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10 **BEFORE THE ARIZONA STATE  
BOARD OF TECHNICAL REGISTRATION**

11 In the Matter of:

12 **Derek Otto,**  
13 Home Inspector Certification No. 54388,  
14 Respondent.

Docket No.: 23F-HI22-022-BTR  
BTR Case Nos.: HI22-022

**CONSENT AGREEMENT  
and  
ORDER OF DISCIPLINE**

15  
16 In the interest of a prompt and judicious resolution of the above-captioned matter before  
17 the Arizona State Board of Technical Registration (the "Board") and consistent with the public  
18 interest, statutory requirements, and the responsibilities of the Board, and pursuant to Arizona  
19 Revised Statutes ("A.R.S.") § 32-101, *et seq.*, and Arizona Administrative Code ("A.A.C.") R4-  
20 30-120(G), the Board and the undersigned party, Derek Otto ("Respondent"), enter into the  
21 following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a  
22 final disposition of this matter.

23 **RECITALS**

24 1. The Board has not conducted a hearing nor made a determination on the merits  
25 contained herein. Instead, the Board and Respondent have agreed to a full and final settlement of  
26 this matter in lieu of formal disciplinary proceedings, pursuant to A.A.C. R4-30-123(B).

27 2. Respondent has read and understands this Consent Agreement and has had the

1 opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity to  
2 discuss this Consent Agreement with an attorney.

3           3.       Respondent understands that he has a right to a public administrative hearing  
4 concerning this case. He further acknowledges that, at such formal hearing, he could present  
5 evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent  
6 knowingly, voluntarily, and irrevocably waives his right to such an administrative hearing, as  
7 well as rights of rehearing, review, reconsideration, appeal, judicial review, or any other  
8 administrative and/or judicial action concerning the matters set forth herein.

9           4.       Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

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

12          6.       The Consent Agreement, any record prepared in this matter, all investigative  
13 materials prepared or received by the Board, and all related exhibits and materials, are public  
14 records (as defined in A.R.S. § 41-151(2)) upon acceptance by the Board of this Consent  
15 Agreement and may be retained in the Board's files pertaining to this matter.

16          7.       Respondent understands this Consent Agreement deals with Board case number  
17 HI22-022 involving allegations that Respondent engaged in conduct that would subject  
18 Respondent to discipline under the Board's statutes and rules. The investigation into these  
19 allegations against Respondent shall be concluded upon the Board's adoption of this Consent  
20 Agreement.

21          8.       Respondent understands that this Consent Agreement is solely to settle case  
22 number HI22-022, does not preclude the Board from instituting other proceedings as may be  
23 appropriate now or in the future, does not constitute a dismissal or resolution of any other  
24 matters currently pending before the Board, if any, and does not constitute any waiver, express or  
25 implied, of the Board's statutory authority or jurisdiction regarding any other pending or future  
26 investigation, action or proceeding.

27          9.       Respondent also understands that, with respect to the conduct that is the subject of

1 this Consent Agreement, acceptance of this Consent Agreement does not preclude any other  
2 agency, subdivision, or officer of this state from instituting any other civil or criminal  
3 proceedings, investigating claims, or taking legal action as may be appropriate now or in the  
4 future relating to this matter or other matters concerning Respondent, including but not limited to  
5 violations of Arizona's Consumer Fraud Act. Respondent acknowledges that, other than with  
6 respect to the Board, this Consent Agreement makes no representation, implied or otherwise,  
7 about the views or intended actions of any other state agency or officer or political subdivision of  
8 the state relating to this matter or other matters concerning Respondent.

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

14       11. This Consent Agreement is subject to the approval of the Board and is effective  
15 only when accepted by the Board and signed on behalf of the Board. If the Board does not  
16 accept this Consent Agreement, the Board retains its authority to hold a formal administrative  
17 hearing pursuant to A.R.S. § 32-128(E). In the event that the Board does not approve this  
18 Consent Agreement, it is withdrawn, shall be of no evidentiary value, and shall not be relied  
19 upon nor introduced in any action by any party. Respondent agrees that should the Board reject  
20 this Consent Agreement and this case proceeds to hearing, Respondent shall assert no claim that  
21 the Board was prejudiced by its review and discussion of this document or any records relating  
22 thereto.

23       12. If a court of competent jurisdiction rules that any part of this Consent Agreement  
24 is void or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full  
25 force and effect.

26       13. Respondent agrees that any violation of this Consent Agreement may result in  
27 disciplinary action, including suspension or revocation of registration under A.R.S. § 32-150.

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

### 3                           **FINDINGS OF FACT**

4           1.    The Board is the duly constituted authority for the regulation and control of the  
5 practice of home inspection, pursuant to A.R.S. § 32-101, *et seq.*

6           2.    Respondent is the holder of Arizona Home Inspector Certification No. 54388.

7           3.    On or about January 25, 2022, Respondent conducted a Home Inspection at 6561  
8 East Sunnyslope Road in Florence, Arizona (the "Home Inspection").

9           4.    On or about February 2, 2022, the Board received a complaint that alleged that  
10 Respondent, in performing the Home Inspection, damaged drywall in the laundry room.

11          5.    On March 9, 2022, an Enforcement Advisory Committee Meeting ("EAC")  
12 convened to review the complaint against Respondent. After reviewing the evidence and  
13 conducting interviews, the EAC did not substantiate the allegations from the original complaint.  
14 However, the EAC found that Respondent's home inspection report failed to meet all of the  
15 technical requirements of the Standards of Professional Practice for Arizona Home Inspectors  
16 ("S.O.P."), in that:

- 17          a.    Respondent failed to properly report on the wall type;
- 18          b.    Respondent failed to report on the roof/ceiling type;
- 19          c.    Respondent failed to report on the wall cladding type;
- 20          d.    Respondent failed to report on the wall flashing condition;
- 21          e.    Respondent failed to report on the plumbing supports and the insulation  
22 condition;
- 23          f.    Respondent failed to report on the electrical service ground condition;
- 24          g.    Respondent failed to properly report on the electrical compatibility;
- 25          h.    Respondent failed to properly report on the electrical service conductor condition;
- 26          i.    Respondent failed to properly report on the heating distribution system, because  
27 he grouped that reporting with other items, causing the condition to be unclear;

- 1 j. Respondent failed to properly report on the heating source, because he grouped  
2 that reporting with other items, causing the condition to be unclear;
- 3 k. Respondent failed to properly report on the cooling source, because he grouped  
4 that reporting with other items, causing the condition to be unclear;
- 5 l. Respondent failed to report on the vapor retarder; and
- 6 m. Respondent failed to report on the bathroom ventilation.
- 7 6. During his interview at the EAC Meeting, Respondent acknowledged that several  
8 of the required items from his Home Inspection Report were missing, because he declined to  
9 report on items that he did not find deficient in the home.

10 **CONCLUSIONS OF LAW**

- 11 1. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-101, *et seq.*
- 12 2. The conduct alleged in the Factual Allegations constitutes grounds for discipline  
13 pursuant to A.R.S. § 32-128(C)(4) and Arizona Administrative Code R4-30-301.01, in that  
14 Respondent failed to conduct an Arizona home inspection in accordance with the SOP.

15 **ORDER**

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

- 18 1. **LETTER OF REPRIMAND.** Respondent shall be issued a letter of reprimand.
- 19 2. **STAYED SUSPENSION AND PROBATION.** Respondent's certification as a  
20 home inspector, No. 54388, shall be suspended for six (6) months; however, the suspension is  
21 stayed for as long as Respondent remains in compliance with this Order. During the stay of  
22 suspension, Respondent's certification as a home inspector is placed on probation for six (6)  
23 months. If Respondent is non-compliant with any terms of this Order during the six (6) month's  
24 stayed suspension and probation period, the stay of the suspension shall be lifted and  
25 Respondent's certification as a home inspector shall be automatically suspended without a  
26 formal hearing, and remain suspended until Respondent is compliant with all terms of this Order.
- 27

1           **3. PEER REVIEW.** Within one hundred twenty (120) days of the effective date of  
2 this Consent Agreement, Respondent shall accompany a supervising Certified Home Inspector  
3 (“Peer Reviewer”) for two home inspections, and perform an inspection at the same time and  
4 location as the Peer Reviewer. Respondent shall write a home inspection report for each  
5 inspection, and submit the written report to the Peer Reviewer for review. The Respondent may  
6 select his Peer Reviewer who shall be in good standing with the Board and shall not have  
7 received any disciplinary action from the Board within the last three (3) years. The Peer  
8 Reviewer shall have been continuously certified by the Board as a Home Inspector for at least  
9 five (5) years and shall have conducted at least two hundred and fifty (250) Home Inspections in  
10 the State of Arizona. Respondent shall provide the Board with the name, certification number  
11 and contact information of the Peer Reviewer for approval prior to engaging in any peer reviews.  
12 The Respondent shall cause the Peer Reviewer to sign and have notarized an Affidavit and  
13 Agreement to Conduct Peer Review with the Board affirming that the Peer Reviewer has met the  
14 peer review selection criteria prior to conducting any peer reviews. At the conclusion of the peer  
15 reviewed home inspection, Respondent will submit his work product, specifically a home  
16 inspection report, to the Peer Reviewer who will review and make all corrections to the  
17 Respondent's home inspection report necessary for the report to meet the Standards of  
18 Professional Practice for Arizona Home Inspectors. Respondent shall not perform any home  
19 inspections or provide any client with a home inspection report for a fee, until all peer reviews  
20 are completed. Respondent shall ensure that the Peer Reviewer provides a written report directly  
21 to the Board after the peer reviewed home inspection, detailing any deficiencies in Respondent’s  
22 practice, and certifying that the deficiencies have been explained and corrected, in so far as the  
23 peer-reviewed home inspection is concerned. Respondent shall retain the Peer Reviewer at his  
24 own expense.

25           **4. OBEY ALL LAWS.** Respondent shall obey all federal, state and local laws, as  
26 well as, all rules governing the practice of home inspection in the State of Arizona. The Board  
27 shall consider any violation of this paragraph to be a separate violation of the rules and statues

1 governing the Board. The Board may also consider Respondent's non-compliance with this  
2 Order as a separate violation of A.R.S. § 32-150.

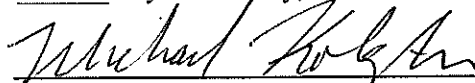
3 **5. RENEWAL OF REGISTRATION.** During the probationary period,  
4 Respondent shall timely renew his Arizona certification as a home inspector, and timely pay all  
5 required registration fees.

6 **6. EFFECTIVE DATE.** The effective date of this Consent Agreement and Order is  
7 the date it was last executed by the Respondent or the Board.


8 **7. COSTS OF COMPLIANCE.** Respondent shall pay all costs associated with  
9 complying with this Consent Agreement.

10 **8. NONCOMPLIANCE.** If Respondent violates this Order in any way or fails to  
11 fulfill the requirements of this Order, the Board, after giving notice and the opportunity to be  
12 heard, may also revoke, suspend or take other disciplinary actions against Respondent based on  
13 the violation of this Order.

14 **ACCEPTED AND ORDERED** this 30<sup>th</sup> day of January, 2024.

15   
16 Michael Kolejka, R.A., Chairman  
Arizona State Board of Technical Registration

17 Consent Agreement and Order, No. Case # HI22-022 accepted this 26 day of January,  
18 2024.

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20 \_\_\_\_\_  
Derek Otto, Respondent