

# ARIZONA REALTOR<sup>®</sup>

## M A G A Z I N E



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# HOW WELL DO YOU KNOW TODAY'S HOME SELLER?

## Action Items for Your Business Based on 2011 Seller Profile

Each year, NAR publishes results from its [comprehensive survey](#) of home buyers and sellers across the country. The report provides a compelling picture of real estate clients today. It also delivers interesting insights into how responses have changed over time. Let's take a look at the data on sellers and consider how it might change the way you currently do business.

<http://www.realtor.org/prodser.nsf/products/E186-45-11?OpenDocument>

**Note:** In the February issue, we looked at buyers.

[Check it out.](#)

<http://www.aaronline.com/azr/2012/february/how-well-do-you-know-todays-home-buyer.aspx>

### DEMOGRAPHICS

Seller demographics shifted this year in much the same way [buyer demographics](#) did. The average seller is older, has a higher household income and is more likely to be married.

<http://www.aaronline.com/azr/2012/february/how-well-do-you-know-todays-home-buyer.aspx>

<b>Median Age:</b>	53
2010:	49
2009:	46
<b>Household Income - 2010:</b>	\$101,500
2009:	\$90,000
<b>Married Couples:</b>	77%
<i>Highest since report began</i>	

**Action Item:** Whether you are a younger agent looking to increase your reach to older clients or an older agent

seeking to work with younger clients, it is important to understand what the different generations of buyers expect from you. Attend a class on the topic (such as the *Generation Buy* class in Flagstaff this month; see sidebar) or educate yourself with books or blog posts on the topic.

### EXPERIENCE

There were slightly more first-time sellers in 2011 than the year before.

<b>First-Time Seller:</b>	66%
2010:	62%

**Action Item:** If you know you are presenting to a first-time seller, tailor your listing presentation accordingly. You might, for instance, bring copies of the contract and other documents that they can review before any offers come in.

### TENURE IN HOME

The amount of time sellers have lived in the home they are selling has jumped considerably.

<b>Years in Home:</b>	9
2007:	6

**Action Item:** Have you targeted marketing to those most likely to have equity in their home? Consider focusing on a subdivision in which most folks bought in the last seven to nine years. There may be pent-up demand that you can capitalize on as the market shifts.

## Generation Buy

Friday, March 23 | 8:30am – 5:00pm

Northern Arizona Association of REALTORS®

\$79 (includes lunch) | [Register Online](#) | [Class Flyer](#)

<http://www.regonline.com/gb2012>

<http://www.aaronline.com/education/class-flyers/120323-genbuy-flagstaff.pdf>

Assessing the distinct wants and needs of different generations can help you nurture real estate client relationships for a lifetime. At any given time, you may be

working with four generations of real estate buyers: Millennials, Generation X, Baby Boomers and Matures. In this one-day course, students will examine the characteristics of these home-buying generations and evaluate their expectations and communication preferences. [Watch the video.](#)

<http://youtu.be/6XC5ewVNTIE>

**C/E: 3-Fair Housing, 3-agency**

**Instructor: Paula Monthofer, ABR, GRI**

## CHARACTERISTICS OF NEXT HOMES PURCHASED

### DISTANCE FROM CURRENT HOME

- The median distance between the home sold and new home purchased is 20 miles.
- 38% move to a home within 10 miles.
- Older sellers are more likely to move a greater distance (43 miles for those 65-74).
- Yet, 52% of sellers did NOT use the same agent for their home purchase.

**Action Item:** Don't be so focused on securing the listing during your presentation that you fail to talk with the sellers about their next step. If they are staying in the area, explain how your skills in buyer representation can benefit them. If they are moving out of state, encourage them to use you for a referral to a qualified agent.

### HOME SIZE

#### 46% purchased a larger home.

*most common among buyers 54 and younger*

#### 31% purchased a home about the same size.

*most common among buyers 55 - 64*

#### 23% purchased a smaller home.

*most common among buyers over 65*

**Action Item:** Understand the motivation behind your clients' decisions. Don't miss the opportunity to speak with both sellers and potential buyers about their goals. It will help you position your listings in an appropriate light.

### AGE OF HOME

#### 60% purchased a newer home.

#### 20% purchased about the same age.

#### 20% purchased an older home.

### COST OF HOME

#### 51% purchased a more expensive home.

#### 26% purchased a less expensive home.

#### 24% purchased in the same price range.

**Action Item:** Evaluate how market factors may influence a potential seller's decision to get off the fence. With historically low home prices and low interest rates, folks can trade up even while purchasing a home in the same price range.

## REASONS FOR SALE

With prices low, more people are selling because they have to — due to factors such as a job relocation or a growing family. Job relocation in particular has jumped significantly.

### PRIMARY REASON

<b>Job relocation:</b>	<b>17%</b>
2006:	<b>9%</b>
<b>Home is too small:</b>	<b>17%</b>
2010:	<b>21%</b>

**Action Item:** During your listing presentation, talk to your potential client about the motives behind their home sale. Be prepared to address considerations that "have-to-sell" sellers will have, such as what will happen if they move before the home sells and must make decisions from a distance. Clients who have outgrown their home may need more than the usual amount of guidance on de-cluttering and staging it to sell.

Generational differences also influence the reason why people sell.

- Sellers 18-44 are most likely to move because their home is too small.
- Sellers 45-54 are most likely to move for job relocation or because the neighborhood has become less desirable.
- Sellers 55+ are most likely to move to be closer to friends and family.

**Action Item:** As you develop a marketing plan for a new listing, consider who your likely buyers might be and find methods to reach that audience. But remember your responsibilities under Fair Housing laws! Also, if you have many clients with aging parents, you might position yourself as a resource for them as they consider options for bringing mom or dad closer.

## SALES PROCESS

In 2011, the sales price was a median 95% of listing price (96% in the West). The median time on market was 9 weeks (8 weeks in the West).

**Action Item:** Are you beating the national or regional average time on market or percent of listing price? What about local trends in a specific neighborhood or subdivision? If you are beating the averages, be sure to mention it in your listing presentation.

## INCENTIVES

The top two incentives offered are home warranty policies (23%) and assistance with closing costs (20%).

**Action Item:** *If you have a challenging listing, talk with the seller about incentives--both the common ones mentioned above and less common ones that may drive additional attention to the home.*

## SATISFACTION

**54% were very satisfied with the process.**

**31% were somewhat satisfied.**

**15% were somewhat or very dissatisfied.**

**69% of sellers say they would use their agent again or recommend the agent to others.**

**Action Item:** *Do you survey your clients at the end of a transaction? With their permission, you could include positive comments on your website, and high overall satisfaction rates might be an effective point to include in future listing presentations. Even negative feedback is useful, helping you improve your game. In fact, if responded to promptly and attentively, you could convert an unhappy client into a future referral source.*

## WHAT SELLERS WANT

**When choosing a listing agent, the most important factors are:**

- Reputation of agent 38%
- Agent is honest and trustworthy 20%
- Agent is friend or family member 18%
- Agent's knowledge of neighborhood 11%

**Sellers say that these are the top four ways they want their agents to help them:**

- Market home to potential clients 24%
- Price home competitively 20%
- Sell home within a specific timeframe 19%
- Find a buyer 19%

**Action Item:** *66% of sellers only contacted one agent, so you want to be first on their list. Review your listing presentation, website and other marketing materials. Do you specifically address these topic areas? Do you have a page on your website that targets sellers and the services you offer them? Could you provide examples of how you meet these goals in outreach to your sphere, posts on your blog and the like?*

## Upcoming Seller Representative Specialist (SRS) Courses Around the State

**\$179 (includes lunch) | [Register Online](#) | [Class Flyer](#)  
C/E: 3-contract, 3-agency, 6-general**

<http://www.regonline.com/2012srs>

<http://www.aaronline.com/education/class-flyers/12-srs-alldates.pdf>

The SRS course is a two-day intensive program that reinvents the way you represent sellers in today's challenging market.

This course provides you with a refreshing perspective of back to basics, "nose to nose, toes to toes" consumer contact combined with today's technology. With comprehensive education on how to deal with Baby Boomers to Gen Ys, you will gain a competitive edge to earn more while reducing risk in a market where clients rely on you more than ever for guidance through transactions.

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**Wednesday, April 4 – Thursday, April 5 | 8:30am – 5:00pm**  
West Maricopa County Regional Association of REALTORS®  
Instructor: Frank Dickens

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**Tuesday, April 24 – Wednesday, April 25 | 8:30am – 5:00pm**  
Northern Arizona Association of REALTORS®  
Instructor: Frank Dickens

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**Wednesday, May 30 – Thursday, May 31 | 8:30am – 5:00pm**  
Tucson Association of REALTORS®  
Instructor: Frank Dickens

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**Monday, August 13 - Tuesday, August 14 | 8:00am - 5:00pm**  
Kingman/Golden Valley Association of REALTORS®  
Instructor: Holly Mabery

## HOW THEY FIND YOU

These are by far the most common ways sellers find an agent:

- 39% got a referral from a friend, neighbor or family member.
- 22% worked with an agent they'd used before.

For comparison purposes, just 4% found their listing agent at an open house and 3% found their agent on a website.

**Action Item:** Do you measure return on investment for your prospecting activities? Make sure you allocate resources of time and money to the arenas most likely to yield clients. When you do outreach to past clients, you have an opportunity to remind them not only that you are in real

estate but that you've continued to grow as an agent. If you've developed into an expert on short sales, for example, do your clients from four years ago know that?

## CONCLUSION

Much of the data detailed above may simply confirm what you already know about your clients. But the final action item is this: Don't just know these facts. Put them to use to your advantage when you are interacting with potential buyers and sellers and with your sphere.

What conclusions do you draw from the data in the home seller profile? Share them in the comments section online.

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COMMENT

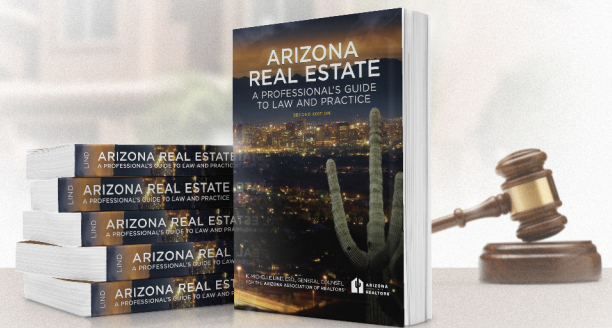
# DUTY OF DISCOVERY AND VERIFICATION OF REPRESENTATIONS

## An Excerpt from *Arizona Real Estate: A Professional's Guide to Law & Practice*

BY K. MICHELLE LIND, AAR GENERAL COUNSEL

There has been some commentary in the past about whether a broker is obligated to verify all representations and discover adverse facts about a property on behalf of a client, by physical inspection or otherwise. Some of this commentary evidences a lack of understanding of the services that a broker provides to the client.

Consider the adverse effect of imposing an imprecise duty to verify representations and to discover property defects upon real estate agents. For example, the case of *Easton v. Strassburger*, 152 Cal. App. 3d 90 (1984) expanded broker liability in California by imposing an overly broad duty on the listing broker to conduct an inspection of the property to discover property defects, leading to increased litigation. The *Easton* decision also strained the E&O insurance market as insurance companies abandoned California. See, 28 Pac. L.J. at 677. As a result, the cost of E&O insurance increased dramatically. In response, the California legislature passed Cal. Civ. Code §2079.12, which states in pertinent part:



## Order Your Copy Today!

<http://www.aaronline.com/azre-book>

Written by AAR General Counsel K. Michelle Lind, *Arizona Real Estate: A Professional's Guide to Law & Practice* is the ultimate real estate resource. The second edition includes new chapters on short sales and REOs, plus updated information on property management and loan defaults.

**Get your copy today!** Books are \$21.99 for AAR members and \$34.00 for non-members. For the first time, there is also an e-book option for just \$9.99. [Place your order online.](#) For bulk orders (25 books or more), please contact Christina Smalls at [christinasmalls@aaronline.com](mailto:christinasmalls@aaronline.com).

<http://www.aaronline.com/azre-book>

**The Legislature hereby finds and declares all of the following:**

That the imprecision of terms in the opinion rendered in *Easton v. Strassburger*, 152 Cal. App. 3d 90, and the absence of a comprehensive declaration of duties, standards, and exceptions, has caused insurers to modify professional liability coverage of real estate licensees and has caused confusion among real estate licensees as to the manner of performing the duty ascribed to them by the court.

Thus, a broker's duty to the client in this regard must be narrowly interpreted to avoid similar consequences in Arizona.

As one commentator stated: "[o]ne of the preliminary issues to be addressed is whether a real estate broker has the ability to conduct a diligent search for material defects. Although educated in the basic conveyance of property, real estate brokers are typically far from being experts in assessing the integrity of a residence. What may be a 'red flag' to a plumber or a mason, may be nothing more than a bump or noise to an inspecting broker." 28 Pac. L.J. 671 (1997). Therefore, to protect the public, discovery of defects should be left to professional inspectors, not the real estate broker. In circumstances in which there are no suspicious conditions and no specific inquires by the buyer, the real estate broker should have no duty to discover defects or verify representations. See, *Harkala v. Wildwood Realty*, 558 N.E. 195, 201 (Ill. App. 1990) ("*nothing in the record suggests that the brokers should have been looking for termite problems or damage when neither the sellers nor the appearance of the home gave evidence of infestation.*")

This policy is consistent with the obligations imposed by the NAR Code of Ethics, Article 2, which states:

"REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law." Standard of Practice 2-1 states: "REALTORS® shall only be

obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR® the obligation of expertise in other professional or technical disciplines."

## VERIFYING INFORMATION

When passing along information from a third party to a client, the broker should make sure the client understands that the broker has not verified the veracity of the information. No Arizona case imposes a duty on a broker to independently verify information on behalf of a client. The court in *Aranki v. RKP Investments, Inc.*, 194 Ariz. 206, 979 P.2d 534 (App. 1999) held that the listing broker is not liable to the buyers for passing along information from the seller without proof that the listing broker knew or should have known that the information might be false. Therefore, at common law, the listing broker has no duty to the buyer to verify such information absent a "red flag" indicating the information is inaccurate.

The California courts have also addressed this issue and held that a buyer's agent is not required to verify information if the client understands that the information is unverified. See, *Assilzadeh v. California Federal Bank*, 82 Cal. App. 4th 399 (2000). As the court in *Pangano v. Krohn*, 60 Cal. App. 4th 1 (1997) stated: "[w]hen the buyer's agent transmits material information from the seller or others to the buyer, the agent must either verify the information or disclose to the buyer that it has not been verified." Citing, *Salahutin v. Valley of California, Inc.*, 24 Cal. App. 4th 555, 562-563 (1994). "Accordingly, a buyer's agent is not required to verify information received from the seller and passed on to the buyer if the buyer understands the agent is merely passing on unverified information." Id. at 563.

## ADRE RULE REGARDING VERIFICATION OF INFORMATION

A broker is required to obtain and communicate all information material to the client and relevant to the transaction. R4-28-1101(I). And, if the broker questions the accuracy of information being provided, or if a client asks about an issue or questions the information, the broker should assist the client to verify the information.

R4-28-1101(I) states:

A salesperson or broker shall exercise reasonable care in ensuring that the salesperson or broker obtains information material to a client's interests and relevant to the contemplated transaction and accurately communicates the information to the client. A salesperson or broker is not required to have expertise in subject areas other than those required to obtain the salesperson's or broker's license. A salesperson or broker shall take reasonable steps to assist a client in confirming the accuracy of information relevant to the transaction.

The related Substantive Policy Statement states:

A licensee is a real estate professional with a fiduciary duty to his or her client to act in the client's best interests as described in R4-28-1101(I). Reasonable care or competence may include recommending that a client seek professional or technical advice when the matter is beyond the expertise of the agent. Licensees are expected to take reasonable steps to assist their clients in confirming or verifying information under circumstances in which a reasonably prudent real estate professional has reason to question the accuracy of the information being provided in a transaction, or where the client has questioned the accuracy of the information.

These considerations are intended to provide a reasonable standard for licensees to follow in complying with their duties and obligations under statute and rule.

Substantive Policy Statement 2005.13 (*Formerly SPS No. 2, Revised 6-1-2001; revised and renumbered 5/28/04, revised and renumbered 4/8/2005*).

Substantive Policy Statement 2005.13 is consistent with the Restatement (Second) of Torts §552, which provides that:

One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their

business transactions, is subject to liability for the pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

## THE GUIDANCE PROVIDED IN ADRE RULE AND POLICY

A broker must exercise reasonable care to obtain information material to a client's interests and relevant to the contemplated transaction and accurately communicate the information to the client. What is reasonable in most cases is dependent upon the circumstances and will vary according to many factors. However, the rule and policy provide some guidance on this issue.

*"A salesperson or broker is not required to have expertise in subject areas other than those required to obtain the salesperson's or broker's license."* In other words, the real estate agent is not required to have the expertise of a home inspector, appraiser or surveyor when representing a client. Therefore, if the seller states that the roof is in excellent condition and only an inspector would have the expertise to determine otherwise, the broker should have no liability for merely passing along the seller's representation.

*"A salesperson or broker shall take reasonable steps to assist a client in confirming the accuracy of information relevant to the transaction. Licensees are expected to take reasonable steps to assist their clients in confirming or verifying information under circumstances in which a reasonably prudent real estate professional has reason to question the accuracy of the information being provided in a transaction, or where the client has questioned the accuracy of the information."* In other words, if the seller states the roof is new and in excellent condition, but the agent has reason to believe that the roof is old and in a state of disrepair, evidenced by broken shingles and obvious water leaks, the agent should point out these circumstances to the buyer/client and recommend that the buyer obtain a professional roof inspection. Similarly, if the buyer questions the accuracy of the seller's representations or other information provided during the transaction, the same rule applies: the agent should assist the buyer in obtaining independent verification.

“Reasonable care or competence may include recommending that a client seek professional or technical advice when the matter is beyond the expertise of the agent.” In other words, in the above scenario, if the client is concerned about the roof’s condition, the agent should advise the client to have the roof inspected by a roofing expert.

In addition to referring the buyer to other professionals to assist in investigating and inspecting the property, the broker may also want to provide the buyer with some tools to encourage the buyer to take an active role in the investigation of the property and the verification of information. For example, the buyer may be provided with access to the *Buyer Advisory*, which provides the buyer

with a wealth of information and resources to assist the buyer in becoming more informed about the property being purchased.

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#### ABOUT THE AUTHOR



**AAR General Counsel Michelle Lind** is a State Bar of Arizona board certified real estate specialist and the author of *Arizona Real Estate: A Professional’s Guide to Law and Practice*.

*This article is of a general nature and may not be updated or revised for accuracy as policy, 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.*

# WINTER CONFERENCE

## We’re Going. Are You?

March 7 - 9, 2012 | Prescott Resort | [Conference Website](#) | [Register Online](#)

<http://www.aaronline.com/winterconference> | <http://www.regonline.com/wc2012>

**Want the scoop on anti-deficiency legislation?**

This is the place.

**Want to know the top five legal issues Arizona REALTORS® are facing?**

We’ve got that.

**BPOs? REO disclosure issues?**

**Low-cost marketing?**

Yep. Yep. Yep.

**Tips on managing risks in social media and how to manage your reputation?**

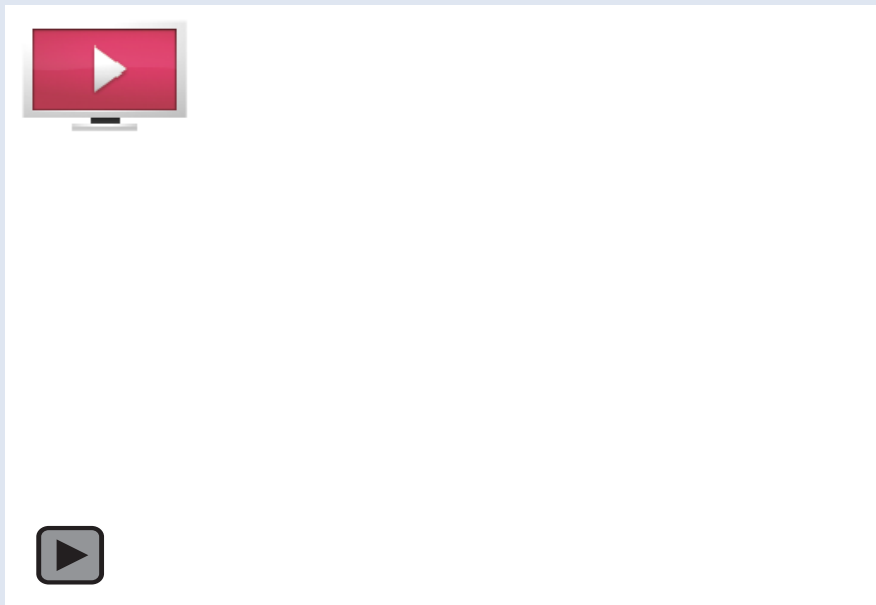
You bet.

**Want to understand hot issues in the mortgage world, such as Dodd-Frank, HARP 2.0, G-Fees and the CFPB?**

We’ll help you.

**Looking for C/E?**

We’ve got you covered with an rCRMS (AAR’s risk management certification) course, property management bootcamp and CRS-sponsored class on major home systems (water & electric).



**Need a break to refocus and have some fun with old friends and new friends?**

Winter Conference is definitely the place for you.

*At this date, registration is only available on site.*

## See you in Prescott!

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# AAR REMEMBERS JACK WOERNER

## Jim Sexton Takes on Role of Treasurer

It is with a heavy heart that we share the passing of our friend and 2012 AAR President-elect John "Jack" Woerner with you. Jack was an agent with Coldwell Banker Residential Brokerage. In addition, he was a past president of the Green Valley/Sahuarita Association of REALTORS® (2004), AAR Region Five vice president (2007-2009), and 2012 AAR president-elect. Jack was to be the 2013 president of the Arizona Association of REALTORS®. President-elect Woerner was a friend, mentor, leader, father and husband who will be missed by so many. Our thoughts and prayers are with his wife, Jan, and his family.

Due to the vacancy of the office of president-elect, Sue Flucke has assumed the office under President Holly Mabery in accordance with the AAR bylaws, Evan Fuchs has been appointed as first vice president and Jim Sexton as treasurer for the remainder of 2012. We are fortunate to have such a strong group working on behalf of Arizona REALTORS®.

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*In Memory of Our Friend  
John "Jack" Woerner*

## Update on the Homeowner's Rebate Affidavit

From the most recent *Capitol Insider* update from AAR: "Those that have been following the various articles and warnings on the impending Homeowner's Rebate Affidavit may have noticed when they received their property valuation notice that no such affidavit was present. As you may recall, the affidavit provision was part of last year's 'Jobs Bill,' which required homeowners to return the affidavit declaring that the property is the homeowner's primary residence. If the homeowner failed to do so, the property would automatically be reclassified as Class 4 property and their taxes would go up as much as \$600/year. Two bills moving through the legislature,

HB 2486 and SB 1217, are the primary reasons the affidavit has not been sent out this year, as required in current law."

[Read the full update.](#) If you did not receive the email and would like to subscribe to the *Capitol Insider*, please email [nicole@aaronline.com](mailto:nicole@aaronline.com). *Capitol Insider* is a member-only benefit.

<http://www.aaronline.com/capitol-insider/archive/120224.aspx>

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# POWER WRITING SKILLS FOR REAL ESTATE AGENTS



## Part Two: Write to Persuade

BY KAREN STEFANO, ESQ. AND PENNY NATHAN

**About the Series:** *Real estate agents spend more time writing than ever before, with email dominating modes of communication with clients, banks, other agents and more. Beyond email, agents need writing skills to prepare compelling website text, client handouts and other marketing material. All of this makes writing key to real estate business development in any type of market. Based on the principles of a new book, Before Hitting Send: Power Writing Skills for Real Estate Agents, this series of three articles provides practical how-to writing tips with examples and exercises from scenarios agents face daily. [View part one.](#)*

<http://www.aaronline.com/azr/2012/february/power-writing-skills-for-real-estate-agents.aspx>

As a real estate agent, you write to persuade in many contexts: to sell yourself, to defend an idea, to refute an opposing point of view. In order to persuade a reader, you must use evidence to support your point of view, address viewpoints that conflict with yours, and present a strong conclusion. Follow the tips outlined below to create a logical argument, using facts and evidence to persuade.

### **TIP #1: FOCUS ON THE PURPOSE OF YOUR ARGUMENT.**

What is your goal? What do you hope to accomplish? Why is it important? What will adopting your point of view achieve? With the answers to these questions in mind, you will create a more persuasive message.

### **TIP #2: IDENTIFY YOUR READER(S).**

Who are you trying to convince? Do you know this audience? What do you know about him, her or them? Target the message to the reader's unique issues and concerns.

### **TIP #3: GET THE READER'S ATTENTION.**

The best way to get a reader's attention is by focusing your argument specifically toward him or her. Show the reader how an issue, problem or situation affects him or her. To spur the reader to act, focus on that reader's hot points — the issues that you know move him or her to pay attention and take action. What are the hot-button issues that have either been articulated by the reader or that you anticipate he or she will respond with when reading your message? Prepare for these and address them in the initial message.

### **TIP #4: RESOLVE THE ISSUE.**

Resolve the issue, problem or situation with your argument. Explain what your plan or solution will accomplish. Show how the reader will benefit.

### **TIP #5: MARSHALL THE EVIDENCE IN SUPPORT OF YOUR ARGUMENT.**

After collecting your evidence, set it out in an organized, easy-to-read format. The opening sentence should introduce your argument or the point you are trying to make. Next, state the evidence that supports the argument. Each of these reasons will become the topic sentence for each paragraph in the body of the message. Use reliable facts to support the argument and avoid emotionally charged language or punctuation. Typing in all caps followed by a half dozen exclamation marks is not an effective "technique" for convincing a reader that your point of view is the right one.

### **TIP #6: RESPOND TO THE READER'S CONCERNS; DON'T IGNORE THEM.**

Respond to these concerns, state why they are not valid and articulate why your point of view is correct.

**TIP #7: AVOID TURNING THE MESSAGE INTO AN "I" VERSUS "YOU" MESSAGE.**

A reader is not likely to be persuaded to change his viewpoint if he feels you are blaming him for an issue, talking down to him or dismissing his viewpoint without proper consideration.

**TIP #8: ENCOURAGE THE READER TO ADOPT YOUR SOLUTION.**

A simple and effective way to close the message is to say:

"For all of the foregoing reasons, I encourage you to...."

Or: "For all of these reasons, I encourage you to...."

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ABOUT THE AUTHORS

**Karen Stefano, Esq. and Penny Nathan** are the authors of *Before Hitting Send: Power Writing Skills for Real Estate Agents*, released by Dearborn in October 2011. This exciting new resource coaches agents in the art of persuasive writing, breaking bad news gracefully, and the strategic use of language to create a more powerful message. Through examples and exercises based on scenarios agents face daily, the book also teaches how to structure a message for maximum impact, how to craft an appropriate tone, and the importance of eliminating unnecessary words. It shows agents how to avoid common grammar and punctuation errors, how to strengthen a communication through use of the active voice, and more. It offers 200 sample letters and emails that agents can modify and use in their own communications with clients, potential clients, other agents, and more. To learn more, go to [beforehittingsend.com](http://beforehittingsend.com).

PUT YOUR NEW SKILLS TO WORK WITH THIS EXERCISE

Rewrite the following email in which the agent seeks to persuade her seller to reduce the listing price on his property.

To: samseller@abc.com  
Fr: Vivian@realty.com  
Re: 678 Oxford Lane

Sam,  
Attached are the recent comps showing the market shift and demonstrating that we are now priced **TOO HIGH!!!!** We are chasing the market downward now. Do you want this to turn into a short sale????! We have been on the market six months and have received zero offers. Last week we didn't even have one showing. Buyers educate themselves by viewing many homes. They know what is a fair price. If your home is not competitive in value with those they have seen it will not sell. I know a price reduction will cut your profit on this property to almost nothing but you need to listen to me. Lower the price NOW to \$322,000 - \$349,000. I know what I'm doing. Who is the real estate expert here — me or you? Please just let me do my job!! Attached are some additional comps. Call me.

Vivian Edwards

To: sam@abc.com  
Fr: Vivian@realty.com  
Re: 678 Oxford Lane

Sam,

I understand your opposition to a price decrease and appreciate your frustration in walking from the sale of this "investment property" with virtually no equity.

For a variety of reasons, however, it is imperative that we lower the price on 678 Oxford Lane. First, we have been on the market for six months and have not received a single offer. Second, last week, in spite of my team's vigorous marketing efforts, we didn't have even one showing. Buyers educate themselves by viewing many homes and they know what constitutes a fair price and what is not a fair price. If your price is not competitive in value with other homes those buyers have seen, your home will not sell.

My concern is that without an immediate price reduction, you will be chasing the market downward and you will end up in a short sale situation. You don't want that to happen and neither do I. Please review the attached comps. They reflect the market shift and demonstrate that 678 Oxford Lane is currently priced too high. By lowering the price immediately, to a range of \$322,000 to \$349,000, you will instantly attract buyers to the property, thus accomplishing your goal of getting out of this property and on to new opportunities.

As always, I am happy to discuss this with you further. Please consider my points and give me a call at your convenience.

Sincerely,  
Vivian Edwards

EXERCISE KEY

The exercise can be written in a number of different ways. This key provides just one example.

# PREPARING YOUR CLIENT TO NEGOTIATE ON SHORT SALES & OTHER TRANSACTIONS

BY DAVID COMPTON

In this period of tumult and uncertainty in the market, agents are continuously being admonished to pay more attention to their role of negotiating for their clients for the best possible outcome that favors their interests. To do this effectively, it might be worth taking a look at how you prepare your client for the possible outcomes and evaluating you and your client as a negotiating team. When time is taken to do this, more often than not, expectations are met more satisfactorily for both you and your client. There is a new focus on the agent performing their fiduciary duty in short sales and transactions with alternative purchase options. Let's start with a few simple steps to prepare your client.

## FORM PHOBIA

First, it's important to understand that consumers have an understandable fear of paperwork. What's even worse is that so many of them are making major decisions, such as loans on their properties, without even reading the forms, agreements, acknowledgements and disclosures they are signing. They just don't want to bother with either taking the time or energy to do this. They just want to get the deal done. This is the number one cause of misunderstandings in real estate that often lead to claims, lawsuits and complaints with the proper authorities.

Make it clear to your client that it is very important that they study the documents they will be signing. Giving them a sample copy of the contract and the other forms they will have to review at the very beginning of your relationship and advising them to read and study them carefully is one major step that can enable them to make a better informed decision. Let them know they will be called upon to respond very quickly, and the more they read, study and ask questions ahead of time, the better they'll be prepared when the decision time occurs. When they have had an opportunity to read and study the contract and the other forms, they'll be less fearful when they have to sign them.

## THE UNIVERSAL RULE OF REASON

Very simply stated, sales associates should advise their clients to only make requests of the other party that they would agree to if they were on that side of the transaction. Anyone who is asking people to do things that they themselves wouldn't be willing to do is a party you are better off not working with. Life is too short, and legal/ethical risks are too great, to take this kind of gamble with your career.

## SETTING TARGETS

Your clients really need to know what they want to achieve when they enter into negotiations. Too often contracts are negotiated to death when it becomes a series of knee-jerk reactions to the other party's requests to the point where both buyer and seller don't see the big picture and are just playing a game of "not giving them another dime." Always reinforce the big picture perspective with your clients so that they don't end up shooting themselves in the foot.

Instead of setting goals and expectations in terms of specific figures, such as a certain price, net or closing costs, set goals in terms of ranges of expectations. For instance, if your buyer client sets a goal of paying no more than \$275,000 for a property, and they end having to pay \$289,000 to get it, they may see it as a failure. They had to pay \$14,000 more than what you said. Instead, why not set a goal of paying between \$270,000 to \$295,000? Now, they will see this as a success. They will have achieved their goal. Goals must be flexible, and you and your client need wiggle room. You can also do this with other terms in an agreement, such as closing costs, closing date, net proceeds and repairs.

## DETERMINING FLEXIBILITY

One way to evaluate yourself and your client as a negotiating team is to rate them on the following eight factors from one to five (five being the best) and totaling the score:

- Client is willing to cooperate with the other party
- Client has well-defined goals
- Client is willing to take your advice
- You and the client get along with each other
- Client is highly motivated
- Client makes decisions based on facts
- You trust the client
- Client understands the risk/reward ratio

Obviously, with eight factors rated one to five, the maximum possible score is 40. If you and your client score a 32 or higher, you are a strong team. If you score 24-31, you are a good team, but you need to keep them focused. If you score 16-23, this one might take a little work and patience and be high maintenance, but it still

might be worth the effort. If you score less than 16, it might be time for you to give them a “friendly rejection,” which might be stated like this: “Mr./Ms. Buyer/Seller, Based on current market conditions, I don’t think that it is possible for you to achieve your goals at this time. Therefore, I will not be able to represent you. I would rather turn you down now than let you down later.”

Following these simple steps will make the negotiation process enjoyable for you instead of stressful. Good luck!

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### ABOUT THE AUTHOR



**David Compton** has been in the real estate business for 30 years in residential and commercial sales and, for the last 20 years, as a real estate trainer/speaker. David served for 12 years as the Director of Education and Regional Trainer for Coldwell Banker. A senior GRI, ABR and CBR instructor, he has developed over 200 real estate courses and authored hundreds of articles. A native Arizonan who grew up in Buckeye, David resides in Litchfield Park.

## Upcoming Accredited Buyer’s Representative Courses

Thursday, May 31 – Friday, June 1 | 8:30am – 5:00pm  
Kingman/Golden Valley Association of REALTORS®

Instructor: Evan Fuchs, ABR, CRS, GRI

OR

Thursday, August 23 – Friday, August 24 | 8:30am – 5:00pm  
Sedona/Verde Valley Association of REALTORS®

Instructor: Holly Mabery, ABR, GRI

\$179 (includes lunch) | [Register Online](#):

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**This class is normally priced at \$295 — a savings to you of \$116!**

CE: 9-agency, 3-disclosure

When you can’t count on the market, you have to count on your skills! This ABR course sets the foundation of skills and resources you need to help you succeed in today’s marketplace as a buyer’s representative. Topics covered include: agency relationships, duties to clients, marketing fundamentals, the interview & counseling session, buyer representation agreements, building buyer loyalty and more.

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## CRB: Understanding & Leveraging Teams

Wednesday, March 28 - Thursday, March 29  
Arizona Association of REALTORS®

\$179 (no C/E) | [Register Online](#) | [Class Flyer](#)

<http://www.regonline.com/crbmarch>

<http://www.aaronline.com/education/class-flyers/120328-crb.pdf>

Are you known as a team-friendly broker? Do you want to attract and service teams at your brokerage? Come and learn how to create the most profitable teams possible!

Highlights of this course include:

- blueprint for a successful team model
- creating coachable moments
- employment contracts
- best practices in team management
- team compensation plans
- and more!

If you are pursuing the Council of Real Estate Brokerage Managers (CRB) designation, this course counts as three credits. Learn more at [www.crb.com](http://www.crb.com).

**Instructors: Holly Eslinger**, ABR, CRB, CRS, GRI & **Laura Kovacs**, CRB, SRES

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# AAR'S NEW PROFESSIONAL STANDARDS ETHICS CITATION PROGRAM

BY K. MICHELLE LIND, AAR GENERAL COUNSEL

Ethics complaints filed at the Arizona Association of REALTORS® (“AAR”) and forwarded by the Grievance Committee (“GVC”), as alleging a possible violation of the Code of Ethics, result in an ethics hearing. An ethics hearing involves the complainant, the respondent REALTOR®, a hearing panel, a court reporter and an AAR Professional Standards Administrator. The respondent’s REALTOR® principal also has the right to be present. During the hearing, both parties have the right to present witnesses, submit evidence pertinent to the case, and to cross-examine witnesses. After the hearing is adjourned, the hearing panel makes a decision by simple majority vote. (*Get more information on the [ethics hearing process.](#)*)

<http://www.aaronline.com/RM/Nov08.aspx>

Beginning in April 2012, a new program will be implemented for resolving certain ethics complaints that would have otherwise required this hearing process. The new Ethics Citation Program will allow a REALTOR® member to resolve an ethics complaint without a hearing by paying a citation amount (similar to the administrative fee imposed in an ethics hearing) and attending a class addressing the Code of Ethics article that is the subject of the complaint. The purpose of the program is to streamline the ethics complaint process in the applicable cases while fulfilling the purpose of Code of Ethics enforcement – educating members about their professional obligations and serving as a meaningful deterrent to future violations. The advantages of resolving a complaint without a hearing include being less burdensome on both parties and more cost effective in terms of volunteer time and actual expenses. Further, complaints processed through the program should be resolved more quickly, which benefits everyone involved.

## ETHICS COMPLAINTS ELIGIBLE FOR THE PROGRAM

Not all ethics complaints are eligible for the Ethics Citation Program. Code of Ethics complaints are eligible for the program only if alleging a violation of one or more of the following articles:

**Article 3: Cooperation with other brokers**

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**Article 4: Disclosure of personal interest**

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**Article 5: Disclosure of present or contemplated interest**

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**Article 6: No compensation without knowledge/consent**

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**Article 12: Advertising**

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**Article 14: Cooperation in professional standards proceedings**

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**Article 16: Interference with the agency of another**

## CITATION PROGRAM OVERVIEW

The GVC will review the ethics complaint and, taking all information in the complaint as true on its face, determine if there is potential violation of the Code of Ethics. If the GVC determines there is not a potential violation, the complaint will be dismissed. If the GVC determines there is a potential violation and the complaint alleges only a violation of the articles eligible for the program, the GVC will have the option to offer the respondent an opportunity to resolve the complaint by citation.

The citation will include an educational requirement commensurate with the article violated and a citation fine of:

- \$250 for the first violation
- \$500 for the second violation
- \$750 for the third violation

If a respondent repeats the same violation, the citation amount will be increased. For example, a first violation of Article 12 would be \$250. A second violation, this time for Article 3, would be \$500, and a third violation, this time for Article 4, would be \$750. However, a first violation of Article

12 would be \$250. A second violation of Article 12 would be \$750 (\$500 + \$250). A third violation of Article 12 would be \$1250 (\$750 + \$500).

If offered by the GVC, the citation and a copy of the complaint will be sent to the respondent and the respondent's REALTOR® principal. The respondent will have 15 days to accept the citation. Acceptance of the citation shall be a final resolution of the complaint, which shall not be appealable or subject to further review. The complaint will be closed, and notice will be provided to the complainant that a citation has been issued and satisfied. If the respondent requests a full hearing on the complaint or does not reply within 15 days, the complaint will be forwarded for a hearing.

A REALTOR® may be offered no more than one citation in a consecutive 12-month period; no more than three citations within a consecutive 36-month period, and no more than three citations for the same violation at any time. Further, no additional citations are permitted where the cumulative fine for the citation, if issued, would be more than \$1750.

## IMPACT IN SUBSEQUENT PROCEEDINGS

The fact that a respondent rejected an offer of a citation is not admissible in the hearing on the complaint. Further, the

fact that a respondent previously accepted a citation is not admissible in any subsequent ethics or arbitration hearing. However, if a hearing panel finds an ethics violation after a hearing for the same violation that was previously resolved by citation, the AAR professional standards administrator will provide the applicable past citation information to the panel for consideration in determining the appropriate sanction. The hearing panel would not be informed of past citations for other violations.

Finally, like publication of those found in violation of the Code of Ethics a third time in three years after a hearing, three citations in three years will also result in publication. Citations, like ethics violations found after a hearing, will remain in the REALTOR®'s file indefinitely.

Get more information on ethics complaints and all of AAR's professional standards programs.

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### ABOUT THE AUTHOR



**AAR General Counsel Michelle Lind** is a State Bar of Arizona board certified real estate specialist and the author of *Arizona Real Estate: A Professional's Guide to Law and Practice*.

*This article is of a general nature and may not be updated or revised for accuracy as policy, 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.*

## AAR Congratulates the Newest GRI Designees

October 2011 - January 2012

Armour Anderson, Jr., GRI  
Pamela Andrew, ABR, GRI  
Richard Andrew, ABR, GRI  
Roger Angeloni, ABR, GRI  
Sherrie Bellamy, GRI  
Norma Benitez, GRI  
Robert Brita, GRI  
Elena Bustillos, GRI  
John Carlson, GRI  
Pan Chan, GRI  
Nina Cimini, GRI  
James Davis, GRI  
Ronald Durban, GRI  
Cynthia Eastwood, GRI  
Bobby Eggenberg, GRI  
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Denise Gallup, GRI  
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Carol Hartman, GRI  
Tim Kelley, GRI  
Theresa Koshollek, ABR, GRI  
Samantha Loreface, GRI  
Marlene Lorona, GRI  
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Learn more about the GRI online at [www.azgr.com](http://www.azgr.com).

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# LEGAL HOTLINE

BY MACK, DRUCKER & WATSON  
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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.

## BROKERAGE

[http://www.aaronline.com/documents/HL\\_Broker.aspx](http://www.aaronline.com/documents/HL_Broker.aspx)

### Listing Agent Cannot Charge a Processing Fee for Presenting an Offer

#### FACTS AS PRESENTED BY THE CALLER:

The listing agent refuses to submit the buyer's offer to the seller unless the buyer pays a \$100 “processing fee.”

#### ISSUE:

May the listing agent require a processing fee as a condition of submitting an offer?

#### ANSWER:

No.

#### DISCUSSION:

A listing agent is required by the Commissioner's Rules to “promptly submit to the... client all offers to purchase or lease the listed property.” See A.A.C. R4-28-801(B). The listing agent may not condition submitting of an offer on the buyer or buyer's agent paying a “processing fee.”

## DISCLOSURE

[http://www.aaronline.com/documents/HL\\_Disclose.aspx](http://www.aaronline.com/documents/HL_Disclose.aspx)

### Agent's Brother's Ownership in LLC Must be Disclosed in Writing

#### FACTS AS PRESENTED BY THE CALLER:

The buyer's agent represents an LLC in the contemplated transaction. A member of the LLC is the buyer's agent's brother.

#### ISSUE:

Must this relationship be disclosed?

#### ANSWER:

Yes.

#### DISCUSSION:

The salesperson must disclose to all parties in writing before the parties enter into a binding agreement if the agent's immediate family has a financial interest in the transaction. See A.A.C. R4-28-1102(E).

## FHA Hikes Fees on Mortgages

Home buyers with mortgages backed by the Federal Housing Administration will soon see a rise in fees. The agency is raising its fees in an effort to try to recoup some of its depleted reserves, which suffered from the rising number of home owners who defaulted on their mortgages. The agency also says it's raising fees to try to encourage the return of more private capital to the market. [Read the full update from NAR.](#)

<http://realtomag.realtor.org/daily-news/2012/02/28/fha-hikes-fees-mortgages>

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## Freddie Mac: No on Deficiency Judgments

From [NAR's Speaking of Real Estate blog](#): “The secondary mortgage market company Freddie Mac has updated its bulletin to servicers of Freddie Mac mortgage loans to make clear that they aren't to pursue a deficiency judgment against a borrower after a short sale or deed-in-lieu of foreclosure if the transaction was processed in accordance with Freddie Mac's guidelines.”

<http://speakingofrealestate.blogs.realtor.org/2012/02/17/freddie-mac-no-on-deficiency-judgments/>

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## SHORT SALES

[http://www.aaronline.com/documents/HL\\_shortsales.aspx](http://www.aaronline.com/documents/HL_shortsales.aspx)

# Agent Needs a Loan Originator's License to Negotiate a Short Sale Where She Does Not Represent a Party in the Transaction

### FACTS AS PRESENTED BY THE CALLER:

An agent was retained to assist in negotiation of short sale, but the agent does not represent the buyer or seller in the transaction.

### ISSUE:

May the agent help negotiate a short sale without representing a party?

### ANSWER:

No.

### DISCUSSION:

A real estate agent may not assist in the negotiation of a short sale unless she represents a party in the transaction and short sale negotiations are incidental to that representation. However, if the real estate agent also holds a loan originator's license, she may assist in the short sale negotiation provided her role as loan originator is disclosed to all parties.

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## CONTRACTS

[http://www.aaronline.com/documents/HL\\_Contract.aspx](http://www.aaronline.com/documents/HL_Contract.aspx)

# Buyer Entitled to Keys at Closing

### FACTS AS PRESENTED BY THE CALLER:

The conveyance deed recorded at 1:00pm on Friday.

### ISSUE:

When does the buyer get the keys to the house?

### ANSWER:

See discussion.

### DISCUSSION:

Pursuant to lines 23 and 24 of the AAR contract, the keys are to be delivered to the buyer at the close of escrow. The contract also defines the close of escrow as the recordation of the document. Since the conveyance deed recorded at 1:00pm, the buyer is entitled to the keys at that time.

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## CONTRACTS

[http://www.aaronline.com/documents/HL\\_Contract.aspx](http://www.aaronline.com/documents/HL_Contract.aspx)

# Seller Warranties Waived by "As-Is" Addendum

### FACTS AS PRESENTED BY THE CALLER:

The buyer and seller executed the standard AAR resale purchase contract as well as the "As-Is" Addendum in connection with the residential transaction. During the inspection period, the buyer discovered a plumbing leak that existed before the contract was signed. The buyer has demanded that the seller repair the plumbing leak as required by section 5(a) of the contract. The seller refuses.

### ISSUE:

Must the seller repair the plumbing leak?

### ANSWER:

No.

### DISCUSSION:

The "As-Is" Addendum specifically states that the seller warranty section in the contract, section 5(a), is waived by the buyer. As such, any obligation to repair the plumbing that may have existed before the purchase contract was specifically waived by the buyer when he signed the "As-Is" Addendum.

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## BROKERAGE

[http://www.aaronline.com/documents/HL\\_Broker.aspx](http://www.aaronline.com/documents/HL_Broker.aspx)

# Brokerage May Cancel Listings at Owner's Request

### FACTS AS PRESENTED BY THE CALLER:

The agent was severed from the brokerage firm and had several listings at the time of the severance. The brokerage firm does not want to do business with the owners, and the owners have expressed an interest to follow the agent to the new firm.

### ISSUE:

Must the brokerage firm honor the listing agreement under the circumstances?

### ANSWER:

No.

### DISCUSSION:

Listings belong to the brokerage firm. However, the brokerage firm does not want to do business with the owners. Additionally, the owners have expressed an interest to follow the agent to her new firm. Accordingly, the broker may either cancel the listing agreements or assign them to the new brokerage firm with the seller's written consent.

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## CONTRACTS

[http://www.aaronline.com/documents/HL\\_Contract.aspx](http://www.aaronline.com/documents/HL_Contract.aspx)

# Seller Must Repair Refrigerator that Stopped Working Pending Escrow

### FACTS AS PRESENTED BY THE CALLER:

The MLS provides that the refrigerator is to be transferred with the property. The contract provides that the refrigerator is transferred at closing. The refrigerator stopped working pending the escrow.

### ISSUE:

Are the sellers obligated to repair the refrigerator?

### ANSWER:

Yes.

### DISCUSSION:

In the facts presented, the refrigerator was operating as of the date the contract was signed but stopped working pending escrow. The AAR contract at lines 169-170 provides that the existing personal property included in the sale will be in substantially the same condition on the date escrow closes as it was on the date the contract was signed. Since the refrigerator was working on the date the contract was signed, it must also be working at the closing. The seller is therefore obligated to repair the refrigerator.

## Have you signed up for the Legal Hotline?

The Legal Hotline provides all AAR broker members (designated REALTORS® — DRs) 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://www.aaronline.com/documents/hotline_access.pdf)

[http://www.aaronline.com/documents/hotline\\_access.pdf](http://www.aaronline.com/documents/hotline_access.pdf)

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## ADVERTISING

[http://www.aaronline.com/documents/HL\\_Advert.aspx](http://www.aaronline.com/documents/HL_Advert.aspx)

# Brokerage Name Must Be Clear and Prominent on All Advertising

### FACTS AS PRESENTED BY THE CALLER:

N/A

### ISSUE:

Does the name of the brokerage have to be the largest item on the broker's website?

### ANSWER:

No.

### DISCUSSION:

The Commissioner's Rules require that the name of the brokerage firm must be "clear and prominent" on all advertising materials, including a website. See A.A.C. R4-28-502(E). However, there is no requirement that the name of the brokerage firm be the largest item on the advertising materials.

## COMMENT

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### ABOUT THE AUTHOR



**Richard V. Mack** is a shareholder at [Mack, Drucker & Watson](http://www.mackdruckerwatson.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.mackdruckerwatson.com/>