

**ANSWER:** See discussion.

**DISCUSSION:** A licensee must report an adverse civil judgment and/or a conviction of a crime to the Department of Real Estate within 10 days of the judgment being entered by the court. A.A.C. R4-28-301 (F). Here, because there is not yet a judgment entered on the driving under the influence charge, there are not yet any reporting requirements to the Department of Real Estate.

### **Pursuant to the Buyer Contingency Addendum, if the Buyer's Existing Home Does Not Close by the Agreed Upon Date, the Contract is Cancelled**

**FACTS:** The buyer and seller entered into the Arizona REALTORS® Residential Resale Real Estate Purchase Contract and a Buyer Contingency Addendum. At the time, the buyer's existing home was under contract and set to close escrow on November 15th. Accordingly, in the Buyer Contingency Addendum, the box on line 49 was checked, and on line 53 the parties inserted November 15th. Unfortunately, due to financing issues, the buyer's existing home did not close on November 15th; the expected closing date is now November 25th. The buyer wants to proceed with the purchase of the new home regardless of the cancellation. The seller by contrast has a backup offer for \$25,000 more and claims the transaction with the buyer is cancelled because the buyer did not close by November 15th.

**ISSUE:** Does the buyer have the contractual right to proceed with closing even though his existing home did not close escrow by the date agreed upon?

**ANSWER:** See discussion.

**DISCUSSION:** In this transaction, lines 53 and 54 of the Buyer Contingency Addendum provide: "if the pending sale of Buyer's property does not close by November 15th, this Contract shall be deemed cancelled and the Earnest Money shall be released to Buyer." Pursuant to the language of the documents, the contract is cancelled without any further action required by the seller.

### **Disclose Media Reports that House Has Been Inhabited by Aliens**

**FACTS:** Seller is under contract with buyer for the sale of the seller's property. Seller is aware that a local newspaper reported in the 1970s that the seller's property was used by a clandestine government agency to house extraterrestrial beings recovered from Roswell, New Mexico. The seller is also aware that most of the residents of the town in which the property is located know about this newspaper story and that it would be difficult to sell the property to many of them.

**ISSUE:** Must the seller disclose this information to the buyer?

**ANSWER:** Yes.

**DISCUSSION:** The seller must disclose material information about the property, i.e., information that would cause a reasonable purchaser to reevaluate the value of the property. *Hill vs. Jones*, 151 Ariz.81, 725 P. 2d 1115 (App. 1986). Here, the seller is likely not obligated to disclose that the property was allegedly inhabited by extraterrestrials, but the seller is probably required to disclose the media attention that the property has received over the years especially since the seller is aware that the local residents would be unlikely to buy the house and, therefore, the value of the home is likely affected by the media attention.

### **An Unlicensed Assistant May Not Sit Open Houses, Attend Inspections or Negotiate and Draft BINSRS**

**FACTS:** The team leader relies heavily on his assistant, who does not hold a real estate license. The assistant sets open houses, attends inspections and final walk throughs with buyers and sometimes drafts and negotiates BINSRS. The broker recently discovered this situation and insisted that the team leader immediately cease and desist using the unlicensed assistant in this manner. The team leader insists that the assistant's work is consistent with the Arizona real estate licensing requirements.

**ISSUE:** May the assistant perform the functions referenced without a real estate license?

**ANSWER:** No.

**DISCUSSION:** The tasks the assistant is performing – setting open houses, attending inspections and final walk-throughs, and drafting and negotiating BINSRS constitutes the practice of real estate for which a license is required. See A.R.S. § 32-2101 (49). In fact, all of the tasks the assistant is performing are identified in ADRE Substantive Policy Statement 2017.01 as tasks an unlicensed person cannot perform. Further, an unlicensed person who performs acts for which a license is required is guilty of a Class 5 felony pursuant to A.R.S. § 32-2165 (B).

### **Out of State Brokerage with Licensees Must Maintain an Office in Arizona**

**FACTS:** A national broker intends to engage in real estate brokerage business in Arizona. The Arizona brokerage will be physically located in another state. The designated broker and the agents will be duly licensed in Arizona, but will not live or physically perform work in the state.

**ISSUE:** Must the broker maintain a physical office in Arizona?

**ANSWER:** Yes.

**DISCUSSION:** Generally, a non-resident broker may conduct real estate brokerage business in Arizona. However, there are several requirements for that business model to be consistent with Arizona licensing laws. See A.R.S. § 32-2125.02 and