

BEFORE THE ARIZONA STATE
BOARD OF TECHNICAL REGISTRATION



<p>In the Matter of:</p> <p>Mark Kilian Home Inspector Certification No. 55011</p> <p>Respondent</p>	<p>Case No. HI20-003</p> <p>CONSENT AGREEMENT and ORDER OF DISCIPLINE</p>
-------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------

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, Mark Kilian (“Respondent”), holder of Certification No.55011, 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 agreement
2 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 public
5 records (as defined in A.R.S. § 41-158.18) upon acceptance by the Board of this Consent
6 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 number
8 HI20-003, involving allegations that Respondent engaged in conduct that would subject him to
9 discipline under the Board's statutes and rules. The investigation into these allegations against
10 Respondent shall be concluded upon the Board's adoption of this Consent Agreement.

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

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

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

23 10. This Consent Agreement is subject to the approval of the Board and is effective
24 only when accepted by the Board and signed on behalf of the Board. If the Board does not accept
25 this Consent Agreement, the Board retains its authority to hold a formal administrative hearing
26 pursuant to A.R.S. § 32-128(E). In the event that the Board does not approve this Consent
27 Agreement, it is withdrawn and shall be of no evidentiary value and shall not be relied upon nor
28 introduced in any action by any party, except that the parties agree that should the Board reject

1 this Consent Agreement and this case proceeds to hearing, Respondent shall assert no claim that
2 the Board was prejudiced by its review and discussion of this document or any records relating
3 thereto.

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

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

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

11 **FINDINGS OF FACT**

12 1. The Board is the duly constituted authority for the regulation and control of the
13 practice of Certified Home Inspectors in the State of Arizona.

14 2. Respondent is the holder of Arizona Home Inspection, certification No. 55011.

15 3. On October 29, 2018, the Respondent performed a home inspection and prepared a
16 home inspection report for the property located at 3901 E Pinnacle Peak Rd No. 410, Phoenix AZ
17 85053.

18 4. On July 17, 2019, the Board revived a complaint alleging Respondent may have
19 failed to conduct a Home Inspection in accordance with the Standards of Professional Practice for
20 Arizona Home Inspectors

21 5. On November 14, 2019, the Board Enforcement Committee (“EAC”) convened to
22 review the complaint against Respondent. The Committee determined that the Respondent’s
23 Home Inspection report failed to meet the Standards of Professional Practice for Arizona Home
24 Inspectors (“S.O.P”) and found that:

25 A. Respondent failed to list the Inspection purpose and scope as required in S.O.P #2.0

26 B. Respondent failed to include AZ Standards of Practice as required in S.O.P #2.2

27 C. Respondent failed to describe the foundation as required in S.O.P #4.1

28 D. Respondent failed to describe the condition of the plumbing functional flow as
required in S.O.P #7.1

- E. Respondent failed to describe the condition of the plumbing functional drainage as required in S.O.P #7.1
- F. Respondent failed to describe the condition of the water heater automatic safety controls as required in S.O.P #7.1
- G. Respondent failed to describe the condition of the heating & cooling system operating controls (thermostat) as required in S.O.P #9.1
- H. Respondent failed to describe the condition of the heating system automatic safety controls as required in S.O.P #9.1
- I. Respondent failed to describe and observe the condition of the air filter as required in S.O.P #11.1
- J. Respondent failed to describe the type and condition of the vapor retarder as required in S.O.P #12.1
- K. Respondent failed to describe the presence and condition of the attic ventilation as required in S.O.P #12.1
- L. Respondent failed to describe the presence and condition of the under-floor crawl space ventilation as required in S.O.P #12.1

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-101, et seq.
2. The conduct alleged in the Findings of Fact constitutes grounds for discipline pursuant to ARS 32-128(C)(4), as it relates to A.A.C. R4-30-301.01, in that Respondent failed to conduct a Home Inspection in accordance with the Standards of Professional Practice for Arizona Home Inspectors.

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. ADMINISTRATIVE PENALTY. Within Ninety (90) days from the effective date of this Consent Agreement, Respondent shall pay an administrative penalty of Five Hundred Dollars (\$500.00) by certified check or money order made payable to the State of Arizona Board of Technical Registration.

1 3. COST OF INVESTIGATION. Within thirty (30) days from the effective date of
2 this Consent Agreement, Respondent shall pay the cost of investigation of this case to the Board
3 in the amount of Four Hundred Eleven Dollars (\$411.00) by certified check or money order made
4 payable to the State of Arizona Board of Technical Registration, according to the provisions of
5 A.R.S. § 32-128(H).

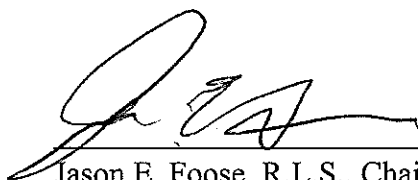
6 4. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, as
7 well as, all rules governing the practice of Home Inspections in the State of Arizona. The Board
8 shall consider any violation of this paragraph to be a separate violation of the rules and statutes
9 governing the Arizona Board of Technical Registration. The Board may also consider
10 Respondent's non-compliance with this Order as a separate violation of A.R.S. § 32-150..

11 5. EFFECTIVE DATE. The effective date of this Consent Agreement is the date the
12 Respondent and Board sign the Consent Agreement. If the dates are different, the effective date is
13 the later of the two dates.

14 6. COSTS OF COMPLIANCE. Respondent shall pay all costs associated with
15 complying with this Consent Agreement.

16 7. NONCOMPLIANCE. If Respondent violates this Order in any way or fails to
17 fulfill the requirements of this Order, the Board, after giving notice and the opportunity to be
18 heard, may revoke, suspend or take other disciplinary actions against the registration. The issue
19 at such a hearing will be limited solely to whether this Order has been violated.

20
21 ACCEPTED and ORDERED this 28th day of January, 2019.

22
23
24 
25 Jason E. Foose, R.L.S., Chairman
26 Arizona State Board of
27 Technical Registration
28

1 Consent Agreement and Order, No. HI20-003, accepted this 18 day of NOV, 2019.

2
3 
4 Mark Kilian, Respondent

5 ORIGINAL filed this 30th day of
6 January, 2020, with:

7
8
9 Arizona State Board of Technical Registration
10 1110 W. Washington, Suite 240
Phoenix, AZ 85007

11 COPY of the foregoing mailed via Certified Mail
12 No. 9214 8901 9434 4600 0661 58 and
13 First Class mail this 30th day of January, 2020, to:

14 Mark Kilian
15 Guardian Home Inspection
16 9235 W Pershing Ave.
17 Peoria, AZ 85381

18 By: 
19
20
21
22
23
24
25
26
27
28