

BEFORE THE ARIZONA STATE BOARD OF TECHNICAL REGISTRATION

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In the Matter of:)
David Butler)
Certified Home Inspector)
Registration No. 55756)
Respondent)

Case No.: HI16-006
HI16-009

CONSENT AGREEMENT and ORDER OF DISCIPLINE

In the interest of a prompt and judicious resolution of the above-captioned matter before the Arizona State Board of Technical Registration ("Board") and consistent with the public interest, statutory requirements, and the responsibilities of the Board, and pursuant to A.R.S. § 32-101 et seq., and A.A.C. R4-30-120(G), the undersigned party, David Butler ("Respondent"), holder of Registration No. 55756, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a final disposition of this matter.

RECITALS

- 1. Respondent has read and understands this Consent Agreement and has had the opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity to discuss this Consent Agreement with an attorney.
- 2. Respondent understands that he has a right to a public administrative hearing concerning this case. He further acknowledges that at such formal hearing he could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent knowingly, voluntarily, and irrevocably waives his right to such an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or judicial action concerning the matters set forth herein.
- 3. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

1 4. Respondent understands that this Consent Agreement or any part of the
2 agreement may be considered in any future disciplinary action by the Board against him.

3 5. The Consent Agreement, any record prepared in this matter, all investigative
4 materials prepared or received by the Board and all related exhibits and materials, are
5 public records (as defined in A.R.S. § 41-158.18) upon acceptance by the Board of this
6 Consent Agreement and may be retained in the Board's files pertaining to this matter.

7 6. Respondent understands this Consent Agreement deals with Board case
8 number HI16-006 and HI16-009 involving allegations that Respondent engaged in
9 conduct that would subject him to discipline under the Board's statutes and rules. The
10 investigation into these allegations against Respondent shall be concluded upon the
11 Board's adoption of this Consent Agreement.

12 7. Respondent understands that this Consent Agreement does not constitute a
13 dismissal or resolution of any other matters currently pending before the Board, if any,
14 and does not constitute any waiver, express or implied, of the Board's statutory authority
15 or jurisdiction regarding any other pending or future investigation, action or proceeding.

16 8. Respondent also understands that acceptance of this Consent Agreement does
17 not preclude any other agency, subdivision, or officer of this State from instituting any
18 other civil or criminal proceedings with respect to the conduct that is the subject of this
19 Consent Agreement.

20 9. Respondent acknowledges and agrees that, upon signing this Consent
21 Agreement and returning this document to the Board's Executive Director, he may not
22 revoke his acceptance of the Consent Agreement or make any modifications to the
23 document regardless of whether the Consent Agreement has been signed on behalf of the
24 Board. Any modification to this original document is ineffective and void unless
25 mutually agreed by the parties in writing.

26 10. This Consent Agreement is subject to the approval of the Board and is
27 effective only when accepted by the Board and signed on behalf of the Board. If the
28 Board does not accept this Consent Agreement, the Board retains its authority to hold a

1 formal administrative hearing pursuant to A.R.S. § 32-128(E). In the event that the
2 Board does not approve this Consent Agreement, it is withdrawn and shall be of no
3 evidentiary value and shall not be relied upon nor introduced in any action by any party,
4 except that the parties agree that should the Board reject this Consent Agreement and this
5 case proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced
6 by its review and discussion of this document or any records relating thereto.

7 11. If a court of competent jurisdiction rules that any part of this Consent
8 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
9 shall remain in full force and effect.

10 12. Respondent understands that any violation of this Consent Agreement may
11 result in disciplinary action, including suspension or revocation of the registration under
12 A.R.S. § 32-150.

13 13. Respondent agrees that the Board will adopt the following Findings of Fact,
14 Conclusions of Law and Order.

15 **FINDINGS OF FACT**

16 1. The Board is the duly constituted authority for the regulation and control of
17 the practice of Home Inspection in the State of Arizona.

18 2. Respondent is the holder of Certified Home Inspector Certification No.
19 55756.

20 3. On or about March 26, 2015, Respondent conducted a Home Inspection at
21 7217 S. Butte Ave., Tempe, AZ 85283.

22 4. On or about May 7, 2015, Respondent conducted a Home Inspection at 330
23 W Monte Vista, Phoenix, AZ, 85003.

24 5. On or about July 28, 2015, concerning the Home Inspection at 7217 S. Butte
25 Ave, Tempe, AZ, the Board received a complaint alleging that the Respondent did not
26 conduct a home inspection in accordance with the Standards of Professional Practice in
27 violation of A.R.S. § 32-128(C)(4) as it relates to R4-30-301.01(A). In the complaint, the
28 Alleger identified twenty-seven (27) areas of the Home Inspection Report that were

1 presumed deficient.

2 6. On or about August 20, 2015, concerning the Home Inspection at 330 W.
3 Monte Vista, Phoenix, AZ, the Board received a complaint alleging that the Respondent
4 did not conduct a home inspection in accordance with the Standards of Professional
5 Practice, R4-30-301.01(A) by failing to accurately inspect and report on the HVAC
6 system.

7 7. On October 23, 2015, the Board's Enforcement Advisory Committee
8 ("EAC") convened to review the complaint against Respondent, HI16-006. After
9 interviewing both the Allegor and Respondent, the committee found that Respondent
10 failed to conduct a home inspection in accordance with the Standards of Professional
11 Practice, R4-30-301.01(A) by failing to accurately report on six (6) items in the Home
12 Inspection Report.

13 8. On October 23, 2015, the Board's Enforcement Advisory Committee
14 ("EAC") convened to review the complaint against Respondent, HI16-009. After
15 interviewing both the Allegor and Respondent, the committee found that Respondent
16 failed to conduct a home inspection in accordance with the Standards of Professional
17 Practice, R4-30-301.01(A) by failing to accurately inspect and report on the HVAC
18 system. The EAC concluded that Respondent did not adhere to Section 9.1 and Section
19 10.1 of the Standards of Professional Practice for Home Inspectors by failing to mention
20 the condition of the HVAC system.

21 CONCLUSIONS OF LAW

22 1. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-101, et seq.

23 2. The conduct alleged in the findings of fact constitutes grounds for discipline
24 pursuant to A.R.S. § 32-128(C) (4) (violation of Board rules) as it relates to A.A.C. R4-
25 30-301.01(A), in that Respondent failed to conduct a home inspection in accordance with
26 the Standards of Professional Practice.

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ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Board issues the following Order:

1. LETTER OF REPRIMAND. Respondent is hereby issued a Letter of Reprimand.

2. STAYED SUSPENSION AND PROBATION. Respondent's certification as a Home Inspector No. 55756, shall be suspended for six (6) months; however, the suspension is stayed for as long as Respondent remains in compliance with this Order. During the stay of suspension, Respondent's certification as a Home Inspector is placed on probation for six (6) months. If Respondent is non-compliant with any terms of this Order during the six (6) month stayed suspension and probation period, the stay of the suspension shall be lifted and Respondent's certification as a Home Inspector shall be automatically suspended without a formal hearing, and remain suspended until Respondent is compliant with all terms of this Order. If Respondent completes all terms of this Order prior to the six (6) month stayed suspension and probation period, Respondent may seek an early termination of this Order by requesting a formal review by the Board. The Board may also consider Respondent's non-compliance with this Order as a separate violation of A.R.S. § 32-150.

3. REMEDIAL TRAINING. Within sixty (60) days from the effective date of this Consent Agreement, Respondent shall provide proof to the Board that he has successfully completed home inspection remedial training in the following areas:

- a) Operation of a Home Inspection business
- b) Inspection of attic, insulation, ventilation and interior systems
- c) Inspection of HVAC systems

4. ADMINISTRATIVE PENALTY. Within six (6) months from the effective date of this Consent Agreement, Respondent shall pay an administrative penalty of One Thousand Dollars (\$1000.00) by certified check or money order made payable to the State of Arizona Board of Technical Registration.

1 Consent Agreement and Order, No. HI16-006 and HI16-009 accepted this
2 22nd day of February, 2016.

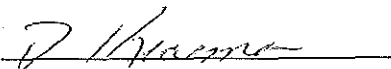
3 
4 David Butler, Respondent

5 ORIGINAL filed this 23 day of
6 FEBRUARY, 2016, with:

7
8 Arizona State Board of Technical Registration
9 1110 W. Washington, Suite 240
Phoenix, AZ 85007

10 COPY of the foregoing mailed via Certified Mail
11 No. 7015 1660 CXC0 1489 5283 and
First Class mail this 24 day of FEBRUARY, 2016, to:

12 David Butler
13 12225 W Tonto Street
14 Avondale, AZ 85323

15 By: 
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