



ARIZONA REALTOR® DIGEST ONLINE



INSIDE THIS ISSUE

REALTOR® Safety Week
September 10-16, 2006

FSBO vs. FSBUS, or Better Yet...
"Unrepresented Seller"

Renewing Your Real Estate
License?

A message from ADRE

FEATURES

ASSOCIATION NEWS

LEGAL HOTLINE

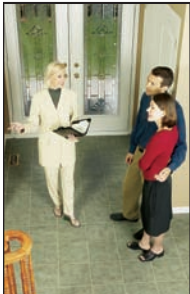
PROFESSIONAL DEVELOPMENT

RISK MANAGEMENT

YOUR BUSINESS

How to use ARDonline

Click on any of the titles on this page to read the article. When finished, press the INDEX button to return to this main page.



REALTOR® SAFETY WEEK

SEPTEMBER 10-16, 2006

Due to their frequent contact with unfamiliar people in private locations, real estate agents face more on-the-job risks than many other business professionals. According to the most recent statistics from the National Safety Council, there were 57 violent crimes committed against real estate practitioners in 2001. Six of them were fatal.

In a recent NAR safety survey of REALTORS®, 67 percent of respondents have experienced safety concerns, incidents, or other harassing situations while working as a REALTOR®. A majority of issues involve open houses or vacant property. Other issues include unfriendly dogs, unsafe property, and threatening or harassing phone calls.

What can you do to protect yourself, to stay out of potentially dangerous situations? In this issue you'll find tips for showing property, holding open houses, meeting new clients, and creating marketing materials. Find more resources on a variety of [safety issues](#) on AARonline. Also check out [the safety information](#) at REALTOR.org.

10 Safety Tips for Showing Property

Follow these 10 tips to minimize your risks while showing property.

1. Instead of meeting new clients at the property, ask them to stop by your office and complete a Prospect Identification Form. Gather information on each, including their car's make and license number, a copy of their driver's license and references.
2. While the client is in the office, introduce them to one or more of your colleagues. A would-be assailant does not like to be noticed, knowing a person could pick him or her out of a police lineup.
3. Always let a colleague, friend or family member know where you are going and when you expect to return. Give that person the name and phone number of the client you are meeting.
4. Try and call the office once an hour to let people know where you are.
5. Establish a voice distress code, a secret word or phrase that is not commonly used but can be worked into any conversation for cases where you feel that you are in danger. Use this if the person you are with can overhear the conversation, but you don't want to alarm them. The distress code

could be something as simple as "Hi, this is Jane. I'm at [address]. Could you e-mail me the red file?" The distress code should be used if you are uneasy, but do not feel you are in danger. If you are in immediate danger – stop the car and leave the area, or jump out of the car at the next stop. Do not hesitate to call 911.

6. Preview the property and don't go into a neighborhood that you perceive as unsafe. Be familiar with the area so you know the location of the nearest police station. Drive there immediately if you feel you are in danger.

7. Carry only non-valuable business items (except for your cell phone), and do not wear expensive jewelry or watches, or appear to be carrying large sums of money. Lock your purse in your car trunk before you arrive.

8. Park at the curb in front of the property rather than in the driveway. You will attract much more attention running and screaming to the curb area. It is much easier to escape in your vehicle if you don't have to back out of a driveway. Besides, parked in a driveway, another vehicle could purposefully or accidentally trap you.

9. In showing a property, always leave the front door open wide while you and the client are inside. As you enter each room, stand near the door.

10. When you show a home, always let the prospect walk ahead of you. Direct them; don't lead them. Say, for example, "The kitchen is on your left," and gesture for them to go ahead of you.

(Sources: Realty Times; REALTOR® Magazine Online; Mesa, AZ Police Department; REALTOR® Magazine; Louisiana REALTORS® Association; Washington Real Estate Safety Council; City of Albuquerque, NM)

[click here to continue article](#) 

**RETURN
TO THE
INDEX**

10 Safety Tips for Hosting an Open House

Open houses are regular events for REALTORS®, but they expose you to potentially dangerous situations. Take these simple steps to help ensure your personal safety during these events.

1. Let the local police know when and where you are hosting an open house. Ask them to have a squad car drive by at least once during the open house.
2. Inform a close neighbor that you will be hosting the open house, and ask if he or she would keep an eye and ear open for anything out of the ordinary.
3. When you first enter an empty home, check each room and determine several escape routes. Make sure all deadbolt locks are unlocked to facilitate a faster escape. (Remember to lock up again when you leave!)
4. Once you enter, turn on the lights and open the curtains. These are not only good safety habits, but can also help you sell the place.
5. Scope out the backyard and make sure that if you had to escape by the back door, you could get out of the yard. Check any gates.
6. Place one of your business cards, with the date and time written on the back, in a kitchen cabinet. Note on it if you were the first to arrive or if clients were waiting.
7. When prospects begin to arrive, jot down their car descriptions, license numbers and physical descriptions.
8. When you show a home, always let the prospect walk ahead of you. Direct them; don't lead them. Say, for example, "The kitchen is on your left," and gesture for them to go ahead of you.

9. Notify someone in your office, your answering service, a friend or a relative that you will be calling in every hour on the hour. And if you don't call, they are to notify the police immediately.

10. Don't assume that everyone has left the home at the end of your open house. Check each room and closet and the backyard prior to locking the doors. Check any windows or sliding doors to make sure they are still locked. Be prepared to defend yourself, if necessary.

(Sources: Washington Real Estate Safety Council; City of Mesa, Arizona; Pineburst, North Carolina Police Department)

10 Safety Tips for Meeting Prospective Clients

Here are 10 steps you can follow to help take the risk out of meeting prospects and clients:

1. Make sure you are not alone in the office when meeting someone. If you are alone, call a "buddy" before the prospect or client is due to arrive and ask them to call and check on you 15 minutes into the visit. Then call them back when the person has left your office.
2. Ask each new client or prospect to stop by your office and complete a Prospect Identification Form, preferably in the presence of an associate.
3. When the person arrives, get the make, model and license number of their car. Check this information yourself—don't just take their word for it. You can do this discreetly by watching them drive up, glancing out at their car, or checking it when you leave the office.
4. Use a registration book for all clients and other visitors. Be careful to make sure that everyone signs in.

5. Photocopy the client's driver's license and retain this information at your office. Legitimate clients should not mind you copying their driver's license. People freely show their licenses to the clerk at the grocery store when they write checks, and we show their IDs to rent a movie.

6. Get personal references as well as employment and home information. Then check all references and verify employment and current address. Check county property records to confirm ownership.

7. Introduce the prospect to someone in your office. A would-be assailant does not like to be noticed or receive exposure, knowing a person could pick him/her out of a police lineup.

8. Always let someone know where you are going; leave the name and phone number of the client you are meeting.

9. When talking to any client or prospect, be careful not to share any personal information—specifically, details on where you live or information that can allow the person to pinpoint your home.

10. When showing a property, always leave the front door wide open while you and the client are inside. As you enter each room, stand near the door.

(This article is part of the NATIONAL ASSOCIATION OF REALTORS® 2006 REALTOR® Safety Week Kit.)

[click here to continue article](#) 

**RETURN
TO THE
INDEX**

5 Tips to Protect Your Clients against Crime

Consider these tips in helping your clients protect themselves against crime:

1. Remind clients who are selling their house or condominium that strangers will be walking through their home. Tell them to put any valuables in a safe, secure place. This includes items they might not initially think would attract interest: Recently, the San Diego Police Department reported that an individual was going through medicine cabinets at open houses and stealing the owners' prescription drugs. Suggest that they hide any such items.
2. Don't leave your own briefcase, purse, laptop or cell phone in view. (You should have that phone on your person at all times anyway.) Wear clothing with pockets so that you can always have your car keys with you as well, and never carry large amounts of cash or credit cards.
3. At an open house, be alert to the pattern of visitors' arrivals, especially near the end of showing hours. In some areas, group of thieves will show up together near the end of the open house and, while a string of "potential buyers" distracts the REALTOR®, the rest of the group walks through the house, stealing any valuables they come across.
4. Finally, when you leave a client's property, whether after an open house or a standard showing, make sure that all doors and windows are locked. Thieves commonly use open houses to scout for valuables and possible points of entry, then return after the agent leaves.
5. Let your clients know that you will take all of the above safety precautions, but that when they return home, they should immediately verify that all doors are locked and all valuables accounted for.

(Source: Nevada County Board of REALTORS®, CA)

6 Ways to Protect Yourself with Smart Marketing Materials

Consider these tips in preparing or updating the information you use to get business:

1. All of your marketing materials should be polished and professional. Don't use "glamour shot" photography or other personal enticements in advertising, on the Web or on your business cards. There are many documented cases of criminals actually circling photographs of their would-be victims in newspaper advertisements. These victims were targeted because of their appearance in the photograph.
2. Limit the amount of personal information you share. Don't use your full name with middle name or initial. Use your office address rather than your home address—or list no address at all. Giving out too much of the wrong information can make you a target.
3. Make phone numbers hard to trace. Rather than use your personal cell phone or home phone number—which can be typed into some Web sites to find your home address—consider using a toll-free number. This can't be traced and prospects may appreciate the free call. You can have calls to this number automatically forwarded to any phone.
4. Concentrate on your professional proficiency rather than personal information in newspapers, resumes and business cards.
5. Be careful how much personal information you give verbally as well. Getting to know your client does not need to include personal information about your children, where you live and who you live with.
6. All agents in your office should use only their first initial and last name on their "For Sale" signs to conceal gender and prevent anyone other than

a personal acquaintance or current client asking for you by name. ▲

(Source: Real Estate Safety Council's "Safety Guide"; City of Mesa, Arizona; Realtytimes.com)

◀ [click here to return to beginning of article](#)

**RETURN
TO THE
INDEX**

YOUR BUSINESS

Ethically Speaking

by Alice Martin, RCE, CAE, GRI, AAR EVP

Summer is here and so are commission issues in cool country!

Article 3 of the Code of Ethics requires that all "REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest."

So far, so good.

The Article goes on to say: "...The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker."

What does this really mean? It means that there is not an automatic offer of either cooperation or compensation from one REALTOR® to another. And while all REALTORS® are obligated by the Code to cooperate with others, that simply means to "share information on listed properties and to make property available to other brokers for showing to prospective purchasers when it is in the best interest of the seller." An offer of cooperation does not include an offer to compensate. The offer to compensate comes from a blanket offer through the MLS or individual offers made by listing agents to other agents or as negotiated between them prior to an offer to purchase being produced.

Unless you are a member of the same MLS as the listing agent and the listing in question is an MLS listing, it is very unlikely that you have been offered either cooperation or compensation.

What the Code wants REALTORS® to do is to communicate about these things so there will be no misunderstanding. The Article and its

related Standards of Practice spell out that the listing REALTOR® is the one who establishes the terms and conditions of the offer to cooperate and it's up to the cooperating broker to ascertain what that offer is, including whether it includes compensation, before they show the property.

Note to listing agents: this provision in Article 3 is not intended to encourage listing REALTORS® to not offer compensation to those outside their MLS. It IS intended to insure that communication about both cooperation and compensation takes place and all is done in the best interests of their clients.

Here are some tips for making sure everyone is communicating clearly about cooperation and compensation when working outside your MLS area:

- Contact the listing agent or broker prior to showing the property to find out
- whether the broker will cooperate with you and, if yes,
- will the broker pay you, and, if yes,
- how much will the broker pay you?
- Then, you should get it in writing for everyone's interests. For more details on this topic, read [Compensating Brokers Outside Your MLS](#) and the [Code of Ethics](#).

Contracts 101

by K. Michelle Lind, AAR General Counsel

Question: The buyer and seller have entered into a Contract, but are now in a dispute about its terms. How can the parties resolve their dispute?

Answer: Pursuant to the Contract, the parties agree to resolve any dispute via mediation or arbitration. The buyer and seller agree to mediate any dispute or claim arising out of or relating to the Contract in accordance with the REALTORS®

Dispute Resolution System ("DRS"), or as otherwise agreed. If mediation does not resolve the dispute, the unresolved dispute must be submitted to binding arbitration, unless either party opts out within thirty days after the conclusion of the mediation conference by written notice to the other.

Note: "Contract" refers to the 2005 Arizona Association of REALTORS® Residential Resale Real Estate Purchase Contract.

Renewing Your Real Estate License?

A message from ADRE

Licensees who cannot or do not renew online may file for renewal by mail or in person. When a licensee brings in a renewal application, the staff will review the application and if it appears complete, will direct the person to place it in the drop box in an envelope provided. If deficiencies are noted during the review that cannot be corrected by the licensee on the spot, the renewal application is returned to the licensee with a checklist identifying what is missing. The Department recommends a licensee file as early as possible (up to ninety days before the license expiration date and not later than thirty days before the expiration date). The Department cannot issue a receipt until the application is processed and monies are received. If the licensee wants proof of what he or she filed, the Department recommends the licensee bring a copy of the application and have Department date-stamp the copy when filing the original.

[click here to continue article](#) 

RETURN
TO THE
INDEX

Due to the continued increase in volume of license applications, renewals, etc., the Department is not physically able to process applications with disclosures immediately as they are much more time consuming with the limited staffing levels available to the Department. However, original applications that do not include disclosures are processed immediately. The moral of the story – keep your license clean and current!

Brochure of the Month

Top Ten Things for Sellers/Top Ten Things for Buyers (available in English and Spanish)

Designed for agents to give to sellers or buyers when taking a listing or writing an offer, this brochure pinpoints the most frequent questions about the contract that sellers and buyers have during a transaction. Using the brochures in conjunction with a complete explanation of the AAR Purchase Contract assures that sellers and buyers are fully informed about their transaction and helps simplify the entire process.

Freedom to Display American Flag

On July 24, 2006, President Bush signed into law H.R. 42, the “Freedom to Display the American Flag Act of 2005,” which prohibits restrictions on displaying the U.S. flag on certain residential property. The law, effective immediately, prohibits condominium and homeowners associations from adopting or enforcing any policy that would restrict or prevent a resident member from displaying the U.S. flag on their personally owned property. Subject to the restrictions for proper display of the flag imposed by the [U.S. Flag Code](#),

the Act states:

“A condominium association, cooperative association, or residential real estate management association may not adopt or enforce any policy, or enter into any agreement, that would restrict or prevent a member of the association from displaying the flag of the United States on residential property within the association with respect to which such member has a separate ownership interest or a right to exclusive possession or use.”

The AAR Unrepresented Seller Compensation Agreement

by K. Michelle Lind, Esq., AAR General Counsel

The AAR *Compensation Agreement (For Sale By Owner)* form has been revised and renamed the *Unrepresented Seller Compensation Agreement*. The revision was made at the suggestion of Fred LaBell, CRS, and approved by the Industry Issues Key Result Area, chaired by Margie E. O’Campo de Castillo, GRI. The revised form should be available by the end of the year; however, the prior form can still be used until supplies are exhausted.

The *Unrepresented Seller Compensation Agreement* is designed to establish compensation to a buyer’s broker by a seller who is not represented by a listing broker. The agreement confirms that the seller is offering the property for sale without the assistance of any real estate broker – in other words, the seller is unrepresented in the transaction.

The agreement provides that if the seller enters into a contract to transfer the property to the specified buyer during the term of the agreement, or within a specified number of days after termination of the agreement, that the seller agrees

to pay the broker the compensation set forth. Additionally, to avoid any agency misunderstandings, the seller acknowledges that the Broker is acting solely as a buyer’s agent and is not representing seller. Further, the agreement emphasizes to the seller that, as agent for the buyer, the broker owes fiduciary duties to the buyer, and these duties require that all information given to the broker by the seller must be disclosed to the buyer. The agreement also requires mediation for any dispute or claim.

To reflect the change in the *Unrepresented Seller Compensation Agreement*, and due to the concerns discussed below, all articles and references to “For Sale by Owner” or “FSBO” on the AAR website will be changed to “unrepresented seller.” ▲

Michelle is General Counsel to the Arizona Association of REALTORS® (“AAR”) and a State Bar of Arizona board certified real estate specialist. This article 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, this article 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.

◀ [click here to return to beginning of article](#)

RETURN
TO THE
INDEX

FSBO vs. FSBUS, or Better Yet... “Unrepresented Seller”?

by James J. Tsighis,
GRI, CRS, CRB, ABR, e-PRO, MRE

After reading an article written by Joe Cook that appeared in *REALTOR® Magazine Online* several months ago, it dawned on me that we should stop using the term “For Sale By Owner” (“FSBO”) and start using “For Sale By Unrepresented Seller” (“FSBUS”) or better yet... simply “Unrepresented Seller.” In my humble opinion, this action should have been taken some time ago and is long overdue.

As real estate practitioners we have taken little time to think about our long-standing usage of this term and the impact it would have on the marketplace. As a result, we have allowed it to occupy a prominent place and become a “brand” name we habitually support to our own undoing. We are so much in the habit of using the term, we have failed to see the obvious: isn’t every property sold by owner?

Opting for political correctness means “unlearning” the use of this term, making another paradigm shift, and calling a property that is sold by its owner without representation an “Unrepresented Seller” or, if an old habit can’t be broken, a “FSBUS.” When we take the time to

ponder this thought, isn’t the replacement term a more accurate description of a seller in the transaction? Doesn’t it help put everything in proper perspective? Isn’t the property owner that attempts to represent him or herself likened to the attorney who becomes a fool when he attempts to represent himself in a court of law?

The 2006 NAR Public Awareness Campaign is aimed at the “Unrepresented Seller” market. The spot, “Don’t Try This at Home,” targets FSBUS’s with a hard-hitting message: REALTORS® have the experience to price your home so it can sell for up to 16 percent more than selling it yourself (from NAR’s 2005 *Profile of Home Buyers and Sellers* study).

Now it’s up to us in our local and state associations and as individuals to consciously make an effort to stop using the old term and start using “Unrepresented Seller.” Old habits are not easily broken. We have to help each other in this effort and when we hear our fellow colleagues use the old term, we should take the time to graciously remind them to use the new and improved, more accurate description: “Unrepresented Seller.”

Kudos to AAR and the Industry Issues KRA task force for taking an important first step in changing the Compensation Agreement and various articles by deleting the old term and replacing it with the new term: “Unrepresented Seller.” ▲

James J. Tsighis is associate broker of Realty Executives Southern Arizona.

ASSOCIATION NEWS

NAR Commercial Division Toasts Success of First Online Convention

More than 14,000 commercial real estate professionals nationwide took part in CommercialSource.com -- the first-ever online convention tailored for the commercial real estate industry -- sponsored by the REALTORS® Commercial Alliance, the commercial arm of the NATIONAL ASSOCIATION OF REALTORS®.

The online convention provided attendees with the fundamentals of a traditional trade show, including education and networking opportunities, while leveraging the convenience of the Internet. CommercialSource.com participants networked with one another via message boards, browsed more than 50 virtual trade booths from exhibitors, and listened to 18 speaker sessions from industry leaders. Convention attendees put their stamp of approval on the event with an 87 percent satisfaction rating.

More than 100,000 NAR members offer commercial services, with 60,000 real estate professionals engaged full time in every aspect of the commercial real estate industry.

Recognition for Resort and Second-Home Certificate Holders

The first 250 to earn the [Resort and Second-home Property Specialist \(RSPS\)](#) certification will be recognized as "charter" certificate holders and will receive a special numbered certificate. There are currently 50 RSPS certificate holders. These graduates will receive reissued certificates

recognizing their RSPS achievement. RSPS certification requires completion of two core courses, on second-home markets and 1031 tax deferred exchanges, and two elective courses.

AAR Publication Wins National Award

For the sixth consecutive year, our online newsletter, the *ARDonline*, has been awarded the prestigious national Award for Publication Excellence. Communications Concepts, an organization that works with professional communicators to improve publications, bases the annual awards on graphic design, editorial content, and overall communications excellence.

The *ARDonline* is available on our website at www.aaronline.com/news. We hope you enjoy it. Please let us know if you have any comments or suggestions for articles -- we're here to serve you.

Diane Cole, Communications Director
Doug Tolf, Graphic Designer

New REALTOR® Political Party members

Joseph Aimone
 Joseph Bourland, ABR, CRS
 Carla Bowen, CRB, CRS, GRI
 Sue Klima, CRS, GRI
 Jan Leighton, GRI
 Phillip Richardson

The Arizona Association of REALTORS® has formed the REALTOR® Political Party program to increase the political influence of the Arizona Association of REALTORS® beyond the limits of RAPAC. This program will augment and enhance RAPAC contributions for the benefit of AAR's positive political position at the state legislature.

New Member Benefit!

DHL Preferred Pricing

AAR is pleased to announce a new shipping program for members with DHL. Through AAR's partnership with DHL, AAR members are eligible for preferred pricing, with discounts up to 25%:

- Next day, 2nd day, and ground services
- International service to more than 220 countries
- Guaranteed on-time delivery
- 24/7 online customer service at www.dhl-usa.com
- Dedicated customer support at 1-800-MEMBERS

Member volume rates also apply.

To find out more about your DHL benefits and set up your account, or if you have questions regarding your current account, please contact the dedicated association hotline at 1-800-MEMBERS (1-800-636-2377, 8 am - 7 pm, ET) or log onto their special [AAR page](#).

NAR Designation Classes in Arizona September 2006

ALC	Land 101	9/14-15
CRS	200	9/14-15
CRS	150 (part II)	9/26
GRI	100	9/6 & 11
GRI	101	9/20-21
GRI	201	9/7-8 & 21-22
GRI	202	9/14-15
GRI	203	9/5-6 & 21-22
GRI	307	9/15 & 19
GRI	308	9/7-8 & 14-15
GRI	311	9/14
GRI	312	9/14
GRI	313	9/15

For more information, go to AARonline for the [Designation and Certification Calendar](#) and the [GRI Class Schedule](#). ▲



PROFESSIONAL DEVELOPMENT

Why Do You Need a Real Estate Designation?

by Mike Wasmann, ABR, CRS, GRI,
AAR Treasurer

I didn't, or so I thought! About eight years ago, after already having spent 20 years working as a real estate agent preceded by 10 years working as the director of sales and marketing for a major corporation's real estate department, I didn't feel the need to explore or earn a real estate designation. Seemed like a good idea for the new guys, but what could it do for me? Well, as it turns out, it did a lot. In fact, in my case I would call it life-changing!

Beginning with GRI, I began to discover just how much I didn't know. I soon realized that GRI is the foundation of a real estate career. Even after 20 years in the industry, every new class either opened new thoughts and ideas or, more importantly, took old misconceptions and shed light upon what I should have known by then. I also realized the value to my clients of what I learned in GRI: by being better informed, I learned how to serve them better and how to better protect their interests in the transaction. As a member of the AAR's Professional Standards Committee, I have seen so many instances of REALTORS® being brought before a panel for

complaints that they could have easily avoided if they had had the benefit of knowledge learned through GRI.

Making contacts and building a huge referral base wasn't a bad side effect either. Soon I was excited to think about what I might learn from ABR (Accredited Buyer's Representative), and it didn't disappoint! Becoming a better buyer's agent was just the beginning. Also, by that time, something else had changed. My referrals had doubled and my annual earnings were up 50 percent... and it didn't stop there!

Soon came CRS (Certified Residential Specialist), and that's where I really learned how to get listings, market properties and represent buyers. CIPS (Certified Industrial Property Specialist) soon followed and the world opened up to me. If I were to use one word to describe a designation it would be "Exciting." Allow me a second word and it would be "Opportunity."

I guarantee you will become a better practitioner and be making significantly more money (statistics prove it!) at the same time! It took me over 20 years to take the first step, and that's what it did for me. Find out what earning a designation can do for you! ▲

Mike Wasmann is an associate broker with Ken Meade Realty in Sun City.

RETURN
TO THE
INDEX

RISK MANAGEMENT

Buying or Selling in Homeowner's Associations

by K. Michelle Lind Esq.,
AAR General Counsel

Buying or selling in a homeowner's association ("HOA") involves different considerations and transactional challenges than a real estate transaction outside of an HOA. Covenants, Conditions & Restrictions ("CC&Rs") are generally recorded against the property in an HOA. The CC&R's empower the HOA to control certain aspects of property use within the development, often including oversight and approval authority over the construction of new homes and alterations of existing ones. The CC&R's form an enforceable contract between the homeowners as a whole and the individual homeowners.

Planned Communities and Condominiums

Planned communities and condominiums are regulated by statute. A "planned community" is defined as a development that "includes real estate owned and operated by a nonprofit corporation or unincorporated association of owners that is created for the purpose of managing, maintaining or improving the property and in which the owners of separately owned lots, parcels or units are

mandatory members and are required to pay assessments to the association for these purposes." A.R.S. §33-1802(4). A "condominium" is a complex, "portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate portions." A complex is not a condominium unless the undivided interests in the common elements are vested in the unit owners. A.R.S. §33-1202 (10).

A public report is generally required for the sale of a new home in an HOA, which provides the buyer with a variety of information. Within ten days after receipt of a written notice of a pending resale, the HOA in a planned community or condominium (if the HOA has 50 or more units) or the seller (if the HOA has less than 50 units) must provide the buyer with the information required by statute. A.R.S. §33-1802(4); A.R.S. §33-1260 (3) (H).

H.O.A. Condominium/Planned Community Addendum

The AAR H.O.A. Condominium/Planned Community Addendum ("Addendum") is designed to be used in residential re-sale transactions involving property in an HOA. The Addendum addresses which party will be responsible for paying any HOA dues, fees and assessments related to the sale. The form language provides that any inspection or certification fee charged by the HOA will be paid by the seller.

The Addendum also obligates the seller to notify the HOA of the pending sale or to make the required disclosures, depending on the size of the association. For reference purposes, the form includes a list of the information required by statute to be provided to the buyer. The buyer is allowed five days after receipt of the HOA

information to provide the seller notice of any items disapproved.

Buyer Considerations

In addition to dues, fees and assessments, some of the issues that a buyer should consider when purchasing a home in an HOA are:

The restrictions contained in the CC&Rs

These restrictions may affect parking, pets, children, the ability to rent the property and a variety of other issues of importance to any homeowner.

Architectural restrictions

These restrictions may prohibit certain alterations and improvements and/or require approval of others.

HOA rules and regulations

Rules and regulations generally govern the use of common areas as well as individually owned homes.

Financial health of the HOA

There must be enough reserves to pay for the repair and maintenance of the common area.

CC&Rs violations

Any violations must be addressed prior to close of escrow.

Rental restrictions

Some HOAs restrict rentals or require approval of all tenants.

[click here to continue article](#) 

RETURN
TO THE
INDEX

Management companies

Some HOAs are managed by management companies and some are not. HOA management companies are unregulated and their level of service and related fees vary.

New home/developer control

Issues regarding when control will be relinquished to the homeowner should be addressed, if applicable.

Restricting resale for a certain time after close of escrow

Anti-speculation clauses are of particular importance to an investor or a buyer who intends to own the home for only a short time.

Lawsuits between the HOA and developer/builder

These lawsuits may be lengthy and expensive.

Other Transactional Challenges

For the brokers, handling a transaction for a home located in an HOA may raise unique transactional challenges, such as:

Locating the contact person

In an attempt to address this issue, A.R.S. §33-1807 (J) requires the HOA to record a notice with the contact information for the association, designated agent or management company for the association.

Obtaining the CC&Rs and other information in a timely manner

HOAs often do not provide the necessary documents and disclosure within 10 days and a buyer may not receive these documents until just prior to COE. The listing broker should consider obtaining as much of the information possible as soon as practical after listing the home for sale.

For Sale signs

The type/size/color of for sale signs may be restricted.

Fees Related to the Transfer of the Property

There are generally fees that must be paid upon the transfer of a property in a "HOA". Most HOAs charge fees to produce the statutorily required disclosures. The statute allows the HOA to charge "reasonable" fees, but the amounts vary greatly depending on the association.

There are often other fees related to the transfer of the home as well. These fees can amount to thousands of dollars and are referred to by a variety of names, such as asset preservation fees, capitol reserve fees, etc. An informal survey reflects the following examples of fees charged by different HOAs across the state:

- **Phoenix:** Some HOAs charge a percentage of the sales price, such as one-half of one percent of the sales price (\$5,000 on a million dollar home); others require fees as high as \$75,000
- **Tucson:** Some HOAs charge "Buyer's Transfer Fees" in the \$1200-1300 range. Other HOAs charge fees called "Working Capital Contribution" and "Transfer Process Fees" which may be in the \$400 - \$650 range. "Capital Preservation Fees" and "Community Enhancement Fees" may be as high as three-quarters of one percent of the sales price.
- **Flagstaff:** Transfer fee \$750
- **Sun City:** Capital preservation fee \$2100; Resale transfer fee \$300
- **Sun City West:** Asset preservation fee \$1700; Resale transfer fee \$180; resale disclosure packet fee \$75

- **Surprise:** CARE fee \$525; Resale transfer fee \$100; HOA assessment \$889/year; Resale disclosure statement fee \$100
- **Prescott:** Transfer fee \$100 - \$300; Reserve fund \$300 - \$500; Working capitol \$300 - \$500; ARC Review fees \$300 - \$2500
- **Peoria:** Transfer fee \$638- \$800; Resale statement fee \$300; City property management fee \$100; Capital preservation fee \$638.31; Front yard grass assessment \$120/year; Reserve fund \$690
- **Yuma:** None reported

Therefore, whether acting as a listing broker or buyer's broker, it is imperative to find out what fees are due and payable at close of escrow and discuss these fees with the client before submitting or accepting an offer. A buyer or seller who is surprised by substantial unanticipated fees at close of escrow is likely to look to their broker for recompense. ▲

Michelle is general counsel to the Arizona Association of REALTORS® and a State Bar of Arizona board certified real estate specialist.

◀ [click here to return to beginning of article](#)

**RETURN
TO THE
INDEX**

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.

Copyright 2006, all rights reserved.

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

No Requirement to Disclose Sale for Higher Price

On May 15 the seller and buyer #1 executed a contract for the sale of five acres of land. The escrow is scheduled to close on July 10. On May 29 buyer #1 and buyer #2 executed a contract for the sale of the same five acres of land for a sale price more than \$100,000 higher. The escrow is scheduled to close on July 15. Does buyer #1 have to disclose to the seller the \$100,000 profit that buyer #1 is making on the sale to buyer #2?

Answer: No. Although a sale and a subsequent re-sale with simultaneous closing dates (“double escrow”) has to be disclosed, the closing dates of July 10 and July 15 are not simultaneous closing dates. In other words, buyer #1 is not using the closing funds of buyer #2 to close the transaction between the seller and buyer #1. In a “double escrow” the closing funds on the subsequent re-sale are used to close the first transaction, and, if those closing funds are unavailable, the first buyer

will be unable to perform. Under the Lombardo decision, this potential inability to perform must be disclosed by the first buyer to the seller in a “double escrow.” See *Lombardo v. Albu*, 199 Ariz. 97, 14 P.3d 288 (2000). *Note: Inasmuch as the transaction from seller to buyer #1 may not close on July 10, buyer #1 is required to disclose to buyer #2 under Lombardo that buyer #1 may not be able to close on July 15 due to lack of title.*

MISCELLANEOUS

Exemption from FIRPTA for Sale of Home Under \$300,000

The Foreign Investment in Real Property Tax Act (FIRPTA) generally requires the withholding of ten percent of the sales proceeds on the sale of any real property by a non-resident alien. At the closing, the ten percent of the sales proceeds are forwarded to the Internal Revenue Service. Upon the filing of a tax return by the non-resident alien, the non-resident alien may be entitled to a tax refund of part or all of the ten percent sales proceeds. The seller is a non-resident alien who owns an investment home in Arizona. The seller has signed a Contract to sell this home to a buyer for \$265,000. The buyer will live in the home. Will ten percent of the \$265,000 sales proceeds be required under FIRPTA to be withheld at closing?

Answer: No. One exception to the ten percent withholding requirement of FIRPTA is the sale of the home of a non-resident alien meeting two requirements: 1) sales price of less than \$300,000, and 2) the buyer using the home as a principal residence. Internal Revenue Code § 1445 (b)(5). Therefore, none of the \$265,000 sales price of the home needs to be withheld under FIRPTA.

AGENCY

Buyer's Agent Can Terminate Representation if Buyer is a Registered Sex Offender

The buyer's agent (a female) has shown the buyer (a male) several homes. The buyer makes an offer on a home, but the offer is rejected by the seller with no counter-offer. The listing agent then contacts the buyer's agent and states that the reason that the buyer's offer was rejected without a counter-offer, was that the buyer is a registered sex offender. The buyer's agent now wants to immediately terminate the representation of the buyer. Can this representation of the buyer be immediately terminated?

Answer: Yes. Registered sex offenders are not a protected class, and the female buyer's agent (or a male buyer's agent) is not required to continue to show homes to the buyer.

FAIR HOUSING

HOA Cannot Unreasonably Restrict Access to Swimming Pool

An HOA rule prohibits the use of the community swimming pool by anyone under sixteen years of age, unless accompanied by an adult. The tenant's thirteen-year-old son has been barred from the use of the swimming pool because of repeated violations of this HOA rule. Is this HOA rule enforceable under the Fair Housing Act?

Answer: Probably not. The Fair Housing Act, with some limited exceptions, e.g., housing for senior citizens, prohibits discrimination in housing against families with children under

[click here to continue article](#) 

RETURN
TO THE
INDEX

eighteen years of age. In addition to prohibiting an outright denial of housing to families with children, the Fair Housing Act also prevents the imposition of special requirements on tenants with children. For example, tenants with children cannot be segregated to a separate area of a community, and unreasonable restrictions cannot be placed on access to recreational services in a community. The inability of a thirteen-year-old to use the swimming pool in the community without an adult is probably an unreasonable restriction.

SUBDIVISION

New Public Report after Two Years Required in Subdivision

A public report was issued in April 2003, for a subdivision of 120 lots. In June 2006, a developer purchases eleven lots in the subdivision for the purpose of building and selling homes on these eleven lots. Is the developer required to apply for a new public report, or can the developer deliver the April 2003, public report to buyers of the homes built on the eleven lots?

Answer: A new public report will be required. An original public report issued for a subdivision can be used by the owner of six or more lots if certain requirements are met. See A.R.S. §32-2181.02. The main requirement is that the original public report be less than two years old. Therefore, inasmuch as the original April 2003, public report was issued more than two years ago a new public report will be required. *Note: If the original April, 2003, public report is mistakenly used by the developer in the sale of the eleven lots to buyers, the buyers will have three years to rescind the transaction because a current public report was not issued. See A.R.S. §32-2183(F).*

BROKERAGE

Brokerage Firm Can Represent Buyers with “Back-Up” Offers

The brokerage firm is a dual agent representing both buyer #1 and the seller in a transaction with the proper AAR Forms. After escrow is opened, another agent in the brokerage firm represents buyer #2 who wants to make a “back-up” offer. Buyer #2 has questioned this agent about the terms of the transaction between the seller and buyer #1. Are the other agents in the same brokerage firm required to disclose to the agent for buyer #2 any terms such as price and closing date of the transaction in escrow?

Answer: Probably not. Under the Real Estate Agency Disclosure and Election Form and the Consent to Limited Representation Agreement form, the seller, buyer #1, and buyer #2 agree that there are certain limitations on the representation by the brokerage firm. For example, both forms indicate that disclosure of price and terms and other confidential information requires written authorization. ▲

Phoenix attorney Christopher A. Combs is a partner with the firm of Combs Law Group, P.C., and is on the AAR Hotline team.

For reprint permission, contact Diane Cole, Communications Director, Arizona Association of REALTORS®, 602-248-7787, 800-426-7274, dianecole@aaronline.com.

◀ [click here to return to beginning of article](#)

**RETURN
TO THE
INDEX**