

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

<p><b>In the Matter of:</b></p> <p><b>Arthur McKay Home Inspector Registration No. 38657</b></p> <p><b>Commercial &amp; Residential Inspections, LLC Firm Registration No. 12153</b></p> <p style="text-align: center;"><b>Respondents</b></p>	<p style="text-align: center;"><b>Case No. HI19-019</b></p> <p style="text-align: center;"><b>CONSENT AGREEMENT and ORDER OF DISCIPLINE</b></p>
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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, Arthur McKay ("Respondent"), holder of Registration No. 38657, and Commercial & Residential Inspections, LLC ("Respondent Firm"), holder of Firm Registration No. 12153, 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

1 administrative and/or judicial action concerning the matters set forth herein.

2 3. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

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

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

9 6. Respondent understands this Consent Agreement deals with Board case number  
10 HI19-019 involving allegations that Respondent engaged in conduct that would subject him to  
11 discipline under the Board's statutes and rules. The investigation into these allegations against  
12 Respondent shall be concluded upon the Board's adoption of this Consent Agreement.

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

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

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

25 10. This Consent Agreement is subject to the approval of the Board and is effective  
26 only when accepted by the Board and signed on behalf of the Board. If the Board does not accept  
27 this Consent Agreement, the Board retains its authority to hold a formal administrative hearing  
28 pursuant to A.R.S. § 32-128(E). In the event that the Board does not approve this Consent

1 Agreement, it is withdrawn and shall be of no evidentiary value and shall not be relied upon nor  
2 introduced in any action by any party, except that the parties agree that should the Board reject  
3 this Consent Agreement and this case proceeds to hearing, Respondent shall assert no claim that  
4 the Board was prejudiced by its review and discussion of this document or any records relating  
5 thereto.

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

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

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

### 13 FINDINGS OF FACT

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

16 2. Respondent is the holder of Arizona Home Inspector Registration No. 38657.

17 3. Respondent Firm is the holder of Firm Registration No. 12153, which expired on  
18 January 21, 2017.

19 4. On or about May 5, 2018, Respondent conducted a Home Inspection at 1205 N.  
20 Renee Ave., Gilbert, AZ under Respondent Firm which had expired on January 21, 2017.

21 5. On or about November 1, 2018, the Board received a complaint alleging that  
22 Respondent failed to conduct a home inspection in accordance with the Standards of Professional  
23 Practice by failing to report on the condition of walls, ceilings, floors, and foundation.

24 6. On or about November 13, 2018, Board received Respondent Firm's annual firm  
25 registration, which was renewed and expires on November 15, 2019.

26 7. On April 17, 2019, the Board's Enforcement Advisory Committee ("EAC")  
27 convened to review the complaint against Respondent. After reviewing the evidence and  
28 interviewing Respondent, the Committee determined that Respondent failed to conduct a home

1 inspection in accordance with the Standards of Professional Practice for Arizona Home  
2 Inspectors ("S.O.P.") and found that:

- 3 a. Respondent failed to report on the condition of the walls, ceilings, floors,  
4 and foundation as required in S.O.P. #4.1,
- 5 b. Respondent failed to report on the type and condition of columns as  
6 required in S.O.P. #4.1,
- 7 c. Respondent failed to report on the condition of supports and insulation as  
8 required in S.O.P. #7.1,
- 9 d. Respondent failed to report on functional flow as required in S.O.P. #7.1,
- 10 e. Respondent failed to report on the functional drainage as required in S.O.P.  
11 #7.1,
- 12 f. Respondent failed to report on the condition of compatibility as required in  
13 S.O.P. #8.1,
- 14 g. Respondent failed to report on the type of heating equipment as required in  
15 S.O.P. #9.2,
- 16 h. Respondent failed to report on the presence and condition of laundry  
17 ventilation as required in S.O.P. #12.1,
- 18 i. Respondent failed to report on the type of vapor retarder as required in  
19 S.O.P. #12.2.

20 8. During the EAC, the Committee also found that Respondent failed to report on the  
21 S.O.P. for swimming pools and spas as noted:

- 22 a. Respondent failed to report on the presence of cross connections as required  
23 in S.O.P. #3.1,
- 24 b. Respondent failed to report on the condition of electrical components as  
25 required in S.O.P. #3.1,
- 26 c. Respondent failed to report on the type and condition of heaters as required  
27 in S.O.P. #3.1,
- 28 d. Respondent failed to report on the presence and condition of automatic

- 1 safety controls as required in #3.1,
- 2 e. Respondent failed to report on the presence of entrapment prevention
- 3 components as required in #3.1,
- 4 f. Respondent failed to report on the type of cleaning systems as required in
- 5 S.O.P. #3.2,
- 6 g. Respondent failed to report on the type and condition of child safe barriers
- 7 as required in S.O.P. #3.2.

8 **CONCLUSIONS OF LAW**

- 9 1. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-101, et seq.
- 10 2. The conduct alleged in the Findings of Fact constitutes grounds for discipline
- 11 pursuant to A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-30-301.01, in that Respondent
- 12 failed to conduct a Home Inspection in accordance with the Standards of Professional Practice for
- 13 Arizona Home Inspectors.
- 14 3. The conduct alleged in the Findings of Fact constitutes grounds for discipline
- 15 pursuant to A.R.S. § 32-141, in that Respondent Firm conducted a Home Inspection without
- 16 Board registration.

17 **ORDER**

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

19 Order:

- 20 1. LETTER OF REPRIMAND. Respondent is hereby issued a Letter of Reprimand.
- 21 2. STAYED SUSPENSION AND PROBATION. Respondent's registration as a
- 22 Home Inspector, No. 38657, shall be suspended for 12 months; however, the suspension is stayed
- 23 for as long as Respondent remains in compliance with this Order. During the stay of suspension,
- 24 Respondent's registration as a Home Inspector is placed on probation for 12 months. If
- 25 Respondent is non-compliant with any terms of this Order during the 12 months stayed
- 26 suspension and probation period, the stay of the suspension shall be lifted and Respondent's
- 27 registration as a Professional Home Inspector shall be automatically suspended without a formal
- 28 hearing, and remain suspended until Respondent is compliant with all terms of this Order.

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

21           4.     **RESTITUTION.** Within thirty (30) days from the effective date of this Consent  
22 Agreement, Respondent shall pay restitution to the client, Roy Grinnell, in the amount of Three  
23 Hundred and Fifty Dollars (\$350.00) for the cost of the home inspection fee related to case  
24 HI19-019. Respondent shall provide proof of payment made to the client, such as a copy of the  
25 check, to the Board of Technical Registration showing payment was made to the client.

26           5.     **ADMINISTRATIVE PENALTY.** Within twelve (12) months from the effective  
27 date of this Consent Agreement, Respondent shall pay an administrative penalty of Four Hundred  
28 Dollars (\$400.00) by certified check or money order made payable to the State of Arizona Board

1 of Technical Registration. Respondent shall make quarterly payments of One Hundred Dollars  
2 (\$100.00).

3  
4 6. COST OF INVESTIGATION. Within twelve (12) months from the effective date  
5 of this Consent Agreement, Respondent shall pay the cost of investigation of this case to the  
6 Board in the amount of Seven Hundred and Sixty Two Dollars (\$762.00) by certified check or  
7 money order made payable to the State of Arizona Board of Technical Registration, according to  
8 the provisions of A.R.S. § 32-128(H). Respondent shall make monthly payments of Sixty-Three  
9 Dollars and Fifty Cents (\$63.50).

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

16 8. RENEWAL OF REGISTRATION. Respondent and Respondent Firm shall timely  
17 renew their Arizona registration as a Home Inspector and Home Inspection Firm, and timely pay  
18 all required registration fees.

19 9. EFFECTIVE DATE. The effective date of this Consent Agreement is the date the  
20 Respondent and Board sign the Consent Agreement. If the dates are different, the effective date is  
21 the later of the two dates.

22 10. COSTS OF COMPLIANCE. Respondent shall pay all costs associated with  
23 complying with this Consent Agreement.

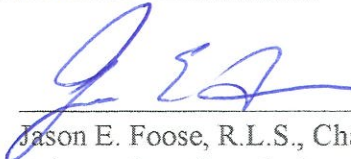
24 11. NONCOMPLIANCE. If Respondent violates this Order in any way or fails to  
25 fulfill the requirements of this Order, the Board, after giving notice and the opportunity to be  
26 heard, may revoke, suspend or take other disciplinary actions against the registration. The issue  
27 at such a hearing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

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ACCEPTED and ORDERED this 28<sup>TH</sup> day of MAY, 2019.



Jason E. Foose, R.L.S., Chairman  
Arizona State Board of  
Technical Registration

Consent Agreement and Order, No. HI19-019 accepted this 28<sup>TH</sup> day of MAY, 2019.



Arthur McKay, on behalf of himself and  
Commercial & Residential Inspections, LLC,  
Respondents

ORIGINAL filed this 30<sup>TH</sup> day of

MAY, 2019, with:

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

COPY of the foregoing mailed via Certified Mail

No. 9214 8901 9434 4600 0556 33 and

First Class mail this 30<sup>TH</sup> day of MAY, 2019, to:

Arthur McKay  
Commercial & Residential Inspections, LLC  
16435 N. 47th Place  
Phoenix, AZ 85032

By:  \_\_\_\_\_