



STATE OF ARIZONA
DEPARTMENT OF REAL ESTATE

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April 21, 2021

Ms. Lindsey Perry, Auditor General
Arizona Office of the Auditor General
2910 N. 44th Street, Suite 410
Phoenix, Arizona 85018

Re: Arizona Department of Real Estate – Performance Audit and Sunset Review

Dear Ms. Perry,

The Arizona Department of Real Estate (ADRE) would like to thank you for the work you and your office performed to evaluate how well the Department is fulfilling its mission, and for providing us the opportunity to respond to the recommendations in your preliminary report draft of the performance audit and sunset review dated April 14, 2021.

The Department would like to highlight a few key successes:

- ADRE remains committed to the continuous improvement of Department processes, and services delivered to our customers.
- ADRE has fully implemented or started the implementation process for all of the recommendations during the audit period.
- The Department now licenses over 90,000 Arizona real estate salespersons, brokers, and entities.

We have carefully reviewed the opportunities, recommendations, feedback, and research provided during this process, and remain committed to using this report to continue to improve the Arizona Department of Real Estate to best serve Arizonans.

Sincerely,

Judy Lowe
Commissioner

Finding 1: Department did not ensure high-risk brokerages were audited

Recommendation 1: The Department should use a risk-based approach to ensure that high-risk brokerages are selected for audit.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department has actively enhanced its policies and procedures during the audit process to conduct audits through a risk-based approach. The Department has already begun to implement this recommendation during the audit process by determining the potential risk to the public related to the real estate activities conducted, and will continue to review and implement the updated process, best practices, and identify other similar states' audit selection process. The Department will continue to interact with other state real estate agencies through its affiliation with the Association of Real Estate License Law Officials (ARELLO), an international trade association of real estate regulators to continuously improve its audit selection process.

Recommendation 2: The Department should revise its policy and develop and implement a process for selecting brokerages for audit based on their assigned risk rating.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department has already begun implementing this recommendation. The Department proposes to implement this recommendation as stated in recommendation one.

Recommendation 3: The Department should, consistent with its policy, review the effectiveness of its new approach for selecting brokerages for audit, including:

Recommendation 3a: Assessing its risk factors and audit results to determine if high-risk brokerages are being selected for audit.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department has already begun implementing this recommendation, and will continue to identify how best to perform this activity on an ongoing basis.

Recommendation 3b: Determining if additional risk factors relevant to the real estate brokerage industry are needed to ensure high-risk brokerages are selected for audit.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department has already begun implementing this recommendation as stated in recommendation one, and will continue to identify if additional risk factors are needed to be considered during the audit selection process.

Recommendation 3c: Monitoring trends of noncompliance in the real estate industry and making changes to its risk assessment process accordingly.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department has already begun implementing this recommendation as stated in recommendation one, and will continue to develop a method to periodically review the risk assessment process.

Recommendation 4: The Department should randomly select lower-risk brokerages for audit.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department has already begun implementing this recommendation as stated in recommendation one, and will continue to develop a method to periodically review the risk assessment process.

Sunset Factor 2: The extent to which the Department has met its statutory objective and purpose and the efficiency with which it has operated.

Recommendation 5: The Department should ensure that initial license applicants possess a valid fingerprint clearance card before it issues a license by developing and implementing policies and procedures requiring Department staff to confirm the validity of fingerprint clearance cards using the DPS website.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department is working to develop as part of its policies and procedures a process to require staff to check the validity of each fingerprint clearance cards on the DPS website. The Department relies on the Arizona Department of Public Safety to review criminal history records of applicants to determine their suitability to receive a fingerprint clearance card, and provide notification of changes in the status of current fingerprint clearance cards. The Department of Real Estate ensures initial license applicants possess a valid fingerprint clearance card by requiring and confirming that all license applicants submit required documents with their applications, including a copy of the front and back of the fingerprint clearance card. Arizona real estate licensees are required by statute to disclose convictions and adverse decisions issued by the courts at the time of license application, and within 10 days of a conviction action. Additionally, the Department receives notices from DPS when an action has been taken on a fingerprint clearance card, and actively tracks these notices weekly, acting as required by statute. This process allows the Department to actively track licensees fingerprint clearance card compliance when a status update is received during their license period.

Recommendation 6: The Department should ensure that applicants for school, course, and instructor licenses submit and it retains all required documentation demonstrating compliance with statutory and rule licensing requirements prior to approving applicants for licensure.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department remains committed to continuously improving processes and services delivered to our customers, and has already begun to implement process improvement and enhanced staff training in this area.

Recommendation 7: The Department should train all relevant staff on the Department's policies and procedures for obtaining, reviewing, and maintaining licensing documentation for school, course, and instructor applications.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department remains committed to continuously improving processes and services delivered to our customers, and has implemented training to problem solve and manage workflow.

Recommendation 8: The Department should develop and implement a supervisory review process to ensure that staff adhere to the Department's policies and procedures for maintaining licensing documentation.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department has already begun to implement this recommendation as stated in recommendation six.

Recommendation 9: The Department should continue to perform the required subdivision inspections and only charge an inspection fee when it must travel to perform an onsite inspection as authorized by statute.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department has successfully implemented recommendation nine as further provided in recommendation 10. By way of background, the Department conducts subdivision inspections to verify that elements of an approved public report are complete, such as roads, utilities, community or recreational facilities and other improvements included in the offering. These subdivision inspections completed by the Department are preceded by multiple inspections completed by local jurisdictions, such as cities or counties, that ensure construction meets local building codes and regulations before granting a Certificate of Completion or Certificate of Occupancy. In lieu of, and per statute, the developer may select and pay the inspector, and have the inspector approved by the Department.

Recommendation 10: The Department should work with its Assistant Attorney General to determine how it should address the estimated \$61,000 in fees that it previously collected although it did not travel to perform onsite inspections.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department will review this recommendation with its Assistant Attorney General. The Department evaluated its process for completing subdivision inspections, and successfully implemented an updated process in February 2020 during the challenges of the COVID-19 pandemic to complete subdivision inspections virtually using established technology tools that identify elements of a public report approval. The subdivision inspection fee was eliminated in March 2020 for inspections that are completed not requiring travel. Upon receipt, all inspection fees are deposited into the state's General Fund.

Recommendation 11: The Department should work with its Assistant Attorney General to determine whether the revenue it receives from development fees should be included in its fee revenue calculation and analysis.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department will review this recommendation with its Assistant Attorney General.

Sunset Factor 3: The extent to which the Department serves the entire State rather than specific interests.

Recommendation 12: The Department should ensure that Advisory Board members continue to annually disclose both financial and decision-making interests as required by its updated policy.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department initially implemented this recommendation in November 2020, with final implementation completed in January 2021, during the audit process.

Sunset Factor 6: The extent to which the Department has been able to investigate and resolve complaints that are within its jurisdiction.

Recommendation 13: The Department should investigate and resolve complaints in accordance with its policies and procedures.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department remains committed to continuously improving processes and services delivered to our customers, and has already begun implementing this recommendation as stated in recommendations 14 and 15. The Department will continue its established focus on thorough investigations and timely resolution of complaints, while ensuring that policies and procedures accurately reflect our target goals.

Recommendation 14: The Department should modify its policies and procedures to require supervisory review of all complaint investigations throughout the investigation process to help ensure investigation time frames and notification requirements are met.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department will implement a supervisory review process for investigations conducted by the division manager, and update the current processes and procedures accordingly.

Recommendation 15: The Department should provide training to staff to ensure they are aware of the new policy changes, including key time frames and requirements. The Department should also continue to provide its enhanced training for new staff.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department implemented enhanced ongoing staff training and modified process and procedures accordingly during the audit process. The Auditing & Investigations Division continues to hold individual and division wide staff trainings, and weekly ongoing case review meetings.

Recommendation 16: The Department should review the disciplinary actions matrix to ensure the penalties reflect current practices and expand the matrix to address all potential statutory and rule violations.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department thoroughly reviews and deliberates all disciplinary action decisions resulting from a public or consumer complaint, brokerage audit, agency initiated investigation, or licensing disclosure to determine the fair and lawful decisions taken. The Department is committed to conduct a thorough review of its disciplinary actions matrix and update it to ensure it reflects current practices and expand the matrix to address all potential statutory and rule violations, including consideration for “aggravating or mitigating circumstances”. This will ensure that disciplinary actions and penalties are issued fairly and consistently.

Recommendation 17: The Department should include in the policies and procedures a requirement to adhere to the disciplinary actions matrix when imposing discipline and include in the case report any aggravating or mitigating circumstances that would cause them to deviate from the disciplinary actions matrix guidance.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department will implement this recommendation as stated in recommendation 16.