REAL ESTATE LICENSEE UPDATE

WASHINGTON STATE DEPARTMENT OF LICENSING

CHRISTINE GREGOIRE, GOVERNOR
VOLUME VI, ISSUE 1

ALAN HAIGHT, DIRECTOR
WINTER 2013

In This Issue

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Deceptive List Prices

The department has received numerous inquires/concerns regarding advertised list prices that are below what a seller will accept to sell the property or what a lender will accept to release its security interest in the property in a short sale. Advertising includes traditional newspaper, internet marketing, social media, and listing the property with a multiple listing service.

This problem seems most pronounced with short sale listings. Some listings contain a list price far less than the fair market value of the property and so low that there is no possibility that the seller or the seller's creditor(s) would accept. In other words, the listing broker knows that such listings cannot be purchased for the list price or for a price even remotely close to the list price.

The department's records contain the following expert opinions on real estate standards of practices related to pricing:

- If there are no offers on the property, the broker should research why and review the market for recent activity regarding similar properties. Even in the case of short sales, the broker should research the market before reducing the price.
- Pricing recommendations by the listing broker should be based on market research.
- Brokers should have a file with comparable sales to justify price reductions.
- The price should be a good faith reflection of what the seller will accept and the amount the lender will approve.

Licensees should establish a list and advertised price, developed in good faith, which will not employ a marketing gimmick or ploy designed to merely attract attention. Thus, properties advertised in bad faith and not at a price a willing seller would compensate a selling broker for procuring a buyer, then the department would consider unrealistic pricing or advertising as misrepresentation. Many buyers have been terribly disappointed and many selling brokers have been forced to waste time and energy chasing deals the listing broker knows are impossible.

The broker must use a reasonable estimate of fair market value and an amount the seller is willing to compensate the selling broker. However, a reasonable estimate of fair market value may dictate a price that is lower than both the outstanding debt and even the assessed value.

In one final order, the Director acknowledged the authorization by the seller to make substantial and arbitrary price reductions. The Director stated that it was implied that the respondents were more interested in generating offers than in realistic pricing. The Director in this case found the licensee engaged in a pattern and practice of listing homes at artificially reduced prices, which were not designed to accurately reflect what the owner of the home was willing to accept in order to generate multiple low-ball offers.

In addition to multiple listing service rules that require list prices be entered in good faith as a reasonable estimate of fair market value, the department's statutes and rules require the list price to be a good faith reflection of what the seller will accept and in the case of short sales, what the lender will approve. Listing homes at artificially reduced prices designed to generate multiple offers, not to accurately reflect the amount that the owner was willing to accept, is not permissible.

As always, a licensee should consult with their managing or designated broker to discuss issues regarding listings.

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Commissioner Corner: Kyoko Matsumoto Wright

Guidelines for Social Media

As social media becomes more and more a part of people's lives, it seems only natural that we start depending on it for news, shopping, entertainment and now real estate. This is done currently using Facebook, Twitter, Google Plus, Pinterest and a lot of other sites with more coming on every day.

With the advent of Facebook pages, real estate brokers can now promote themselves and their business. What a great idea! Or is it? As we all know, most everyone seems to follow rules, but there are always the exception. Those who think they are different or better and those who think rules don't apply to them. They make it difficult for the rest of us. Because of these few, we find we may need to have guidelines.

The first thing we need to remember is that social media is a different form of advertisement. For example, Facebook has their Pages where you can promote your business. People are invited to "like" it to get updates. It is also open to the public so others can see what you post. However if they are a licensed broker in the state of Washington they must adhere to the Department of Licensing advertising rules (at the DOL website) and have their company name visible. If they are a Realtor, they not only have to follow state laws and rules, they must follow the Code of Ethics (details can be found on the National Association of Realtor site).

As the Washington Real Estate Commission, we advise the director of the DOL on the practice of real estate. Recommending guidelines based upon current laws and rules for the practice of real estate can be very helpful for licensees. Social Media is international. People can engage in the interaction on our licensee's pages from all over the world. How do we distinguish between our licensees and those from outside our state?

There are more questions than answers here. How do we set guidelines for our Washington State brokers? Every time we think we found a solution a dozen more questions arise.

Social media is very new. While in its infancy we need to mold it to fit our needs of today yet be flexible enough to help it morph into any future forms it may need to become. In September of 2000 the real estate commission developed guidelines for advertising on the internet. Since that time the internet and social media have grown substantially. The real estate commission is currently reviewing and updating guidelines. This is not an easy job because of the dynamics of social media, internet and real estate practices. If you have concerns or would like to provide input on the use of social media, please contact one of your commissioners.

Social media is more than selling. It's relationship building. Those who embrace its true meaning and follow the guidelines will most likely survive in this business. I would like to be one of those survivors. I hope you do, too.

Kyoko Matsumoto Wright
Real Estate Commissioner

Real Estate Licensee Update
Volume VI, No. 1 Winter 2013

Real Estate Market Roundup

Glenn E. Crellin, Associate Director for Research, Runstad Center for Real Estate Studies, University of Washington

The housing market in Washington seems to have "turned on a dime", at least in the greater Seattle area. Home sales have returned to levels not seen since 2005. Listings available for sale are scarce. Combined, these two conditions lead to multiple offer situations and significant price jumps. While prices remain below their peaks, the rates of price increases are impressive. Before a new boom is declared, however, it is important to note the clouds on the horizon. The stalemate in DC over the "fiscal cliff" continues to cause concern about a return to recession. While the number of distressed mortgages has finally begun to decline, the numbers of properties which are at least 90 days past due or in the foreclosure pipeline remains high, and it is still unclear how many properties which have already been foreclosed are still being held by financial institutions.

Sales and Construction Activity

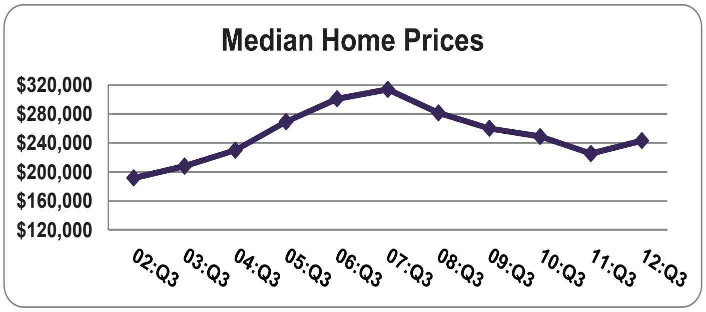
Home sales activity in Washington during the third quarter of 2012 increased 3.4 percent from the second quarter to a seasonally adjusted annual sales rate of 97,860 home sales. This is the highest sales rate which was not driven by government incentives since the opening quarter of 2008.

Despite the strong statewide performance, sales activity declined compared to the second quarter (using seasonally adjusted annual rates) in 11 counties, while sales declined compared to the third quarter of 2011 in eight counties. Most of the declines were in small counties, but the Tri-Cities and Lewiston, ID-WA markets also registered slower sales. It needs to be emphasized, however, that the Tri-Cities was the strongest urban market throughout the recession, thanks in large part to Federal stimulus spending on the Hanford cleanup.

Construction activity, measured by the value of residential permits issued by those cities and counties reporting data monthly to the Census Bureau, totaled $1.5 billion in the third quarter, 43.6 percent above the value in the third quarter of 2011. Roughly 72 percent of the construction value was for single-family homes which increased 39.9 percent from a year earlier. Building permits were issued in the 32 counties where at least some of the permitting jurisdictions report to the Census Bureau for 7,463 homes and apartments during the July through September period. Of those, 5,325 permits (71.4 percent) were issued in the five-county Seattle metropolitan area.

Home Prices

Reporting home prices has changed dramatically in the last few years. The most common statistics are median and average sales prices, with most analysts preferring medians (half higher, half lower) as more indicative of market conditions, especially since average prices tend to run about 20 percent higher than medians. However, both medians and averages depend on what sold during the period, and are influenced by changes in composition, meaning they are not measures of appreciation or depreciation in the values of individual homes. During the third quarter of 2012 the median price in Washington was $243,100. This represented an increase of 7.9 percent compared to a year earlier.



Local medians ranged from a high of $382,100 in San Juan County to a low of $86,200 in rural Lincoln County. While most of the state was showing higher median prices, the median actually declined compared to a year ago in ten counties. Double-digit increases in medians were reported in eight counties.

Several groups, especially S&P Case-Shiller and the Federal Housing Finance Agency (FHFA), report repeat-sales measures which are a better measure of appreciation. Those measures use only properties where they have access to at least two sales, adjust the sales prices for changes in quality (e.g. substantial rehabilitation or additions), and focus on monitoring changes over time. The data are reported as indexes and changes, not prices in dollars. Because of the sophisticated statistical modeling involved, the data are often released with considerable delays (especially Case-Shiller). No data on non-urban markets are available from either source. Case-Shiller only reports 20 markets while FHFA reports all metropolitan areas and statewide measures. Despite the improvement in the market, FHFA reported that only three of the 13 metropolitan areas in Washington had annual price appreciation in the third quarter. While median prices are increasing, buyers are still seeking bargains in most markets.

Affordability

Housing affordability is not defined exclusively by prices, although they are a significant component of affordability's three legged stool. The other legs are the mortgage interest rate (since relatively few homes purchased by owner-occupants are cash sales) and the purchaser's income. Mortgage interest rates continued to decline to record lows during the third quarter (although they are currently gradually rising). Incomes also were gradually improving, although often not keeping up with inflation.

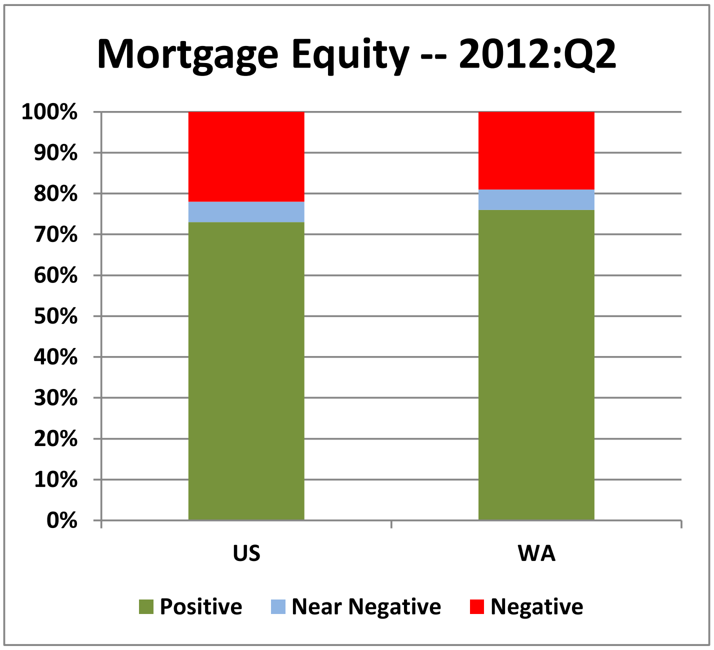
The Runstad Center produces two measures of housing affordability, following the model developed in 1982 at the National Association of Realtors. The All-Buyer Housing Affordability Index (HAI) compares the mortgage payments on a median price home to median FAMILY income (2 or more persons, related by blood, marriage or adoption) assuming a 20 percent downpayment and allocating 25 percent of gross income to principal and interest payments. An index of 100 means the family can just afford the median price home, and higher values are more affordable. The statewide HAI in the third quarter was 168.7, meaning the typical family has 68.7 percent MORE income than the minimum required to qualify for a mortgage on the median price home. Only San Juan County reported an index level below 100. Thirteen counties had HAI's above 200, meaning the median income local family could afford a home at least double the median local price. Among urban markets the affordability indices ranged from a low of 132.4 in King County to a high of 234.6 in Skamania County (part of the Portland-Vancouver, OR-WA metropolitan area).

Renters generally confront greater challenges becoming home owners. Accordingly, the Runstad Center's First Time Buyer Affordability Index (FTBHAI) assumes a less costly home (85 percent of area median), a lower down payment (10 percent) and a lower income (70 percent of median household income, which includes often lower-income single person households). The statewide FTBHAI in the third quarter was 96.6, only slight below the record 103.2 recorded in the first quarter.. This means that despite the low assumed income level that homeownership is within the reach of most interested households. These high first-time buyer affordability measures have resulted in active first-home purchases, especially in greater Seattle in the last few months. First-time buyer affordability ranged from 64.2 in San Juan County (Whitman County was second lowest at 66.4) to a high of 214.2 in rural Lincoln County.

Negative Equity

Shortages of listings are driving up home prices. While the housing market in Washington still has nearly 70,000 mortgages which are at least 90 days past due, or at some stage of the foreclosure process, those numbers have finally begun to decline a bit. More significant is how the improving market is changing the number of "underwater" mortgages in the state. Unfortunately this data is only released with significant delays (third quarter data will finally be available from CoreLogic in early 2013).

News stories throughout the recession would have you believe that the vast majority of homeowners (or at least those with mortgages) were underwater. To be sure, many households who purchased their homes late in the boom were joined by many others who refinanced their homes one or more times, often increasing the loan balance in the process, resulting in mortgage balances which were above the value of the homes. In the second quarter of 2012 CoreLogic estimated that 19 percent of Washington



mortgages had negative equity balances, and another five percent of loans had equity in the property which was less than five percent of value. As dire as these numbers sound, however, they describe a situation where this state's homeowners are in a stronger financial position than homeowners around the country since that national negative equity is 22 percent of outstanding mortgages. More impressive is that the negative equity share of mortgages dropped from 23 percent of Washington homeowners with mortgages to 19 percent in just three months, illustrating how quickly conditions were improving in the middle of the year. It is anticipated that results in the third and fourth quarters will continue this pattern of increasing equity.

Commercial Market

Since moving from Washington State University to the University of Washington, the Washington Center for Real Estate Research (now part of the Runstad Center for Real Estate Studies) has obtained access to transaction data from the Commercial Brokers Association and is beginning the process of developing statistics on the commercial real estate market throughout the state.

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What do you mean the "Department put my license on Inactive Status?"

Experienced real estate licensees realize they can't practice real estate without an active license. All firms must have a managing broker appointed as designed broker to operate. All licensees must be licensed to an active firm and can only conduct business through the firm. The majority of licensees understands and complies with the requirements for timely renewal of their licenses.

However, there are other circumstances that may affect a real estate licensee's status. For the firm license to be current, the firm must not only be current with the Real Estate Licensing Program, but must also hold an active Washington State business license.

- **What happens when the Department of Licensing becomes aware the business license is expired?** The firm is no longer authorized to conduct activities requiring a real estate license in Washington. All licensed affiliates, brokers, and managing brokers are placed on inactive status.

- **What happens if the firm does not renew the firm real estate license on time?** The firm can't operate with an expired license and is placed on a delinquent status. Affiliate licensees will be placed on inactive status.

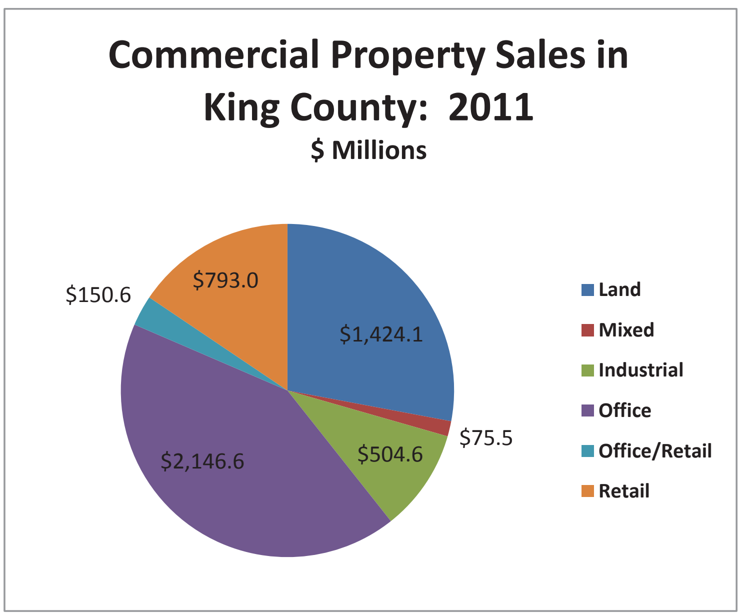
- **How do I know if the department has inactivated my license due to the firm not properly renewing?** The department's current procedure is to allow for reasonable mail times prior to inactivating a firm's license and placing all licensees on inactive status. It is the licensees' responsibility to ensure their licensing status is accurate. We suggest individuals routinely review the department's website at www.dol.wa.gov/business/real estate to determine their licensing status.

Real Estate Market Roundup, continued from page 4

While still in its early stages, some interesting facts are coming to light.

Since 2007 a total of $32.7 billion in commercial real estate sales have taken place in the three-county Seattle market (King, Pierce and Snohomish counties). Not surprisingly, 2007 had the highest volume ($11.7 billion). During the first nine months of 2012 a total of $5.3 billion in commercial real estate sales took place in the three counties.

In 2011 the total commercial sales in King County was $5.1 billion, with office properties representing the largest share of activity, followed by land sales. Despite an active development market for mix-used properties, only $75.5 million in properties identified as mixed use sold last year. The analysis at this point has not included multifamily properties, which will add significantly to the total sales activity and will represent a significant share of total activity



Attending the Home Inspection

Paul Duffau, Home Inspector Board Member

“Why don't you go get a cup of coffee or something while my client and I concentrate on this inspection?” is what one home inspector said to a licensee recently during an inspection. The real estate licensee balked and stated, "I'll be fined!"

The real estate licensee responded that he had to be there legally or risk receiving a fine. During the public comment portion of a recent board meeting for the Home Inspector Licensing Advisory Board, the inspector asked for clarification regarding the process of real estate licensees attending the inspection.

Here is the story from the inspector. Within minutes of beginning the inspection the real estate licensee involved had begun asking the inspector leading questions.

The inspector pointed out the inspection time is his time with the client to provide that client with the best available information. To protect everyone involved, the home inspector suggested the licensee leave. The client fortunately was oblivious to the real messages being exchanged. Imagine the reaction of the client if the inspector said to the licensee, "Why would you try to convince me to minimize a serious and expensive issue when it has the potential to bankrupt my client; and, if not fixed, make this house unsellable five years from now?"

The inspector recognized that the real estate licensee was attempting to exercise damage control. In this case, the issue really was a big deal -- it needed to be attended to as soon as possible and it was important that the buyer understand it fully. The liability for everyone was substantial.

Real Estate Designated Brokers must have a written policy for their firm addressing home inspector referrals (WAC 308-124C-125). A Licensed Home Inspector’s primary obligation is to ensure that the inspector’s client is as fully informed as possible. This means focusing on the concerns and questions that home inspector’s client has. A real estate licensee asking questions at this juncture can interrupt the process and potentially cause problems. Given that strong-willed personalities populate our professions on both sides of the equation, let’s focus on how to avoid the potential for confrontation rather than assign fault.

There is no legal requirement for real estate licensees to attend the inspection.

That doesn’t let the real estate licensee off the hook though; your local MLS and Realtor Associations may have bylaws that will direct your actions on attendance. The Northwest MLS, for example in Rule 50(a) states, *“no key holder shall leave any other person who is not also a key holder unattended at a listed property without the seller’s permission.”* This, by definition, includes the home inspector and the mutual client.

The purpose of the MLS rule is to actively protect the property of the seller by maintaining control of the property and monitoring the activities of those who are present – the buyer and the inspector. It is quite normal and reasonable for a buyer or the inspector to open and look into closets.

A potential risk for the real estate licensee is the liability incurred by attending the inspection. For example, a real estate licensee attending the inspection who tells the buyer that an item “isn’t a big deal” has injected themselves into the process and placed themselves in substantial jeopardy.

“No key holder shall leave any other person who is not also a key holder unattended at a listed property without the seller’s permission.”

The Inspector has legal and ethical rules he must follow.

Under Washington regulations (WAC 308-408C-020(10)), the inspector is not allowed to disclose the results of the inspection to any person other than the client. By that standard, the home inspector cannot and should not discuss the report in front of either the seller’s or buyer’s representative.

Without the approval of the client, the inspector is required to exercise reasonable care in presenting the information without compromising the privacy of the client. If the client specifically withholds permission to share the findings of the report the home inspector cannot ethically discuss the findings while the buyer’s representative is present.

So, clearly, while attendance is mandatory in some areas due to MLS Rules, real estate and home inspector licensees can still work productively.

Here is how:

"Don't go through the house with the inspector. Explain to your clients that you sell real estate and the inspector inspects it."

1. Mutual Respect.

Each licensee should recognize the limits of their expertise and act within those bounds while respecting the obligations that are placed on the other person legally, ethically and morally.

Inspectors need to accept that the real estate licensee will be present. The inspector needs to communicate clearly his expectations to perform the task he was hired for without interference. The mere presence of a real estate licensee does not constitute interference. The real estate licensee is there to maintain the security of the property. Unless the inspector wishes to assume that responsibility, he should be supportive of the real estate licensee. Also, the buyer's representative can directly get the information from the inspector *at the appropriate time* and with the permission of the client to best serve the needs of the client. This can serve to limit miscommunication by getting the information directly from you rather than relying on their interpretation of the report or the second-hand impressions of the buyer.

2. Let the Inspector work.

Every successful inspector has developed an individual system of performing the inspection and communicating the results. Both clients – buyer and seller -- have expectations that the inspection will provide unbiased information. By systematizing his process, the inspector increases his accuracy for your clients or customers while minimizing wasted time.

3. Attending the Inspection – or just Present?

If you are required to be at the inspection, understand that this is a different requirement than attending the inspection. To quote Oliver E. Frascona from an article in REALTOR® Magazine: *"Don't go through the house with the inspector. Explain to your clients that you sell real estate and the inspector inspects it."*

She coaches the client to let the inspector do his job and then proceeds to model that behavior. When there are findings, she respects the client and trusts the expertise of the inspector. This licensee will ask clarifying questions to ensure that she understands the scope of the issue and the precise location. She finds that this greatly enhances her ability to communicate with all the parties involved.

4. Negotiations.

It is a very different question when the buyer asks "Should I get this fixed?" versus "Should I have the seller fix this?" Inspectors need to be aware when they are crossing the line from inspector to real estate licensee. The real estate licensee is the person who has the expertise to handle the negotiations. Just as an inspector will grumble if a real estate licensee minimizes a reportable item in the report, the real estate licensee has every right to be unhappy if the inspector crosses the line from impartial observer to advocate. Home inspectors need to let the real estate licensees do their job representing the client.

The ultimate goal of each of us is to have clients successfully navigate the home buying/home selling process. For that to happen, real estate licensees and inspectors need to act cooperatively in the best interests of our clients.

Disciplinary Actions

MAY 2012

Lynn Zumwinkle — Seattle
Finding: Unprofessional conduct — Failed to notify us of 2 separate arrests and subsequent convictions for shoplifting, and false answers on application.
Action: Real estate broker license revoked. She may reapply for license after March 1, 2015.

JUNE 2012

Mauricio Muguira — North Bend
Finding: Unprofessional conduct — Failed to cooperate with us during an investigation.
Action: Real estate broker license suspended until he cooperates.

JULY 2012

Julian Ng — Edmonds
Finding: Negligent in not confirming earnest money funds were deposited with the escrow company.
Action: Broker license suspended for 1 year, stayed (not imposed) for 3 years, and fined $1,000.

AUGUST 2012

Bobbie Jo Page — Edmonds
Finding: Unprofessional Conduct, Consent Order entered against Respondent by State of Washington Dept. of Financial Institutions (DFI).
Action: Broker license revoked for 5 years from date of Consent Order by DFI.

David B. Page — Edmonds
Finding: Unprofessional Conduct, Consent Order entered against Respondent by State of Washington Dept. of Financial Institutions (DFI).
Action: Broker license revoked for 10 years from date of Consent Order by DFI.

Lori A. Allen — Puyallup
Finding: Failed to resubmit another fingerprint card and additional fee after the original card was rejected by the Washington State Patrol.
Action: Broker license suspended until a new fingerprint card and fee is received.

Arthur B. Uchytil — Lacey
Finding: Failed to resubmit another fingerprint card and additional fee after the original card was rejected by the Washington State Patrol.
Action: Broker license suspended until a new fingerprint card and fee is received.

SEPTEMBER 2012

No final orders issued in the month of September 2012

OCTOBER 2012

Natalia Beran — Seattle
Finding: Unprofessional conduct — two King County Superior Court orders against her.
Action: Real estate broker license suspended for 1 year, with all but 7 months stayed (not imposed) for 16 months, and fined $1,000.

Steve L. Burright — Longview
Finding: Unprofessional conduct — Convicted of Assault in the 2nd degree and didn't report the conviction to us within 20 days.
Action: Real estate broker license suspended 1 year, stayed (not imposed) for 3 years.

Lorraine B. Dill — Puyallup
Finding: Unprofessional conduct — Gave keys and possession of property to buyers prior to closing of sale without written consent of the property owner.
Action: Real estate broker license suspended for 1 year, stayed (not imposed) for 3 years, and fined $2,000.

Richard A. Hicks — Seattle
Finding: Unprofessional conduct — Negligent in taking steps to determine true ownership of property listed for sale; Acted outside of scope to remove person living in property; Interfered with our investigation.
Action: Real estate broker license suspended 1 year, stayed (not imposed) for 3 years, and fined $500.

Svetlana A. Yim — Kirkland
Finding: Unprofessional conduct — Convicted of Conspiracy to Distribute Controlled Substances and Conspiracy to Engage in Money Laundering and Wire Fraud, and failed to report the indictment and verdict to us.
Action: Real Estate broker license revoked for 10 years or until her sentence and incarceration are satisfied, whichever is longer.