



Real Estate Licensee Update

Christine Gregoire, Governor
Volume I, Issue 2

Elizabeth Luce, Director
Winter 2009

Workers' Compensation Insurance and Washington Real Estate

Real estate licensees are trained to understand that in most cases they are independent contractors – not employees. That distinction impacts access to employment benefits, the nature of supervision by managers, and most significantly income taxation. It is therefore not surprising that many in the industry believed that worker's compensation insurance requirements did not pertain, except for the formal employees on the payroll of the real estate firm. They were wrong.

Workers' compensation protects real estate licensees performing their licensed duties.

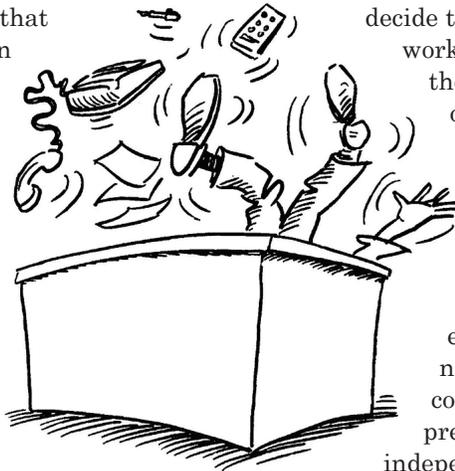
For example, if a real estate licensee were to be injured during a showing of a property, treatment for that injury would be covered through workers' comp rather than your personal insurance or the liability insurance of the property owner.

The Department of Labor and Industries (L&I) prepared a brochure designed to help businesses relying on

independent contractors understand whether they qualify as employees under the workers' compensation law, but the brochure seems targeted at the construction industry, rather than professional services industries, including real estate. Working through the questions posed in the brochure might cause a real estate firm to decide their professional workforce did not meet the L&I definitions of employees.

However, a 1993 decision the Washington State Court of Appeals rejected the idea that real estate firms do not need to pay workers' compensation premiums for their independent contractors.

Even though that decision was handed down 15 years ago, a recent audit by L&I indicated that more than 80 percent of real estate brokers were delinquent in making their premium payments. In an effort to increase compliance, L&I suspended its audits of real estate brokers until October 31, 2008.



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For brokers who have never paid workers' compensation premiums, you will:

- Refile a master business license application through the Department of Licensing indicating that you have employees. (www.dol.wa.gov/business/file.html)
- Wait for contact from L&I account managers to establish your reporting obligations and amount owed.
- Receive a rate notice at the end of every year identifying the insurance rate and the portion you can require licensees and employees to pay for the following year.

For brokers who have current workers' compensation accounts, you will:

- Contact an L&I account manager to report real estate licensees working. Contact information for account managers can be found on your L&I quarterly reports or by calling 360-902-4817.
- Accept assessment of four quarters of back premiums.

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The Department of Licensing has a policy of providing equal access to its services. If you need special accommodation, please call (360) 902-3600 or TTY (360) 664-8885.

Commissioner Corner

by George Pilant

Could you use a 20% raise?

As I write this, 30 year fixed rate mortgages are at 5.0% and even lower! All last year, rates fluctuated between 6.0 and 6.5%. Lower interest rates and declining home prices have combined to make homes in Washington State more affordable by a factor of 20% or more in most areas of our State from this time last year.

20% more affordable? How is this possible? When the interest rates drops 1 point from 6% to 5% that corresponds to an increase in purchasing power of 12%. For example, if a buyer or homeowner could afford a principal and interest payment of \$1,500 in January of 2008, they could qualify for a mortgage of \$250,000. Today, that \$1,500 payment at 5% would qualify for a mortgage of \$280,000: an increase in purchasing power of 12%.

We also know that on average, statewide home prices have dropped about 10% since last year. Combined with the increased purchasing power of lower interest rates, homes are more affordable by 20% **plus** over this time last year. For homebuyers, this is like getting a 20% raise! It is a good time to buy a home and a great time to refinance an existing mortgage.

Will rates and home prices drop more? They might, but for most of us, trying to forecast the bottom is a greater risk than taking action now. We may all look back on 2009 as the year we should have bought real estate.

We are all facing tough economic challenges. There is real hardship out there and many homeowners are in trouble. A sure thing that will help our real estate market and our economy is to have more buyers in the market. Lower interest rates will create more demand and more buyers.... **if we let people know the benefits of lower interest rates!** As real estate professionals, it is up to us to communicate useful and accurate information to our clients, customers, and our local media. Do that and you would be doing a service to your community and to your own business.

Commissioner George Pilant is an Associate Broker with RE/MAX Professionals in Tacoma, Washington and has been licensed in real estate since 1990. He was appointed to the Real Estate Commission in 2005 by Governor Gregoire.



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Audits are now conducted by mail. Brokers are receiving an audit request by mail and will receive a follow-up phone call from an auditor to assist with questions that may arise. L&I indicates that when audits turn up problems, they typically assess four quarters of back premiums, but that can be extended up to 12 quarters if there are strong indications that a broker knew the rules and intentionally violated them. Interest is 1% per month, compounded. Penalties vary depending on the circumstances.

Ron Langley, Small Business Liaison for L&I indicated, "Audits began during the first week of November, but brokers can still get a break on penalties and interest if they check with their account manager and correct any reporting errors before they receive an audit letter."

The sidebar on page 1 presents information about either creating a workers' compensation account or catching up with required premiums. Questions should be addressed to either Ron Langley or Tiffany Scheer at L&I.

Ron Langley: (360) 902-4817, lanx235@lni.wa.gov

Tiffany Scheer: (360)902-6043, scti235@lni.wa.gov

Real estate licensees who employ licensed or unlicensed assistants independently of the real estate firm should also check with L&I regarding your potential premium liabilities for those workers.

Real Estate Market Roundup

The first nine months of 2008 have been one of the most challenging real estate markets on record in the state of Washington. Home resales have declined sharply, with the sales rate in the third quarter falling to 85,180 units, a level 26.0 percent below a year ago and 47.9 percent below the market peak in the third quarter of 2005. Home prices also were lower than a year ago, with a statewide median price of \$281,500, 10.4 percent lower than a year ago. Because median prices have not been adjusted for seasonality, only third quarter values have been compared, but the current median price is also below the median price in 2006.

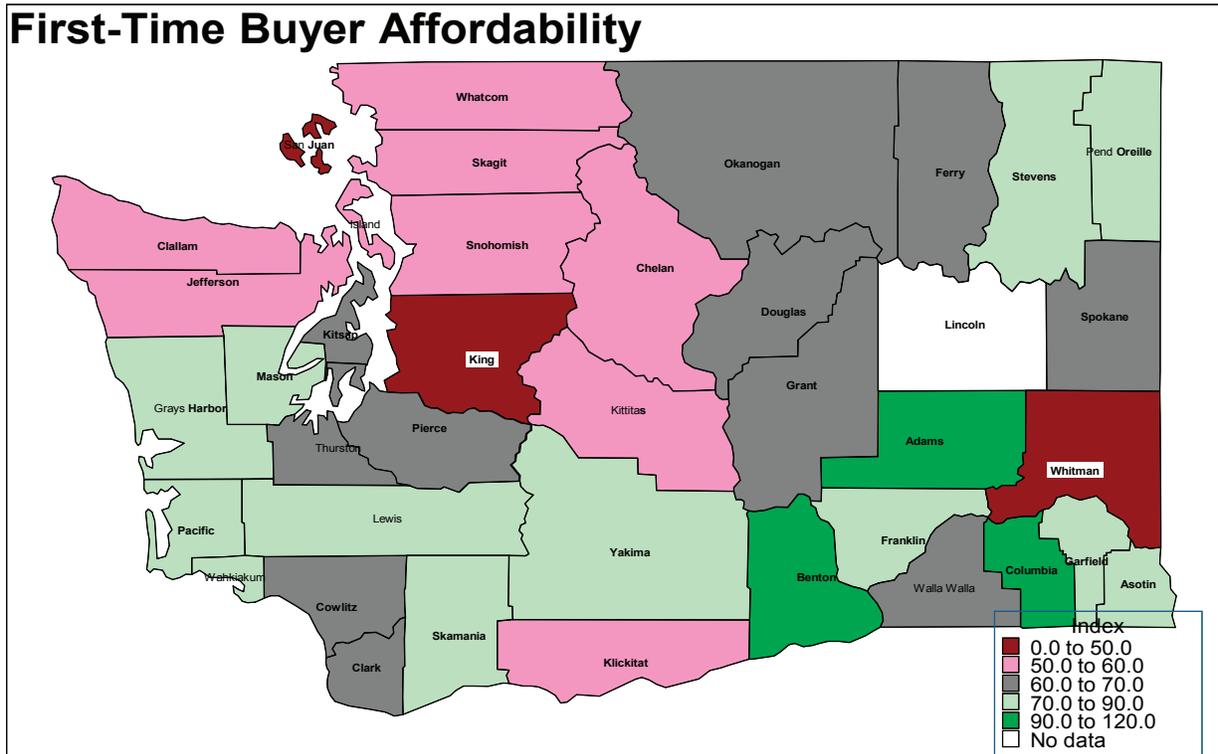
The housing construction market is not doing any better. The primary data for housing construction comes from the Census Bureau. On a national and regional basis (four Census regions) four sets of construction statistics are prepared – building permits, housing starts, housing completions and new home sales. Unfortunately, data for states and counties is only available for residential building permits. During the first nine months of 2008 a total of 11,433 single-family building permits were issued in those communities which report monthly to the Census Bureau. This is a level of new home construction 43.6 percent below same period in 2007. Moreover, it represents the lowest level of housing construction during the January-September period since WCRER began monitoring the statistics in 1993. The peak construction period was the first nine

months of 2005 when a total of 26,835 single-family building permits were issued by these monthly reporting jurisdictions. No data is compiled about selling prices of new homes at the state level.

One would generally expect that a 10 percent decline in median prices of homes would translate into significant increases in housing affordability. While the housing affordability index for all buyers in the third quarter improved from 81.8 a year ago to 96.9 this year, the quarterly changes during 2008 have been modest at best and much of the benefit of lower sales prices has been offset by higher mortgage interest rates. Recent cuts in the Federal Funds Rate by the Federal Reserve Board have resulted in lower mortgage rates, but it is unclear how long the precarious financial position of most lenders will allow them to keep making affordable long term loans based on short-term Fed policies. Moreover, as lenders require higher credit scores and larger downpayments to qualify for the best terms, a significant number of home buyers will be able to secure credit, but only by accepting higher interest rates.

Healthy housing markets require the ability of first-time buyers to be able to afford to purchase a home. WCRER computes a first-time buyer affordability index which measures the ability of a typical household considering a home purchase to afford the payments on a

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Note: Index value of 100 means the typical first-time buyer could barely afford the typical starter home. Higher values mean housing is more affordable.

typical starter home. The accompanying map illustrates the first-time buyer affordability in individual Washington counties. It indicates that most rural areas offer reasonable opportunities for households to afford the purchase of their first homes, but that more urban markets, especially those west of the Cascades still present significant affordability barriers to homeownership. A healthy housing market cannot be restored until those households have reasonable prospects of becoming home owners.

The rental and ownership housing markets are obviously linked. Before they buy a home most households spend time as renters, establishing their credit and getting started in their careers. WCRER engages in research on apartment vacancies and rents in addition to the better publicized information on home sales and prices. Twice each year (March and September) WCRER collects data from owners and managers of apartment complexes in 13 Washington counties. This data is in generally the same format as information collected by Dupre + Scott Apartment Advisors in the five-county greater Seattle market. The 18 counties included in those surveys account for roughly 95 percent of the market-rate (non-subsidized) apartments in the state. In the third quarter the statewide vacancy rate in apartments was 4.7 percent, with an average rent of \$934 per month. Vacancy rates are nearly a full percentage point higher than the third quarter of last year, despite the slowdown in moves from renter to owner. At the same time, however, the average rent for an apartment increased by 6.4 percent.

While the residential market has been suffering for several quarters, the commercial real estate market has been holding its own until recently. The Seattle market, in particular, has been highlighted by national analysts as one of the best in the country, with the metropolitan Portland market, including Clark County, only a little less robust. From a statistical perspective the biggest challenge talking about commercial real estate through the state of Washington is the absence of reliable information in the smaller markets. Reasonably good data is limited to the Seattle, Portland and Spokane metropolitan areas, with only sketchy data available in the Bremerton and Bellingham markets. WCRER is endeavoring to develop



On the Horizon...

- The Department of Licensing and Department of Financial Institutions are jointly sponsoring legislation to resolve the problems with the distressed property law as it affects real estate licensees with the hopes of early legislative action.
- The Insurance Commissioner is finalizing rulemakings regarding the relationship between title insurers and real estate firms regarding inducements.
- The Washington Real Estate Commission has been reviewing the entire set of rules implementing the real estate licensee law (RCW 18.85), ensuring the rules conform to legislative revisions. Meetings with stateholders will be scheduled in advance of a formal rules hearing and adoption.

reliable data for the remaining metropolitan areas, but that is a longer-term project, with no immediate effort planned to extend data outside the 16 counties identified by the Federal Office of Management and Budget as part of metropolitan areas. The immediate future of the commercial real estate market will be driven by financing, with most equity partners and lenders hesitant to embark on real estate initiatives. The downtown Seattle market must be prepared to re-absorb significant office space currently occupied by JP Morgan Chase as it follows through on its plans to reduce the former Washington Mutual employment and office space usage in the Central Business District. Similarly, the consumer retrenchment during the recession which officially began last December will result in increasing vacancy in the retail market, which was already perceived as oversupplied.

Review of Education Course Content

A significant change under the revisions to the real estate license law regards pre- and post-license education for both brokers and managing brokers. Since the new courses need to be available when the changes in law take effect in July 2010, developing the appropriate curricula has become a

high priority. The Education Subcommittee of the Real Estate Commission, chaired by George Pilant of Tacoma is leading the charge.

The accompanying table illustrates the changing educational requirements:

	Current Law	Revised Law
	Salesperson	Broker
Prelicense	60 hrs Fundamentals	60 hrs Fundamentals 30 hrs Practices
First Renewal	30 hrs Practices	30 hrs Advanced Practices 30 hrs Real Estate Law
Continuing Education (every 2 yrs, including first renewal)	30 hrs Elective (including Core)	30 hrs Elective (including Core)
	Broker	Managing Broker
Prelicense	30 hrs R E Brokerage Management 30 hrs Business Management 30 hrs Real Estate Law 30 hrs Elective (single class)	30 hrs R E Brokerage Management 30 hrs Business Management 30 hrs Advanced Real Estate Law
Continuing Education (every 2 yrs)	30 hrs Elective (including Core)	30 hrs Elective(including Core)

The curriculum review began by comparing the course content of pre- and post-license courses required in states that have educational requirements equal to or greater than the new Washington requirements. It was somewhat surprising that in many jurisdictions the content requirements are not clearly identified, they are left to the educational providers to determine. Others only identify content in very broad topics, rather than the detailed learning objectives specified by regulation in Washington.

Second, focus groups were held with small groups of real estate licensees throughout the state, where the groups were designed to include brokers, experienced salespeople and new licensees, and addressed the specialized needs of commercial as well as residential practitioners.

Based on the responses from the focus groups, a brief online survey of real estate licensees was conducted to validate the qualitative information obtained from the focus groups. The Department of Licensing real estate ListServ, along with contact lists provided by Washington Realtors®, NWMLS, CBA and other industry groups was used to contact licensees requesting their participating. A total of 703 licensees responded to the survey.

The next stage was to share the jurisdictional review and licensee feedback to the diverse group of education providers for their recommendations regarding content changes to existing courses (some of which have not been revised since 2000) and for the courses which have never been

offered previously (Advanced Practices, Advanced Real Estate Law). Armed with this additional input the real heavy lifting begins as the learning objectives for the new and revised courses are developed and concurrence with the real estate commission and education providers is achieved. The plan is to have curriculum details for the new courses finalized in early 2009 (giving the education providers nearly a year to actually plan and implement their courses), with the revisions to the existing courses developed during the first half of 2009, ensuring all courses have updated learning objectives identified at least 12 months before the license law revisions are implemented. In addition to these longer courses, the revised law provides for a short transition course which all licensees who became licensed prior to July 1010, must take prior to their first renewal after that date. The transition course will focus on changes to the Washington Administrative Code (WAC) rules which are developed to implement the new law. Development of that class will begin as soon as the WACs are finalized.

The Washington Center for Real Estate Research at Washington State University is conducting this project for the Department of Licensing and Real Estate Commission. Licensees are encouraged to submit comments for topics to be included, excluded, emphasized or de-emphasized. Send recommendations via e-mail to the Center at wcrer@wsu.edu.



License Law Revision

Q & A

Is it true that three years after licensure all real estate licensees will need to obtain the managing broker license?

No. Individuals obtaining the entry-level real estate broker license may remain brokers indefinitely. They will, of course, be subject to continuing education requirements throughout their licensed career.

I am a current associate broker, and have been told I will need to take all the courses and exams to become a managing broker before my first renewal after July 1, 2010. Is this correct?

No. Associate Broker licenses will automatically become managing broker licenses. You will, however, need to take a 3-hour transition class before your first renewal after July 1, 2010. That transition class may be used as part of your continuing education.

Why is the implementation date so far in the future?

In order to be prepared for a transition of this magnitude the Real Estate Commission and Department of Licensing need to review and potentially revise all the Washington Administrative Code (WAC) regulations which clarify expectations under the law. Since pre-license education requirements are changing, they also need to define the course content and education providers need time to design their courses and identify or create instructional materials, like textbooks.

Early proposals included required apprenticeships or other methods to closely supervise new agents. Are apprenticeships now required?

The final version of the legislation requires managing brokers to provide a “heightened level of supervision” over the activities of a newly licensed real estate broker during the first two years of that new licensee’s activities. Clarification of those requirements will be identified in rules to be adopted by the Director upon the recommendation of the Real Estate Commission. Those rules have not been finalized yet.

I want to open a real estate office where I will have no employees and no affiliated licensees, so I will be managing no one. Why do I need a managing broker license?

The responsibility of a managing broker goes beyond managing people. The managing broker license may manage the paperwork of a firm and may be the point of contact for a Department of Licensing audit. In addition, you might not intend on hiring a workforce when you open the office but decide to do so down the road, and it would be a shame to be forced to stop and earn the higher level license later.

Isn't the language change making all licensees brokers confusing, and diminishing the value of the broker licenses earned in the past?

Research with consumers indicates that they generally believe that all real estate licensees are brokers already. That coupled with the fact that brokers are traditionally defined as intermediaries in transactions – whether the transaction is real estate, securities or insurance. Calling a real estate licensee a salesperson implies they are endeavoring to sell the consumer something they might or might not really want or need, whereas a broker is assisting them to satisfy a need or desire. As other states examine the content of their license laws, in general they are updating the language to reflect the reality of the situation that all licensees really serve a brokerage function, and to use language which identifies some as having achieved an increased level of training (managing broker) really helps clarify responsibilities in the eyes of the general public.

How much will licensing fees be increased?

There is currently no plan for any changes in license fees. The current salesperson fee will become the broker fee, and the current broker fee will become the managing broker fee. There will, however, be a new \$50 fee for fingerprinting.

Disciplinary Actions



Bruce Baldwin, Spokane

Action: Sixty day suspension of salesperson license and \$2,500 administrative penalty

The Respondent failed to deposit earnest money as required by the Purchase and Sale Agreement and failed to notify the listing agent that this had not been done.

March 2008 Default Order

Travis Bride, Puyallup

Action: Revocation of salesperson license and ineligible to reapply until May 12, 2011

The Respondent submitted a transfer application and failed to disclose that he was convicted of the crime of Assault in the Fourth Degree. He failed to disclose this conviction to the Department as required by law.

July 2008 (BAP) Brief Adjudicative Proceeding Order

John Choi, Federal Way

Action: Three year revocation of salesperson license

The Respondent altered an earnest money check, deposited it into his personal bank account and failed to advise the listing agent that the check had not been deposited in accordance with the Purchase and Sale Agreement.

March 2008 Agreed Order

Phyllis Etzler-Tomaras, Snohomish

Action: Summary suspension of broker license

The Respondent used her Supra Key to access homes listed through the Northwest Multiple Listing Service for the purpose of stealing items from the home. She was arrested for suspicion of theft and trafficking in stolen property.

August 2008 Ex Parte Order of Summary Suspension

Eleanor Hackler, Tacoma

Action: No right to apply for a license as a broker or salesperson for one year from the Orders date of service

While licensed to Home for Life, LLC, the Respondent performed real estate work for Harold A. Allen Company. She also engaged in real estate work while her license was in an expired status and in an inactive status.

July 2008 Agreed Order

Aaron Hayes, Puyallup

Action: Revocation of salesperson license for ten years from date of last conviction

The Respondent entered a plea of guilty to the charges of making False Statements to a Federal Firearms Licensee for the purposes of obtaining a Century Arms International; model SKS 59/66, 7.62X39 caliber rifle in violation of a DV-130 Order.

December 2007 (BAP) Brief Adjudicative Proceeding Order

Kevin Mallahan, Blaine

Action: No right to reinstate his cancelled Real Estate License or to re-apply for a Real Estate salesperson license for six (6) months from the date of the Order

The Respondent sold his property without disclosing that there were problems with the septic system and that a sewer system would be installed by the City at the purchaser's expense. The Respondent failed to provide the seller Form 17, Seller Disclosure Statement.

May 2008 Agreed Order

Victoria Mallahan, Blaine

Action: Six months suspension of salesperson license

The Respondent sold her property without disclosing that there were problems with the septic system and that a sewer system was being installed by the City at the purchaser's expense. The Respondent failed to provide the seller Form 17, Seller Disclosure Statement.

May 2008 Agreed Order

Larry Moshofsky, Maple Valley

Action: Five years revocation of salesperson license

The Respondent was a dual agent for the sellers of residential property. The Respondent failed to include with the paperwork presented to the lender, the addendum concerning a \$25,000 credit to the buyer. The Respondent misrepresented to the Department his actions regarding the transaction.

December 2007 Default Order

Amani Moss, Everett

Action: Six months suspension of salesperson license and an administrative penalty of \$5,000

The Respondent failed to collect or deposit earnest money with the Closing Agent as required by the Purchase and Sale Agreement and failed to notify the Listing Agent of that failure. In addition, the Respondent failed to cooperate with the Departmental investigation.

April 2008 Default Order

Rusty Namie, Spokane

Action: Revocation of salesperson license for ten years from date of last conviction

The Respondent was convicted of Money Laundering on October 24, 2006, and he failed to disclose the conviction to the Department of Licensing within 20 days of the conviction. The Respondent also failed to disclose to the Department in his application for a salesperson license, his conviction for three counts of Bank Robbery in 1997, and in his transfer application of May 2008, a 2002 Theft 2 conviction.

August 2008 (BAP) Brief Adjudicative Proceeding Order

Jamie Stupey, Everett

Action: Six weeks suspension of salesperson license, completion of courses on ethics and agency and an administrative penalty of \$2,500

The Respondent failed to disclose in writing that she was a real estate licensee. The Respondent also engaged in misrepresentation and trickery in negotiating a Purchase and Sale Agreement.

September 2008 Order

Troy Reimer, Point Robinson

Action: Five year revocation of broker license

The Respondent submitted an application for a real estate corporate license and failed to disclose a conviction for Malicious Mischief in the Third Degree and Harassment and failed to respond to the investigator's requests for information.

October 2008 Default Order at Formal Hearing

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Real Estate Section
PO Box 9015
Olympia, WA 98507-9015

Disciplinary Actions continued from page 7

David J. Richards, Kirkland

Action: Five year revocation of salesperson license; ineligible to reapply for 5 years from 7/27/07 or until court ordered obligations are satisfied, whichever is later

The Respondent was convicted of Assault in the Fourth Degree with Sexual Motivation
May 2008 (BAP) Brief Adjudicative Proceeding Order

Dixie Ellen Randock, Colbert

Action: Ten year revocation of broker license

The Respondent was convicted of Conspiracy to Commit Wire Fraud and Mail Fraud in U.S. District Court for the Eastern District of Washington and a judgment was entered against her in a another court several years earlier. She failed to report the second judgment to the Department within 20 days as required by law.

August 2008 (BAP) Brief Adjudicative Proceeding Order

Heidi Lorhan, Spokane

Action: Ten year revocation of Real Estate School Administrator's License

The Respondent was convicted of Conspiracy to Commit Wire Fraud and Mail Fraud in U.S. District Court for the Eastern District of Washington. Another judgment was entered against her in a court and she failed to report the judgment to the Department within 20 days as required by law.

August 2008 (BAP) Brief Adjudicative Proceeding Order

Stephanie Pak, Puyallup

Action: Suspension of salesperson license until November 25, 2008

The Respondent was convicted of two counts of Promoting Prostitution in the Second Degree.
January 2008 Agreed Order

Linda Sanford, Anacortes

Action: Two month suspension of broker license

The Respondent failed to conduct herself in an honest and trustworthy manner, failing to act in good faith with regard to a real estate transaction in which she was the listing agent.

March 2008 Agreed Order

Thu Tran, Issaquah

Action: Revocation of salesperson license until March 14, 2018

The Respondent was convicted of Conspiracy to Structure Currency Transactions and failed to disclose the conviction to the Department as required by law.

August 2008 (BAP) Brief Adjudicative Proceeding Order

Mary Vanko, Everson

Action: Suspension of broker license until documents requested by Department are furnished.

The Respondent failed to cooperate with the Department's requests for information concerning conducting an audit of her property management records.

April 2008 (BAP) Brief Adjudicative Proceeding Order