removed on Statewide Purchase and Sale Agreements

The Washington State Supreme Court recently removed Paragraph 9 on negligent misrepresentation from most purchase and sale agreements, therefore changing how the Court manages these claims relating to real estate transactions.

Paragraph 9 was a provision designed for both parties to determine whether or not the buyer would have the right to sue the seller for financial losses arising from property damage that was not disclosed on the Seller Disclosure Statement, also known as Form 17. In these instances, the court system could settle claims based on the contractual agreement between parties, even if evidence could support a negligent misrepresentation case at trial. Unless the buyer reserved the right to sue the seller in the purchase and sales agreement, the buyer would also be barred from suing the seller later to recover financial losses.

Within the purchase and sales agreement, Paragraph 9 emphasized that all buyers should be wary and conscious of any damages or problems within their house before closing a deal. Paragraph 9 not only allowed sellers to make transactions without bearing the risk of misrepresentation but allowed them to place buyers into situations with high chances of risky purchases and decisions; which became even more probable and likely if the buyer didn't hire a professional inspector to thoroughly check the property before it was purchased. By signing Paragraph 9 the buyer acknowledged that he knew all the risks in buying the house and that if something else were to happen, like a gas leak, the seller wouldn't have been held responsible because of the contract previously agreed upon.

Recently, on November 4th, the Washington State Supreme Court concluded that any negligent misrepresentation claims will no longer be determined upon the nature of the contract, but rather on the analysis of the facts and the case that the buyer presents before the court. The more damage caused to the family or the

buyer the likelier the chances that they are going to receive and recover compensation for the harm caused to them; someone who suffered a serious health injury is more likely to win a case than someone who only suffered monetary losses. This new opinion on negligent misrepresentation claims allows a person to bring forth a case against someone who has breached a civil duty that was either promised or owed to them.

The economic loss rule was changed recently because the Supreme Courts ruled that it was unfair and unjust for a seller making a transaction to basically trick a buyer into signing a contract that prevented them from receiving any form of compensation if something were to go wrong, even if the seller knew about the problem and intentionally hid it from the buyer. Now, without Paragraph 9 in the contract, the buyer is able to ask or sue for monetary compensation or refunds if they can prove that they have suffered economic, emotional, personal, reputational, or constitutional damages due to a breach in civil duty on someone else's part.

Real estate licensees should become familiar with the latest Supreme Court opinion and recent court cases involving negligent misrepresentation in order to properly inform their clients during real estate transactions, especially when the seller is filling out Form 17. Furthermore, real estate licensees are encouraged to refer their clients to legal counsel if they have any questions or concerns involving negligent misrepresentation. As always, real estate licensees should also advise their clients to hire a professional inspector to look over the property thoroughly.

Since Paragraph 9 will no longer be included in most purchase and sales agreements, real estate licensees will need to replace any forms that include the provision with new forms.

Short Sales continued from page 1

party and may not charge any additional fee above the normal and customary commission to provide short sale negotiation services.

Short Sale Regulations

Real estate licensees should be familiar with regulations that coincide with short sale transactions. Short sale properties may not be listed for an amount greater than the fair market value to discourage buyers from presenting an offer or for far less than the market value to convince the lender that the property will not sell for a higher amount.

Short sale properties cannot involve flip transactions in which the real estate broker discovers, upon negotiation, how much the lender will accept for a distressed property, only to begin marketing the property at a higher price. If the broker can find a buyer who will pay more than the short sale payoff, the broker arranges a simultaneous closing, and the broker profits from the difference. If the broker does not find a new buyer, the broker lets the

property go into foreclosure. DOL may pursue disciplinary or administrative action against those brokers engaged in such practice. However, real estate brokers can engage in transactions and if they purchase short sale properties on their own account first and later sell the property.

In all short sale negotiations and transactions, a broker owes a duty to deal honestly and in good faith with all parties. In addition, a broker may not knowingly commit, or be a party to, any material fraud, misrepresentation, trick, or scheme, whereby any other person lawfully relies upon the word, representation or conduct of the broker. Brokers that deceive or aid in the deception of a lender are subject to enforcement. Real estate licensees must realize business and regulatory environment, along with the customer or client financial situation, are dynamic. It would be in the customer or clients' best interest to seek independent legal and financial counsel prior to making a commitment to buy or sell real property. Due to the intricacies in short sales, real estate licensees should consult with a real estate attorney.

Real Estate Market Roundup *Glenn E. Crellin, Director, Washington Center for Real Estate Research*

The Great Recession has impacted Washington's housing market tremendously. Home sales (and to some extent construction) had been driven by public policies to spur housing market activity, and when those policies expired, sales activity returned to levels near the depths of the market. In addition, job-induced delinquencies have replaced unwise lending practices as the source of foreclosure problems, thus the incidence of delinquency and foreclosure throughout the state continues to increase. Pressure from these distressed properties, combined with an imbalance between homes on the market and willing buyers continues to exert downward pressure on real estate values. Now the question remains, "Are we there yet?" Where is the bottom of this cycle, and when will a meaningful recovery begin?

Sales and Construction Activity

Economists tell us the recession ended in August, 2009. That's 15 months ago as of this writing, yet the housing market in Washington remains mired near the bottom of the cycle. The seasonally adjusted sales rate during the third quarter of 2010 was 70,550 units. This represents a decline of 26.5 percent compared to the tax-credit encouraged rate in the second quarter, and is a sales rate only 3.7 percent above the first quarter of 2009, before a meaningful tax credit to encourage home sales was implemented. No wonder the industry feels like the recession is going on and on!

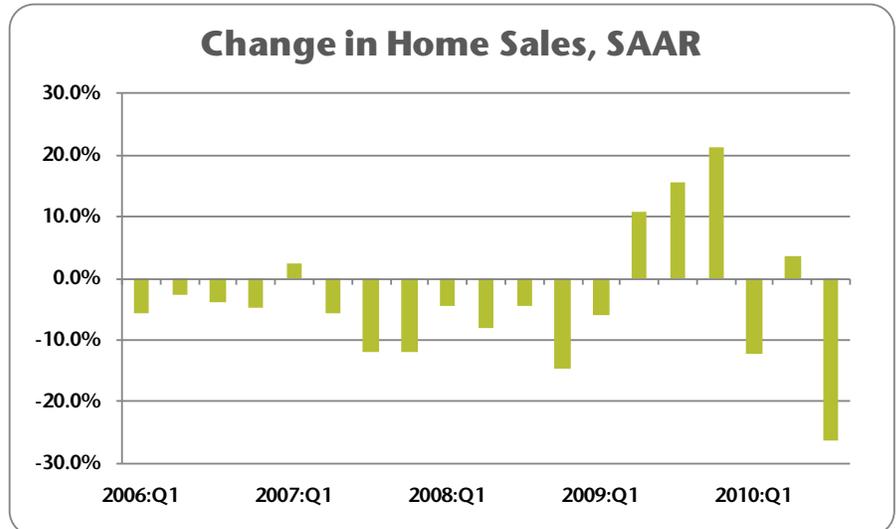
Statistics for the third quarter were somewhat encouraging for construction, with building permits 21.3 percent above a year earlier. Unfortunately, this is somewhat misleading because only apartment construction increased. Building permits for single-family homes during the quarter were nearly eight percent below the already depressed level of 2009. This is a single-family construction level nearly 70 percent below the same time period in 2005, with declines in each successive year. Builders understandably lack optimism.

Home Prices and Construction Value

Unit sales and permits only tell half of the story. Home prices/values are critical to consumer decisions.



The median price resale home sold during the third quarter was \$248,900, 4.2 percent lower than a year earlier. It must be emphasized that changes in median prices do not represent changes in the price of a specific home. In addition to reflecting the changes in prices of individual homes, the median also includes changes in the composition of what is selling. After the expiration



of the tax credits, the perception is that aggressive price reductions on more expensive homes allowed buyers to re-enter that part of the market in search of bargains. They spent more on homes that were discounted more, meaning the true appreciation (depreciation) of homes was probably more than a 4.2 percent drop.

On the new construction side, the news in terms of value is a bit more upbeat. While there were fewer homes permitted, the total dollar value of those permits for single-family homes actually increased by 3.3 percent. The average permit value (excluding land) was \$243,600 during the third quarter, compared to \$217,100 last year, an increase of 12.2 percent. However, the builders were focused on basic homes for first-time buyers a year ago, meaning there is some composition effect here as well.

Affordability

During the height of the housing bubble, housing affordability was a top story, and homebuyers were doing whatever they could to obtain a home with monthly payments they could afford. Even though mortgage rates in those days were reasonable, lenders encouraged buyers to accept mortgages with questionable terms – interest only converting to above market amortization, option ARMS, etc. Now, affordability conditions are favorable but buyers are convinced prices will still tumble, making it advantageous to wait. Based on traditional underwriting, WCRER's all-buyer affordability index during the third quarter was 140.2. This means that a middle-income family had a 40.2 percent income cushion in terms of purchasing a median price home in the state, assuming they have access to a 20 percent downpayment and take

out a 30-year loan at prevailing mortgage interest rates. The calculation assumes the family allocated a quarter of their gross income to principal and interest payments. The all-buyer index is generally viewed as a good measure of the affordability of housing for repeat home buyers.

First-time buyers, who typically have lower incomes and less access to cash for a downpayment, face higher hurdles in terms of acquiring that first home. To reflect that reality, WCRER computes a separate index which assumes a lower home price (85 percent of median), a lower downpayment (10 percent), and a lower income (70 percent of median household income). The resulting index was 79.1 during the first quarter, virtually unchanged from three months earlier. Because of revisions to prior quarters, both these measures represent record levels of affordability. Every county in Washington, with the exception of San Juan County, had an all-buyer index of at least 100 during the quarter. For first-time buyers where an index level of 80 is representative of strong affordability, 24 of the 38 counties for which the index is calculated were judged to offer affordable housing options to well-qualified buyers.

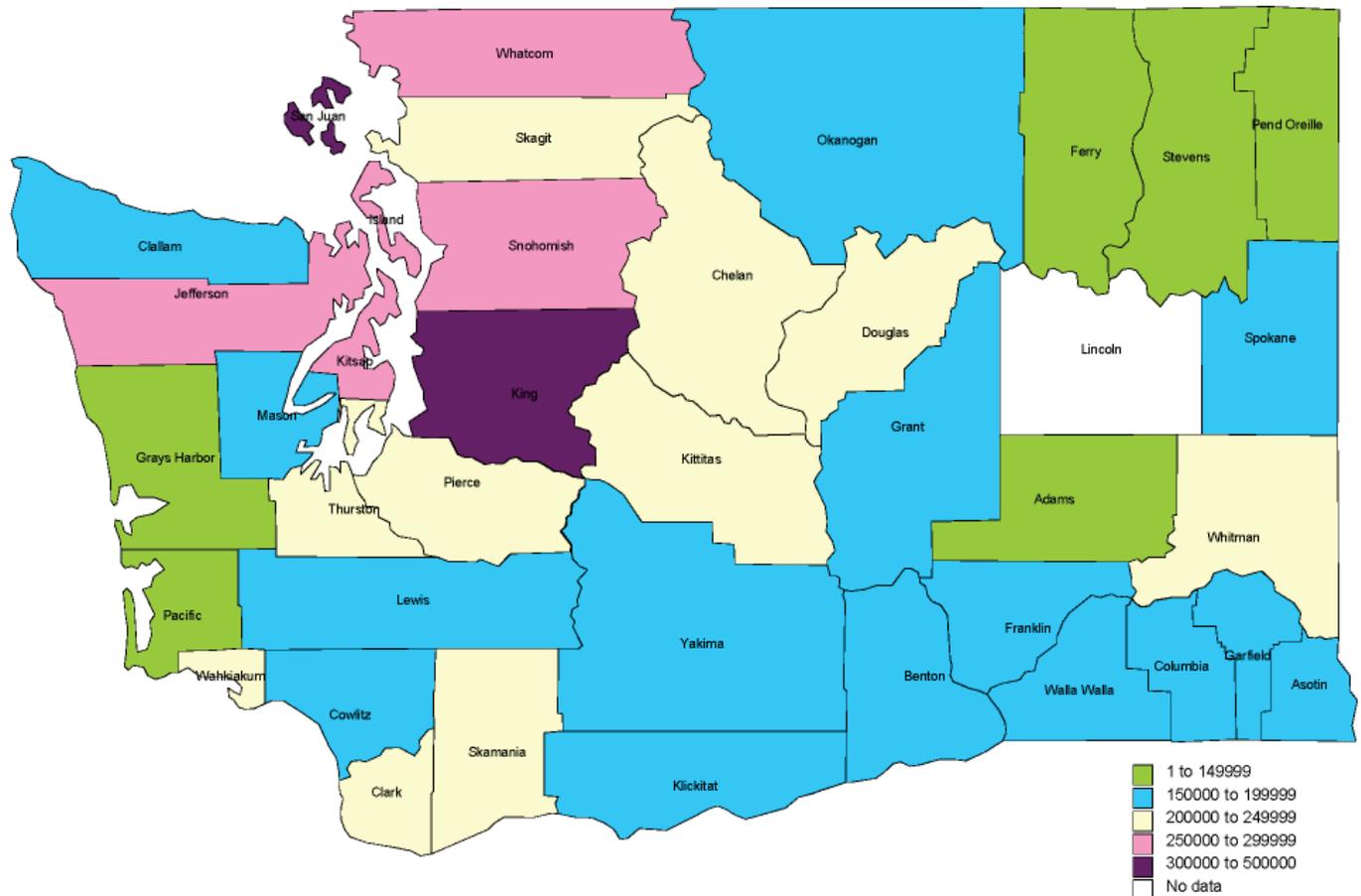
Buyers are wary to purchase before prices reach the bottom, and this psychology is preventing the record

low mortgage rates from energizing the market as they normally would. Buyers need to consider the impact of both prices and mortgage rates. For a typical buyer, if interest rates increase by one percentage point (to a still very affordable level), it would require a 10 percent additional reduction in price to keep payments as low as they would be today. Most analysts believe additional price declines will be less than 10 percent.

Delinquency and Foreclosure

The Mortgage Bankers Association reports that 6.43 percent of Washington mortgages are at least 90 days delinquent or in foreclosure, and this does not include homes which have already been returned to the lender. The result is a so-called shadow inventory of distressed homes which will clearly influence the future direction of Washington's housing market. Unlike states where the market decline began first, and which are now seeing reductions in delinquencies and foreclosures, Washington now leads the nation in increases in the foreclosure rate. These homes present the biggest risk to the recovery of Washington's housing market as the calendar turns to 2011.

Median Home Prices



New Carbon Monoxide Alarm Requirements When Advising Sellers

The Washington State Building Code Council adopted a new provision that requires installation of carbon monoxide alarms in all living areas of new residential construction and non-occupied existing homes. Real estate licensees should become familiar with the new rules and aware of potential adjustments to the provision that will be occurring within the next year. The carbon monoxide alarm provision will affect buyers of new and existing homes, emphasizing the importance for real estate licensees to be knowledgeable on the matter.

Effective January 1, 2011, all new residential construction are statutorily required to install carbon monoxide alarms outside of each separate sleeping area in the immediate vicinity of the bedroom. The requirement is limited to residential settings which include fuel-fired appliances and/or an attached garage. The

implementation date for non-owner occupied, existing residential housing was to become effective July 1, 2011.

Recently, however, the State Building Council postponed the implementation date for existing residential housing to January 1, 2013 “to provide additional time for consideration of stakeholder interests and technical assistance regarding the potential economic impacts of existing rules on specific industries.” The State Building Council will meet over the next year to construct a course of action that could either reduce or eliminate economic impacts without compromising public safety.

There are three types of carbon monoxide alarms that will be accepted under the building code: the hard-wired system connected to a central station, the plug-in/battery back-up model, or the simple battery-powered model. Each of the models must meet UL

standard 2034, and installed in accordance with the code and the manufacturer’s instructions. The number of carbon monoxide alarms required within residential property will vary depending on size and number of bedrooms.

The State Building Council developed the carbon monoxide alarm provision as a result of the six fatalities and numerous hospitalizations caused from carbon monoxide poisoning during the 2006 winter storms and power outages in Western Washington. The fatalities and injuries occurred because individuals had fuel burning devices or generators operating inside or too close to their home. According to the Environmental Protection Agency, the presence of carbon monoxide within the home is very dangerous because it is odorless, colorless, and toxic. The fatalities and injuries during the 2006 winter storm could have been prevented with the installation of carbon monoxide alarms.

Real Estate Brokers May List and Sell Resale Timeshares

In recent years, thousands of Washington residents have acquired timeshare interests.

While most timeshare purchasers anticipate decades of enjoyment of the vacation opportunities acquired, it is inevitable that lifestyle changes and other factors will result in many owners ultimately needing assistance in marketing the timeshare ownership interest(s) they’ve enjoyed.

A Washington real estate brokerage may be primarily in the business of offering resale timeshares, without registering under the Timeshare Act, as long as the broker is acting solely in a brokerage capacity (not selling inventory owned by the broker or brokerage) and provided the brokerage is not offering unregistered inventory of a timeshare developer/promoter. The broker must provide information about the timeshares as required under the Timeshare Act and the broker must ensure the transfer of the timeshare. Washington real estate brokers may also offer developer/promoter

owned inventory if the timeshare project is registered under Washington’s Timeshare Act while the timeshare interests are offered.

Real estate licensees may market both timeshares that include a real property interest and timeshares without a real estate interest.

Currently, there are only a few Washington brokers primarily in the business of timeshare resales. Large and medium size real estate companies may wish to consider adding one or more brokers who focus their work efforts on becoming experts in timeshare resales. Smaller firms may wish to consider specializing in timeshare resales.

The Timeshare Act (Revised Code of Washington (RCW) Chapter 64.36) is available online at www.leg.wa.gov/lawsandagencyrules. In the event you have questions on real estate licensees marketing timeshares, please feel free to call the Department of Licensing’s Timeshare Program at (360) 664-6486.

Disciplinary Actions

May 2010

Carmen H. Arruda, Sammamish

Action: Five year revocation of the Real Estate Salesperson License

The Respondent was convicted of Theft in the First Degree and Medicaid False Statements in King County Superior Court, Theft in the Third Degree in Issaquah Municipal Court and Theft in the Third Degree in Tukwila Municipal Court and failed to notify the Department of the charges or convictions.

James J. Bondsteel, Sisters, OR

Action: Ten year revocation of the Real Estate Salesperson License

The Respondent was charged with Two Counts of Second Degree Kidnapping; One Count of Criminal Attempt to Commit Sexual Assault; One Count of Assault in the First Degree; One Count of Assault in the Second Degree; and Two Counts of Menacing.

Jessica Evanson, Puyallup

Action: Three year revocation of the Real Estate Salesperson License

The Respondent had knowledge of fraudulent documents associated with a real estate transaction and failed to disclose this information to her clients.

Bruce Hardie, Spokane

Action: One year suspension of the Broker License stayed for three years and \$2500 fine

The Respondent failed to supervise the real estate activities of a real estate salesperson such that the salesperson engaged in unlicensed real estate activity.

Kacy L. Howerton, Redmond

Action: Ninety day suspension of the Real Estate Salesperson License

The Respondent engaged in unlicensed real estate activity; was convicted of Theft in the First Degree and Burglary in the Second Degree and failed to advise the Department of the convictions or cooperate with the Department investigation.

Brian Kasbar, Spokane

Action: One year suspension of the Real Estate Salesperson License stayed for three years and \$2500 fine

The Respondent engaged in real estate activity while his license was in expired status.

Steven Mahoney, Kent

Action: Ten year revocation of the Broker License

The Respondent was indicted on ten charges of Theft in the First Degree and Aggravated Theft in the First Degree, in the Circuit Court for the State of Oregon for Washington County and convicted of Theft in the First Degree on May 7, 2009, in the Circuit Court for the State of Oregon for Washington County and further failed to notify the Department of the indictment or conviction as required.

Thomas Platfoot, Vancouver

Action: Ninety day suspension of the Broker License

The Respondent falsified continuing education records in an attempt to renew his license.

Faiyaz M. Farouk, Kent

Action: Ten year revocation of the Real Estate Salesperson License

The Respondent was Listing Agent for property and failed to return \$6,000 to sellers following a failed sale; then entered into a Purchase and Sale Agreement to purchase the property himself, and requested and obtained jewelry from the sellers as security for a note, and then rented out property prior to closing without the permission of the sellers.

Matthew S. Steel, Redmond

Action: One year suspension of the Real Estate Salesperson License stayed for three years and \$2500 fine

The Respondent engaged in real estate activity while his license was in expired status.

Chad B. Storey, Kirkland

Action: One year suspension of the Broker License stayed for three years and \$4000 fine

The Respondent failed to supervise the activities of two licensees, such that the licensees engaged in real estate activities while their licenses were in expired status.

June 2010

Ryan Vincent Driver, Puyallup

Action: Ten year revocation of the Real Estate Salesperson License

The Respondent failed to notify the Department of a conviction for Possession of Stolen Property in the Second Degree and Attempted Unlawful Possession of a Controlled Substance; and charges of one count of Theft in the First Degree and two counts of Theft in the Second Degree.

Chou H. Yoo, University Place

Action: One year suspension of the Real Estate Salesperson License stayed for three years and \$2500 fine
The Respondent failed to deliver earnest money to the closing agent in accordance with the terms of the Purchase and Sale Agreement.

August 2010

Timothy B. Morris, Seattle

Action: Five year revocation of the Real Estate Salesperson License
The Respondent failed to timely notify or disclose to the Department the existence of several civil judgments associated with his business related activities.

Steven Saunders, Seattle

Action: One year suspension of the Broker License stayed for three years
The Respondent failed to supervise the activities of a Salesperson.

John Stickle, Puyallup

Action: Thirty day suspension of the Real Estate Salesperson License and \$1000 fine
The Respondent failed to disclose or provide an addendum to the lender in the subject transaction; buyers did not receive financing as a result of the paperwork drafted by the Respondent.

October 2010

Chris G Galyon, Battle Ground

Action: Real Estate Broker's License suspended for 3 months of which the entire 3 months suspension is stayed for one year. In addition licensee shall take a three credit-hour course approved by the Department on agency or fiduciary duty. The three credit-hour course will not count toward his continuing education for renewal.
The Respondent failed to disclose on the purchase and sale agreement that he was representing both parties.

Katriona O Grant, Woodinville

Action: Real Estate Salesperson's License is revoked for ten years.
Violations of unprofessional conduct; failure to respond to the Department.

Joseph Kelly, Spokane

Action: Real Estate Broker's License is suspended for three months.
Violations of unprofessional conduct.

Margaret Ferrell, Vancouver

Action: Real Estate Broker License is suspended for one year of which all but sixty days shall be stayed for three years. A fine of \$1,000, payable prior to the end of the sixty day suspension.
The Respondent altered a fully executed purchase and sale agreement without authorization of the parties; deposited client funds into a personal bank account.

Frank L Fredericks, Brush Prairie

Action: Real Estate Broker's License is suspended for 3 years; provided that the 3 year suspension shall be stayed for a period of 5 years. If there are no violations of RCW 18.235 during the said 5 year period then the 3 year suspension shall not be imposed. Also he shall take two courses approved by the Department; one 3 hour class on agency or fiduciary duty; and one 3 hour class on ethics.
The Respondent failed to disclose on the purchase and sale agreement that he was the designated broker for a dual agent representing both parties.

David B Newberry, Kent

Action: Real Estate Broker License suspended for 12 months, plus an additional 5 months for a prior disciplinary action.
The Respondent failed to exercise adequate supervision and reasonable skill and care with regard to the placement of an illegal lien.

November 2010

Karla Wagner DeLaughder, Bonney Lake

Action: Real Estate License is suspended for one year of which all but 60 days shall be stayed for three years and fined \$2,500.
The Respondent failed to deliver earnest money to the closing agent in accordance with the purchase and sale agreement.

Joseph Q Bauman, Auburn

Action: Real Estate License is suspended for one year of which all but 60 days shall be stayed for three years and fined \$2,500.
The Respondent failed to adequately supervise an affiliated real estate salesperson.