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Presenting and Negotiating Multiple Offers

a White Paper from the
NATIONAL ASSOCIATION OF REALTORS®

“When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their clients. This obligation to the client’s interests is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly.”

(from Article 1 of the 2002 REALTORS Code of Ethics)

“REALTORS® shall submit offers and counter-offers objectively and as quickly as possible.”

(Standard of Practice 1-6)

Perhaps no situation routinely faced by REALTORS® can be more frustrating, fraught with potential for misunderstanding and missed opportunity, and elusive of a formulaic solution than presenting and negotiating multiple purchase or lease offers and/or counter-offers on the same property. Consider the competing dynamics. Listing brokers are charged with helping sellers get the highest price and the most favorable terms for their property. Buyers’ brokers help their clients purchase property at the lowest price and on favorable terms. Balanced against the Code’s mandate of honesty is the imperative to refrain from making disclosures that may not, in the final analysis, be in a client’s interests. (Revised 11/01)

Will disclosing the existence of one offer make a second potential purchaser more likely to

sign a full price purchase offer — or to pursue a different opportunity? Will telling several potential purchasers that each will be given a final opportunity to make their best offer result in spirited competition for the seller’s property — or in a table devoid of offers?

What is fair? What is honest? What is to be done? Who decides? And why is there not a simple way to deal with these situations?

As REALTORS® know, there are almost never simple answers to complex situations. And multiple offer presentations and negotiations are nothing if not complex. But, although there is not a single, standard approach to dealing with multiple offers, there are fundamental principles to guide REALTORS®. While these guidelines focus on negotiation of purchase offers, the following general principles are equally applicable to negotiation of lease agreements. (Revised 11/01)

- Be aware of your duties to your client — seller or buyer — both as established in the Code of Ethics and in state law and regulations. (Revised 5/01) The Code requires you to protect and promote your client’s interests. State law or regulations will likely also spell out duties you owe to your client.
- The Code requires that you be honest with all parties. State law or regulations will likely spell out duties you owe to other parties and to other real estate professionals. Those duties may vary from the general guidance offered here. REALTORS® need to be familiar with applicable laws and regulations. Be aware of your duties to other parties, both as established in the Code of Ethics and in state law and regulation.

- Remember that the decisions about how offers will be presented, how offers will be negotiated, whether counter-offers will be made and ultimately, which offer, if any, will be accepted, are made by the seller, not by the listing broker. (Revised 5/01)
- Remember that decisions about how counter-offers will be presented, how counter-offers will be negotiated, and whether a counter-offer will be accepted, are made by the buyer, not by the buyer’s broker. (Adopted 5/01)
- When taking listings, explain to sellers that receiving multiple, competing offers is a possibility. Explain the various ways they may be dealt with (e.g., acceptance of the “best” offer; informing all potential purchasers that other offers are on the table and inviting them to make their best offer; countering one offer while putting the others to the side; countering one offer while rejecting the other offers, etc.).

Explain the pluses and minuses of each approach (patience may result in an even better offer; inviting each offeror to make their “best” offer may produce a better offer[s] than what is currently on the table — or may discourage offerors and result in their pursuing other properties).

- Explain that your advice is just that and that your past experience cannot guarantee what a particular buyer may do. Remember — and remind the seller — that the decisions are theirs to make, not yours, and that you are bound by their lawful and ethical instructions.
- When entering into buyer representation agreements, explain to buyers that you or your firm may represent more than one buyer-client, that more than one

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of your clients or your firm's clients may be interested in purchasing the same property, and how offers and counter-offers will be negotiated if that happens. (Adopted 5/01)

Explain the pluses and minuses of various negotiating strategies (that a "low" initial offer may result in the buyer purchasing the desired property at less than the listed price, or in another, higher offer from another buyer being accepted; that a full price offer may result in the buyer purchasing the desired property while paying more than the seller might have taken for the property, etc.). (Adopted 5/01)

Remember — and remind the buyer — that the decisions are theirs to make, not yours, and that you are bound by their lawful and ethical instructions. (Adopted 5/01)

- If the possibility of multiple offers and the various ways they might be dealt with were not discussed with the seller when their property was listed and it becomes apparent that multiple offers may be (or have been) made, immediately explain the options and alternatives available to the sellers — and get direction from them.
- When representing sellers or buyers, be mindful of Standard of Practice 1-6's charge to "...submit offers and counter-offers objectively and as quickly as possible." (Revised 5/01)
- With the seller's approval "...divulge the existence of offers on the property" consistent with Standard of Practice 1-15. (Adopted 11/02)
- While the Code of Ethics does not expressly mandate "fairness" (given its inherent subjectivity), remember that the Preamble has long noted that "...REALTOR® has come to connote competency, fairness, and high integrity..." If a seller directs you to advise offerors about the existence of other purchase offers, fairness dictates that all offerors or their representatives be so informed.

- Article 3 calls on REALTORS® to "... cooperate with other brokers except when cooperation is not in the client's best interest." Implicit in cooperation is forthright sharing of information related to cooperative transactions and potential cooperative transactions. Much of the frustration that occurs in multiple offer situations results from cooperating brokers being unaware of the status of offers they have procured. Listing brokers should make reasonable efforts to keep cooperating brokers informed. Similarly, buyer brokers should make reasonable efforts to keep listing brokers informed about the status of counter-offers their seller-clients have made. (Revised 5/01)

Realize that in multiple offer situations only one offer will result in a sale and one (or more) potential purchasers will be disappointed that their offer was not accepted. While little can be done to assuage their disappointment, fair and honest treatment throughout the process, coupled with prompt, ongoing and open communication, will enhance the likelihood they will feel they were treated fairly and honestly. In this regard, "...REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, 'Whatsoever ye would that others should do to you, do ye even so to them.'" (from the Preamble to the Code of Ethics). (Revised 11/01) ▲

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Attracting Buyers with Perfect Floor Plans

by *Paul Stannard d*

I imagine this: A prospective buyer finds your website and clicks through a few of your property listings. The client sees a house she is interested in, and, with a click of the mouse, is taken to a page that displays detailed floor plans of the house.

If a picture is worth a thousand words, floor plans are worth a thousand more. Floor plans are a great communication tool and allow you to show potential buyers exactly what they are getting. There are several benefits to using floor plans:

- Spend less time on the phone describing the interior of the home, and more time selling.
- Great for out-of-state buyers who can't physically come and view the property.
- Help your website stand out. You'll be offering

more detailed information than your counterparts.

- Help you bridge the gap between house and home. If you can get your client to start placing furniture in their minds, you are halfway to a sale! A search for "floor plan software" on your favorite search engine will produce several easy-to-use programs to consider. Look for programs that offer free trials of their software, a great way to take the software for a test drive. Floor plans should look professional, but you don't need to spend \$500 to get a good value; some floor plan software programs start as low as \$69. Some companies even offer free technical support. After all, we all need a little help sometimes!

Good luck, and happy drawing! ▲

About the author

Paul Stannard is CEO of SmartDraw.com, a business graphics software company. For more information on floor plan software, contact Christine La Grange at 858-225-3342 or clagrange@smartdraw.com

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YOUR BUSINESS

12.8% of Arizonans are Foreign-born

Why do you need to know anything about international real estate when you never or seldom travel internationally? International real estate activity is defined as one in which any component of the deal (buyer, seller, or source of financing) is from a foreign country. The following statistics, from the 2003 U.S. Census, represent a staggering long-term business opportunity for REALTORS®:

- 38% of Arizona's population growth in the 90's was due to the increase in minority populations
- 28.4 Million people in the U.S. are foreign-born — a 44% increase in the past 10 years
- 49% of foreign-born U.S. residents are homeowners
- In the Midwest and West, foreign-born citizens are more likely to own a home than native U.S. citizens
- Within six years of arriving in the U.S., the homeownership rate for immigrants is the same as U.S.-born citizens
- Approximately one-fifth of non-immigrant entrants into the U.S. are involved in a real estate transaction in the U.S. within a year
- Foreign purchases of U.S. real estate in 1999 represented \$862.7 million; U.S. purchases overseas were more than \$652.4 million
- 1.1 million Americans live overseas (not counting military personnel), translating into an estimated 200,000 corporate relocation housing orders annually

Over a quarter of Arizona's population is of Hispanic or Latino origin. A study last fall by the NATIONAL ASSOCIATION OF REALTORS® reported that more than half of Latino home buyers consider one of their chief barriers to homeownership is finding a trustworthy adviser who can guide them through the home buying process and help them obtain bilingual outreach and counseling. The study concluded that REALTORS® who help buyers overcome such obstacles will stand to gain in the coming years as minority populations and their buying power increase rapidly.

How can you improve your skills and prepare yourself to take advantage of this fast-growing group of potential homebuyers? Join [IREC \(International Real Estate Council\)](#) today.

Ethically Speaking

by Alice Martin, RCE, CAE, AAR EVP

Have you had your "agency chat" with your buyers lately?

Before you and a buyer agree to representation, either through the execution of an agency disclosure and election form or a written exclusive representation agreement, do you talk with potential buyer clients about what agency representation means to them? Do they really know what it means to be "represented?"

Do you tell them that there is a potential for dual representation, exactly what that means, and what the potential conflicts and limitations are in a dual representation? And, for a buyer who is agreeable to paying you, do you disclose the potential for offsetting compensation to be paid by other brokers or the seller?

If you don't, you are likely violating the Code of Ethics.

Article 1, Standard of Practice 1-13, spells out several requirements that REALTORS® acting as buyer's agents need to have before they enter into an agreement to represent a buyer.

Cost of Remodel vs. Resale Value

Which remodeling projects should your clients take on before selling? The *2004 Cost vs. Value Report*, sponsored by *Remodeling* magazine and *REALTOR Magazine*, analyzes the return on investment of 18 common remodeling projects. Following are some of the estimated percents of cost recouped for projects done in the Phoenix metro area:

Minor kitchen remodel.....	81.1%
Midrange major kitchen remodel	78.6
Midrange bathroom remodel	66.6
Upscale master suite addition	65.8
Midrange window replacement	64.8
Sunroom addition	59.2
Roofing replacement.....	57.7

For details on these projects and for more project estimates, order a reprint of the report at the [REALTOR® store online](#).

Working with FSBOs

Every home seller must eventually decide whether to hire a REALTOR® or to sell the home on their own. But even after they decide to go solo, FSBOs can still be convinced to use a REALTOR®'s expertise. In the 2004 Profile of Home Buyers & Sellers, a study by the NATIONAL ASSOCIATION OF REALTORS®, the

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most important reasons for selling a home as a FSBO were:

- Did not want to pay commission fee:61%
- Sold it to a relative/friend/neighbor:17%
- Buyers contacted seller directly:9%
- Did not want to deal with an agent:6%
- Have your own real estate license:2%
- Agent was unable to sell home:2%
- Could not find agent to handle transaction:1%
- Other:2%

In NAR's *Field Guide to Working with FSBOs*, you'll find dozens of articles, books, videos, studies, statistics and websites to help you find out who FSBOs are and how to work with them.

Homebuyers Favor Shorter Commutes, Walkable Neighborhoods

The prospect of lengthening commutes is leading more Americans to seek walkable neighborhoods in close-in suburbs and cities, according to the [2004 American Community Survey](#) sponsored by the NATIONAL ASSOCIATION OF REALTORS® and Smart Growth America. A commute time of 45 minutes or less is the top priority in deciding where to live for 79 percent of Americans. Other top priorities include easy access to highways (75 percent) and having sidewalks and places to walk (72 percent).

Contracts 101

by K. Michelle Lind, AAR Legal Counsel

Is a party entitled to waive a contract contingency?
Answer: Yes, if the contingency is solely intended for that party's benefit. A contingency is a clause that requires the completion of a certain act before

the parties are obligated to perform. However, the party benefited by the contingency may waive the contingency and close escrow. For example, a buyer who is unable to obtain a loan may waive the financing contingency and pay cash.

Brochure of the Month – Hopes, Dreams and Fair Housing

(available in English and Spanish)

This brochure pinpoints the most frequent questions about fair housing laws that come from home seekers and homeowners. An order form is available on [AARonline](#). ▲

ASSOCIATION NEWS

Tucson Association Wins National Award!

The Tucson Association of REALTORS® (TAR) has won the Award of Excellence in the 2005 Associations Advance America (AAA) Awards program, a national competition sponsored by the American Society of Association Executives (ASAE). TAR received the award for its Aspen fire relief efforts after the devastating fire on Mt. Lemmon in June 2003, coordinating a donation drive and soliciting temporary housing for victims. This Award of Excellence also places TAR in the running to receive a Summit Award, ASAE's top recognition for association programs. ▲

MEMBER BENEFITS

New Dental Plan for AAR Members

Looking for an individual dental plan that's sure to make you smile? [Delta Dental of Arizona](#) now offers individual members of the Arizona Association of REALTORS® the same dental benefits that big businesses get:

- the same extensive network of dentists
- the same high-quality care
- the same attentive customer service
- rates much lower than you might imagine

Integrity of product design is first and foremost at Delta Dental. Their board of directors and company leaders take seriously their charge of overseeing plan design and development, claims processing issues, and peer review to ensure quality. With Delta Dental, you get:

- an Arizona-based company - claims processed locally; leadership and associates live in Arizona
- optimum coverage for diagnostic and prevention, as well as basic and major intervention
- your own dentist - choose from more than 2,350 dentists located throughout the state

Minimal paperwork...checkups and cleanings are covered...and 8 out of 10 Arizona dentists belong. When you've got group dental coverage with Delta Dental of Arizona, you've got a lot to smile about! ▲



SALES AND MARKETING

Understanding the Process

by Dirk Zeller

Being a salesperson is one of the greatest professions on earth. As real estate salespeople we are helping people to achieve the great "American Dream." Where we get into trouble as salespeople is when we don't understand the process of the sale. Most real estate salespeople have never studied sales. They have learned a few scripts and dialogues, but they don't clearly understand the buying process. They have never become students of selling.

To be a champion salesperson you have to understand and study sales. The first step is to understand the sales process. The truth in sales is that people make decisions based on emotion. How they feel emotionally about something governs their decision-making process. We don't do things based on logic, reason, and intelligence. We will use those tools to justify our decision. Reality is we all act emotionally and our behavior is shaped by our emotions. Because we are human, we are in a constant state of trying to satisfy our emotional needs and emotional wants.

How do we talk to our clients' or prospects' emotions? We need to first put ourselves in their situation. We need to clearly understand their needs, wants, and desires. We need to have true empathy for the prospect or client. To really be effective we need to imagine what the prospects feel like. By clearly knowing their feelings we can gently and patiently help them see our point of view.

For example, you are working with sellers who want to overprice their home. They believe they need to get above fair market value. The most effective way to turn them to reality is to empathize with their problem, to acknowledge that you understand their feelings. Once you do that, then you can gently show them why their desires will not happen. You have to meet those overpriced sellers where they are and work them towards your position.

If you draw a line in the sand and you are worlds apart, all you are doing is yelling at them across a canyon. You have to cross the canyon to their side. You need to lead them back across the canyon. People can often be like cows. You can push, poke, and prod them, and they won't budge.

Your reason for your way has to be a benefit to them. Once they see how they can benefit, they will follow your thinking. The key is to talk to people in terms of needs and emotional benefits to them. Once you have established the benefits, you can persuade people to do anything. ▲

About the author

Dirk Zeller is a personal coach and motivational speaker. He can be reached at 541-383-8833 or via the web at www.dirkzellerlive.com.

NATIONAL NEWS

Telemarketers Must Now Update Contact Lists Every 31 Days

Effective January 1, 2005, telemarketers have to scrub their contact lists against the national do-not-call registry every 31 days, rather than every three months, as had been the case since the do-not-call list was established in 2003. The change was adopted in an FCC order released September 21, 2004, and reflects changes also made in the Federal Trade Commission's rules. A resource page on AARonline provides links to numerous articles and websites explaining the do-not-call laws and what REALTORS® need to know.

Arizona is Second-Fastest Growing State

From July 2003 – July 2004, Arizona's population grew three percent, making it the second-fastest growing state in the U.S., according to the U.S. Census Bureau. Nevada continued its eighteen-year reign as the fastest growing state with an increase of 4.1 percent. Florida grew 2.3, Idaho 1.9, and Georgia 1.8 percent. Complete statistics are available on the Census website. ▲

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INFOMANIAC

Windows XP Security Pack 2

by Stephen M. Canale

If you pay attention to technology in the press then you probably know that Microsoft has released a major upgrade to Windows XP - Security Pack 2 (SP2) but wonder whether or not you should upgrade. There's no shortage of opinions regarding SP2 and major upgrades to an operating system always carry some risk. That said, most users will be able to (and should) make the transition with little or no inconveniences. Considering the improvements that SP2 makes to both security and wireless connectivity (two hot topics to be sure), the average user should consider the potential risks worth taking.

On the security front, SP2 offers a new consolidated "Security Center" (located in the Control Panel) that provides a nice overview of your systems' security settings, including the current status of most third-party anti-virus programs. The ability to review and revise the triad of security settings (Firewall, Antivirus and Automatic Updates) from this one location will no doubt go a long way toward safer computing for the typical user. The menus are remarkably easy to both use and understand; and for those willing to invest a little time, the descriptions and related help topics are well done. If you've ever wondered about how secure and up to date your system really is, then the Security Center will provide the answers.

In addition to the usability of the Security Center, the built-in software Firewall is now much

easier to use and administer and blocks inbound traffic to most programs until you specifically allow access. From a user perspective this simply means that the first time a connection is attempted you'll be prompted with a warning, and then can "allow" such communication in the future on a case by case basis. Not only will this provide greater control over your computer, but it also creates a better understanding regarding which programs were previously establishing outside Internet connections without your knowledge.

As for wireless connectivity, SP2 makes navigating and understanding WI-FI connections much easier for the average user with a vastly improved interface. You can finally view available networks, change preferences and settings from one point and again, the user documentation and help files are easier to find and understand.

While the benefits are desirable, users should review the list of programs that might not work after the upgrade, or at least will not work without some special tweaking, at [Microsoft's support page](#).

After that, upgrading is as simple as visiting <http://windowsupdate.microsoft.com> with Internet Explorer version 5 or later. However, the process is slow, and for those users without reliable broadband connections, ordering the upgrade on CD is probably preferred. ▲

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About the author

*Stephen is a speaker, trainer, and author of [Preparing Professionals to Compete in Tomorrow's Marketplace](#).
Subscribe to Canale's newsletter [Tips & Tricks](#).*

ARIZONA SCENE

ADRE Update

A new publication for consumers, *Arizona Real Estate and You, A Consumer Guide*, is now available for free from the ADRE. Consumers should be aware that rules and laws pertaining to real estate are subject to change at any time. Download a copy from the [Department's website](#) or order by mail: ADRE, 2910 N. 44th St., Phoenix, AZ 85018.

News Briefs

The Valley's fringes are developing so rapidly that the Arizona Department of Transportation decided it was necessary to lower the speed limit to 65 mph along outlying stretches of Interstate 10 and Interstate 17 effective December 3... *Arizona Republic*, 12/3

The Town of Gilbert is extremely concerned that real estate agents may be under the impression that a Gilbert mailing address results in Gilbert emergency and fire services. That is not the case... *ADRE Late Breaking News*, 11/22 ▲

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RISK MANAGEMENT

The Importance of Reviewing the Title Commitment

by K. Michelle Lind, AAR Legal Counsel

The AAR contracts require the escrow company to obtain and distribute to the buyer a Commitment for Title Insurance together with complete and legible copies of all documents that will remain as exceptions to the Buyer's policy of Title Insurance ("Title Commitment"). The Buyer has five days after receipt of the Title Commitment and documents that will remain as exceptions to provide notice to the seller of any of the exceptions disapproved. Buyer's brokers can reduce their liability and experience fewer problems during escrow by promptly reviewing the Title Commitment with the buyer.

TIP: Make sure that the buyer understands the Title Commitment must be reviewed within five days after receipt so that notice of any items disapproved can be delivered to the seller – afterwards is too late!

Understanding the Title Commitment

The Title Commitment is divided into several sections: Schedule A, Schedule B exceptions, Requirements, and Exclusions, and should be accompanied by the "underlying documents." The underlying documents are copies of the actual documents referred to in Schedule B.

Schedule A: Schedule A sets forth the search date, the amount of insurance coverage, the name of the insured, and the legal description of the property being insured.

TIP: Check the policy to be issued in Schedule A of the Title Commitment to insure that the best policy type available will be issued. The American Land Title Association ("ALTA") Homeowner's Title Insurance Policy is generally considered the best available for residential transactions.

Schedule B: Schedule B lists the specific exceptions from coverage that the title company discovered during its title search. It also generally includes certain standard exceptions such as mineral and water rights. The title insurance policy will not insure against loss, nor will the title insurer pay costs, attorney fees, or expenses resulting from title problems listed in Schedule B. Additional boilerplate exceptions coverage may be contained in an addendum to the commitment.

TIP: Check Schedule B of the Title Commitment for disclosure items and for restrictions on the use of the property. Refer the buyer to the escrow officer or an attorney if there are questions or concerns.

Schedule B may be the most important part of the Title Commitment, but buyers are often unaware that they need to read the exceptions to coverage. If an exception is unacceptable to the buyer, the buyer and agent may be able to convince the title company to remove it, insure over it (with an endorsement), or eliminate the exception by obtaining a release, affidavit, waiver, quitclaim deed or other document. However, if the unacceptable exception is not discovered and objected to within five days of receipt, there may not be time to address the unacceptable exception and the buyer may be forced to close escrow subject to the exception.

TIP: Talk to the escrow officer about the exceptions. The title insurance company may be willing to delete

some Schedule B exceptions if the problem is further explained or cured before closing. Or, the buyer may obtain an endorsement so that the title policy will cover any damages arising from the defect.

Requirements: The Requirements section lists what things must be done before escrow can close and title insurance will be issued. If a requirement can not be met, close of escrow may be prevented or delayed. The common requirements include the payment of taxes, recording a release and reconveyance of the deed of trust currently encumbering the property, recording the deed, and recording the deed of trust securing the new loan. Other requirements may include approval by the trustee in bankruptcy, recording a disclaimer deed from a spouse, redemption of a certificate of purchase for past due taxes, recording a court order evidencing the authority for one person to act on another's behalf, and releases of various other types of liens.

TIP: Talk to the escrow officer about fulfilling any unusual requirements as soon as possible to avoid a delay in close of escrow.

Exclusions: There are also standard exclusions from the title insurance policy, including generally:

- Any law, ordinance or governmental regulation relating to the use of the property
- Any governmental police power, unless recorded
- Rights of eminent domain, unless recorded
- Defects, liens, encumbrances, adverse claims or other matters agreed to by the buyer
- Claims arising from bankruptcy or other creditors' rights laws

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Specific Title Commitment Issues

Easements: An easement gives persons other than the owner access to or a right of way over the homeowner's property. Common easements include utility easements and roadway or access easements. Easements may be an issue if the buyer is planning on building a pool or adding improvements to the home.

CC&R's and other Deed Restrictions: A declaration of covenants, conditions and restrictions ("CC&R's") for a homeowner's association is recorded against the property. The CC&R's empower the homeowner's association, if there is one, to control certain aspects of the home. If there is no homeowner's association, the CC&R's can be enforced by the other homeowners. A homebuyer should always carefully read the CC&R's (and any other association documents) because the buyer will be obligated to comply with all the rules and restrictions.

TIP: Use the CC&R's table of contents to point out the section on Use Restrictions to the buyer. Explain to the buyer in a new home transaction that the CC&R's must be reviewed before signing the contract. In a resale transaction, the AAR contract allows the buyer five days to review and disapprove of the CC&R's.

Access: Failure of the public record to disclose a right of access to the land will be noted in the Title Commitment. Although landlocked property can be sold (except in the case of subdivided land, A.R.S. §32-2185.02), the lack of access must be disclosed to the buyer.

Military Airports: To ensure disclosure to buyers in areas in the vicinity of a military airport, the ADRE is required to record a disclosure notice on

all affected property. This disclosure notice should be reflected in the Title Commitment.

Judgments: A recorded judgment is a lien on all real property of the judgment debtor. A judgment lien against the seller usually must be paid prior to close of escrow.

Bankruptcy: If the seller has filed bankruptcy, the bankruptcy trustee will have to approve of the sale prior to close of escrow or a court order may be necessary. The seller's bankruptcy attorney should be able to assist in obtaining the approval, but be sure to allow enough time for the process.

Liens: There are numerous types of liens that may need to be paid and released before escrow can close. These liens may include state and federal tax liens. State tax liens are extinguished if the state takes no action for six years. By filing a Notice of Federal Tax Lien, the government establishes its interest in the property and any property acquired after the lien is filed. Mechanics liens and liens arising from environmental laws may also become an issue.

Endorsements: In addition to the coverage available under the title insurance policy, a buyer can obtain additional coverage through endorsements. These endorsements may be available for little or no cost. For a list of available endorsements, visit the [ALTA website](#).

The Title Insurance Policy

The title insurance policy will be issued as of close of escrow. Title insurance does not insure that a title defect will not occur; it insures that if a defect that occurred prior to the policy date becomes apparent, the buyer will be indemnified if the

defect cannot be cured. A standard policy generally insures against the title to the property being vested other than stated in the policy; any defect in or lien or encumbrance on the title; unmarketability of title; and lack of a right of legal (not necessarily physical) access. The ALTA Homeowner's Title Insurance policy provides coverage for additional defects.

The title industry is regulated by the [State Banking Department](#) (which may be undergoing a name change) for escrow services and the [Department of Insurance](#) for title operations. ▲

About the author

Michelle is General Counsel to the Arizona Association of REALTORS ("AAR") and a State Bar of Arizona board certified real estate specialist.

Note: This information is of a general nature and may not be updated or revised for accuracy as statutory or case law changes following the date of first publication. Further, the information contained herein reflects only the opinion of the author; is not intended as definitive legal advice and you should not act upon it without seeking independent legal counsel.

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LEGAL HOTLINE

by Christopher A. Combs

Find more Hotline questions and answers addressing the following topics by clicking on the category in italics above each question. For other Hotline topics, click here.

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The following is for informational purposes only and is not intended as definitive legal or tax advice. You should not act upon this information without seeking independent legal counsel. If you desire legal, tax or other professional advice, please contact your attorney, tax advisor or other professional consultant.

CONTRACTS - GENERAL

Amendment to the contract must be signed by all parties to the contract

Two sisters own a home as joint tenants with right of survivorship. The two sisters sign a contract to sell the home with a closing date of June 15. On June 15 the buyer needs additional time to procure the down payment, and the buyer and one of the sisters sign an amendment to the contract extending the closing date to June 30. The other sister did not sign this amendment to the contract. The sister who did not sign the amendment to the contract wants to cancel the contract because the buyer did not have the down payment on June 15. Has the contract been extended until June 30?

Answer: No. An amendment to the contract is ineffective unless all parties sign the amendment to the contract. Therefore, the contract is subject to cancellation after June 15 for the failure of the buyer to have the down payment to close the transaction. Both sisters, however, must furnish written notice to cancel the contract if the buyer failed to close on June 15.

REMEDIES

Buyer cannot file lis pendens unless title dispute

The sale of the home is scheduled to close on August 31. Although the buyer qualified for the loan, the lender was not able to fund the loan on August 31. The seller delivered a notice of cancellation to the title company the next day, and the title company released the buyer's earnest money to the seller. The buyer is extremely upset because of the loss of the earnest money, and is threatening to file a lawsuit against the seller. In addition, the buyer is threatening to record a notice of lis pendens to prevent the seller from selling the home to another buyer. Can the buyer record a notice of lis pendens if the buyer files a lawsuit for the return of the earnest money?

Answer: No. The buyer is only entitled to record a notice of lis pendens if there is a claim for specific performance of the contract. In other words, a notice of lis pendens is only appropriate if there is a title dispute as to who should be the owner of the home—the seller or the buyer. If the buyer has a claim only for the return of the earnest money, the recording of a lis pendens could subject the buyer to liability to the seller for \$5,000, or three times the seller's actual damages, for the wrongful recording of a notice of lis pendens. A.R.S. §33-420(A).

DISCLOSURE AND OTHER LIABILITIES

After disclosure the buyer required to investigate

In the SPDS the seller disclosed that a defective water heater had caused flooding in the home, and that the defective water heater had been replaced with a new water heater. After the inspection period and just prior to close of escrow the buyer discovers that the seller had also

replaced the carpeting in the home because of the flooding. The buyer wants to cancel the contract. Can the buyer cancel the contract because the seller did not disclose that the carpeting had been replaced?

Answer: Probably not. Although the seller did not disclose that the carpeting had been replaced, the seller did disclose that there had been flooding in the home. If the buyer was concerned about the extent of the damage to the home because of the flooding, the buyer should have conducted a more thorough investigation during the inspection period.

FINANCING

Buyer did not qualify for financing because of condition of the home

The buyer qualified for financing based on the buyer's income and other financial information. The lender refuses to make the loan, however, based on the physical condition of the home, specifically, the home needs a new roof. The seller refuses to pay for a new roof. The seller is demanding the buyer's earnest money because the buyer personally qualified for financing. Is the seller entitled to the buyer's earnest money?

Answer: No. Although the buyer may have personally qualified for financing, the buyer did not qualify for the financing to purchase the home because of the physical condition of the home. Therefore, the buyer is entitled to the return of the earnest money.

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BROKERAGE**Change of name of brokerage firm and resignation of designated broker**

The brokerage firm is an Arizona corporation. The brokerage firm is becoming a national franchisee and is changing the name of the brokerage firm. In addition, the designated broker is resigning from the brokerage firm. Does the brokerage firm need the consent of the sellers and buyers represented by the brokerage firm to these changes?

Answer: No. If the Arizona corporation will still be representing the sellers and buyers, the consent of the sellers and buyers is not needed for the change of the name of the brokerage firm or the resignation of the designated broker. Note: the procedure to amend the name of an Arizona corporation requires an amendment to the Articles of Incorporation. This amendment must be filed with the Arizona Corporation Commission and must be published in a local newspaper.

CONTRACTS - INSPECTION/BUYER DISAPPROVAL**Five day right to cancel after receipt of all HOA documents**

After signing the purchase contract the buyer receives the CC&Rs and several other documents relating to the homeowners association ("HOA"). The buyer does not cancel the purchase contract within five days after receiving these documents. Two weeks later the buyer receives the HOA rules and regulations. The buyer reasonably disapproves of the HOA rules and regulations within five days and delivers a notice of cancellation to the title company. Is the buyer entitled to cancel the contract?

Answer: Probably. The HOA rules and regulations are probably "governing documents" as stated in

line 153 of the contract. See A.R.S. §33-1806 (A)(1). Therefore, the buyer probably has the right to cancel within five days after receiving all of the HOA governing documents, including the HOA rules and regulations.

Buyer has right to request replacement of air conditioning unit

The buyer's home inspector states that the air conditioning unit is defective. During the inspection period the buyer requests that the seller replace the air conditioning unit. The seller refuses to replace the air conditioning unit, but states that the seller will repair the air conditioning unit to working condition as required by the contract. The buyer refuses to accept repair of the air conditioning unit, and cancels the contract. The seller is demanding the buyer's earnest money. Is the seller entitled to the buyer's earnest money?

Answer: No. When the buyer discovered during the inspection period that the air conditioning unit was defective, the buyer had the right to cancel the contract without making any request of the seller. If the buyer requests that the seller replace the air conditioning unit, and the seller refuses, the buyer should still be entitled to cancel the contract. ▲

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FINANCING**FHA Loan Limits Rise in 2005**

The 2005 FHA single-family loan limits increased this year. The maximum loan size for a single-family home will be \$172,632; \$220,992, two-unit; \$267,120, three-unit; and \$331,968, four-unit. In Flagstaff, the maximum loan size for a single-family home will be \$204,250; Kingman/Lake Havasu maximum loan size is \$244,600. Mortgagee letter 2004-46 provides the details. A complete schedule of [FHA mortgage limits](#) for all areas is available. ▲

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