

2001

Lucille Bearden, Dorothy Lucille Christensen
Bearden, Harold Dee Bearden v. Guy Gritton,
Wardley Corporation, Wardley Better Homes and
Gardens : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LUCILLE BEARDEN, DOROTHY LUCILLE
CHRISTENSEN BEARDEN AS TRUSTEE
OF THE LUCILLE BEARDEN FAMILY
TRUST and HAROLD DEE BEARDEN,

Plaintiffs-Appellees,

vs.

GUY GRITTON, WARDLEY
CORPORATION dba WARDLEY BETTER
HOMES & GARDENS,

Defendants-Appellants.

Appellate Case No. 20011036-CA

Priority No. 15

Oral Argument Requested

BRIEF OF APPELLEES

Appeal from a Judgment of the Third Judicial District Court, Salt Lake County
Honorable J. Dennis Frederick, District Judge

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Utah Court of Appeals

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Paulette Stagg
Clerk of the Court

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LIST OF PARTIES

In addition to the parties listed in the caption, the following were parties to the proceeding in the court below:

Charlene Burns-Nielson

Backman Stewart Title Services, Ltd.

Old Republic Surety Group

Pursuant to Utah R.App.P. 24(d), the following party designations are used in the brief:

Lucille Bearden, individually:	Mrs. Bearden
Harold Bearden, individually:	Mr. Bearden
Plaintiffs-Appellees, collectively:	Bearden
Guy Gritton:	Gritton
Wardley Corporation:	Wardley
Charlene Burns-Nielson, individually:	Ms. Burns-Nielson
Charlene Burns-Nielson, Backman Stewart Title Services, Ltd, Old Republic Surety Group, collectively:	Settling Defendants

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JURISDICTION OF THE UTAH COURT OF APPEALS

The Utah Court of Appeals has jurisdiction over this matter pursuant to *Utah Code Ann.* §§ 78-2a-3(2)(j) and 78-2-2(4).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Appellees Lucille Bearden, Dorothy Lucille Christensen Bearden as Trustee of the Lucille Bearden Family Trust, and Harold Dee Bearden ("Bearden") respond to Wardley Corporation's ("Wardley") characterization and statement of the issues as follows:

Issue #1: No objection.

Issue # 2: In addition to the principles cited by Wardley, Bearden notes that proof of insufficiency mandates a showing by the appellant "that *all* the evidence in favor of the verdict 'cannot support the verdict.'" *Brewer v. Denver & Rio Grande W. R.R.*, 2001 UT 77, ¶ 33, 31 P.3d 557 (Utah 2001) (emphasis added) (quoting *Hansen v. Stewart*, 761 P.2d 14, 18 (Utah 1988)). The disturbance of a jury verdict is unwarranted even if contradictions or conflicting inferences arise upon review of all the evidence. *Id.* at ¶ 36. It is the exclusive province of the jury to weigh evidence in reaching a verdict, and such should not be overturned "so long as some evidence and reasonable inferences support the jury's findings." *Child v. Gonda*, 972 P.d 425, 433 (Utah 1988).

Issue #3: No objection.

Issue #4: Special Verdict Forms are within the discretion of the trial court. *See Canyon Country Store v. Bracey*, 781 P.2d 414, 420 (Utah 1989). "In the absence of a showing of abuse of discretion, the trial court's actions will not be disturbed" on appeal.

Id. Both Wardley and Bearden proposed forms. (R. at 378 and 398.) The trial court "concluded the [plaintiff's] better states the questions." (R. 708 at 229.)

Issue #5: By failing to submit an adequate record, Wardley did not preserve this issue for review. *State v. Rawlings*, 829 P.2d 150 (Utah App. 1992). Wardley's trial counsel did not request the transcription of the entire trial record. The transcript submitted is inconclusive as to whether or not the jury's question was reviewed by counsel. In addition, Bearden's undersigned attorney's both remember the discussion of a jury question with counsel.

Should the Court choose to review this issue, "a court's communication with a jury will be considered reversible error only if the error is 'substantial or prejudicial . . . such that the result would have been different had it not taken place.'" *Board of Commissioners of the Utah State Bar v. Peterson*, 937 P.2d 1263, 1271 (Utah 1997) (quoting *Tjas v. Proctor*, 591 P.2d 438,441 (Utah 1979)).

Issue #6: No objection.

Issue #7: This issue is more appropriately stated as follows:

Was the trial court's award of attorney's fees in the amount of \$46,970.19 was reasonable?

Wardley's characterization of the attorney's fees issue implicates the two very different issues of entitlement and reasonability. Wardley failed to preserve the issue of entitlement. Its Memorandum in Opposition to Plaintiffs' Request for Attorney's Fees, Costs and Prejudgment Interest, (R. at 558-563.), Wardley argued only that Bearden's fees were

excessive and improperly categorized and, therefore, unreasonable. Wardley did not challenge Bearden's theory of contractual entitlement to fees. (R. at 483.)

"The standard of review on appeal of a trial court's award of attorney fee's is 'patent error or clear abuse of discretion.'" *Valcarce v. Fitzgerald*, 961 P.2d 305, 316 (Utah 1998) (quoting *City Consumer Serv., Inc. v. Peters*, 815 P.2d 234, 240 (Utah 1991)).

However, because Wardley's 57-page brief does not contain argument on the issue of attorney's fees, this Court need not review the award. Utah R.App.P. 24(a)(9) provides that the Appellant's brief "shall contain" argument on the issues presented, and Rule 24(c) prohibits Wardley from raising new arguments in its Reply Brief. Neither Bearden nor this Court should guess at Wardley's arguments. Wardley has waived any objection to the trial court's award of fees.

DETERMINATIVE AND/OR IMPORTANT STATUTES AND RULES

Bearden submits that there are no such statutes or rules.

STATEMENT OF THE CASE

I. NATURE OF THE CASE

Mrs. Bearden hired Wardley and its agent, Gritton, to help her sell her home. Both Wardley and Gritton owed Mrs. Bearden fiduciary duties of honesty, loyalty, full disclosure, and reasonable care. In his efforts to sell Mrs. Bearden's home, Gritton swindled her and stole the home. Wardley, rather than protect the interests of its client, looked the other way. This case presents the issue of whether Wardley is responsible for

the damages Bearden has incurred. At trial, the jury found for Bearden on every issue – including a modest award of punitive damages against Wardley. Wardley asks this Court to overturn the jury's conclusions and hold it completely harmless for Bearden's losses. This Court should sustain the results in the trial court below.

II. COURSE OF THE PROCEEDINGS

The Complaint in this matter was filed against Wardley and Gritton on November 30, 1998. (R. 1.) Having sought and received an Order Granting Leave to File an Amended Complaint, (R. 102.), Bearden amended its Complaint by adding defendants Charlene Burns-Nielson, Backman Stewart Title Services, Ltd., and Old Republic Surety Group ("Settling Defendants") on May 19, 1999. (R. 102.) Bearden then filed a Motion for Partial Summary Judgment against Gritton alone that was granted October 6, 1999. (R. 166 and 206.) The trial court issued a Writ of Execution evicting Gritton from the Property on October 25, 1999. (R. 208.)

Wardley filed a Motion for Summary Judgment on January 11, 2000. (R. 213.) That motion was denied for the reasons stated in Bearden's opposition, by Order dated July 12, 2000. (R. 305, 307.) Wardley's petition for interlocutory review of its summary judgment motion was opposed by Bearden and denied by the Utah Supreme Court on September 20, 2000. (R. 331.) The Settling Defendants settled with Bearden and were dismissed from the lawsuit by Order of the trial court on May 18, 2001. (R. 353.)

A two day jury trial presided over by the Honorable Judge Frederick was held on September 4-5, 2001. At the close of Bearden's case in chief, Wardley brought and lost a

Motion for Directed Verdict. (R. 708 at 171-74.) The jury returned a verdict against both Wardley and Gritton. (R. 471 and 475.) On every single issue presented, the jury found for Bearden. (R. 471 and 475.) Among other things, the jury found Gritton to have committed fraud and/or breached his fiduciary duty to Bearden; Wardley to have been liable for Gritton's acts; and Wardley to have breached its own fiduciary duty to Bearden. (R. 472.)

Bearden filed a Motion for Attorney's Fees and Costs and Prejudgment Interest on September 14, 2001. (R. 479.) The trial court granted that motion via a minute entry dated November 13, 2001. (R. 641.) On November 13, 2001, Judgment was entered against both Gritton and Wardley in the amount of \$75,000.00 in damages, \$1,107.00 in costs, \$46,970.19 in attorney's fees, and \$7,203.00 as prejudgment interest. (R. 643-644.) Pursuant to the jury's verdict (R. 475-76), the Judgment also included punitive damages of \$25,000.00 against Gritton and \$15,000.00 against Wardley. (R. 644.)

III. STATEMENT OF FACTS

January 3, 1997, Gritton and Wardley executed a contract making Gritton a Wardley real estate agent. (Tr. Ex. 2, R. 708 at 201.) He was heavily recruited to that position by Mr. Jeff Somers ("Somers"), a General Manager with Wardley. (R. 707 at 102, 708 at 220.) During that same time Gritton was in bankruptcy, involved in litigation with his former real estate broker, and subject to a tax lien recorded by the IRS. (R. 707 at 139-141.) Sommers interviewed Gritton but never asked about these circumstances. (R. 708 at 220.)

In June of 1997, Gritton approached Mrs. Bearden about the possibility of selling her home located at 550 Adams Avenue, Midvale, Utah (the "Property"). (R. 707 at 12-13.) Gritton and Bearden were friends. (Id. at 8-9.) Mrs. Bearden trusted Gritton and perceived Wardley to be a reputable real estate broker. (Id. at 9 and 13.) Consequently, she retained Wardley and Gritton to represent her in the sale of the Property by entering into a Listing Contract and Agency Disclosure (the "Listing Agreement") with Wardley. (Id. at 15-16.) The Listing Agreement states that as Mrs. Bearden's agent, Wardley would at all times serve Bearden in a manner consistent with the company's fiduciary duty of loyalty, full disclosure, confidentiality and reasonable care. (Tr. Ex. 4, Appellee's Addendum A.) Gritton signed the Listing Agreement on Wardley's behalf and as the broker's "authorized agent." (Id.)

The Property was placed on the market at a purchase price of \$95,000.00. (R. 707 at 23.) Shortly thereafter, Gritton asked Mrs. Bearden if she might consider selling the Property to him. (Id. at 19.) Mrs. Bearden agreed and the two of them worked out an arrangement by which Gritton would make nominal monthly payments of \$400.00 toward a reduced purchase price of \$89,000.00, followed by a balloon payment in five (5) years. (Id. at 19-21.) Only with the balloon payment would title to the home transfer to Gritton. (Id. at 21.) Gritton did not tell Mrs. Bearden about his bankruptcy, tax problems, or that he was being sued by his former broker. (R. 707 at 141-142.) He did not tell Mrs. Bearden that numerous lenders had refused to loan him the money necessary to purchase the Property outright. (R. 707 at 142.)

On July 11, 1997, Gritton visited Bearden's home in order to get her signature on certain documents relating to the sale of the Property. (Id. at 24, 26-27.) The documents Mrs. Bearden signed included a Real Estate Purchase Contract (the "REPC"). (Id. at 26-27, 118-119, Appellee's Addendum B.) According to the REPC, Gritton agreed, among other things, to make a monthly payment, make a balloon payment after five years, and to make a \$500.00 earnest money deposit prior to October 15, 1997. (Tr. Ex. 7.)

Unbeknownst to Mrs. Bearden, Gritton also added a warranty deed to the documents signed that day. (Tr. Ex. 9, R. 707 at 26-30.) The Deed transferred title of the Property from Mrs. Bearden to Gritton. (Tr. Ex. 9.) Gritton had not paid for the property at that point and Mrs. Bearden had no intention of transferring title until the Property's purchase price had been paid in full. (R. 707 at 27-28.)

Gritton did not tell Wardley about the Warranty Deed. (R. 708 at 196.) He did, however, place a copy of the REPC on file with Wardley. (R. 707 at 120.) Gritton also completed and filed an "Under Contract Information Sheet" (the "Information Sheet"). (Id. at 121.) The Information Sheet listed Mrs. Bearden as the seller and Gritton as both the seller's agent and the buyer. (Tr. Ex. 10, Appellee's Addendum C.) It listed the reduced purchase price, Bearden's address and telephone number, an earnest money amount of \$500.00, and Gritton's six percent (6%) commission. (Id.) Wardley received the Information Sheet and REPC from Gritton (R. 707 at 120-122.), set up a file on the transaction (Id. at 121; R. 708 at 212.), assigned the file a tracking number (R. 708 at 212.), and established a trust account for the transaction. (Id. at 215.) According to

Wardley policy, supervisors are supposed to review the documents placed in each transaction file. (Id. at 212.) When there is a problem, Wardley's practice is to notify the agent responsible. (Id. at 212.)

Wardley prohibits its agents from buying property from a client which the agent represents as a seller. (Id. at 215-216.) The policy insures that Wardley's agents act in the best interests of the company's clients. (Id. at 217-218.) Gritton was unaware of the policy. (R. 707 at 132-33.) On the Information Sheet and REPC, Gritton was listed as the seller's agent AND the individual buying the Property. (R. 708 at 214, 221-222.)

Wardley also requires its agents to deposit earnest money in a trust account within twenty-four hours of its receipt. (Id. at 222-224.) Gritton did not deposit the earnest money required in the REPC. (Tr. Ex. 12.) Wardley had every reason to know of Gritton's policy violations. (Id. at 223-224.) Wardley, however, did nothing. (Id. at 224-225.) It allowed the transaction to go forward and even sent Gritton a congratulatory note. (Tr. Ex. 11, Appellee's Addendum D.)

In the Fall of 1997, Gritton had the notarized deed recorded. (R. 707 at 137, 143.) He moved into the Property in October. (Id. at 32-33.) After making \$3,200.00 in total monthly payments, Gritton stopped making payments in May of 1998. (Id. at 32-33.) He stayed in the Property, however, until November 3, 1998, when he was judicially evicted. (Id. at 32-33, R. 208.)

Concerned by Gritton's failure to make payment, Bearden contacted an attorney. (Id. at 34, 74.) Bearden's attorney visited the County Recorder's office and there

discovered the fraudulent warranty deed. (Id. at 80.) Bearden's attorney also discovered two notices of default. (Id. at 80-81.) After fraudulently recording the warranty deed, Gritton had obtained and defaulted on two loans secured by the Property. (Id. at 81.) The loans were in foreclosure. (Id. at 37; 708 at 81.) Bearden had no choice but to borrow approximately \$60,000.00 to pay off the loans and save the Property from foreclosure. (R. 707 at 37.) Bearden filed suit to recover her home and losses.

SUMMARY OF ARGUMENT

The trial court properly submitted to the jury all the issues regarding Gritton and Wardley's liability and Bearden's resulting damages. Using a Special Verdict Form, the jury found for Bearden on every single question. Specifically, the jury found that Wardley was liable for Bearden's losses based 1) on its own breach of fiduciary duty, and 2) its vicarious liability for Gritton's conduct. The jury awarded Bearden \$75,000 as compensatory damages, and modest amounts against Gritton (\$25,000) and Wardley (\$15,000) as punitive damages. This Court should not disturb the jury's verdict.

Wardley's position on appeal is fatally defective because it cannot overcome the jury's finding on breach of fiduciary duty. Wardley focuses almost all of its attention on its vicarious liability for Gritton's conduct. However, even if this Court holds that Wardley is not vicariously liable--which it should not--Bearden should still prevail because Wardley is liable for her losses based on its breach of fiduciary duty.

The evidence supports the jury's finding that Wardley breached its fiduciary duty to Bearden. Although Wardley has failed to meet its burden of marshaling the evidence on

this issue, the facts recited by Bearden demonstrate that the jury's finding was appropriate. Wardley's fiduciary duty to Bearden arose from its contract with her, and as a matter of Utah law. Based on the documents in its files, Wardley knew that Gritton's purchase of Mrs. Bearden's home jeopardized Mrs. Bearden's interests. Indeed, Wardley had a policy prohibiting its agents from buying their own listings. Yet Wardley did nothing to protect Mrs. Bearden's interests. The jury properly concluded that Wardley breached its fiduciary duty to Bearden.

Although Wardley's arguments against vicarious liability are mooted by the jury's finding on breach of fiduciary duty, these arguments fail anyway. The Utah Supreme Court's decisions in *Phillips v. JCM Dev. Corp.*, 666 P.2d 876 (Utah 1983) and *Wardley Better Homes and Gardens v. Cannon*, 2002 UT 99, -- P.3d -- ("*Cannon II*") supports both the trial court's decision to submit the issue of vicarious liability to the jury, and the jury's verdict against Wardley. Wardley relies heavily on this Court's decision in *Wardley Better Homes and Gardens v. Cannon*, 2001 UT App. 48, 21 P.3d 235 ("*Cannon I*"), which has now been reversed by *Cannon II*. This Court should follow the precedent of *Phillips* and *Cannon II*.

The jury found that Wardley was liable for Gritton's conduct based on three separate theories: respondeat superior, subagency liability, and apparent authority. Although Bearden only needs an affirmative finding on one of these theories, the evidence supports the jury's finding on all three. Simply put, Gritton's efforts to sell Mrs. Bearden's home on behalf of Wardley--which necessarily include his proposed purchase of

the home and his fraudulent procurement of Mrs. Bearden's signature on the warranty deed--occurred within the scope of his employment and his agency. Gritton was acting with the apparent authority of Wardley, which expressly authorized Gritton to act as its agent, and provided him with the means he needed to effectuate his fraudulent and tortious acts.

The damages awarded by the jury are also supported by the evidence. As to compensatory damages, the three primary categories of Bearden's losses add up to at least \$75,000, the amount of the jury's award. Similarly, the jury's award of punitive damages against Wardley is also justified. Wardley is liable for punitive damages based on its own breach of fiduciary duty, a point that Wardley does not even acknowledge. The evidence also supports a finding of vicarious punitive damage liability against Wardley. In Gritton, Wardley was allowing a bankrupt, who had not paid his taxes and was being sued by his former broker, to help clients like Mrs. Bearden sell their homes. As to Mrs. Bearden, Gritton violated Wardley's policies by purchasing his own listings and failing to deposit his earnest money obligation with Wardley. He also defrauded Bearden. Wardley had either actual or constructive knowledge of all these facts, yet it allowed Gritton to continue to act as its agent. Punitive damages are appropriate.

None of the various other issues raised by Wardley--which include a challenge to a standard jury instruction, and unsupported allegations regarding a question by the jury--justify overturning the results below. Indeed, Wardley has failed to even present argument on Issue #7, Bearden's recovery of attorneys' fees.

In its attempts to find fault with the proceedings below, Wardley has lost sight of the central issue on this appeal: its own culpability. This is a case about a real estate agent and a real estate transaction gone bad. As a broker, Wardley's fiduciary responsibility was to protect the interests of its own client, Mrs. Bearden. It failed to do so in every respect. Wardley's attempts to wash its hands of the situation is both unavailing and unsettling. This Court should affirm the verdict of the jury, which found against Wardley on every count, and the Judgment of the trial court.

ARGUMENT

I. WARDLEY BREACHED ITS FIDUCIARY DUTY TO BEARDEN.

A. Wardley's Breach of Its Fiduciary Duty to Mrs. Bearden Is Dispositive of Most of the Issues on Appeal.

The most glaring deficiency with Wardley's position on appeal is that it cannot overcome the jury's finding that it--independent of Gritton's conduct--breached the fiduciary duty it owed to Mrs. Bearden. Wardley has not even raised the propriety of this finding as an issue; instead, it summarily contends that it did not breach this duty on two pages near the end of its Brief. (Appellant's Brief at 44-45.) However, Bearden addresses this issue first because it is largely dispositive of the remaining issues raised by Wardley.

The jury found that Wardley was liable for Bearden's losses based 1) on its own breach of fiduciary duty, and 2) its vicarious liability for Gritton's conduct. (Special Verdict Form, Questions #2 and #3; Appellant's Addendum E.) Wardley has focused almost all of its attention on vicarious liability. However, even if this Court were to hold

that Wardley is not vicariously liable for Gritton's conduct--which it should not--Bearden would still prevail because Wardley is liable for her damages based on its breach of fiduciary duty. As demonstrated immediately below, the Court should uphold the jury's finding on this issue, thus obviating most of the other issues raised by Wardley.

B. Wardley Has Failed to Marshal the Evidence.

The jury's determination that Wardley breached its fiduciary duty (Special Verdict Form, Question #3, Appellant's Addendum E) should not be set aside unless clearly erroneous, with due regard to the jury's ability to judge the credibility of the witnesses. *Consolidation Coal v. Div. of State Lands*, 886 P.2d 514, 519 (Utah 1994). Wardley bears the heavy burden of establishing that the jury's findings are not supported by substantial and competent evidence. *See id.* If there is any competent evidence to support the findings and conclusions of the trial court, such findings, and the conclusions rationally based thereon, will not be disturbed on appeal. *Highland Const. Co., v. Stevenson*, 636 P.2d 1034, 1036 (Utah 1981). To meet its burden Wardley must "first marshal all the evidence supporting the finding and then demonstrate that the evidence is legally insufficient to support the findings even in viewing it in the light most favorable to the court below." *Consolidation Coal*, 886 P.2d at 519; *see also Wilson Supply, Inc. v. Fradan Manufacturing Corp.*, 2002 UT 94, ¶21, -- P.3d --. Where the appellant fails to marshal, the appellate court need not consider the challenge to the sufficiency of the findings. *Tanner v. Carter*, 2001 UT 18, ¶ 17, 20 P.3d 332.

Wardley has attempted to satisfy its marshaling burden by setting forth facts on pages 16 through 26 of its Brief. This alone is insufficient. *See Fitzgerald v. Critchfield*, 744 P.2d 301, 304 (Utah App. 1987). The presentation of supporting evidence must also be found in the argument portion of the brief, and the appellant must demonstrate why such evidence is insufficient. *See id.*; *see also Roderick v. Ricks*, 2002 UT 84, ¶47, n. 11, -- P.3d --. Wardley has made no attempt in its argument to recite the facts that support the jury's finding of breach of fiduciary duty. Instead, Wardley has cited to selected portions of its own witness's testimony, and argued that there was no breach. (Appellant's Brief at 44-45.) This does not comply with the marshaling requirement. *See Wilson Supply*, 2002 UT 94, ¶ 26. It is not this Court's duty or burden to marshal for Wardley. *See Fitzgerald*, 744 P.2d at 304. Therefore, the Court should uphold the jury's finding that Wardley breached its fiduciary duty.

C. The Evidence Supports the Jury's Finding.

However, it is easy to demonstrate that the jury's finding of breach of fiduciary duty was supported by substantial and competent evidence. The following evidence, in conjunction with those facts listed in Wardley's Brief, pp. 20-23, ¶¶ 18-37, shows that the jury's finding was anything but clearly erroneous:

1. Section 6 of the Listing Agreement between Wardley and Mrs. Bearden provides that Wardley owed her a fiduciary duty of loyalty, full disclosure, confidentiality, and reasonable care. (Appellee's Addendum A.)
2. Sommers, the manager of the Wardley office where Gritton worked, testified that Wardley owed Mrs. Bearden a fiduciary duty of honesty, trustworthiness, loyalty, diligence, and accountability. (R. 708 at 206-09.)

3. Wardley tracked, set up a file, and supervised each of its client's transactions. Wardley required its agents to turn in paperwork on each transaction--including the contract documents themselves, and an "Information Sheet." (Id. at 212-215)

4. Gritton filled out and submitted an Information Sheet to Wardley. It shows Gritton as the Buyer and Mrs. Bearden as the seller. It states a price of \$89,000; an earnest money deposit of \$500.00; a closing date of October 15, 1997; and a transaction number of 97006551. It also states that the Wardley 53rd South Office will receive a 3% commission as the Listing Office, and a 3% commission as the selling office, with Gritton as the sales executive for both. (Tr. Ex. P-10, Appellee's Addendum C.)

5. Gritton also submitted the REPC executed by himself and Mrs. Bearden. The REPC shows that Gritton has delivered to Wardley the earnest money payment of \$500.00. It also lists Gritton as the buyer, as the agent for buyer, as the agent for the seller, and Wardley as both the listing and selling broker. (Tr. Ex. P-7, Appellee's Addendum B.)

6. Wardley prohibited its agents from buying property from clients they represented as sellers. (R. 708 at 212, 215-216.) Gritton was not aware of this policy. (Appellant's Brief at 21, ¶ 25.)

7. Nevertheless, Wardley was aware that Gritton was acting as both Wardley's agent representing Mrs. Bearden, and as the buyer of the Property. (Id. at 21, ¶ 24.)

8. Wardley never contacted Gritton about the fact that his transaction with Bearden violated company policy. Wardley never required Gritton to cease representing Bearden in the transaction; nor did it appoint a substitute agent for Mrs. Bearden. Wardley never even contacted Mrs. Bearden about the transaction. (Appellant's Brief at 21, ¶¶ 27-28.)

9. Sommers testified that Wardley had every reason to know that Gritton had violated its policy and that Bearden's interests were at risk. Sommers admitted that Wardley did nothing about it. (R. 708 at 223-24).

Thus, there was sufficient and competent evidence to demonstrate that Wardley owed a fiduciary duty to Mrs. Bearden and that it breached this duty. Wardley's statement that there was no "evidence of duty" (Appellant's Brief at 45) borders on the frivolous. It

is clear that Gritton's proposed purchase of the Property, while still acting as Mrs. Bearden's agent, violated Wardley's own policy. Wardley was aware of this fact, yet did nothing to stop or intervene in the transaction. The jury reasonably concluded that Wardley breached its fiduciary duty to Mrs. Bearden.

Wardley's contentions that it could not have foreseen Gritton's scheme and that it was also the victim of fraud, are simply unavailing in the face of the evidence cited above.¹ Wardley's argument regarding the standard of care is equally flimsy. Sommers described Wardley's fiduciary duty as one requiring honesty, trustworthiness, loyalty, diligence, and accountability, which is consistent with the language in the Listing Agreement itself. Further testimony regarding the standard of care was unnecessary. It was rational for the jury to conclude that, had Wardley prohibited Gritton from simultaneously buying Mrs. Bearden's Property and acting as her real estate agent, Mrs. Bearden would not have lost her home.

There is nothing in the record to support Wardley's argument that the jury may have answered the fiduciary duty question based on Gritton's actions--not Wardley's. The Court should read the jury's verdict harmoniously, and presume that it properly followed the instructions. *Moore v. Burton Lumber & Hardware*, 631 P.2d 865, 869 (Utah 1981). Question #3 asked the jury whether Wardley breached a fiduciary duty to Bearden.

¹ In light of *Cannon II*'s holding (*infra* at 20-21), imputing an agent's knowledge to the broker, even when the agent is engaged in tortious conduct, it could be argued that Wardley breached its fiduciary duty to Bearden as a matter of law.

Question #1 asked whether Gritton breached a fiduciary duty to Mrs. Bearden. That the jury differentiated between the conduct of Gritton and Wardley is apparent from the differing punitive damage amounts it awarded against them: \$25,000 against Gritton and \$15,000 against Wardley (Appellant's Addendum E.). Although Wardley may be confused about its fiduciary duty, the jury was not.

II. WARDLEY IS VICARIOUSLY LIABLE FOR GRITTON'S CONDUCT

A. The Court Correctly Denied Wardley's Motion for Summary Judgment.

1. Breach of Fiduciary Duty.

In arguing that the trial court should have granted its motion for summary judgment, Wardley has focused on its vicarious liability. Again, it has ignored its independent fiduciary duty to Mrs. Bearden. (Appellants' Brief at 27-30.) Bearden raised the issue of Wardley's fiduciary duty in her Memorandum in Opposition to Motion for Summary Judgment. (R. 271.) Pursuant to *Utah R.Civ.P* 56(e), Bearden submitted two affidavits demonstrating that genuine issues of material fact existed. (R. 184-200, 284-89.) Viewing the facts in the light most favorable to Bearden, the trial court correctly held that summary judgment was inappropriate on this claim. Of course, at trial the jury found that Wardley breached its fiduciary duty to Wardley. Because Wardley has failed to challenge the Court's denial of summary judgment on this ground, its argument that summary judgment should have been granted on the issue of vicarious liability is ineffective.

2. *Phillips* Is Still Good Law.

Wardley's primary argument against the Court's denial of summary judgment is that "*Phillips* is no longer good law." This statement was incorrect when Wardley made it, and it is even more inaccurate now. *Phillips v. JCM Dev. Corp.*, 666 P.2d 876 (Utah 1983), in which the Supreme Court upheld the trial court's determination that a real estate broker was liable for its agent's tortious conduct pursuant to *respondeat superior*, has never been overturned or questioned by the high court. Since the filing of Wardley's brief, the Supreme Court has overturned the Court of Appeals decision in *Wardley Better Homes and Gardens v. Cannon*, 2001 UT App 48, 21 P.3d 235 ("*Cannon I*"), on which Wardley relies. (Appellant's Brief at 14-16.) In *Wardley Better Homes and Gardens v. Cannon*, 2002 UT 99, ¶ 25, -- P.3d -- ("*Cannon II*"), the Supreme Court expressly followed *Phillips*:

Wardley, nevertheless, contends that Hansen's knowledge cannot be imputed to it because Hansen [Wardley's agent] was an independent contractor and not an employee. This argument fails because he have clearly held that "[t]he relationship between a real estate broker and its agents is that of employer and employee." *White v. Fox*, 665 P.2d 1297, 1301 (Utah 1983), *see also Phillips v. JCM Dev. Corp.*, 666 P.2d 876, 881 (Utah 1983).

3. Wardley's Argument Regarding Changes to Utah's Statutory Scheme Is Not Properly Before the Court.

Wardley also attacks *Phillips* on the theory that because there were changes to Utah's statutory scheme governing real estate brokers and agents in 1985--two years after the *Phillips* decision--*Phillips* is no longer applicable. (Appellant's Brief at 27-29.)

However, Wardley has failed to preserve this issue for appeal. Issues raised for the first time on appeal will generally not be considered. *Certified Surety Group, Ltd. v. UT Inc.*, 960 P.2d 904, 906 n. 3 (Utah 1998). The parties addressed the applicability of *Phillips* in conjunction with Wardley's Motion for Summary Judgment; yet Wardley made no mention of any changes in Utah's real estate statutes in its attempt to distinguish *Phillips*. (R. 296-97.) Wardley is precluded from raising this argument now.²

Nevertheless, in *Cannon II*, 2002 UT 99, ¶ 25, the Supreme Court reiterated that the relationship between real estate agent and broker is still that of employer and employee. Thus, under the new statutory scheme, the trial court was correct to view Wardley's liability for Gritton's conduct pursuant to respondeat principles.

B. Pursuant to *Phillips* and *Cannon II*, the Question of Wardley's Liability for Gritton's Conduct Was Properly Submitted to the Jury.

Phillips, 666 P.2d 876 (Utah 1983) should guide this Court's decision. There, the seller engaged a real estate agent, who was acting on behalf of a broker, to sell certain properties. The seller entered into a contract with a buyer. The agent, who had a separate and undisclosed business relationship with the buyer, misrepresented the buyer's financial stability to the seller, and then convinced the seller to accept an unsecured note from the buyer--rather than cash--at the closing. Subsequently, the buyer defaulted on the note and the buyer's creditors pursued the seller, who was forced to file bankruptcy. *Phillips*, 666

² The trial court's failure to consider changes to the statutory scheme is not an obvious error, nor is it necessary for this Court to consider such issues in order to render a proper decision. See *Kaiserman Assoc. V. Francis Town*, 977 P.2d 462, 463-64 (Utah 1998).

P.2d at 879-80. After a trial, the court found that both the agent and his broker had breached their fiduciary duties to the seller. *Id.* at 880.

On appeal, the Supreme Court held that the agent was an "employee" of the broker, which was therefore responsible for the tortious conduct of the agent within the course and scope of employment. The Supreme Court held that the broker was also liable based on its own relationship with the seller. In this context, the seller was the principal and the broker was its agent; the broker's agent was a subagent. Quoting from the *Restatement (Second) of Agency*, § 406 (1958), the Court observed that "an agent is responsible to the principal for the conduct of a subservant or other subagent with reference to the principal's affairs entrusted to the subagent, as the agent is for his own conduct." *Id.* at 881-82. Although the broker argued that it was not responsible for the agent's tortious conduct, the Supreme Court disagreed. It held that the evidence at trial was sufficient to find that the agent acted within the scope of his employment. *Id.*

In *Cannon II*, 2002 UT 99, ¶ 2, – P.3d –, a Wardley agent defrauded a seller by altering the duration of four listing agreements between Wardley and the seller. Subsequently the seller, unaware of the doctored agreements, sold their property through another broker. The sale occurred during the term of the altered listing agreements, and Wardley filed a lawsuit for payment of its commission. *Cannon II*, 2002 UT 99, ¶¶ 3-6. After a bench trial, the court ruled against Wardley on all claims and held that the Wardley agent had defrauded the sellers. However, the trial court denied the seller's motion for attorneys' fees under *Utah Code Ann.* § 78-27-56 because Wardley itself did not have the

requisite level of knowledge, with regard to the agent's fraud, to sustain a finding of bad faith. *Id.* at ¶¶ 6-8. The Court of Appeals affirmed the trial court's holding on the issue of attorneys' fees. *Cannon I*, 2001 UT App. 48, ¶¶ 7-12, 21 P.3d 235.

The Supreme Court reversed. It reaffirmed that in Utah "the knowledge of [an] agent concerning the business which he is transacting for his principal is to be imputed to his principal." *Cannon II*, 2002 UT 99, at ¶ 16.

A principal is affected with constructive knowledge, regardless of his actual knowledge, of all material facts of which his agent receives notice or acquires knowledge while acting in the course of his employment and within the scope of his authority, although the agent does not in fact inform his principal thereof.

Id., citing 3 C.J.S. Agency § 432 (1973). The Supreme Court held that vicarious liability and imputation of knowledge are two separate legal questions. *Id.* at ¶ 17. With respect to the former, the Court held that the agent was acting within the scope of his employment with Wardley when he fraudulently obtained the listing agreements. "[A]n agent does not cease to act within the course of his employment merely because he engages in a fraud upon a third person; it is of no consequence that he is deceiving the principal along with the third person." *Id.* at ¶¶ 26-27.

In light of *Phillips* and *Cannon II*, it was proper for the trial court to submit Bearden's claims of vicarious liability to the jury. Wardley's assertion that "reasonable minds could not disagree with the conclusion that Gritton's actions were not within the scope of employment" stretches credulity. The cases relied on by Wardley--*Jackson v. Righter*, 891 P.2d 1387 (Utah 1995); *J.H. and D.H. v. West Valley City*, 840 P.2d 115

(Utah 1992); *Birkner v. Salt Lake County*, 771 P.2d 1053 (Utah 1989)—all concern sexual misconduct of an employee. However, there was no sexual misconduct in this case. Indeed, it would have been reversible error for the trial court to grant either Wardley's Motion for Summary Judgment, or its Motion for Directed Verdict.

C. The Jury's Findings of Vicarious Liability Against Wardley Are All Supported by The Evidence.

On every basis provided in the Special Verdict Form (Appellant's Addendum E), the jury held Wardley liable for Gritton's Conduct: respondeat superior, subagency liability, and apparent authority. Any one of these theories suffices to establish vicarious liability against Wardley. However, sufficient evidence exists to support the jury's findings on all of them.

1. Respondeat Superior

As required by the first prong of Utah's respondeat superior inquiry, Gritton's conduct was of the general kind that he was employed to perform. Although Wardley focuses on Gritton's role as the purchaser of the Property,³ it is undisputed that Gritton was hired by Wardley to sell homes for its clients. In his dealings with Mrs. Bearden that was what he was doing. Gritton had Mrs. Bearden sign Wardley's Listing Agreement and he put a Wardley sign on the Property. With respect to Mrs. Bearden's sale of the Property to him, Gritton used Wardley forms, he listed himself as both the buyer and the seller's

³ Because Wardley has only argued the facts from the record that support its position (Appellant's Brief at 35), it has not met its burden of marshaling the evidence.

agent, he listed Wardley as the broker for the buyer and the seller, he identified Wardley as getting a 6% commission on the sale, and he turned in the Wardley forms to his supervisors. The evidence shows that Gritton's conduct was of the general kind he was employed to perform.

With respect to the third respondeat superior prong,⁴ there was sufficient evidence to demonstrate that Gritton's conduct was motivated by Wardley's interest. The jury found Wardley responsible for Gritton's "fraud and/or breach of fiduciary duty." (Special Verdict Form, Question #1, emphasis added.) Irrespective of his fraudulent procurement of the warranty deed, Gritton breached his fiduciary duties of loyalty, full disclosure, honesty and reasonable care when he convinced Mrs. Bearden to sell the Property to him on the terms set forth in the REPC and Addendum 1. (Appellant's Brief at 19-20, 24-25.) Given Gritton's financial situation at the time (*infra* at pp. 32-33), and the inherent conflict between his interests and Mrs. Bearden's, the jury could reasonably conclude that the sale itself constituted a breach of his fiduciary duty towards her.

Gritton's conduct demonstrated that he intended to benefit Wardley through the sale of the Property.⁵ Gritton abided by Wardley's procedures in filling out and turning in

⁴ Wardley concedes that there was sufficient evidence to satisfy the second criteria: whether the conduct occurred within the hours of the employee's work and ordinary spatial boundaries of the employment. (Appellant's Brief at 32, note 5.)

⁵ Wardley's references to Gritton's testimony regarding his motivation are ineffective. The jury was free to disbelieve the statements of Gritton, and—based on their verdict—they probably did.

paperwork on the sale. At trial, he admitted that he was acting as a Wardley agent and doing what he was supposed to do. (R. 707 at 125.) The Information Sheet showed that Wardley was entitled to a commission, and Gritton admitted that Wardley would have benefitted financially if the sale had gone through. (R. 707 at 127-28.) This evidence all supports the jury's verdict.⁶

Wardley attempts to avoid liability by separating Gritton's conduct into distinct episodes—the preparation of the warranty deed, its recordation, then obtaining the loans. However, Gritton's conduct must be considered as a whole. Allowing employers to segregate portions of related on-the-job conduct (except in instances of sexual misconduct) would eviscerate the doctrine of respondeat superior. That some of Gritton's acts were improper methods of making a sale or constituted fraud, does not relieve Wardley of liability for the totality of his conduct. *Cannon II*, 2000 UT 99 at ¶ 27.

Moreover, Wardley's approach ignores the fact that Mrs. Bearden was damaged the moment she unknowingly signed the warranty deed on July 11, 2002. At that point, the Property was no longer hers. Gritton both breached his fiduciary duty and defrauded Mrs. Bearden on July 11, 1997, when he had her sign the REPC and the warranty deed. The

⁶ Instruction No. 41, "Scope of Employment-Deviation by Employee" (R. 465), to which Wardley has not objected, specifically instructed the jury that Gritton's acts would not be attributable to Wardley the acts were "for his own purposes or for purposes other than for Wardley's business, which had no relation to Wardley's business." The Court should presume that the jury understood Instruction No. 41, and correctly applied it to the evidence.

evidence supports the jury's conclusion that this conduct--and what followed--occurred within the scope of Gritton's employment.

B. Subagency Liability

Wardley concedes that it is liable to Mrs. Bearden, its principal, for the acts of its agent, Gritton, if Gritton was acting within the scope of his employment or in the course of carrying out his express duties. (Appellant's Brief at 43.) *See also Phillips*, 666 P.2d at 881-83. For the same reasons as those listed above, Gritton's conduct was within the scope of his duties as Wardley's agent.

However, Wardley argues that Instruction No. 23 (R. 446) was improper and confused the jury on the agency issue. This argument goes too far. Although one instruction may not be fully accurate, where the instructions--taken as a whole--fairly instruct the jury on the law, they should be affirmed. *See State v. Robertson*, 932 P.2d 1219, 1231 (Utah 1997). The second paragraph of Instruction No. 23, Utah's standard instruction regarding a corporation's acts, is appropriately limited: "Any act or omission of an officer, employee, or agent of a corporation, in the performance of the duties or within the scope of the authority of the officer, employee, or agent, is the act or omission of the corporation." (Emphasis added.) Wardley fails to mention this paragraph in its Brief, nor does it observe that this language is in accord with Instructions Nos. 36 and 40, to which it

has not objected. In the context of all the instructions,⁷ Instruction No. 23 is not confusing and stands in accord with Utah law.⁸

Wardley also claims Instruction No. 23 is improper because Gritton was not the type of corporate agent that could generally bind Wardley in the course of its business. Yet Gritton bound Wardley by executing the Listing Agreement on its behalf. This contract, upon which this action is based, established Wardley as Mrs. Bearden's agent and imposed fiduciary duties. Indeed, it is this contract, signed by Gritton, that entitled Wardley to a commission on the sale of Bearden's Property. Gritton's role as Wardley's subagent was sufficiently broad so as to encompass the sale of the Property, in all of its aspects.

C. Apparent Authority

"An agent's apparent . . . authority flows only from the acts and conduct of the principal." *Zions First Natn'l Bank v. Clark Clinic Corp.*, 762 P.2d 1090, 1095 (Utah 1988). In other words, what did the principal know of and/or acquiesce to in the conduct of its agent. *Id.* at 1095. The evidence marshaled by Wardley--along with the facts

⁷ Wardley lists a number of instructions (Appellant's Brief at 42-43), related to misrepresentation and the elements thereof, that it claims confused its conduct with Gritton's. However, it is obvious that these instructions applied to Gritton's conduct. Bearden never alleged that anyone other than Gritton committed fraud. Nobody from Wardley, other than Gritton, ever even contacted Bearden.

⁸ This conclusion is bolstered by *Cannon II*, 2002 UT 99, at ¶ 22, where the Supreme Court held that Wardley's knowledge--just like its acts--must be based on the knowledge of its "officers and agents."

identified below--demonstrate that there was sufficient evidence to find that "Gritton's acts ... were done with the apparent authority of Wardley." (Special Verdict Form, Question #3; Appellant's Addendum E.)

Wardley's own conduct establishes Gritton's apparent authority. Wardley hired Gritton as an agent and, in the parties' Sales Executive Agreements (Tr. Exs., P-2, P-3) authorized him to act and make promises in order to sell real estate. Wardley provided Gritton with office space and support, business cards with the Wardley name, lawn signs with the Wardley name, forms with the Wardley name, and many other items to help him sell real estate for Wardley clients. (See Appellants Brief pp. 17-18.)⁹ Further, the Listing Agreement appoints Gritton as Wardley's agent, authorized to assist Mrs. Bearden in the sale of the Property. This evidence is enough to sustain the jury's verdict of apparent authority.

Wardley's excuse that Mrs. Bearden relied on Gritton's representations--not its own--proves too much. As the jury implicitly found, Wardley breached its fiduciary duty to Bearden when it failed to communicate with her. Wardley cannot use its own improper silence as a shield against Bearden's apparent authority claim. Wardley's failure to advise Mrs. Bearden on her sale to Gritton demonstrates its acquiescence in Gritton's conduct.

⁹ By themselves, these items may be insufficient to establish apparent authority. See e.g. *Bodell Construction Co. v. Stewart Title Guaranty Co.*, 945 P.2d 119, 124 (Utah Ct. App. 1997). Coupled with the Sales Executive Agreements, Listing Agreement, Wardley's tracking file and trust account, however, they support the jury's finding.

Wardley's claim that it was unaware of several crucial facts also falls short. Pursuant to *Cannon II*, 2002 UT 99 at ¶¶ 16-24, Gritton's knowledge regarding his transaction with Mrs. Bearden and the fraudulent Warranty Deed is imputed to Wardley. That Gritton's methods were improper is of no consequence with respect to imputation of knowledge. *Cannon II*, 2002 UT 99 at ¶ 26.

III. THE JURY'S DAMAGE AWARD IS SUPPORTED BY THE EVIDENCE.

A. Compensatory Damages

A reviewing court will defer to the jury's damage award unless 1) the jury disregarded competent evidence; or 2) the award is so excessive beyond rational justification as to indicate the effect of improper factors in the determination; or 3) that it clearly appears that the award was rendered under a misunderstanding. *Bennion v. LeGrand Johnson Const. Co.*, 701 P.2d 1078, 1084 (Utah 1985). Wardley attacks the jury's award on a number of grounds; all of them fail.

The \$75,000 awarded by the jury as compensatory damages is supported by the evidence. Wardley does not dispute that Bearden was damaged in an amount of \$60,000 (\$59,621.15 to be exact) based on the loans Mr. Bearden took out to pay off the encumbrances Gritton had placed against the Property. Also, Mr. Bearden testified that he paid \$8,000 to \$10,000 in interest on these loans before he paid them off. Although Wardley mentions this evidence, it inexplicably fails to include it in the damage

calculation. (Appellant's Brief at 52-53.)¹⁰ Adding this factor to the amount of the loans themselves brings the total damage amount to \$68,000 to \$70,000.

The jury's damage award also included lost rental income. As Wardley notes, just prior to her transaction with Gritton, Mrs. Bearden was renting the home for \$600 to \$625 per month; after Gritton was evicted, she fixed-up the home and rented it for \$850 to \$900 per month. While he was living there Gritton paid Mrs. Bearden a total of \$3,200. From the time Gritton occupied the home in October 1997 through the time Bearden re-rented it in mid-January 1998 (R.707 at pp. 32, 38), fifteen and one-half months elapsed. Using the lowest rental rate of \$600 per month, Mrs. Bearden's lost rental income was \$6,100--bringing the total damage award to \$74,100 to \$76,100. If the highest rate of \$900 per month is used, the lost income was \$10,750--bringing the total damage award to \$78,750 to \$80,750. The jury's award of \$75,000 is not excessive.

In challenging the damage amount, Wardley criticizes Bearden's prior submission regarding prejudgment interest. (Appellant's Brief at 54-55.) This tactic should fail. The question is whether the evidence presented at trial supports the damage award--not the

¹⁰ Wardley's statement that there was no evidence of the rate of interest (Appellant's Brief at 55) is false. Mr. Bearden testified that he paid a varying rate of interest, which was two percent above prime. He stated that the rate was around eight percent to begin with, and rose to around ten and one-half percent. (R. 707 at p. 98).

propriety of Bearden's interpretation of the damage award as it related to prejudgment interest.¹¹

Wardley also contends that there is no basis to hold it vicariously liable for Gritton's unpaid rent. However, the Court should presume that the jury held Wardley directly responsible for Bearden's lost rental income. It was reasonable for the jury to conclude that if Wardley had not breached its fiduciary duty to Mrs. Bearden, the transaction with Gritton would not have occurred and she would have been able to earn rental income on the Property. Wardley is liable for that loss.

Finally, Wardley posits that the award may represent a double recovery for Bearden, based on her prior settlement with the Settling Defendants. The case against these parties was dismissed prior to trial. (R. 353-55.) Indeed, the jury was given an instruction on the Settling Defendants (Instruction No. 18, R. 441), to which Wardley has not objected. Although Wardley argues that Ms. Burns-Nielson's role should have been included in the Special Verdict Form, it has not specifically objected to the Special Verdict Form on this ground, and it is too late to do so now. Question 7 to the Special Verdict Form asked the jurors to state the amount of damages suffered by Bearden "as a proximate result of the Defendants' conduct." (Emphasis added.) In posing this question, the trial

¹¹ Bearden concedes that its calculations regarding prejudgment interest are somewhat confusing. However, Wardley did not object to Bearden's calculation of prejudgment interest below, and it has not appealed the trial court's award of prejudgment interest. Wardley's focus on Bearden's prejudgment interest request is an improper attempt to distract the Court.

court did not abuse its discretion. At that point, none of the Settling Defendants was a "Defendant," and this Court should presume that the jury properly attributed its damage award to the conduct of Gritton and Wardley.¹²

In any event, there is no danger of a double recovery. Bearden's agreement with the Settling Defendants consisted of an initial payment plus a note to be paid over time. Bearden has deducted the recovery from the amounts owed on the Judgment.¹³ To the extent that Wardley (or Gritton) believes that Bearden is recovering more than it is entitled to, it can object pursuant to *Utah R.Civ.P* 69.

B. Punitive Damages

In contending that Bearden is not entitled to any punitive damages against it based on Gritton's conduct, Wardley is wrong twice.¹⁴ First, Wardley overlooks the fact that

¹² Wardley called Ms. Burns-Nielson as a witness at trial. However, it did not ask her any questions about the settlement or how much Bearden had been paid. (R. 708 at pp. 176-80.) If Wardley had wanted the jury to take the actual settlement amount into account, it should have elicited such testimony.

¹³ The deduction is apparent in Bearden's Application for Writ of Garnishment ("Application") against Wardley. (R. 663-64). Bearden listed the amount owed on the Judgment against Wardley as \$140,282.19. This reflects a discount in the amount of the initial settlement payment. (The total amount owed by Wardley--with reference to the Judgment itself--is \$145,282.19. (R. 643-44.)) Bearden notes that the note has been paid off; therefore an additional deduction is warranted.

¹⁴ Notably, Wardley does not argue that the amount of the punitive damage award against it is excessive. Wardley only addresses punitive damages in the context of whether it can be held liable for Gritton's conduct. (Appellant's Brief at 45-48.) Thus, Wardley has waived the argument that the amount of the punitive damage award is excessive.

punitive damages were warranted based on its own conduct. Second, an award of vicarious punitive damages against Wardley is supported by the evidence.

Instruction No. 44 (R. 468), to which Wardley has not objected, properly advised the jury about punitive damages against either Gritton or Wardley, based on their own conduct. The jury's determination that Wardley breached the independent fiduciary duty it owed to Mrs. Bearden is clearly supported by the evidence. This same evidence also supports a finding that Wardley's conduct manifested a "reckless indifference" to the rights of Mrs. Bearden.

A finding of vicarious punitive damage liability is also supported by the evidence. Wardley has correctly identified the applicable standard, which appears in Instruction No. 45. (R. 469) Wardley contends that "there is no evidence that anyone associated with Wardley, other than Gritton, acted in a culpable manner." (Appellant's Brief at 47.) Viewed in the light most favorable to the jury's verdict, this statement is simply incorrect. The following evidence--which has not been marshaled or explained by Wardley--supports a finding that Gritton was unfit, and that Wardley was reckless in retaining him:

1. When Gritton hired on with Wardley, and at the time of the transaction with Mrs. Bearden, Gritton was in personal bankruptcy. (R. 707 at p. 138-40.)
2. There was an outstanding federal tax lien against Gritton's home. (Id. at 140.)
3. Gritton was also being sued by his former real estate broker, which eventually obtained a judgment against him. (Id. at p. 141.)
4. Sommers, who recruited Gritton, never asked him about the aforementioned financial circumstances, and Gritton never told him. (R. 707 at p. 140; R. 708 at p. 220.)

5. Gritton's credit was so bad that he was unable to get financing to purchase the home, which is why he proposed that Mrs. Bearden finance it herself. (R. 707 at p. 143.)

6. The Information Sheet, which Gritton turned into Wardley, showed that Gritton had no financing from a lender. (Appellee's Addendum C.) The REPC which Gritton also turned into Wardley did not identify a method of payment. (Appellee's Addendum B.)

7. The REPC required an earnest money deposit of \$500, and indicated that such payment had been received by Wardley. (Appellee's Addendum B.)

8. However, Gritton never deposited the earnest money with Wardley, which was required by Wardley's policies. (R. 707 at pp. 118, R. 708 at pp. 222-23.)

9. In August, 1997, Wardley's own internal documents showed that Gritton had not deposited the earnest money. (R. 708 at p. 222; Tr. Ex. P-12.)

10. Wardley personnel, such as Sommers himself, are supposed to review all the documents turned into Wardley regarding any transaction. (R. 708 at p. 212.)

Based on this evidence--which does not even include the fact of Gritton's fraud upon Mrs. Bearden--a jury could reasonably conclude that Gritton was unfit as an agent and that Wardley was reckless in retaining him. Wardley is charged with knowledge of all of these facts, and yet it did nothing. It did not. Instead it allowed Wardley to continue to operate as an agent, and even congratulated him on the sale of the Bearden Property. (Appellant's Brief at 22, ¶ 36, Appellee's Addendum D.) In arguing that nobody at Wardley was culpable, Wardley has impermissibly ignored the evidence--just as its own personnel recklessly ignored the rights of Mrs. Bearden.

IV. REMAINING ISSUES

A. The Trial Court Did Not Abuse Its Discretion by Giving the Special Verdict Form Submitted by Bearden.

"It lies within the broad discretion of the trial court to determine whether special interrogatories are to be used and, if so, the content thereof. In the absence of a showing of an abuse of discretion, the trial court's actions will not be disturbed." *E.A. Strout Western Realty v. W.C. Foy & Sons*, 665 P.2d 1320, 1324 (Utah 1983); *see also Canyon Country Store v. Bracey*, 781 P.2d 414, 420 (Utah 1989). At trial, Judge Frederick chose to give the Special Verdict Form (Appellant's Addendum E) submitted by Gritton. Wardley complains that Question #1 is "significantly wrong" because it instructs the jury to determine fraud by a preponderance of the evidence. Wardley's argument fails for a host of reasons, and it has failed to meet the high burden of showing abuse of discretion.

First, Wardley states that "there is no dispute that Gritton fraudulently had Bearden sign the Warranty Deed." (Appellant's Brief at 23.) Given this admission, Wardley's objection to the burden of proof on the question of fraud is puzzling.

Second, Question #1 asks whether Gritton "defrauded Mrs. Bearden and/or breached a fiduciary duty toward her." Again, the jury found that Wardley independently breached its fiduciary duty to Mrs. Bearden in Question #3, and the damages it awarded were supported by the evidence. At worst, any problems with Question #1 are harmless error.

Third, as Instructions Nos. 26 and 27 made clear,¹⁵ the jury could find fraud in either of two ways: 1) if Gritton made a fraudulent omission in the context of a confidential/ fiduciary relationship with Mrs. Bearden; or 2) if Gritton's conduct satisfied the seven well-established elements of fraud. In the latter event, the jury's finding had to be determined by clear and convincing evidence, which was properly defined in Instruction No. 15. A jury does not need to state directly how it resolved every important issue; nor is a party entitled to a special verdict on "each of the multi-faceted, multitudinous issues essential to the resolution of a given case." *Canyon Country Store*, 781 P.2d at 420. Under these circumstances, the form of Question #1 was appropriate.

Fourth, even if the jury did apply the wrong standard of proof on the issue of fraud, this error was not prejudicial to Wardley. The jury found that Gritton defrauded and/or breached his fiduciary duty. If Gritton defrauded Mrs. Bearden he necessarily breached his fiduciary duty, which only requires a preponderance of the evidence showing. Under either scenario, Gritton's conduct gave rise to the question of whether Wardley was responsible for Gritton's actions.

Fifth, Wardley's contention that Question #1 confused the jury is pure speculation. Although the jury presented a question to the trial court, it concerned Question #2--not Question #1. This Court should assume that the jury, as it was properly instructed, applied

¹⁵ Wardley has not objected to Instructions Nos. 26, or 27

the correct standard of proof in finding that Gritton either breached his fiduciary duty and/or defrauded Bearden.

B. The Court's Treatment of the Jury's Question Was Not Error.

Wardley's contention that the trial court mishandled the jury's question is ineffective because it has failed to provide this Court with an adequate record on the issue. In the absence of an adequate record, the appellate court cannot address the issue raised and will presume the correctness of the disposition made by the trial court. *State v. Rawlings*, 829 P.2d 150 (Utah App. 1992). Here, Wardley did not request that the entire trial record be transcribed. (R. 659) The transcript ends with the oral argument on the Special Verdict Form and specifically states "further proceedings were recorded but not transcribed." (R. 708 at 230.) Any conversations between the court and counsel with respect to the jury's question would have occurred after the end of the transcript. Under this circumstance, the Court should presume that the trial court acted in accordance with *Utah R.Civ.P.* 47(n).

Wardley's allegation that its trial counsel was unaware that the jury had submitted a question (Appellant's Brief at 4) is not part of the record on appeal. The record is confined to those items listed in *Utah R.App.P.* 11(b)(1)(A)-(F). Wardley has not supplemented the transcript, nor has it submitted an affidavit from trial counsel. It is too late to do so now. The unsworn allegations of Wardley's trial counsel, contained in Wardley's Brief, are no substitute for the record.

Moreover, Wardley's trial counsel is wrong. Bearden's attorneys both remember that the trial court posed the jury's question to counsel. The undersigned remembers that he had no objection to the trial court's response; he cannot remember what Wardley's trial counsel said.

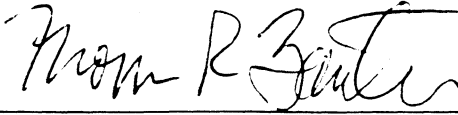
In any event, Wardley has failed to even argue that the trial court's response to the question was incorrect. Without such an argument, Wardley cannot meet its burden that the trial court's alleged error was so substantial or prejudicial that the result would have been different had it not taken place. *Board of Commissioners of the Utah State Bar v. Peterson*, 937 P.2d 1263, 1271 (Utah 1997). In any event, the trial court's response to the jury's question was correct.

CONCLUSION

Pursuant to Utah law, the trial court was correct in submitting the issue of Wardley's liability to the jury. The evidence at trial supports the jury's findings that Wardley breached its fiduciary duty to Bearden and was vicariously liable for Gritton's conduct. The evidence also supports the compensatory and punitive damage awards against Wardley. Bearden requests that the Court affirm the verdict of the jury and the Judgment of the trial court; and that the case be remanded for a determination of Bearden's reasonable attorneys' fees incurred on appeal.

RESPECTFULLY SUBMITTED this 7th day of November, 2002.

PRINCE, YEATES & GELDZAHLER

By 

Thomas R. Barton

James W. McConkie III

Attorneys for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of November, 2002, I caused to be mailed,
postage prepaid, two true and correct copies of the foregoing **BRIEF OF APPELLEES** to
the following:

Kevin N. Anderson, Esq.
FABIAN & CLENDENIN
215 South State Street, Suite 1200
P.O. Box 510210
Salt Lake City, Utah 84151
Attorneys for Defendant-Appellant
Wardley Corporation dba Wardley
Better Homes & Gardens



ADDENDUM

Addendum A: Listing Agreement between Wardley and Mrs. Bearden

Addendum B: Real Estate Purchase Contract between Mrs. Bearden and Gritton

Addendum C: Under Contract Information Sheet

Addendum D: Reminder Notice

Tab A



(Form A)



THIS IS A LEGALLY BINDING AGREEMENT - READ CAREFULLY BEFORE SIGNING

THIS AGREEMENT is entered into on this 20 day of June, 1997, by and between Dorothy L. C. Bearden Jr.
(the "Seller") and Wardley Better Homes & Gardens (the "Company").

1. **TERM OF LISTING.** The Seller hereby grants Wardley Better Homes & Gardens, including Guy Grifton as agent for Wardley Better Homes & Gardens (the "Agent") starting on the date of execution of this Agreement, and ending at 12:00 P.M. (midnight) on the 20 day of Dec., 1997, (the "Listing Period"), the Exclusive Right to Sell, Lease, or Exchange certain real property owned by the Seller, described as: 550 Palms Midvale, UT 84047 (the "Property"), at the price and terms specified in the Computer Listing Input Form or at such other price and terms to which the Seller may agree in writing. The Company hereby agrees to use reasonable efforts to find a Buyer or tenant ("Buyer") for the Property.

(X) Seller herein expressly authorizes that in the event there is a change in list price or the seller accepts an offer on the property, this listing contract shall automatically be extended 60 additional days for each such occurrence; however in no event will said extensions exceed 180 days without further approval of Seller. 6%

2. **COMPANY FEE.** If, during the Listing Period, the Agent, Wardley Better Homes & Gardens, any other real estate agent, or the Seller locates a party who is ready, able and willing to buy, lease, or exchange (collectively referred to as "acquire") the Property or any part thereof, at said price and terms, or any other price or terms to which the Seller may agree in writing, the Seller agrees to pay Wardley Better Homes & Gardens a commission of 6% of the acquisition price for residential properties or 10% of the acquisition price for unimproved properties and/or commercial properties. A party who is ready, willing and able to buy, lease, option or exchange is one who executes an agreement, in writing, to buy, lease, option or exchange. If the Buyer is ready, willing, and able to close, and the Seller refuses to close, the Seller shall be obligated to pay Wardley Better Homes & Gardens a fee based on the above formulas. Unless otherwise agreed to in writing, the fee to the broker as stated above shall be due and payable as follows: In the event a sale or exchange is contemplated, on the date set for recording of documents; In the event a lease is contemplated, on the date which is the first day of the lease term; In the event an option is contemplated, on the date the option is signed.

(X) (B) In the event a sale, exchange, lease or option is consummated and closes, I hereby irrevocably authorize the closing agent to disburse to Wardley Better Homes & Gardens, the Fee as stated above from the Seller's proceeds.

3. **EXTENSION PERIOD.** If within 12 months after expiration, the Property is acquired by any party to whom the Property was offered or shown by Wardley Better Homes & Gardens, the Agent, the Seller, or any other real estate agent during the Listing Period, the Seller agrees to pay Wardley Better Homes & Gardens the commission stated in Section 2.0, if the Seller is not obligated to pay a commission on such acquisition to another brokerage pursuant to another valid listing contract entered into after the expiration date of this Agreement.

4. **EQUAL HOUSING OPPORTUNITY.** All properties will be presented in compliance with federal, state and local antidiscrimination laws.

5. **SELLER WARRANTIES.** The Seller warrants that it has marketable title and an established right to sell, lease, or exchange the Property. The Seller agrees to execute the necessary documents of conveyance and to prorate general taxes, insurance, rents, interest and other expenses affecting the Property to the agreed date of possession. The Seller further agrees to furnish the Buyer at closing good and marketable title with a policy of title insurance in the amount of the purchase price and in the name of the Buyer. In the event the acquisition includes personal property, the Seller agrees to sign proper conveyance documents which shall contain acceptable evidence of title or right to sell, lease, or exchange, said personal property.

6. **AGENCY RELATIONSHIPS.** Wardley Better Homes & Gardens and the Agent agree to act as agent for the Seller and will work diligently to locate a Buyer for the Property. As the Seller's agent, they will act consistent with their fiduciary duties to the Seller of loyalty, full disclosure, confidentiality, and reasonable care. The Seller understands however, that Wardley Better Homes & Gardens and the Agent, may now, or in the future, agree to act as agent for a Buyer who may want to negotiate a purchase of the Property. Then Wardley Better Homes & Gardens and Agent would be acting as a limited agent because they would be representing both the Seller and the prospective Buyer at the same time. Limited agency is allowed under Utah law only with the informed consent of the Seller and the prospective Buyer. For consent to be informed, the Seller must understand that:

6.1 **Conflicting Duties.** With limited agency, conflicting duties of disclosure, loyalty and confidentiality to each party will arise.

6.2 **Duty of Neutrality.** To resolve these conflicting duties, the limited agent will be bound by a further duty of neutrality. Being neutral, the limited agent will show no preference to either party in their mutual dealings. Also, the limited agent will not disclose to either party information likely to weaken the bargaining position of the other, for example, the lowest price the Seller will accept and the highest price the Buyer will offer. However, the limited agent will disclose to both parties material information known to the limited agent regarding a defect in the Property and the ability of the other to fulfill all obligations under their agreement; and

6.3 (X) (B) **Conditions for Seller's Consent.** If the Seller consents to limited agency as described above, the consent is conditioned upon the limited agent: (i) having obtained from the prospective Buyer, informed consent to the limited agency as described above; and (ii) informing the Seller of the limited agency upon first contact with the Seller by an agent or subagent of Seller who is also representing the prospective Buyer.

ACCORDINGLY, THE SELLER CONSENTS TO LIMITED AGENCY AS DESCRIBED ABOVE.

6.4 **Subagency.** The Seller further understands that other sales agents and associate brokers affiliated with Wardley Better Homes & Gardens, and other brokerages, may act as subagent of the Seller in finding a Buyer for the Property, but only if they are authorized to do so by the Seller. A subagent is treated under the law as the Seller's agent, and the Seller may be liable for the acts and omissions of a subagent, one who, for example, misrepresents the Property. Accordingly, the Seller authorizes the following to act as subagents for the Seller: (X) Agent and Principal/ Branch Broker ☐ all agents affiliated with Wardley Better Homes & Gardens ☐ all other brokerages. In the event neither the Principal/Branch Broker nor the Agent are available, Seller authorizes the Principal/Branch Broker for Wardley Better Homes & Gardens to appoint a temporary agent.

6.5 **Commission Sharing.** Wardley Better Homes & Gardens is authorized to share the commission listed in section 2.0 above, with another brokerage.

7. **SELLER DISCLOSURES.** The Seller agrees in connection with this Agreement to provide to Wardley Better Homes & Gardens Property Condition Disclosures regarding the Seller's knowledge of the Property. The disclosure statement must be signed by the Seller.

8. **ATTORNEY'S FEES.** In any action, proceeding or arbitration arising out of this agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

9. **INFORMATION RELEASE.** Wardley Better Homes & Gardens is authorized to obtain financial information from any mortgagee or other party holding a lien or interest on the Property, and share contents of above referenced property disclosure statements at their discretion.

10. **MULTIPLE LISTING SERVICE (MLS).** Wardley Better Homes & Gardens is authorized and instructed to offer this Property through the Multiple Listing Service of the applicable Board/Association of REALTORS* unless otherwise agreed in writing. Wardley Better Homes & Gardens and MLS is further authorized to disclose after closing the final sales price of the Property and terms of the sale. The Seller hereby gives authorization for Wardley Better Homes and Gardens or the Agent to change the status and expiration date in the MLS without further written authorization, when instructed to do so by the Seller or through the terms of this agreement.

11. **SELLER/OWNER AUTHORIZATION AND INSTRUCTIONS** (Designate desired authorizations and instructions with owners initials in the spaces provided below).

11.1 () () **Open Houses.** You are authorized to show the above listed Property for the purpose of exposing the Property to prospective purchasers.

11.2 (X) (B) **Key Authorization.** YOU are hereby authorized to have possession of key/keys permitting access to the Property for the purposes of showing the Property to prospective purchasers and/or to facilitate the sale of the Property, i.e. associate inspections.

() () **Key Authorization.** YOU OR OTHERS authorized by you are hereby authorized to have possession of key/keys permitting access to the Property for the purpose of showing the Property to prospective purchasers and/or to facilitate the sale of the Property, i.e. associate inspections.

11.3 (X) (B) **Key Box Authorization.** You are hereby authorized and instructed to have a key box system installed at the Property at the address indicated.

11.4 **Home Warranty.** The advantages of a Home Warranty have been explained to me. I choose to () (); I choose NOT to (X) (B); purchase a Home Warranty.

11.5 **Fee Appraisal.** The advantages of a Fee Appraisal have been explained to me. I choose to () (); I choose NOT to (X) (B); pay for a Fee Appraisal.

The Seller accepts full responsibility for any loss or damage that might result from "Open Houses" and/or the use of the key, keys, or key box systems from any source whatsoever and agrees to hold the Company, the agent, and the Board/Association of REALTORS* harmless from any and all liability as a result of holding "Open Houses" and/or the use of keys and key box systems.

12. **SIGNAGE.** Wardley Better Homes & Gardens is authorized to place appropriate signage on the Property.

13. **COMPUTER LISTING INPUT FORMS.** Provisions of the "Computer Listing Input Form" (Part B), including list price, and any subsequent MLS Change Forms, are incorporated by reference and made a part of this agreement.

14. **OTHER.** See addendum 1 for listing price options

15. **ENTIRE AGREEMENT.** This Agreement may not be changed, modified or altered, except by prior written consent of the parties hereto.

IN WITNESS WHEREOF, the undersigned agree to the above terms and acknowledges receipt of a copy of this Agreement.

Wardley Better Homes & Gardens

by Guy Grifton
(Authorized Agent)

5296 Commerce Dr Suite 350
(Branch Office) (Phone) 487-4663

Seller

Dorothy L. C. Bearden 25505
(Name) (Address / Phone)

1671 E 8640 So Sandy UT 84040
(Name) (Address / Phone)

Addendum A

Tab B



REAL ESTATE PURCHASE CONTRACT

This is a legally binding contract. Utah law requires real estate licensees to use this form. Buyer and Seller, however, may agree to alter or delete its provisions or to use a different form. If you desire legal or tax advice, consult your attorney or tax advisor.

EARNEST MONEY RECEIPT

Buyer Guy Gritton offers to purchase the Property described below and hereby delivers to the Brokerage, as Earnest Money, the amount of \$ 500 in the form of cash which, upon Acceptance of this offer by all parties (as defined in Section 23), shall be deposited in accordance with state law.
Received by: [Signature] on 7-11-97 (Date)
Brokerage: Wardley Better Homes & Garden's Phone Number 487-4663

OFFER TO PURCHASE

I. PROPERTY: 550 Adams
also described as:
City of Midvale, County of SC, State of Utah (the "Property").

1.1 Included Items. Unless excluded herein, this sale includes the following items if presently attached to the Property: plumbing, heating, air conditioning fixtures and equipment; ceiling fans; water heater; built-in appliances; light fixtures and bulbs; bathroom fixtures; curtains, draperies and rods; window and door screens; storm doors and windows; window blinds; awnings; installed television antenna; satellite dishes and system; permanently affixed carpets; automatic garage door opener and accompanying transmitter(s); fencing; and trees and shrubs. The following items shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title: As per MLS

1.2 Excluded Items. The following items are excluded from this sale: None

1.3 Water Rights. The following water rights are included in this sale: N/A

1.4 Survey. A survey map of the Property certified by a licensed surveyor [] WILL [X] WILL NOT be prepared. The Property corners [] WILL [X] WILL NOT be marked by survey stakes set by a licensed surveyor or engineering company. The cost of the applicable items checked above will be: [] paid by Buyer [] paid by Seller [] shared equally by Buyer and Seller [] Other (specify) _____

For additional terms, see attached Survey Addendum if applicable.

2. PURCHASE PRICE. The Purchase Price for the Property is \$ 89,000

2.1 Method of Payment. The Purchase Price will be paid as follows:

- \$ 500 (a) Earnest Money Deposit. Under certain conditions described in this Contract, THIS DEPOSIT MAY BECOME TOTALLY NON-REFUNDABLE.
- \$ _____ (b) New Loan. Buyer agrees to apply for a new loan as provided in Section 2.3. Buyer will apply for one or more of the following loans: [] CONVENTIONAL [] FHA [] VA [] OTHER (specify) _____
If an FHA/VA loan applies, see attached FHA/VA Loan Addendum.
If the loan is to include any particular terms, then check below and give details:
[] SPECIFIC LOAN TERMS _____
- \$ _____ (c) Loan Assumption (see attached Assumption Addendum if applicable)
- \$ _____ (d) Seller Financing (see attached Seller Financing Addendum if applicable)
- \$ _____ (e) Other (specify) _____
- \$ _____ (f) Balance of Purchase Price in Cash at Settlement

\$ 89,000 PURCHASE PRICE. Total of lines (a) through (f)

Addendum B

2.2 Financing Condition. (check applicable box)

- (a) ☒ Buyer's obligation to purchase the Property IS conditioned upon Buyer qualifying for the applicable loan(s) referenced in Section 2.1(b) or (c) (the "Loan"). This condition is referred to as the "Financing Condition."
(b) ☐ Buyer's obligation to purchase the Property IS NOT conditioned upon Buyer qualifying for a loan. Section 2 does not apply.

2.3 Application for Loan.

- (a) **Buyer's duties.** No later than the Application Deadline referenced in Section 24(a), Buyer shall apply for the Loan. "Loan Application" occurs **only** when Buyer has: (i) completed, signed, and delivered to the lender (the "Lender" the initial loan application and documentation required by the Lender; and (ii) paid all loan application fees as required by the Lender. Buyer agrees to diligently work to obtain the Loan. Buyer will promptly provide the Lender with any additional documentation as required by the Lender.
(b) **Procedure if Loan Application is denied.** If Buyer receives written notice from the Lender that the Lender does not approve the Loan (a "Loan Denial"), Buyer shall, no later than three calendar days thereafter, provide a copy to Seller. Buyer or Seller may, within three calendar days after Seller's receipt of such notice, cancel this Contract by providing written notice to the other party. In the event of a cancellation under this Section 2.3(b): (i) if the Loan Denial was received by Buyer on or before the Earnest Money Forfeiture Deadline referenced in Section 24(d), the Earnest Money Deposit shall be returned to Buyer; (ii) if the Loan Denial was received by Buyer after the Earnest Money Forfeiture Deadline, Buyer agrees to forfeit, and Seller agrees to accept as Seller's exclusive remedy, the Earnest Money as liquidated damages. A failure to cancel as provided in this Section 2.3(b) shall have no effect on the Financing Condition set forth in Section 2.2(a). Cancellation pursuant to the provisions of any other section of this Contract shall be governed by such other provisions.

2.4 Appraisal of Property. Buyer's obligation to purchase the Property ☒ IS ☐ IS NOT conditioned upon the Property appraising for not less than the Purchase Price. If the appraisal condition applies and the Property appraises for less than the Purchase Price, Buyer may cancel this Contract by providing written notice to Seller no later than three calendar days after Buyer's receipt of notice of the appraised value. In the event of such cancellation, the Earnest Money Deposit shall be released to Buyer, regardless of whether such cancellation is before or after the Earnest Money Forfeiture Deadline. A failure to cancel as provided in this Section 2.4 shall be deemed a waiver of the appraisal condition by Buyer.

3. SETTLEMENT AND CLOSING. Settlement shall take place on or before the Settlement Deadline referenced in Section 24(e). "Settlement" shall occur only when **all** of the following have been completed: (a) Buyer and Seller have signed and delivered to each other or to the escrow/closing office all documents required by this Contract, by the Lender, by written escrow instructions or by applicable law; (b) any monies required to be paid by Buyer under these documents (except for the proceeds of any new loan) have been delivered by Buyer to Seller or to the escrow/closing office in the form of collected or cleared funds; and (c) any monies required to be paid by Seller under these documents have been delivered by Seller to Buyer or to the escrow/closing office in the form of collected or cleared funds. Seller and Buyer shall each pay one-half (1/2) of the fee charged by the escrow/closing office for its services in the settlement/closing process. Taxes and assessments for the current year, rents, and interest on assumed obligations shall be prorated at Settlement as set forth in this Section. Tenant deposits (including, but not limited to, security deposits, cleaning deposits and prepaid rents) shall be paid or credited by Seller to Buyer at Settlement. Prorations set forth in this Section shall be made as of the Settlement Deadline date referenced in Section 24(e), unless otherwise agreed to in writing by the parties. Such writing could include the settlement statement. The transaction will be considered closed when Settlement has been completed, and when **all** of the following have been completed: (i) the proceeds of any new loan have been delivered by the Lender to Seller or to the escrow/closing office; and (ii) the applicable Closing documents have been recorded in the office of the county recorder. The actions described in parts (i) and (ii) of the preceding sentence shall be completed **within** four calendar days of Settlement.

4. POSSESSION. Seller shall deliver physical possession to Buyer within: ☐ 48 hours ☐ _____ days after Closing;
☐ Other (specify) _____

5. CONFIRMATION OF AGENCY DISCLOSURE. At the signing of this Contract:

☐ Seller's Initials [Signature] ☐ Buyer's Initials [Signature]

The Listing Agent, Guy G. [Signature], represents ☐ Seller ☐ Buyer ☒ both Buyer and Seller as a Limited Agent;

The Selling Agent, _____, represents ☐ Seller ☐ Buyer ☐ both Buyer and Seller as a Limited Agent;

The Listing Broker, Cheryl B. Wadley B.H.G., represents ☐ Seller ☐ Buyer ☒ both Buyer and Seller as a Limited Agent;
The Selling Broker, Wadley B.H.G., represents ☐ Seller ☐ Buyer ☒ both Buyer and Seller as a Limited Agent;

6. **TITLE INSURANCE.** At Settlement, Seller agrees to pay for a standard-coverage owner's policy of title insurance insuring Buyer in the amount of the Purchase Price.

7. **SELLER DISCLOSURES.** No later than the Seller Disclosure Deadline referenced in Section 24(b), Seller shall provide to Buyer the following documents which are collectively referred to as the "Seller Disclosures":

- (a) a Seller property condition disclosure for the Property, signed and dated by Seller;
- (b) a commitment for the policy of title insurance;
- (c) a copy of any leases affecting the Property not expiring prior to Closing;
- (d) written notice of any claims and/or conditions known to Seller relating to environmental problems and building or zoning code violations; and
- (e) Other (specify) _____

8. **BUYER'S RIGHT TO CANCEL BASED ON EVALUATIONS AND INSPECTIONS.** Buyer's obligation to purchase under this Contract (check applicable boxes):

- ☐ IS ☒ IS NOT conditioned upon Buyer's approval of the content of all the Seller Disclosures referenced in Section 7;
- ☐ IS ☒ IS NOT conditioned upon Buyer's approval of a physical condition inspection of the Property;
- ☐ IS ☐ IS NOT conditioned upon Buyer's approval of the following tests and evaluations of the Property: (specify) _____

if any of the above items are checked in the affirmative, then Sections 8.1, 8.2, 8.3 and 8.4 apply; otherwise, they do not apply. The items checked in the affirmative above are collectively referred to as the "Evaluations & Inspections." Unless otherwise provided in this Contract, the Evaluations & Inspections shall be paid for by Buyer and shall be conducted by individuals or entities of Buyer's choice. Seller agrees to cooperate with the Evaluations & Inspections and with the walk-through inspection under Section 11.

8.1 **Period for Completion and Review of Evaluations and Inspections.** No later than the Buyer Cancellation Deadline referenced in Section 24(c) Buyer shall: (a) complete all Evaluations & Inspections; and (b) determine if the Evaluations & Inspections are acceptable to Buyer.

8.2 **Right to Cancel or Object.** If Buyer determines that the Evaluations & Inspections are unacceptable, Buyer may, no later than the Buyer Cancellation Deadline, either: (a) cancel this Contract by providing written notice to Seller, whereupon the Earnest Money Deposit shall be released to Buyer; or (b) provide Seller with written notice of objections.

8.3 **Failure to Respond.** If by the expiration of the Buyer Cancellation Deadline, Buyer does not: (a) cancel this Contract as provided in Section 8.2; or (b) deliver a written objection to Seller regarding the Evaluations & Inspections, the Evaluations & Inspections shall be deemed approved by Buyer.

8.4 **Response by Seller.** If Buyer provides written objections to Seller, Buyer and Seller shall have seven calendar days after Seller's receipt of Buyer's objections (the "Response Period") in which to agree in writing upon the manner of resolving Buyer's objections. Seller may, but shall not be required to, resolve Buyer's objections. If Buyer and Seller have not agreed in writing upon the manner of resolving Buyer's objections, Buyer may cancel this Contract by providing written notice to Seller no later than three calendar days after expiration of the Response Period; whereupon the Earnest Money Deposit shall be released to Buyer, regardless of whether such cancellation is before or after the Earnest Money Forfeiture Deadline. If this Contract is not canceled by Buyer under this Section 8.4, Buyer's objections shall be deemed waived by Buyer. This waiver shall not affect those items warranted in Section 10.

9. **ADDITIONAL TERMS.** There ☒ ARE ☐ ARE NOT addenda to this Contract containing additional terms. If there are, the terms of the following addenda are incorporated into this Contract by this reference: ☒ Addendum No. 1
☐ Survey Addendum ☐ Seller Financing Addendum ☐ FHA/VA Loan Addendum ☐ Assumption Addendum
☒ Lead-Based Paint Addendum (in some transactions this addendum is required by law)
☐ Other (specify) _____

10. SELLER WARRANTIES & REPRESENTATIONS.

10.1 Condition of Title. Seller represents that Seller has fee title to the Property and will convey good and marketable title to Buyer at Closing by general warranty deed, unless the sale is being made pursuant to a real estate contract which provides for title to pass at a later date. In that case, title will be conveyed in accordance with the provisions of that contract. Buyer agrees, however, to accept title to the Property subject to the following matters of record: easements, deed restrictions, CC&R's (meaning covenants, conditions and restrictions), and rights-of-way; and subject to the contents of the Commitment for Title Insurance as agreed to by Buyer under Section 8. Buyer also agrees to take the Property subject to existing leases affecting the Property and not expiring prior to Closing. Buyer agrees to be responsible for taxes, assessments, homeowners association dues, utilities, and other services provided to the Property after Closing. Except for any loan(s) specifically assumed by Buyer under Section 2.1(c), Seller will cause to be paid off by Closing all mortgages, trust deeds, judgments, mechanic's liens, tax liens and warrants. Seller will cause to be paid current by Closing all assessments and homeowners association dues.

10.2 Condition of Property. Seller warrants that the Property will be in the following condition **ON THE DATE SELLER DELIVERS PHYSICAL POSSESSION TO BUYER:**

- (a) the Property shall be broom-clean and free of debris and personal belongings. Any Seller or tenant moving-related damage to the Property shall be repaired at Seller's expense;
- (b) the heating, cooling, electrical, plumbing and sprinkler systems and fixtures, and the appliances and fireplaces will be in working order and fit for their intended purposes;
- (c) the roof and foundation shall be free of leaks known to Seller;
- (d) any private well or septic tank serving the Property shall have applicable permits, and shall be in working order and fit for its intended purpose; and
- (e) the Property and improvements, including the landscaping, will be in the same general condition as they were on the date of Acceptance.

11. WALK-THROUGH INSPECTION. Before Settlement, Buyer may, upon reasonable notice and at a reasonable time, conduct a "walk-through" inspection of the Property to determine only that the Property is "as represented," meaning that the items referenced in Sections 1.1, 8.4 and 10.2 ("the items") are respectively present, repaired/changed as agreed, and in the warranted condition. If the items are not as represented, Seller will, prior to Settlement, replace, correct or repair the items or, with the consent of Buyer (and Lender if applicable), escrow an amount at Settlement to provide for the same. The failure to conduct a walk-through inspection, or to claim that an item is not as represented, shall not constitute a waiver by Buyer of the right to receive, on the date of possession, the items as represented.

12. CHANGES DURING TRANSACTION. Seller agrees that from the date of Acceptance until the date of Closing, none of the following shall occur without the prior written consent of Buyer: (a) no changes in any existing leases shall be made; (b) no new leases shall be entered into; (c) no substantial alterations or improvements to the Property shall be made or undertaken; and (d) no further financial encumbrances to the Property shall be made.

13. AUTHORITY OF SIGNERS. If Buyer or Seller is a corporation, partnership, trust, estate, limited liability company, or other entity, the person executing this Contract on its behalf warrants his or her authority to do so and to bind Buyer and Seller.

14. COMPLETE CONTRACT. This Contract together with its addenda, any attached exhibits, and Seller Disclosures, constitutes the entire Contract between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties. This Contract cannot be changed except by written agreement of the parties.

15. DISPUTE RESOLUTION. The parties agree that any dispute, arising prior to or after Closing, related to this Contract ☐ SHALL ☒ MAY (upon mutual agreement of the parties) first be submitted to mediation. If the parties agree to mediation, the dispute shall be submitted to mediation through a mediation provider mutually agreed upon by the parties. Each party agrees to bear its own costs of mediation. If mediation fails, the other procedures and remedies available under this Contract shall apply. Nothing in this Section 15 shall prohibit any party from seeking emergency equitable relief pending mediation.

16. DEFAULT. If Buyer defaults, Seller may elect either to retain the Earnest Money Deposit as liquidated damages, or to return it and sue Buyer to specifically enforce this Contract or pursue other remedies available at law. If Seller defaults, in addition to return of the Earnest Money Deposit, Buyer may elect either to accept from Seller a sum equal to the Earnest Money Deposit as liquidated damages, or may sue Seller to specifically enforce this Contract or pursue other remedies available at law. If Buyer elects to accept liquidated damages, Seller agrees to pay the liquidated damages to Buyer upon demand. It is agreed that denial of a Loan Application made by the Buyer is not a default and is governed by Section 2.3(b).

17. ATTORNEY FEES AND COSTS.

17.1 In Actions to Enforce this Contract. In the event of litigation or binding arbitration to enforce this Contract, the prevailing party shall be entitled to costs and reasonable attorney fees. Attorney fees shall not be awarded for participation in mediation under Section 15.

17.2 In Interpleader Actions. If a principal broker holding the Earnest Money Deposit is required by law to file an interpleader action in court to resolve a dispute over that Deposit, Buyer and Seller authorize that principal broker to draw from that Deposit an amount necessary to advance the court costs needed to bring that interpleader action. The amount of the Deposit remaining after advancing those costs shall be interpleaded into court. Buyer and Seller further agree that whichever of them is found to be in default may be ordered to pay any reasonable attorney fees, or additional court costs, incurred by the principal broker in bringing the action, unless the court finds that there was fault on the part of the principal broker or his or her agent that would make such an award of attorney fees and costs unjust.

18. NOTICES. Except as provided in Section 23, all notices required under this Contract must be: (a) in writing; (b) signed by the party giving notice; and (c) received by the other party or the other party's agent no later than the applicable date referenced in this Contract.

19. ABROGATION. Except for the provisions of Sections 15 and 17.1 and express warranties made in this Contract, the provisions of this Contract shall not apply after Closing.

20. RISK OF LOSS. All risk of loss to the Property not caused by Seller or Buyer, including physical damage or destruction to the Property or its improvements due to any cause except ordinary wear and tear and loss caused by a taking in eminent domain, shall be borne by Seller until Seller delivers possession of the Property to Buyer.

21. TIME IS OF THE ESSENCE. Time is of the essence regarding the dates set forth in this Contract. Extensions must be agreed to in writing by all parties. Unless otherwise explicitly stated in this Contract: (a) performance under each Section of this Contract which references a date shall absolutely be required by 5:00 PM Mountain Time on the stated date; and (b) the term "days" shall mean calendar days and shall be counted beginning on the day following the event which triggers the timing requirement (i.e., Acceptance, receipt of the Seller Disclosures, etc.). Performance dates and times referenced herein shall not be binding upon title companies, lenders, appraisers and others not parties to this Contract, except as otherwise agreed to in writing by such non-party.

22. FAX TRANSMISSION AND COUNTERPARTS. Facsimile (fax) transmission of a signed copy of this Contract, any addenda and counteroffers, and the retransmission of any signed fax shall be the same as delivery of an original. This Contract and any addenda and counteroffers may be executed in counterparts.

23. ACCEPTANCE. "Acceptance" occurs when Seller or Buyer, responding to an offer or counteroffer of the other: (a) signs the offer or counteroffer where noted to indicate acceptance; and (b) communicates to the other party or to the other party's agent that the offer or counteroffer has been signed as required.

24. CONTRACT DEADLINES. Buyer and Seller agree that the following deadlines shall apply to this Contract:

- | | |
|---------------------------------------|------------------------------------------------------------------------------------------------|
| (a) Application Deadline | No later than <u>1/1</u> calendar days after Acceptance. |
| (b) Seller Disclosure Deadline | No later than <u>1/1</u> calendar days after Acceptance. |
| (c) Buyer Cancellation Deadline | No later than <u>1/1</u> calendar days after Buyer's receipt of all of the Seller Disclosures. |
| (d) Earnest Money Forfeiture Deadline | <u>1/1</u> calendar days after the Buyer Cancellation Deadline. |
| (e) Settlement Deadline | <u>Oct. 15, 1997</u> (DATE) |

25. OFFER AND TIME FOR ACCEPTANCE. Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept this offer by: 7/11/97 [] AM [] PM Mountain Time upon Presentation, 1997, this offer shall lapse, and the Brokerage shall return the Earnest Money Deposit to Buyer.

(Buyer's Signature)

(Offer Date)

(Buyer's Signature)

(Offer Date)

The later of the above Offer Dates shall be referred to as the "Offer Reference Date"

(Buyers' Names) (PLEASE PRINT)

(Notice Address)

(Phone)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☒ ACCEPTANCE OF OFFER TO PURCHASE: Seller Accepts the foregoing offer on the terms and conditions specified above.

☐ COUNTEROFFER: Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached ADDENDUM NO. _____.

Lucille B. Bearden

(Seller's Signature)

(Date)

(Time)

(Seller's Signature)

(Date)

(Time)

(Sellers' Names) (PLEASE PRINT)

(Notice Address)

(Phone)

☐ REJECTION: Seller Rejects the foregoing offer.

(Seller's Signature)

(Date)

(Time)

(Seller's Signature)

(Date)

(Time)

DOCUMENT RECEIPT

State law requires Broker to furnish Buyer and Seller with copies of this Contract bearing all signatures. (Fill in applicable section below.)

A. I acknowledge receipt of a final copy of the foregoing Contract bearing all signatures:

[Signature]

(Buyer's Signature)

(Date)

(Buyer's Signature)

(Date)

Lucille B. Bearden

(Seller's Signature)

(Date)

(Seller's Signature)

(Date)

B. I personally caused a final copy of the foregoing Contract bearing all signatures to be ☐ faxed ☐ mailed ☐ hand delivered on _____, 19_____, postage prepaid, to the ☐ Seller ☐ Buyer.

Sent/Delivered by (specify) _____

THIS FORM APPROVED BY THE UTAH REAL ESTATE COMMISSION AND THE OFFICE OF THE UTAH ATTORNEY GENERAL, EFFECTIVE JUNE 12, 1996. IT REPLACES AND SUPERSEDES ALL PREVIOUSLY APPROVED VERSIONS OF THIS FORM.



ADDENDUM NO. 1
TO
REAL ESTATE PURCHASE CONTRACT



Page 1 of 7

THIS IS AN ☒ **ADDENDUM** [☐ **COUNTEROFFER** to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of July 11, 1997, including all prior addenda and counteroffers, between Guy Gritton (Agent) as Buyer, and Lucille Beardon as Seller, regarding the Property located at _____.
The following terms are hereby incorporated as part of the REPC:

1) Lucille Beardon Fully understands that Guy Gritton is a licensed real estate agent, and has disclosed his intent in the purchase of 550 Adams To purchase, to fix up and sell for a profit. Guy Gritton has disclosed and Lucille Beardon Fully understands the above statements.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same. [☐ Seller [☐ Buyer shall have until _____

[☐ AM [☐ PM Mountain Time Upon Presentation 19____, to accept the terms of this ADDENDUM in accordance with the provisions of Section 23 of the REPC. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

Guy Gritton 7-11-97
[☐ Buyer [☐ Seller Signature Date Time

[☐ Buyer [☐ Seller Signature Date Time

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☒ **ACCEPTANCE:** [☐ Seller [☐ Buyer hereby accepts the terms of this ADDENDUM.

[☐ **COUNTEROFFER:** [☐ Seller [☐ Buyer presents as a counteroffer the terms of attached ADDENDUM NO. ____.

Lucille B Beardon

(Signature) (Date) (Time) (Signature) (Date) (Time)

[☐ **REJECTION:** [☐ Seller [☐ Buyer rejects the foregoing ADDENDUM.

(Signature) (Date) (Time) (Signature) (Date) (Time) **251**

Tab C

JUL 15 1997

UNDER CONTRACT INFORMATION SHEET

Must Be Submitted With Every Reported Sale

Wardley Transaction ID#

97006551

☐ Letter Sent

53RD SOUTH

Reporting Sales Executive

Sales Executive Name:

Guy Gritton

Branch Office:

53rd

Date of Report:

7-15-97

Co-op Agent:

Company:

Address:

Phone:

487-4663

Principals

Seller(s)

Seller(s):

Lucille Beardon

Phone:

255-0581

Address:

1671 E. 8040 So.

City:

Sandy UT 84098

Buyer(s)

Buyer(s):

Guy Gritton

Phone:

254-8848

Address:

1150 W. 10400 So.

City:

So Jordan

Zip:

84095

Property Information

Wardley Listing#

598065

MLS#

☒ Residential

☐ Non-Residential

☐ Lot/Land

☐ Multi-Unit

Property Address:

550 Adams

City:

Midvale

Zip:

84047

Year Built:

1960

Exterior:

Brick

Total Sq. Ft.:

2080

Wood Burning Stove:

No

Pool:

No

Brick or Frame

Yes or No

Yes or No

Sale Information

Sales Price:

89,000

Listed Price:

89,000

Contract Date:

7/11/97

Proposed Closing Date:

10/15/97

Earnest Money Deposit Amount:

500

Date E.M. Submitted to Office Administrator:

N/A, if not working with Buyer

Source of Sale

- ☒ 11- Personal Sphere of Influence
☐ 12- Walk-in
☐ 13- Sign Call
☐ 14- FSBO
☐ 15- Direct Mail - Postcard Response
☐ 16- Ad Call
☐ 17- Open House

- ☐ 19- Call-Around
☐ 20- Inter-Office Referral
☐ 21- We Sell Utah!
☐ 22- Geographic Farming (except We Sell Utah!)
☐ 30- Mail-Time
☐ 00- Relocation Dept
☐ Other:

Commission Disbursement

Listing Office

Selling Office

☐ A different WBH&G Office: Branch

☐ A different WBH&G Office: Branch

☐ A different Company:

☐ A different Company:

☒ This Office:

☒ This Office:

Sales Exec: Guy Gritton % 3

Sales Exec: Guy Gritton % 3

Sales Exec: %

Sales Exec: %

Licensed Asst.: S or %

Licensed Asst.: S or %

Trainer: %

Trainer: %

Referral Agent: %

Referral Agent: %

c/o Company:

c/o Company:

Ancillary Services

Lender:

N/A

Rep:

Phone:

Title Company:

Bachman Stewart

Rep:

Phone:

Home Warranty Company:

N/A

Policy#:

Phone:

Property Inspection Company:

N/A

Rep:

Phone:

Under Contract Procedures

- ☐ Complete all spaces in the Buyer Agency Contract & Agency Disclosure. Sign the contract. Insure that the buyers initial all appropriate locations and that they sign the contract.
- ☐ Complete all spaces in the Real Estate Purchase Contract. Never leave blank spaces. If a space does not apply write 'N/A'. Sign the Contract. Insure that your clients initial in all appropriate locations and that they personally sign the contract. Verbal contracts are unenforceable. It is against policy for you to sign on behalf of the buyers.
- ☐ Complete and have all parties sign an Document Receipt.
- ☐ Complete and have all parties sign an Agency Disclosure Statement. Be sure to disclose if you are acting as a Limited (Dual) Agent.
- ☐ Insure that the buyers sign a Lead Based Paint Addendum, if the home was built prior to 1978 or is HUD insured.
- ☐ Insure that all parties sign a VA/FHA Addendum, if FHA or VA financing is being obtained.
- ☐ Obtain a Seller's Property Disclosure from the Seller.
- ☐ Complete and mail or call in the Home Warranty application if agreed to in the Purchase Contract.
- ☐ Complete an Under Contract Information Sheet and submit along with original copies of all required paperwork to the Office Administrator. After processing, the file will be filed in the Under Contract file drawer by address. The original file MUST remain in the office. You may make a copy for your own use on the office copier.
- ☐ Record all upcoming contingency and/or inspection deadlines and the closing date in your personal calendar.
- ☐ Schedule all inspections for which your party is responsible to pay for. Accompany the buyers on their Walk Through Inspection. Have the buyers sign the Property Inspection Sign Off.
- ☐ Take a copy of all documents to the Closing Officer (normally chosen by the Seller or Seller's agent) to start the closing process. Be prepared to provide them with detailed information on the buyer and seller and the other agents involved. Request the Closing Officer to send you a copy of any amendments or supplements which they may receive during the escrow period.
- ☐ Assist the buyer in immediately applying for their loan. Follow up with the lender and advise the buyer to do so also.
- ☐ If the buyer has an out-of-area home to sell, complete a Listing Referral Form and send to the Family Relocation Center (534-1911 or FAX 355-4056).
- ☐ Send all amendments, change of escrow dates, loan commitment dates or loan amounts to the listing agent and both the Closing Officer and the Loan Officer immediately upon receipt.

Earnest Money Procedures

- ☐ Attempt to obtain a minimum of 1% of the Sales Price by stressing to the buyers the importance of how an Earnest Money deposit establishes the offer as bona fide rather than frivolous.
- ☐ Do not accept a CASH Earnest Money Deposit. Have your clients go to a bank, grocery store or convenience store and convert their cash into Money Orders or a Cashier's Check.
- ☐ Instruct the buyer to make the check out to Wardley Better Homes and Gardens. Indicate on the check the address of the property in case the check gets separated from the contract. DO NOT ACCEPT A POSTDATED CHECK WITHOUT A SIGNED WRITTEN AGREEMENT FROM BOTH THE BUYER AND THE SELLER.
- ☐ State law requires that all Earnest Money Deposits be deposited into the Broker's trust account within 3 business days. This makes it imperative that you submit the E.M. Deposit to your Office Administrator immediately so that they can process it and courier it to the Corporate Service Center for deposit.
- ☐ Remember: Your signature for receipt of the Earnest Money Deposit is written confirmation that the money was actually given to you. Do not sign for it unless it was in fact received by you (unless you want to be personally liable for that amount of money).
- ☐ Earnest Money Deposit checks may not be held uncashed after a contract has been signed by both parties unless all parties agree with signed written instructions. Personal notes are to be made out in the name of the Seller and held with the file until further written instructions are received from both Parties.
- ☐ Deposits to other than the Broker's trust account (e.g. directly to the builder, seller, title company, etc.) requires written instructions signed by all parties and prior consultation with the manager.

Closing and Post-Closing:

- ☐ Remember that you are required to attend the closing. Take the attitude that you are the only person responsible to see that everything gets done. Verify the closing date and get a preliminary closing statement from the Closing Officer so that you can advise the buyer on the amount of funds that need to be brought in the form of a certified check (not a personal check).
- ☐ Insure that the listing agent brings keys, garage door openers, security codes, etc. to the closing. Hold until possession is granted.
- ☐ Pick up yard sign. Remove lockbox.
- ☐ Send your Client a thank you note and closing gift. KEEP IN TOUCH! Add to mailing list.
- ☐ Order 'Just Sold' cards from the Marketing and Development Center. Forms can be obtained at your Office.
- ☐ Call through neighborhood inviting the neighbors to welcome the new residents. Ask for their business.

Tab D

Reminder Notice

Congratulations on your sale and/or listing. We appreciate your hard work!

LOWY Please remit the following items to enable us to complete your file:

Buyers Agent

- ☐ Under Contract Information Sheet
- ☒ Agency Disclosure Form
Buyers Agent/Limited/Designated
- ☒ Buyers Agency Contract
- ☐ REPC (Initials)
(Signature)
- ☐ Addenda/Counter Offer

☐ Seller's Property disclosure Statement

- ☒ Lead Based Paint Disclosure
- ☐ (Other Disclosures) _____
- ☒ MLS Printout
- ☐ Earnest Money Check
- ☒ Earnest Money Release
- ☐ Document Receipt Buyer

Comments: _____

Sellers Agent

- ☐ Under Contract Information Sheet
- ☒ Agency Disclosure Form
Seller's Agent/Limited/Designated
- ☒ Listing Agreement (Form A)
- ☒ Data Input Form (Form B)
- ☐ REPC (Initials)
(Signature)
- ☐ Addenda/Counter Offer

☐ Seller's Property disclosure Statement

- ☒ Lead Based Paint Disclosure
- ☐ (Other Disclosures) _____
- ☐ MLS Change Form
- ☐ Earnest Money Release
- ☐ Document Receipt Seller

5053 12/96