

ARIZONA REALTOR

M A G A Z I N E

PROSPECTING?

Avoid These Danger Zones

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PROSPECTING? AVOID THESE DANGER ZONES

Editor's Note: The Code of Ethics turns 100 in 2013. AAR will be celebrating the code with monthly articles published under the caption, Code Talk, in the Arizona REALTOR® Magazine, discussing the various ways the code governs professional conduct and interaction with the consumer in every day transactions.

When it comes to obtaining new clients, real estate agents are at the top of their game. But, there are several commonly used prospecting tactics that can land agents in hot water. This month, we'll take a look at some danger zones to avoid when it comes to prospecting and advertising and give you tips on the right and wrong ways to do it.

ZONE 1: GIVING IT AWAY

While prospecting for new clients, some agents consider using a game of chance (like a drawing for an iPad). However, agents should make certain that they are not doing so in violation of Arizona law. A.R.S. § 13-3301(4) defines gambling, in part, as "the act of risking or giving something of value for the opportunity to obtain a benefit from a game or contest of chance or skill." Giving business to an agent in exchange for entry into a drawing is likely considered "giving something of

value for the opportunity to obtain a benefit." Agents should therefore refrain from offering new clients entry into a game of chance in exchange for business.

In light of the above, the better practice is to offer the same benefit to all members of the public that attend the agent's open house or respond to the agent's advertisement. Jerome King, designated broker of Long Realty in Tucson, Ariz., offers this advice for erring on the side of caution, "If you'd like to offer a free Starbucks card at an open house, you should give a Starbucks card to everyone." The giveaways must be without condition and universal across the board. Furthermore, keep in mind that Article 12, Standard of Practice 12-1 of the Code of Ethics states: "REALTORS® may use the term 'free' and similar terms in their advertising and in other representations provided that all terms governing availability of the offered product or service are clearly disclosed at the same time."

ZONE 2: THE CLAIM GAME

"I've seen a lot of marketing attempts lately that focus on 'the last five homes sold in this neighborhood'. And then it gives the addresses of five homes sold, but not necessarily the last five homes the agent himself sold," said King. "It's a great marketing tactic, but it has one flaw:



If you weren't involved in the transaction you can't give the impression in your advertising that you sold these homes." Article 12, Standard of Practice 12-7 states: "Only REALTORS® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have "sold" the property." Armando Contla, GRI with Arizona Turquoise Realty in Lake Havasu City, Ariz. adds, "I've also seen people advertise a property that has already closed escrow" in an effort to gain prospective clients. This is also found when people 'poach' listings and [post them to Craigslist](#) or other internet sites.

<http://www.aaronline.com/2012/08/are-other-agents-posting-your-listings-on-craigslist/>

If you're looking to paint a picture of a specific neighborhood in your marketing collateral, you should leverage other data such as that on your MLS or from your local newspaper.

ZONE 3: SLIPPERY SIGNS

"Many REALTORS® are posting 'For Sale' or 'For Lease' signs in their own yards to gain the attention of potential buyers. The only problem is, the agent's home isn't really on the market. This is just a way to get prospects," said King. Clever? Sure. Unethical? Definitely.

Article 12 of the Code of Ethics strictly prohibits false advertising of any kind. King offers this solution, "If you want to post a sign in your yard attracting new clients, have it say something like 'For information regarding real estate in this neighborhood, call ...!'"

Contla said that he's also seen For Sale By Owner (FSBO) signs popping up in agents' yards, when the property is not for sale. "Appealing to unrepresented buyers with a FSBO sign is just another bait and switch tactic."

Along those same lines, Contla says that many agents are putting "For Sale" signs in front of homes where the owner may not want it advertised. "We're seeing this in rental properties where the owner may live out of state," said Contla. "Agents think that a home won't sell unless it has a 'For Sale' sign in front. But, you must make sure that you have the express consent of your owner to do so." ❖

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Legal Hotline Q&A

BY MACK, WATSON & STRATMAN
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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.

Q&As are not "black and white," so experienced attorneys and brokers may disagree. Agents are advised to talk to their brokers/managers when they have questions.

A Seller Will Likely Be Relieved Of His Mistaken Acceptance Of An Offer

FACTS:

The buyer submitted an offer of \$450,000 to the seller. The seller submitted a counter offer of \$375,000 which the buyer immediately signed and returned to the seller. The seller stated that he made a mistake and the counter offer should have been \$475,000.

ISSUE:

Is there an enforceable contract between the buyer and seller at \$375,000?

ANSWER:

If one party is operating under a mistake of fact when it signs an agreement, the agreement is voidable if the other party knew or should have known that the first party was mistaken (*Parrish v. United Bank*, 164 Ariz. 18, 20, 790 P.2d 304, 306 (App. 1990)). In this instance, the buyer submitted an offer of \$450,000 and the seller countered with \$375,000. It is likely that the buyer knew or should have known that the seller made a mistake. As such, the seller has the option of voiding the contract by providing the buyer notice that the contract is void.

Independent legal counsel should be consulted. ❖

Arizona REALTOR® Magazine – October 2013 | Contracts - Cancellation

Seller Is Obligated To Provide Insurance Claims History Even Though It May Reference A Death In The Home

FACTS:

The previous owner of the property passed away in the master bedroom. The son inherited the home shortly thereafter. Apparently, the deceased was not discovered until eight days after he passed away. Consequently, the son filed a claim with the property insurance policy for death remediation and cleanup. The damage and remediation is now identified in the C.L.U.E. Report (insurance claims history hereinafter CLUE Report). The remediation and cleanup was extensive and the subject of the damage was identified as "physical peril."

ISSUE:

In selling the property, is the son required to disclose that a death occurred in the property? If not, is the son required to disclose the damage and remediation? Finally, is the son also required to provide the CLUE Report?

ANSWER:

Pursuant to A.R.S. § 32-2156, a seller and broker are not required to disclose that the property was the site of a natural death, suicide or homicide. In other words, the seller or broker cannot be liable for failing to disclose that the property had been the site of a human death. *Id.* In this case, the father

HAVE YOU SIGNED UP FOR THE LEGAL HOTLINE?

The Legal Hotline provides all AAR broker members (designated REALTORS®) free access to a qualified attorney who can provide information on real estate law and related matters.

Find out how brokers can access the Legal Hotline

<http://aaronline.com/wp-content/uploads/2012/11/hotline-access.pdf>

Browse more Legal Hotline topics online

<http://www.aaronline.com/manage-risk/legal-hotline/>

Richard V. Mack

Richard V. Mack is a shareholder at [Mack, Watson & Stratman](http://www.mackwatsonstratman.com), which provides the AAR Legal Hotline service. He is a State Bar of Arizona Board Certified Real Estate Specialist and AV rated by Martindale Hubbell. He has also been designated as a Southwest Super Lawyer. Mr. Mack practices commercial litigation with an emphasis on real estate litigation. He is admitted to practice in the state and federal courts of Arizona and before the 9th Circuit Court of Appeals. Mr. Mack graduated Magna Cum Laude from Southwestern College in Winfield, Kansas with a Bachelor of Business Administration, with an emphasis in economics, and received his Juris Doctor from the University of Arizona.

<http://www.mackwatsonstratman.com>



passed away naturally in the master bedroom of the property. As such, the son and/or the broker are not required to disclose this fact to a potential buyer.

With respect to the CLUE Report, Section 4b, Lines 137-141 of the purchase contract provides, in pertinent part, the seller must provide to the buyer a five-year insurance claims history report. In this case, the son is contractually obligated to provide the CLUE Report. The CLUE Report identifies the subject of the remediation as “physical peril.” Despite the subject of the remediation being identified, the son is still contractually bound to provide the CLUE Report. ✱

Arizona REALTOR® Magazine – October 2013 | Disclosure

Departing Agent May Not Work With Old Clients Unless Both Brokers Agree

FACTS:

The agent leaves Brokerage A and begins working with Brokerage B. The agent was representing several buyers at Brokerage A who have properties under contract. The agent now wants to bring those buyers to Brokerage B to ensure he can continue to work on the contracts.

ISSUE:

May the buyer’s agent represent the buyers now that he is licensed with Brokerage B?

ANSWER:

The buyer’s agent cannot represent the buyer if there is a broker employment agreement between Brokerage A and the buyer since the agent is no longer licensed with Brokerage A. Thus, Brokerage A and the

buyer must agree in writing to terminate the broker employment agreement and the buyer must sign a new buyer/broker agreement with Brokerage B. ✱

Arizona REALTOR® Magazine – October 2013 | Brokerage

Buyer Who Fails to Timely Obtain an Appraisal, Waives the Appraisal Contingency

FACTS:

The seller and the buyer have contractually agreed to limit the buyer’s appraisal contingency rights. To this end, the seller and the buyer agreed that (a) the buyer must obtain an appraisal within the 10-day Inspection Period; and (b) the failure to obtain an appraisal within the 10-day Inspection Period results in a waiver of the appraisal contingency. The buyer did not obtain an appraisal within the Inspection Period.

ISSUE:

Does the fact that the buyer failed to obtain an appraisal within the inspection period constitute a potential breach of contract such that the seller should issue a three-day Cure Notice?

ANSWER:

No. The fact that the buyer failed to obtain an appraisal within the inspection period is not a breach of contract or a potential breach of contract. Rather, the failure to obtain an appraisal in this situation simply means that the buyer can no longer use the appraisal contingency as a basis to cancel the contract. ✱

Arizona REALTOR® Magazine – October 2013 | Disclosure

Where a Tenant Commits a Felony in the Leased Premises, the Landlord May Immediately Terminate Lease

FACTS:

A murder has taken place at the rental property. The tenant has been arrested and charged with murder, and is now in jail. The police also found drugs in the rental property.

ISSUE:

What are the landlord's rights in such a situation?

ANSWER:

The AAR Residential Lease Agreement (the lease), lines 145-151, states "Tenant...shall not engage in or facilitate:...(ii) any criminal activity, including drug-related criminal activity, any act of violence or threats of violence, other illegal activity, including... assault..." The lease further provides that any "violation of this provision shall constitute a material and irreparable violation of this agreement and good cause for immediate termination of the tenancy."

In addition, pursuant to A.R.S. § 33-1368(A)(2), "If there is a breach that is both material and irreparable and that occurs on the premises, including but not limited to...homicide...the unlawful manufacturing, selling, transferring, possessing, using or storing of a controlled

substance...the landlord may deliver a written notice for immediate termination of the rental agreement..." The landlord may therefore immediately terminate the Lease. ✱

Arizona REALTOR® Magazine – October 2013 | Landlord/Tenant Issues

Buyer May Cancel Based On Failed Loan Contingency During The Cure Period

FACTS:

The buyer was unable to obtain loan approval and received notice of this fact on the date scheduled for the close of escrow. The seller delivered a Cure Notice and the buyer thereafter delivered a notice of the inability to obtain loan approval. The seller is now demanding the earnest money.

ISSUE:

Is the buyer still entitled to the return of their earnest money deposit?

ANSWER:

Yes. The Cure Period applies to every noncompliance with the terms of the contract. Here, the buyer delivered the notice of inability to obtain loan approval within the cure period. Thus, the buyer is entitled to the earnest money. ✱

Arizona REALTOR® Magazine – October 2013 | Contracts

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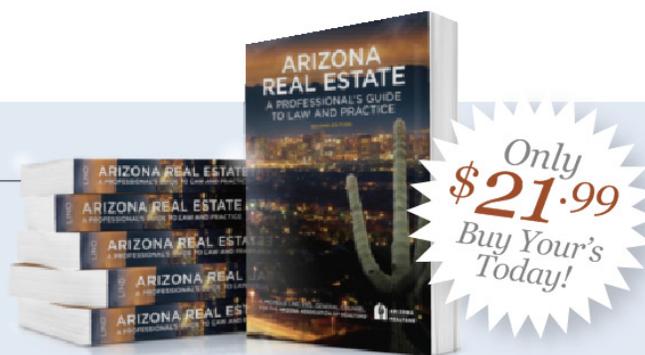
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HUD MORTGAGEE LETTER 2013-23

Over the last few weeks, several brokers have contacted AAR to express concerns regarding [U.S. Department of Housing and Urban Development \(HUD\) Mortgagee Letter 2013-23](#). The concerns surround that portion of HUD's new pre-foreclosure sales policy that states, "no party that is a signatory on the sales contract, including addenda, can serve in more than one capacity. To meet the Pre-Foreclosure Sale (PFS) Addendum requirements, brokers and their agents may only represent the seller, but not both parties." In other words, HUD will no longer allow "dual agency" agreements in short sale transactions. This restriction includes those dual agency transactions in which two different agents are working for the same broker and one agent represents the seller and the other agent represents the buyer.

<http://portal.hud.gov/huddoc/13-23ml.pdf>

AAR has worked closely with NAR policy representatives to address this onerous restriction and, on September 18, 2013, NAR President Gary Thomas submitted a letter to The Honorable Carol Galante, Assistant Secretary for Housing, urging HUD to reconsider implementation of the policies set forth in Mortgagee Letter 2013-23. AAR

President Sue Flucke has also submitted a letter to HUD in which she explained why the subject restriction is harmful to Arizona REALTORS® and FHA borrowers throughout our state.



As a result of these efforts, on September 25, 2013 [HUD reported to NAR](#) that it will reissue Mortgagee Letter 2013-23 and remove all dual agency language. The result is that the dual agency restriction originally considered by HUD will not be implemented on October 1, 2013.

<http://www.realtor.org/articles/hud-removes-dual-agency-restrictions>

Although this was a team effort, AAR would like to extend its sincere gratitude to Ken Ryan and G-II Varatto for their assistance in contesting HUD's proposed dual agency restriction. Their commitment to the industry is greatly appreciated. Thank you all. ✨

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SAVE THE DATE AAR Leadership Conference

The Arizona Association of REALTORS® Leadership Conference is a two-day program for incoming local and state leadership. Sessions provide how-to tips and networking opportunities focusing on fulfilling your volunteer role. This year's event takes place at the Talking Stick Resort and Casino in Scottsdale, Arizona, October 15 through 17.

Learn More Online:

www.aaronline.com/leadership-conference-2014



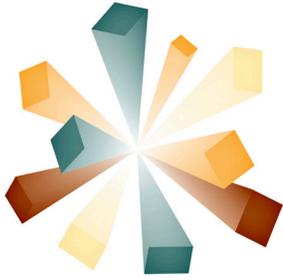
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SOME THINGS CAN'T BE GOOGLED

Previewing the newest GRI course for AAR members

In August, AAR gave our members a brief look at the [changes taking place in 2014](#) with regards to the GRI designation. This month, we're giving you a sneak peek into one of the new courses you'll find in the 2014 GRI course catalog. To see the entire list, visit www.azgri.com.

<http://www.aaronline.com/2013/08/the-evolution-of-gri/>

This course begins with a simple question: How has the role of the REALTOR® changed over the past 10 years? As technology continues to proliferate the consumer landscape, some agents are finding it difficult to cope with the new and diverse needs of today's homebuyer. Today's consumer is better educated when it comes to the market, as well as the home buying process itself. A successful REALTOR® must be able to provide solid information that cannot be found elsewhere (even on Google).

Enter the **Effective Strategies for Building Client Relationships** class. This day-long class focuses on uncovering new ways to build a sustainable real estate career by giving you the tools to market, consult, negotiate and close with buyers and sellers. Both new and seasoned agents will uncover tried-and-true tactics for helping clients understand that you're not withholding "the goods" from them when it comes to homes; or teach you new ways to interpret data for you clients.



This course addresses these major topics:

1. UNDERSTANDING TODAY'S CONSUMER

Agents will gain a greater understanding of the traits today's consumer; tech-savvy, with access to a greater wealth of information (and misinformation). You will learn how to adapt your communication style to eliminate confusion and become a trusted advisor to your clients.

2. MARKETING AND BRANDING YOURSELF

Have you established yourself as a brand? Find ways to play to your strengths when building your brand. It also delves into ways to analyze your marketing mix and evaluate and track your results.

3. DiSC® ANALYSIS FOR SUCCESSFUL NEGOTIATION AND CONFLICT RESOLUTION

When it comes to negotiation, it helps to have the advantage. Agents will be taught the DiSC® (dominance, influence, steadiness, conscientiousness) personal assessment tool, attendees will gain a better understanding of what motivates you, how you respond



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to conflict and ways eliminate stress. This workshop will help build a better understanding of the communications needs of different profiles and ways to adapt to meet their needs enabling more fluid transactions.

4. CREATING LONG-TERM SUCCESS

Dedication to success is hard work and it should pay off for the long-term. This course will help you draft a blueprint for creating a business plan that works for years to come. ❄

If you'd like to learn more about the GRI program, visit www.azgri.com. Or, if you'd like to see when the Effective Strategies for Building Client Relationships class is going to be held, view it on the GRI calendar here:

<http://www.azgri.com/calendar-registration>

Visit [this article](#) on AARonline.com — comment with your thoughts & share to your social networks.

If you are interested in learning more about earning your GRI designation, you can view the designation curriculum here or visit www.azgri.com for more information.

Kristen J. Buckel Phoenix Association	Jeffrey M. Sibbach Scottsdale Area Association	Damon Franks West Maricopa
Luz I. Ceballos Phoenix Association	Donald Tyler Scottsdale Area Association	Amy B. Gilner West Maricopa
Melinda Eslinger Phoenix Association	Dena Greenawalt SEVRAR	Robert Ingenito West Maricopa
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LEARN MORE ABOUT GRI ONLINE
AT WWW.AZGRI.COM

INDUSTRY PARTNERS CONFERENCE 2013 – RE-CAP

For any REALTOR® that's [been frustrated](#) by a transaction that takes on a life of its own, there's a mortgage lender and escrow agent who feels the same way. At this year's annual Industry Partners Conference, more than 300 REALTORS®, mortgage lenders and escrow agents came together to spend the day dissecting possibly the most complicated scenario and finding a way to close the transaction and all get paid. To view photos from the event [click here](#).

<http://blog.aaronline.com/2013/08/3788/>

https://www.facebook.com/IndustryPartnersConference/photos_stream

The day started with a round of introductions, and a truly moving presentation honoring those who lost their lives on September 11, 2001.

Rick Mack, shareholder of Mack, Watson and Stratman and AAR Legal Hotline provider, presented 20 of the top requested legal hotline questions of 2013. You can view them [here](#).

<http://www.aaronline.com/wp-content/uploads/2013/09/20-Questions-RMack1.pdf>

Following Mack's presentation, FBI Special Agent [Desirae Tolhurst](#) gave a great presentation about how the FBI is tackling mortgage fraud in Arizona.

<http://blog.aaronline.com/2013/09/how-the-fbi-plans-to-prevent-mortgage-fraud-in-az/>

Attendee and REALTOR® **Tiffany Robbins Cloud** posted on the [Industry Partners Conference Facebook page](#) after the event that she learned: "That we have our own Phoenix version of 'Sandra Bullock FBI' agent! I actually had to ask a client to call the FBI about housing fraud this morning, so appreciated the presentation. Rick Mack was great as well!"

<https://www.facebook.com/IndustryPartnersConference>

These presentations helped set the stage for the scenario-based work that the REALTORS®, mortgage lenders and escrow agents participated in for the rest of the day. Each table was given a specific scenario of a transaction about to go off the rails. They worked together and learned so much from each other.

Immediately following the conference, the Arizona Women's Council of REALTORS® (WCR) sponsored a cocktail party to raise funds for the Karen Franz Scholarship Fund. The scholarship fund is utilized statewide to support professional develop for WCR members.

To make sure you don't miss next year's event, be sure to like the [Industry Partners Conference page](#). ❄

<https://www.facebook.com/IndustryPartnersConference>

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2013 AAR REALTOR® CAUCUS – RE-CAP

At the 2013 REALTOR® Caucus, Vice President of Government Affairs Nicole LaSlavic detailed the challenges and opportunities that lay before us in the coming year.

Guest speakers this year were Michael Orr, director of the Real Estate Center at the W.P. Carey School of Business at Arizona State University and publisher of the Cromford Report and Congresswoman Kyrsten Sinema. Orr dismissed worries of a second real estate bubble and helped to frame what to expect for the years to come.

Members were asked to discuss with their regions what challenges they face. These challenges include solar leases and contemplated changes to Arizona’s anti-deficiency laws, home owner associations and more.

“With the valuable input from our members, we’ll be able to formulate a plan for the next legislative session,” said LaSlavic. “In 2014, we will once again focus on HOA legislation, anti-deficiency protections, and regulatory issues. I’d like to thank all the members who attended this event and value the role that AAR plays in the legislative arena.”

The REALTOR® Caucus is an annual event hosted by the Arizona Association of REALTORS®. Next year’s event will take place during the month of September. ❖

Visit [this article](#) on AARonline.com — comment with your thoughts & share to your social networks.



NEW FLOODPLAIN MAP

and Rate Changes Coming to Maricopa County

Recently, representatives from the Federal Emergency Management Agency (FEMA) held Open House events at several locations throughout the Valley to discuss the implications of the new floodplain map changes taking effect on October 16, 2013.

AAR interviewed Edith Lohmann, FEMA National Flood Insurance Program specialist and Patricia Rippe, FEMA Natural Hazards program specialist to discuss how these upcoming changes will affect homeowners; especially considering the rate increases due to the extension of the [Biggert-Waters Flood Insurance Reform Act of 2012](#).

<http://www.fema.gov/flood-insurance-reform-act-2012>



A COUPLE THINGS TO NOTE:

FEMA reached out to the homeowners who are affected by these rate plan map changes via mail and invited them to the Open House events.

Floodplain map changes vary from city to city, to get the most up-to-date information, please encourage homeowners to contact their city for more information on changes.

If you're looking for ways to talk to your past, present or future clients about rate changes, this is [a great resource](#).

<http://www.floodsmart.gov/toolkits/insurance/ra.htm>

WHERE TO FIND ADDITIONAL RESOURCES:

NAR created [a podcast](#) in August 2013 to offer specific guidance to members introducing flood insurance disclosure requirements, rates and rate increases.

<http://www.realtor.org/audio/legal-podcast-flood-insurance-program>

NAR Activity Update – [National Flood Insurance Program](#)

<http://www.ksefocus.com/bilddbatabase/clientfiles/172/4/1817.pdf>

Additional links to information from FEMA:

[National Flood Insurance Reform Act 2012](#)

<http://www.fema.gov/national-flood-insurance-program/flood-insurance-reform-act-2012>

[Floodsmart](#)

<http://www.floodsmart.gov/>

[National Flood Insurance Program](#)

<http://www.fema.gov/national-flood-insurance-program>

[Flood Insurance Rate Map](#)

<http://www.fema.gov/floodplain-management/flood-insurance-rate-map-firm>

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