

ARIZONA REALTOR®

M A G A Z I N E

TIPS FROM REAL ESTATE'S BEST COACHES

How to Position Your
Business for Success
in 2013

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TIPS FROM REAL ESTATE'S BEST COACHES

How to Position Your Business for Success in 2013

Don't wait until the new year has already begun to make resolutions and refine your business. Get started now with these tips from some of real estate's best coaches and put yourself in a position to succeed in 2013.

WHAT IS THE MOST IMPORTANT ACTION AGENTS COULD TAKE TO IMPROVE THEIR BUSINESS THIS MONTH?

Ask for a Referral. The best and quickest source for a new lead is to get a referral from the client they're currently working with. If you are working with a buyer or seller right now, you can be sure that person is thinking about real estate. They are talking to colleagues at work. They're talking to friends at church and in social settings. Real estate is taking up a large portion of their mindshare, and that is what makes them far more likely to refer you than at any other time in your relationship. But you've got to ask! You must be proactive in letting clients know you are open for business and never too busy to take care of their referrals. Let them know that when they come across people who are thinking about buying or selling a home, you'd be thrilled to follow up and serve their referral.

BUFFINI ■

Mail a Postcard. Send an effective mailing to your sphere of influence. Our clients get huge results by sending a postcard that imprints and strengthens the agent's brand. It does that because it is strongly branded with the agent's picture and some consistent design elements. The postcard has houses for sale and sold, calls to action and a message that feels like it is from the agent's voice. Particularly in the healthy market we see this year (2012), this type of marketing piece will get immediate response. Sending this regularly is the key to many top agents' success.

LEVIN ■



The Coaches

BRIAN BUFFINI ■
www.buffiniandcompany.com

Entrepreneur, author, motivational trainer and founder of the largest training and coaching company in the real estate industry.



TOM FERRY ■
www.yourcoach.com

A top trainer, motivator, speaker, New York Times bestselling author, business coach and one of the most connected people in real estate.



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www.RealEstateCoach.com

Speaker, author, nationally syndicated columnist, named "America's Top Real Estate Coach" by Inman News.

Reach Out. Go through all of your leads, old emails and database and contact them. We need inventory. So the question for all of them is, “With the market the way it is, have you had any thoughts of selling?” Master 5/5/4. Make five contacts to your past clients and sphere, five new contacts and four lead follow-up contacts every day. Remember, the focus is to schedule an appointment!

FERRY ■

Repeat Your Success. Review your closed transactions for the last six months to see where you are having the greatest success. Be sure to note what activity generated the lead, the location, the price range and the type of property. Next, note if you are attracting a certain type of clients (e.g. young families, retirees, artists, etc.). Look for patterns. To make your business soar, focus your energy on the areas where you are having success and drop the other activities that are not generating leads for you right now.

ROSS ■

WHAT ARE SOME PROVEN TECHNIQUES TO HELP AGENTS STAY ACCOUNTABLE TO THEIR GOALS?

Put It in Writing. Having written goals is critical. Do a yearly business plan and monitor each month what’s working, what’s not and what shifts in systems or strategies need to happen.

FOSSLAND ■

Focus on Results. Measure a few simple, intelligent results: initial appointments for the week, sales under contract, listings and income for the month and year to date. Record and review these daily, which takes less than five minutes. One initial appointment per week will bring an average agent 20 sales for the year. A common mistake most agents make is to measure activities instead of results. Activities are things like phone calls, contacts, visits, mailings, emails and open houses. Measuring activities leads to burnout and provides little actionable intelligence for the agent. Measuring the right results inspires focus and motivation.

LEVIN ■

Answer to a Third Party. We all have the ability to tell ourselves that we are “doing well” or that our excuses aren’t really excuses; they’re “reasons”. Truth is, accountability is a process best administered by others. Once I commit to a

coach in any area of my life, that accountability to another person has an energy, a set of expectations and a life all its own. And it’s likely that I am going to work to meet those expectations.

BUFFINI ■

WHAT SHOULD AGENTS WHO HATE COLD CALLING DO?

Never Do Anything You Hate. There are many ways to create results, and the self-discipline to do something that isn’t a fit with an agent’s personality style only lasts for a little while. An agent who hates cold calling can lead generate in many ways with people they already know, joining groups around activities they love and developing relationships with others who are interested in the same client they are. With technology, there are a lot of opportunities for lead generation, but an agent needs to develop their systems and follow up to capitalize and leverage the opportunities.

FOSSLAND ■

Practice Warm Calling. The first thing to look at is how you are defining cold calling. Calling expireds, FSBOs, divorce attorneys and accountants is not cold calling in my book. That is a warm call. You know that these people could use your service and/or know someone that could use your service. Opening up the phone book and randomly selecting names is cold calling. But it all comes down to understanding marketing. Do you have a target market? Do you know where they hang out online and offline? Do you know the best method to communicate with them to get their attention? Do you know the conversation that is taking place in their mind? Answer those questions and that gives you your marketing strategy.

PERSINGER ■

Build Relationships. The funny thing about cold calling is that not only do agents hate it, but consumers hate it being done to them. I believe agents should build relationships with customers by calling, sending valuable information via mail and email, corresponding through personal notes, and personally interacting with them by popping by with a little gift or taking them for coffee. This level of care establishes a wonderful opportunity to ask for referrals and endorsements to their friends and family. Cold calling is a process that’s 40 years old and about 20 years past its prime. It’s not made for today’s modern customer.

BUFFINI ■

WHAT IS THE MOST COMMON CHALLENGE YOUR CLIENTS WORK ON?

Just Do It. Our clients already know what to do. It's getting themselves to do it that's challenging. Once they have identified their strengths, it's merely a process of helping them create a bigger game by expanding on what works the best in their business.

ROSS ■

Master Time Management. Doing a time log, developing a "perfect week schedule" and using a technique like identifying each day the three most important actions that will take them closer to their goals are all tools that help.

FOSSLAND ■

F Is For... It comes down to fear and focus. Fear: What if this doesn't work? What if I lose my money or waste my time? What if this does work? What if I get more leads and business than I can handle? I help my clients overcome that fear. The second thing is focus. We work together to eliminate distractions, stop chasing the shiny objects and start taking consistent, focused action on the essential.

PERSINGER ■

WHAT HAVE YOU FOUND TO BE CRITICAL CHARACTERISTICS OF SUCCESSFUL AGENTS?

Build Habits. Habits are the most important characteristic of a successful and secure agent. Habits are hard to establish, but successful agents stick with it until they have a set of daily and weekly ones. Successful agents also take responsibility. When something goes right, they are proud. When something goes wrong, they look to what they could do differently.

LEVIN ■

Give Back. The top agents have a written business plan, they regularly prospect for business (normally at least 10-15 hours per week), and they are involved in giving back to their community. (Approximately 70% of the agents interviewed in Billion Dollar Agent Lessons Learned noted that community involvement was a primary motivator for the work they do.)

ROSS ■

HOW TO FIND A COACH WHO'S RIGHT FOR YOU

Time and again, the coaches interviewed for this story mentioned that trust is at the core of the agent-coach relationship. Keep looking until you find the person that you really trust. Here are a few more tips to help you in your search:

"Everyone is different, and each person needs to find a coach who understands and appreciates their **core values** and can help bring out the best in them," says Joeann Fossland. "Plus, the agent needs to be coachable, willing to stretch, try on different approaches and take on the responsibility of their own success."

"Ask where they received their training," advises Bernice Ross. "A **professionally trained coach** will be a graduate of a coach training institution that has been accredited by the [International Coach Federation](http://www.coachfederation.org/) (ICF)."

"An excellent coach guides the agent to make breakthroughs: in their work, in their habits and in their own personal barriers," reports Rich Levin. "This requires a set of **high-level skills** far beyond simply holding an agent accountable to a given set of tasks. As you interview the coach and three to five references, look for this level of skills."

"Anyone can call themselves a coach," notes Fossland. "Many are teaching training systems rather than **individualizing** to the needs of the client. There is a difference between training (learning someone's system and/or accountability to a system) and coaching (which is a co-creation of the client and the coach). Both are useful, but it isn't the same thing."

"As much time as I spend with my clients, they still know their strengths, their market, their clients and their sphere better than I do," emphasizes Darin Persinger. "Some of the best things come from me pushing a client outside their comfort zone, and then they push back to get the idea and strategy back inside their core strengths and specific market. **It's a partnership.**"

Keep It Simple. The most successful agents seem to be consistent and simple. They consistently show up every day and do the core activities that generate business. They consistently follow up on leads and consistently stay on top of transactions until closing. They also are about making their systems, routine and business simple. People cannot live in complexity for very long. And when things get complex, people change the direction or approach. When you live in simplicity, you can stay in that groove long term.

PERSINGER ■

Love the Hunt. The beauty of real estate is that so many different personalities and styles figure out a way to be successful. That said, some common traits include self-motivation, competitiveness, a passion for helping clients and a love for the hunt!

FERRY ■

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REALTOR® SUCCESS CASE STUDY

WRITING ABOUT REAL ESTATE FOR A LOCAL PUBLICATION

REALTOR® SUCCESS CASE STUDY

This new series features best practices from AAR members across the state. If you or someone you know has a success story to share, please email editor@aaronline.com.

If you're a REALTOR® with a way with words, a great way to establish yourself as an authority in your marketplace is to write for a local publication. That publication can be an established print daily, a well-trafficked local website, a neighborhood newsletter or maybe even your own blog. AAR interviewed three REALTORS® who have made a local name for themselves with their real estate insights.

RAY PUGEL, CRB, CRS, GRI

Designated Broker | Coldwell Banker Bishop Realty | Pine

Ray Pugel got his break over dinner with the publisher of the *Payson Roundup*. "He said, 'Why don't you write a real estate article for the local paper?'" remembers Pugel. "I told him, 'You've got to be kidding. Writing was my least favorite part of college.' But 180 articles later, it seems to be working."

"I never thought I could come up with that many ideas," Pugel says. "But the government seems to supply endless ideas with all of their rules and regulations." Pugel's first article for the *Payson Roundup* was on the real estate

transfer tax back in April 2008. His favorite article, "[Noting Historical Milestones in the Real Estate Industry](#)," includes milestones both national ("1913 — The National Real Estate Exchange [later to become the National Association of REALTORS®] adopts the first Code of Ethics.") and local ("1958 — The Beeline Highway is paved, making the trip to a vacation home much easier.") His most controversial piece was "[Is Payson too Gray?](#)" "I think I can write about that because I've got gray hair," he laughs.

http://www.paysonroundup.com/news/2009/may/05/noting_historical_milestones_real_estate_industry/

http://www.paysonroundup.com/news/2008/dec/16/payson_too_gray/

Pugel acknowledges that it's hard to track how his writings have affected his business: "When I introduce myself, people say, 'Oh, I read your articles.' Or they recognize me from my picture with the articles." One ancillary benefit is how much he has learned from the research he does; he usually puts in one to three hours of research per story. "If you're in print, you're the expert," notes Pugel. "But I don't consider myself the expert. There's too much to learn."

MARY MONDAY, CRS, GRI

Associate Broker | RE/MAX Peak Properties | Flagstaff

Looking for a way to break into your local publication? Sometimes you just have to ask. "I have always been an avid reader of our local paper and thought that there was a need for content from a real estate perspective," says Mary Monday. "In July 2002, I approached the editor of the

Arizona Daily Sun's business page and offered to write a monthly column for the paper. The young man who was then in charge of the business section was more than happy to accept my offer."

In her 10 years writing for the paper, Monday has often used her real experiences with real estate transactions as fodder for her articles. "I have been in this business for a long time and have always enjoyed helping people understand the process," she says. "I try to write my articles to provide some bit of information that an individual can use when they enter into a real estate transaction." Monday also works hard to give her articles a Northern Arizona slant, referencing local lenders, titles companies and other affiliates and talking about neighborhood issues. One of her more popular articles, "[Keeping Your Home's Value at Top of the Market](#)", called attention to neglected homes in the city in the wake of the foreclosure crisis.

http://azdailysun.com/business/columnists/keeping-your-home-s-value-at-top-of-the-market/article_3571f90b-58a1-59d2-9f77-c0a907a360b1.html

"Of course, getting my name out there in front of the public is another purpose," Monday acknowledges. "I am often approached by people who comment that they read my column. The feedback has always been positive."

GARY EDELBROCK

Agent | Nextage Southwest Premier Realty | Prescott

Gary Edelbrock edits a real-estate column for PrescottNews.com, an online-only publication in Prescott. When the editor of the site approached him with the opportunity three years ago, he was hesitant to commit to a

weekly article and asked if he could have guest writers. She agreed. Now he asks industry representatives—other agents, new home developers, lenders and beyond—to contribute their expertise to the column.

<http://www.prescottnews.com/>

"The county assessor did a [great piece](#) explaining the affidavit of value and the process for appealing your tax bill," reports Edelbrock. "She even put in her phone number." Articles about financing are popular, and a recent post from local agent and regular contributor Nancy Briggs ("[Top Ten Questions to Ask When Selling a House](#)") got a good response.

<http://www.prescottnews.com/features/columnists/real-estate-news-a-info/item/19817-understanding-the-property-notice-of-value>

<http://www.prescottnews.com/features/columnists/real-estate-news-a-info/item/20479-top-ten-questions-to-ask-when-selling-a-house>

Edelbrock estimates that the site receives about 1,000 readers per week, and the articles net him plenty of calls from folks with real estate questions. "Have I gotten leads from the articles? Yes. Have I gotten great ones? Well..." says Edelbrock with a smile. "But it's fun."

The bottom line? Writing for your local publication can raise your profile in the community and increase your own knowledge base. But if you're looking for a quick injection of new clients, you may be disappointed. You'll still need to do the hard work of converting those with real estate questions into real estate clients.

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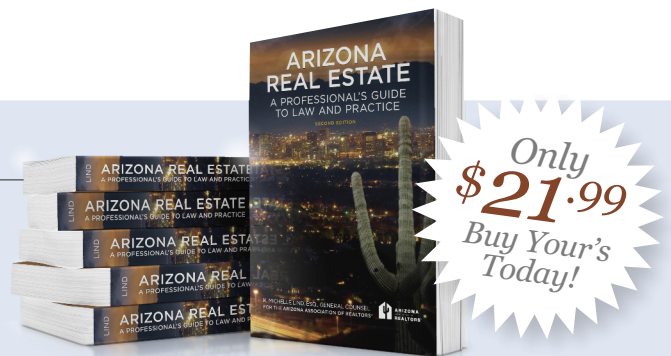
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LEADERSHIP INSIGHTS

AAR Past Presidents Reflect on Lessons Learned

REALTORS® get involved at the local, state and national REALTOR® associations for a variety of reasons. Perhaps there is an issue they're passionate about, such as education. Maybe they're frustrated with something in the industry and want to change it. Sometimes they were invited to participate by someone they respect and just got hooked.

But one of the best reasons for staying involved, active volunteers say, is that they learn so much about the industry, about their own business and about themselves. In honor of Leadership Conference this month (see box), we asked AAR past presidents to share leadership insights they learned during their tenure at AAR.

"My greatest lesson: surround yourself with other passionate volunteers. As a leader, you must be excited and passionate about the work of the association so that others will also be excited and passionate. You must lead by example and bring value to everyone. You must enable yourself, direct, empower others, respond not react, and state the truth all the time. And lastly, once you have inspired your volunteers, then get out of way and let them shine. You will find your replacement in that group."

Holly Estlinger, ABR, CRB, CRS, GRI

2010 President of the Arizona Association of REALTORS®
Exclusive Homes and Land | Scottsdale

"Leadership is not about what one individual brings to the table; it is input from the entire leadership team that makes the difference. In 2005, I served as AAR treasurer and was surrounded by quality individuals who all worked together as a team. Tim Hatlestad was president, Craig Sanford was president-elect, and Frank Dickens was first vice-president. Each one of us brought a special skill set and perspective to the leadership team table. We each made a commitment to carry forward a set of policies as the years progressed. We took the long-term view in order to advance the association.

Often in association leadership, each president wants to 'leave their mark' and doesn't necessarily focus on the items that would have long-term benefits. Under Tim's leadership, we all promised to carry on the policies we had agreed upon. I'm glad that I was part of a leadership team that worked together, not one simply focused on leaving a presidential mark."

John R. Gall, CRS, GRI

2008 President of the Arizona Association of REALTORS®
Independence Realty Professionals | Tempe

"My leadership role at AAR was the most rewarding highlight in my real estate career. I was honored and humbled to be the first president to serve the state from Flagstaff. The best experience I had was traveling to each and every local association to tour the communities and learn about the diverse opportunities and challenges. We had a common goal with varying plans of action, all formulated to make the real estate industry the best it can be. The dedication to homeowners and our members is invigorating.

After over 25 years in real estate before entering leadership, I found my daily business to be better organized and twice as productive as it had been in the past. When you golf with better golfers, you learn how to play golf better. I am humbled to have soared with eagles, and learned from each and every member I met. When thousands trust you to do the best you can, you learn that their trust is because they are doing the best they can, and they live it daily."

Frank Dickens, ABR, rCRMS, SRES

2007 President of the Arizona Association of REALTORS®
Realty ONE Group | Phoenix

"What makes a great leader? Passion! Passion gives you strength to keep pushing forward when people say it can't be done. Passion makes you want to be better than you were the day before. Passion keeps you believing in yourself and all you are surrounded by. Without passion, you can't lead your troops to victory. Passion is the reason we succeed."

Kim Horn, GRI

2004 President of the Arizona Association of REALTORS®
Nextage Southwest Premier Realty | Prescott

"One of the most valuable lessons I learned during my term as president of AAR was the necessity of always listening. The issues and needs of our membership were so vast and varied that I could not pay attention to only a few. I was also reminded that every year we have new volunteers and that to them what I might have thought to be repetitive was 'new.' I needed to always be open minded and allow them to express their ideas, opinions and suggestions.

AAR also brought a national speaker in by the name of Adorna Carroll. She told us that as leaders, we needed to always remember that this year's proud peacock is next year's feather duster. Though I laughed with her at the time, it made a lasting impression that I have carried with me. For me, leadership was a team effort that involved many and touched many. The relationships developed will last a lifetime. I was truly blessed when given this opportunity."

Marge Lindsay, CRB, CRS, GRI

2002 President of the Arizona Association of REALTORS®
West USA Realty | Glendale

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LEADERSHIP CONFERENCE

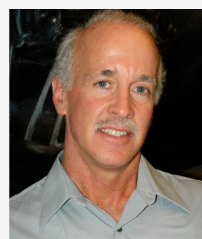
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<http://www.aaronline.com/education/class-flyers/12-leadership-conference.pdf>

<http://www.regonline.com/lc2013>



Each year in October, AAR holds its Leadership Conference, two days of education and networking for incoming leaders at the state and local levels.

Don Mann

This year's keynote speaker is Don Mann, a former Navy SEAL team leader. Mann played a crucial role in some of America's most daring military missions, including training the SEAL Team Six warriors who assassinated Osama bin Laden. He will discuss "Reaching Beyond Boundaries."

New Member Benefit: Commercial Forms

AAR has just completed an agreement that allows Arizona REALTORS® to purchase a full complement of commercial real estate forms from the AIR Commercial Real Estate Association (AIR) at a steep discount. AIR forms have been "localized" for Arizona law and are used by commercial agents and brokers across Arizona.

WHERE TO FIND AIR FORMS

You can review [sample AIR forms](#). Please note that these forms are "generic", not the Arizona-specific forms. To review the Arizona-specific forms, you need to [install the AIR program](#). After the program is installed, you may review every AIR form and even print them with the word "DRAFT" across the form. If you want to actually use the form without "DRAFT", you must use AIR tokens. Depending on complexity, each AIR form costs zero to eight tokens.

<http://www.airea.com/FORMS/SampleForms.aspx>

<http://www.airea.com/FORMS/DownloadPurchaseForms.aspx?v=1&s=AZ>

HOW TO BUY AIR FORMS AND TOKENS

Typically, agents would be charged \$399 for AIR forms (with 200 tokens). As noted earlier, each form has a certain number of tokens associated with it ranging from zero to eight, depending on the complexity of the form. All lease and purchase agreements are eight-token forms. A user can

create and modify as many "DRAFT" versions of a form as desired, only being charged the appropriate tokens once a "FINAL" copy is created. New tokens are issued at \$.50 each, with a minimum purchase of 100 tokens.

To get started, AAR members may choose from five different pricing tiers:

AAR DISCOUNTED PRICE	QTY OF TOKENS INCLUDED
\$299	200
\$199	155
\$99	100
\$49	40
\$24	15

To purchase a starter package or additional tokens, AAR members should call 866-946-2472. You will need your NRDS number handy to validate your REALTOR® membership. ([Find your NRDS number.](#))

<https://reg.realtor.org/roreg.nsf/retrieveID?OpenForm>

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SYNCING DIGITAL STORAGE

Plan Ahead So That More Gadgets Doesn't Mean More Ways to Misplace Your Data

I just moved into a new house. The kitchen has a lot more storage space, which is great — except that it means a lot more places to look for that spatula (no-not-that-one-I-mean-the-one-with-the-curved-handle).

When you have a lot of places to store data, you can run into the same problem. Is that file on your work PC or your phone? You saved that phone number... but was it on your phone or the tablet you just got? Time to lay back with your Kindle to read... oh, wait, was the book on your iPad?

You have a computer, possibly two (work and personal), at least one of which is probably a laptop. You probably have a smartphone, too. And like it or not, chances are you'll be getting a tablet of some sort in the next couple of years.

Spread out among all these gadgets is your stuff — your data. Documents and mail and contacts and pictures and the address of that funny cat video, and who knows what else.

Take the time to be smart about getting them to work together, lest you end up using a modern version of the "it's in my other pants" excuse: "Oh, I have that on my other computer."

The goal is simple: Wherever you are (home, office, car, friend's house) and whatever gadget you're using, you should have access to the same files and information.

Let's talk about some easy ways to get there.

IN THE CLOUDS

The simplest way to have all your stuff at hand is to store it on the Web, rather than on your computers/phone/tablet. As

long as you have an Internet connection, you can get to your files. (In fact, some services don't necessarily require you to be connected; see "Store vs. sync.")

Thus is born the idea of Web-based (sorry, *cloud*) storage — services that let you put your files online for easy retrieval. Even better, most offer a lot of free space, certainly enough for hundreds of documents and photos.

So you can start writing a document on your home PC, save it to your storage service, and grab it the next day when you're at your office, or when you're using your phone at a showing. Take a picture with your phone camera and save it to the cloud so you can grab it at home. Ditto if someone sends you a file (picture, PDF, whatever): you may get it on your phone, but a quick click or two and you can open it anywhere. Forget about emailing it to yourself or carrying a flash drive.

There's a long list of these cloud storage services that offer lots of space and that have apps for every device you're likely to have: desktop, laptop, phone, or tablet (not to mention access through any Web browser).

Microsoft's SkyDrive (technically "Windows Live SkyDrive"), for example, offers 25 GB of storage free (!), and it can be integrated into Windows so it looks like a second hard drive. (It's even integrated into Office 2010.)

There are more: Amazon Cloud Drive, Box.net, Dropbox, Google Docs and SugarSync are some big names, but there are many, many others. No matter which you use (heck, use several!), you essentially have a hard drive that's shared by all your devices.

CLIPS AND SNIPS

These services are great for giving you access to all your files from all your gadgets, but you don't always want to share *files*. Often you just want to save *information*.

For example, imagine someone tells you, "You gotta check out whatever.com/coolthing!" Or that you're reading an article, and there's a chunk of text you want to save. Or something in a book piques your interest, and you want to read more later.

You *could* copy the bit of text, open a text editor, paste it in, and save it as "checkthisout.txt" or whatever, then upload it to your Dropbox or SkyDrive. Clunky.

There's a better way. *Several*.

Call them "notetaking services" or "clipping tools". The idea is that there's software to let you quickly and easily grab (or create) a short snippet of information — an address, a quote, a fact, whatever — and save it online for access from anywhere.

They're integrated with your devices (for example, via Android's "Share" menu, or simply as a folder) and designed to be very, very easy to use.

Let's say you're reading an article in *Time* (on your PC, phone or tablet) and see a great quote. You can select it and save it with your clipping tool, knowing that you'll be able to read it anytime from anywhere. Find a useful website? Save the address. Think of something you need to remember? Write a quick note.

There's a long and growing list of companies offering this kind of note-taking. Evernote gets the lion's share of attention (it's available free for your PC and just about every kind of smartphone and tablet), but it's far from the only one. Also quite nice (and free) are SpringPad and Read It Later, both of which are available for just about any device you can think of.

Which one to use is a matter of taste. SpringPad has more features for organizing than Evernote, but with that comes a steeper learning curve. Read It Later is geared toward noting webpages and text selections, but it's dead simple to use. And, of course, there's no reason not to try more than one.

None of these is a perfect, total solution, obviously. Different devices are bound to contain different data. But with a few minutes — and zero cash — you can make sure that whatever gadget you have on hand has everything you need.

Originally published in [Commonwealth Magazine](#) by the Virginia Association of REALTORS®. <http://www.varealtor.com/commonwealth>

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Two Arizonans Among REALTOR® Magazine's Good Neighbor Award Finalists

For the 13th year, the National Association of REALTORS® and REALTOR® Magazine are honoring outstanding REALTORS® who volunteer time and energy to improve the quality of life in their communities. This year, we are fortunate to have two Arizona REALTORS® in the group of ten Good Neighbor Awards finalists:

MICHAEL RAY CAMPBELL, CRS

Coldwell Banker Residential Brokerage | Tucson

Campbell is president of the nonprofit Hearth Foundation, which provides transitional housing for low-income families, typically women with young children. He is credited with reorganizing and stabilizing the organization, strengthening the board, and creating effective partnerships with other organizations to provide services to the residents. Campbell recently won a \$720,000 grant, which will allow the organization to make much-needed renovations to their apartments.

The finalists, drawn from 200 nominations, will be featured in the November/December issue of REALTOR® Magazine. In October, the five winners will be revealed, and each will receive a \$10,000 grant and will travel to the NAR Conference & Expo in Orlando, where they will receive their awards during the General Session on Saturday, November 10. The remaining five honorable mentions will each receive \$2,500 grants for their causes.

PATTI M. MILLER

Tierra Antigua Realty | Sierra Vista

Miller is founder and president of Real Wishes Foundation. Since 2006, the organization has granted home repair wishes for the elderly and disabled as well as other wishes throughout their community. Miller sprang into action during recent Arizona wildfires and flooding, collecting \$1 million worth of food, clothes, and places to stay for victims who lost everything. The foundation, which is supported by the Southeast Arizona Association of REALTORS®, also distributed \$130,000 in donations to victims to help pay for losses.

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LEGAL HOTLINE

BY MACK, DRUCKER & WATSON
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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.

CONTRACTS

<http://www.aaronline.com/law-ethics/legal-hotline/contract.aspx>

Buyer May Cancel Based on Inspection in Spite of “As Is” Addendum

FACTS:

The seller and the buyer execute an “as is” addendum. Following that, the buyer submits a list of requested repairs to the seller, which the seller refuses to complete. The buyer then issues a cancellation notice during the inspection period and demands the return of the earnest money deposit.

ISSUE:

Can the buyer terminate the contract and recover the earnest money deposit during the inspection period, even though the parties agreed to an “as is” sale?

ANSWER: Yes.

DISCUSSION:

The “as is” addendum generally provides that the property is being sold in its present condition and that the seller does not warrant the condition, zoning or fitness of the property for the buyer’s intended use. However, the AAR “As Is” Addendum does not eliminate the buyer’s inspection period, nor does it eliminate the buyer’s cancellation right pursuant to Section 6(j) of the purchase contract. See AAR “As Is” Addendum, line 16 (“Buyer retains the rights pursuant to Section 6j”). As a result, the seller is not required to perform

the requested repairs, but the buyer can cancel the contract pursuant to Section 6(j) for any reasonably disapproved items and recover the earnest money deposit.

SUBDIVISION

<http://www.aaronline.com/law-ethics/legal-hotline/subdivision.aspx>

Buyer May Cancel Certain Transactions If Property Is Purchased Sight Unseen

FACTS:

Client currently resides out of the county but is interested in purchasing a vacant land parcel. The prospective purchaser is considering buying the parcel sight unseen.

ISSUE:

Would the prospective buyer have a six-month rescission right as a result of purchasing the property sight unseen?

ANSWER: See Discussion.

DISCUSSION:

If the parcel at issue is either: (1) an unimproved subdivided lot, or (2) “unsubdivided lands”, as those terms are defined by statute, a buyer who purchases the property sight unseen may inspect the property and unilaterally rescind the sale within six months after the date of the purchase contract. See A.R.S. § 32-2195.04(E) (applicable to unsubdivided lands), A.R.S. § 32-2185.01(E) (applicable to unimproved subdivided lots or parcels). Please note that not all vacant parcels qualify

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as unimproved subdivided lots or unsubdivided lands. The AAR Vacant Land/Lot Purchase Contract Addendum Regarding Subdivided or Unsubdivided Land (08/07) outlines the buyer recession right at lines 20-26.

SHORT SALES

<http://www.aaronline.com/law-ethics/legal-hotline/short-sales.aspx>

No Cure Notice Required If the Seller and Lender Cannot Agree to the Terms of a Short Sale

FACTS:

In a short sale, the seller's lender required the buyer and seller to sign an affidavit prior to issuing short sale approval. The buyer declined to sign the affidavit, and the lender therefore denied the short sale.

ISSUE:

Must the seller issue a three-day cure period notice to the buyer prior to canceling the buyer's offer and moving forward with a new offer?

ANSWER: No.

DISCUSSION:

Lines 9-11 of the Short Sale Addendum express that the Purchase Contract is "contingent upon an agreement between the Seller and Seller's creditor(s), acceptable to both, to sell the Premises for less than the loan amount(s)." Lines 47-49 state, "In the event that Seller and Seller's creditor(s) are unable to reach a short sale agreement acceptable to both, at the sales price contained herein, Seller shall promptly notify Buyer of same, and the Contract shall be deemed cancelled due to the unfulfilled short sale contingency." In this case, seller and seller's lender have been unable to reach an agreement as to the approval of the buyer's offer. The seller is therefore entitled to notify the buyer that the Purchase Contract has been deemed cancelled and need not first issue a Cure Period Notice.

CONTRACTS

<http://www.aaronline.com/law-ethics/legal-hotline/contract.aspx>

Waiver of Appraisal Contingency May Deprive Buyer of Earnest Deposit

FACTS:

The buyer and seller agreed to remove the appraisal contingency, lines 85-88 in the AAR Residential Resale Real Estate Purchase Contract. The general financing contingency was not changed. The property did not appraise for the

purchase price. Additionally, the buyer was denied his contemplated loan. The letter from the buyer's lender does not specify the reason that the loan was declined. The buyer has demanded the return of the earnest money.

ISSUE: Is the buyer entitled to the return of the earnest money?

ANSWER: See Discussion.

DISCUSSION:

The lack of specificity in the loan denial letter creates a difficult situation. If the loan denial was based on the property not appraising for the purchase price, then the buyer is not entitled to the return of the earnest money as the appraisal contingency was waived. If, on the other hand, the loan denial was based on some other factor, then the buyer would be entitled to the return of the earnest money since the parties did not specifically remove the financing contingency.

DISCLOSURE

<http://www.aaronline.com/law-ethics/legal-hotline/disclosure.aspx>

Prior Appraisal Need Not Be Disclosed

ISSUE:

Is a seller obligated to disclose to a subsequent buyer an appraisal conducted by a lender in connection with a previous purchase contract?

ANSWER: No.

DISCUSSION:

Pursuant to line 173 of the AAR Residential Resale Real Estate Purchase Contract, the seller does not have to disclose to the buyer any "opinions of value", i.e., appraisals. Therefore, the seller is not required to disclose the previously conducted appraisal to a subsequent buyer as the appraisal merely represents an "opinion of value". See also *Frazier v. Southwest Savings and Loan*, 134 Ariz. 12, 653 P.2d 362 (1982) (representations of value are generally opinions, not fact, and therefore are not the basis for a misrepresentation claim).

SHORT SALES

<http://www.aaronline.com/law-ethics/legal-hotline/short-sales.aspx>

Undisclosed Referral Fee Cannot Be Paid in a Short Sale

ISSUE:

In a short sale transaction, can the seller, who is also a licensee, be paid a referral fee from the seller's listing agent when the referral fee is not set forth in the contract documents?

ANSWER: See Discussion.

DISCUSSION:

There have been reports of fraudulent activity in some short sale transactions. As a result, lenders generally require all of the parties to sign an affidavit attesting that the transaction is “arms-length” and that all material information has been disclosed. Arms-length affidavits often contain a provision that “none of the parties shall receive any proceeds from this transaction.” In this instance, the referral fee is neither approved by the lender nor reflected in the contract. Therefore, the referral fee paid to the seller (also a licensee) violates the arms-length affidavit and is thus prohibited. Furthermore, the arms-length affidavit typically includes an “entire agreement” provision, which requires that “the parties agree that the contract shall constitute the entire agreement between the parties.” Here, since the referral fee is not reflected in the contract or approved by the lender, such a fee likely constitutes a separate undisclosed agreement between the parties and therefore again violates the arms-length affidavit.

SHORT SALES

<http://www.aaronline.com/law-ethics/legal-hotline/short-sales.aspx>

Unless Licensed by the Arizona Department of Financial Institutions, an Agent Cannot Negotiate a Short Sale with a Lender Unless S/He Provides Other Real Estate Services

FACTS:

Two agents, working for the same brokerage, assisted each other with short sales. One agent focused on listings, showings and related activity, while the other focused on the negotiations with the borrowers’ lenders, although both shared all duties. Now the agent who focused on short sale negotiations has moved to a different brokerage.

ISSUE:

Can the two agents continue operating in the same manner?

ANSWER: See Discussion.

DISCUSSION:

It is the Arizona Department of Real Estate’s (“ADRE”) position that a real estate licensee may not receive compensation for negotiating a short sale, besides the actual commission paid, unless the licensee is also properly licensed with the Arizona Department of Financial Institutions (“ADFI”). As a result, the agent specializing in lender

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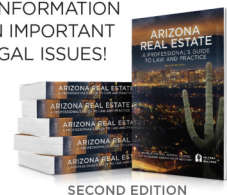
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negotiations cannot continue to receive compensation under the previous arrangement. Note that the ADRE's position also applies to referral fees, such that an agent with a different brokerage may not receive a referral fee for handling the negotiation aspects of the short sale.

LISTINGS

<http://www.aaronline.com/law-ethics/legal-hotline/listings.aspx>

Listing Agreement Must Have Definite Termination Date

ISSUE:

Is a Listing Agreement for a single buyer valid where the Listing Agreement's expiration date is "close of escrow"?

ANSWER: See Discussion.

DISCUSSION:

All written listing agreements must, among other things, have a definite duration or expiration date, showing dates of inception and expiration. See A.R.S. § 32-2151.02(A). In other words, the listing agreement should have a definite expiration date. In this instance, identifying the expiration of the listing agreement to be at "close of escrow", although probably sufficient in most cases, would be a problem, if for instance, escrow never closes. The better practice, therefore, is to draft the listing agreement so that it terminates on a specific date.

COMMENT

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/>

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