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# ARIZONA REALTOR®

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## REMEDICATION OF CLANDESTINE DRUG LABORATORIES

By Lisa Lawhorn

On June 30, 2003, the legislature passed HB 2595, which tasked the Board of Technical Registration to regulate certain illegal drug laboratory remediation efforts. The following is a summary of the requirements of A.R.S. §12-1000:

Once a peace officer discovers a clandestine drug laboratory or arrests a person for having, on any real property, chemicals or equipment used in manufacturing methamphetamine, ecstasy or LSD, the peace officer shall remove all persons and affix a notice of removal on the real property. The law enforcement agency that conducted the seizure shall then send notice to the property owner, county health department, local fire department and, as of August 12, 2005, the Board of Technical Registration.

The notice of removal posting warns that hazardous substances, toxic chemicals or other waste products may still be present on the real property and that it is unlawful for any person other than the owner, landlord or manager to enter the residually contaminated portion of the real property, or to disturb the notice of removal, until the owner, landlord or manager remediates the residually contaminated portion of the property by a drug laboratory site remediation firm registered by the Board of Technical Registration. The notice of removal posting

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## 2007 LEGISLATIVE SUMMARY

By AAR VP Government Affairs Tom Farley and AAR General Counsel Michelle Lind

**The 48<sup>th</sup> Legislature First Regular Session** adjourned June 21 sine die on the 164<sup>th</sup> day of the 2007 session, going down in the history books in a tie for the fifth longest session since Arizona's statehood. The regular effective date for the new laws passed this session will be September 19, 2007, unless the legislation includes an appropriation, fee increase, tax change or emergency clause.

The legislative session dealt with some important issues such as real estate signs, disclosures, exemptions and licensing, the budget, employer sanctions, air quality, and requiring an adequate water supply for new rural development. Below are some of these legislative issues that AAR successfully advanced or defeated.

### HOA For Sale Sign SB 1062 — SUCCESS!

This legislation was sponsored by Senator Jay Tibshraeny on behalf of a constituent living in a gated homeowner's association (HOA). The legislation provides for a pivotal change in the law responding to a growing pattern of over-regulation of home sellers by HOAs. Many HOAs have drafted or amended their CC&Rs, bylaws or rules to prohibit homeowners from

displaying a for sale sign on their own property. Some of these restrictions were drafted by the home-builder, applying the restriction to all sellers except the home-builder. As a result of SB 1062, Arizona homeowners living in these HOAs will now be permitted to display on their property (indoor or outdoor) an industry-standard for sale sign not to exceed 18x24 inches and sign rider not to exceed 6x24 inches to market their property, regardless of any prohibition in the HOA governing documents.

### Third Party Disclosure Reform HB 2323 — SUCCESS!

Last year the legislature passed HB 2779, a permissive law, allowing a seller to pay a company (referred to in the law as a third party provider) to supply a basic disclosure report on nine items based on governmental maps. The nine items relate primarily to soil and airports and are material in only a small fraction of Arizona real estate transactions. Unfortunately, once this law became effective, aggressive marketing efforts by some third party disclosure companies caused confusion

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**REMEDICATION OF CLANDESTINE DRUG LABORATORIES** CONTINUED

further warns that it is a class 6 felony to violate this section, that it is a class 2 misdemeanor to disturb the notice of removal posted on the real property, and that if an owner fails to provide any notice required by this section, the owner is subject to a civil penalty and a buyer, tenant or customer may void a purchase contract, rental agreement or other agreement.

The only legal way that a posted notice can be removed is by the registered drug laboratory site remediation firm after the remediation is complete. Within twenty-four hours after the completed remediation, the registered drug laboratory site remediation firm shall deliver or send by certified mail a document stating that the residually contaminated portion of the real property has been remediated and complies with the Best Practices and Standards under A.A.C. R4-30-305 to the property owner, county health department, local fire department, Board of Technical Registration and the law enforcement agency that issued the notice. After the document has been issued, any person may then use, enter, occupy, rent or sell the real property as required in A.R.S. §12-1000(D)(2).

It is important to point out that A.R.S. §12-1000(A)(4) states: the notice of removal shall state that it is unlawful for any person other than the owner, landlord or manager to enter the residually contaminated portion of the property until the owner remediates the residually contaminated portion of the property. However, A.R.S. §12-1000(D)(2) states: after the drug laboratory site remediation firm remediates the residually contaminated portion of the real property and has issued the document, then any person may use, enter, occupy, rent or sell the real property. Legal advise to our agency is that there is a distinction between enter and occupy. The Board, therefore, believes the owner, landlord or manager is permitted to enter the property to facilitate ownership and/or managerial duties prior to the remediation, but is not allowed to occupy or reside on the property until remediation is complete.

On August 12, 2005, A.R.S. §12-1000(C) was amended to state: "The owner of the real property shall remediate the residually contaminated portion

of the real property within twelve months after the date of notice of removal by retaining a registered drug laboratory site remediation firm pursuant to title 32, chapter 1. If the owner of the real property fails to remediate the property under this subsection, a county or city in this state may remediate the property using a registered remediation firm contracted by any county or city in this state with the cost of remediation passed on to the property owner in the form of a lien on the property title."

Until the remediation is complete, under A.R.S. §12-1000(F), within five days after a buyer signs a contract to purchase the real property, the owner shall notify the buyer in writing that methamphetamine, ecstasy or LSD was manufactured on the real property or that an arrest was made. The buyer shall acknowledge receipt of the notice and the buyer may cancel the real estate purchase contract within five days after receiving the notice. If the owner does not comply, the buyer may cancel the purchase contract. A landlord shall also notify a prospective tenant for a dwelling unit in writing that methamphetamine, ecstasy or LSD was manufactured on the real property or that an arrest was made. The tenant shall acknowledge receipt of the notice and the notice shall be attached to the rental agreement. If the landlord does not comply, the tenant may void the rental agreement. The owner of a mobile home or recreational vehicle shall notify a buyer or prospective tenant in writing that methamphetamine, ecstasy or LSD was manufactured or that an arrest was made. The buyer shall acknowledge receipt of the notice before taking possession of the mobile home or recreational vehicle and the buyer may cancel the purchase contract within five days after receiving the notice. The tenant shall acknowledge receipt of the notice and the notice shall be attached to the rental agreement. If the owner does not comply, the tenant may void the rental agreement.

A.R.S. §12-1000(G) states, "if an owner fails to provide any notice required by this section, the owner is subject to a civil penalty of one thousand dollars and is liable for any harm resulting from the

owner's failure to comply with the requirements of this section." Under A.R.S. §12-1000(I), "a person who operates a clandestine drug laboratory and who is not the owner of the real property shall pay restitution to the owner of the real property for all costs that the owner incurred to remediate the property."

The Board of Technical Registration has enlisted the aid of the volunteer law enforcement assistance group, the Arizona Rangers, to help conduct monthly site investigations of seized clandestine drug laboratories to determine whether the law enforcement posting is still present and whether the site appears occupied. It appears that a substantial number of the seized sites are being unlawfully inhabited without first being remediated by a registered drug laboratory site remediation firm. At many sites the posted notice of removals are found to be missing before the site has been lawfully remediated. Re-occupation prior to the proper and required remediation exposes occupants to possible harmful effects of the residual contamination created by the manufacturing of methamphetamine, ecstasy or LSD or the storage of those chemicals.

The Board of Technical Registration is currently maintaining a database of statewide seized drug laboratories. The database is updated immediately upon notification to the agency of a seizure made by law enforcement or of a remediation conducted by one of the registered firms. A list of unremediated sites as well as a list of the registered drug laboratory site remediation firms can be found [on their website](#). 📍

*Lisa Lawborn is the Drug Laboratory Site Remediation Program coordinator with the Board of Technical Registration. For questions, please call Lisa at 602-364-4948 or the Board's Meth Lab Remediation Unit directly at 602-809-3308.*

## 2007 LEGISLATIVE SUMMARY CONTINUED

in the industry. In fact, a third party disclosure company unsuccessfully lobbied the Arizona Department of Real Estate to essentially require sellers to purchase a third party disclosure report. This same company is also involved in litigation with the Justice Department. Thus, this reform legislation was necessary to protect Arizona's real estate consumers and industry licensees from misinformation from third party disclosure report providers. The legislation will allow the county attorney, the attorney general or individuals to prosecute third party disclosure companies making false representations about disclosure law or misrepresenting that buyers/ sellers/brokers/agents are required to purchase a third party disclosure report as part of a real estate transaction. AAR would like to thank First American Natural Hazards and Environmental Data Resources for their support of HB 2323.

#### **Appraisal Exemption for Real Estate Licensees SB 1291 — SUCCESS!**

SB 1291 became the subject of national media attention when the Board of Appraisal sought to prohibit [Zillow.com](http://Zillow.com) from providing "Zestimates" without an appraisal license. A statutory change in this lengthy bill was crafted by AAR in response to an attempt by the Arizona Board of Appraisal to impact customary broker opinions of value/broker's price opinion (BOV/BPO). The legislation removes any ambiguity about the right of brokers to prepare a BOV/BPO and industry conflict by removing the words, "for the purposes of prospective listing or sale" from the exemption for real estate salespersons or brokers from the appraisal licensing statute. The statute now exempt from the appraisal licensing requirement: "[a] real estate broker or salesperson who is licensed in this state and who, when acting as such, gives an opinion as to the price of real estate if this opinion is not referred to as an appraisal." *This measure contains an emergency clause and will be effective upon the Governor's signature, which is expected on or before July 2, 2007.*

#### **Four Year and Entity Licensure Amendments SB 1349 — SUCCESS!**

SB 1349 allows a licensee's license upon renewal to be valid for four years rather than two years. This legislation contained several other changes to real estate licensing law, including tying the Entity License (ABC Realty) to the Designated Broker's License (Tom Farley, Designated Broker for ABC Realty) upon renewal. This is a welcome change since if ABC Realty's entity license renewal date were to be missed or late, all agents working for ABC Realty would have to find somewhere else to hang their license until the entity license was renewed. Due to an emergency clause, **SB 1349 applies retroactively from and after June 30, 2007.** For information on the four year license, see the answers to frequently asked questions about SB 1349 on the [Arizona Department of Real Estate \("ADRE"\) website](http://Arizona Department of Real Estate).

#### **Mortgage Fraud; Classification; Definitions HB 2040 — SUCCESS!**

This legislation makes residential mortgage fraud a class four felony. The statute provides that a person commits residential mortgage fraud if, with the intent to defraud, the person knowingly makes any deliberate misstatement, misrepresentation or material omission during the mortgage lending process that is relied on by a mortgage lender, borrower or other party to the mortgage lending process; uses or facilitates the use of any deliberate misstatement, misrepresentation or material omission during the mortgage lending process that is relied on by a mortgage lender, borrower or other party to the mortgage lending process; or receives any proceeds or other monies in connection with a residential mortgage loan that the person knows resulted from a violation of the statute.

#### **Real Estate Education HB 2110 — SUCCESS!**

The ADRE must approve all real estate school education offerings (including prelicensure courses and continuing education courses) whether live or available via distance learning. This legislation made

various changes in statutes related to the real estate education, including permitting the ADRE to sponsor seminars and workshops for educators and licensees and the licensure of a real estate school for a period of four years.

#### **Escrow Interest for Lawyers HB 2733 — DEFEATED!**

This bill would have attached the interest from monies being held in interest-bearing real estate escrow accounts to be diverted to the Arizona State Bar Association and other groups. The monies would then have been spent on attorney programs and to fund legal services.

#### **Budget Issues**

The state budget negotiations between the Arizona Senate, House and the Executive Branch always have their stressful moments. This year a new twist emerged as the Senate Republicans and Democrats successfully negotiated a budget with the Governor without the House of Representatives Republicans. The House Democrats supported the Senate Budget. Ultimately, a budget did pass without a House Republican majority, leaving many House Republicans with a sense of frustration that their priorities were not included in the budget.

#### **1. Supported ADRE Budget Request — SUCCESS!**

AAR provided advocacy assistance for ADRE funding while providing specific input on proposed expenditures based on demonstrated needs. The state budget provides for an \$828,100 increase in General Fund appropriations for the Arizona Department of Real Estate from Fiscal Year 2006-07, across Fiscal Year 2007-08 (\$376,300) and Fiscal Year 2008-09 (451,800). State General Fund appropriations for the ADRE are as follows: Fiscal Year 2007-08 \$4,363,000 and Fiscal Year 2008-09 \$4,438,500.

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## 2007 LEGISLATIVE SUMMARY CONTINUED

### 2. Advocated for the Reinstatement of the 95/110 Budget Provisions for Licensing Fees — SUCCESS!

AAR, with the assistance of several legislators, prevented several attempts to restructure the ADRE's funding formula to the detriment of fiscal accountability. AAR ended the backdoor taxation, through licensing fees, which has occurred in previous budgets in this year's bi-annual budget process. The backdoor taxation effort occurs when the legislature suspends the statutory appropriation/fee formula for the ADRE in order to keep more of the licensees' fees in the state General Fund rather than lowering licensee fees or increasing the ADRE's appropriation.

### Air Quality/Dust Amendments SB1552 — SUCCESS!

One of the most critical public policy challenges this session was the county government-led effort to secure its \$1 billion in federal transportation monies from a list of promised changes to residential and commercial development, business and transportation practices. AAR's legislative focus centered around three draft amendments as follows:

**1. County Lien Authority to Stabilize Vacant Lot Dust** – This proposal started off as a legislative draft to allow the counties to enter vacant property to inspect and enter again to stabilize. The costs of stabilization would be recorded as a lien on the property superior to mortgages. AAR negotiated with Maricopa County to change the legislation from a lien right to providing a notice to property owners regarding the violation and giving the property owner the ability to cure the un-stabilized dirt. If the property owner fails to stabilize the dust, the county would then have the right to stabilize the dust (to hire a water truck) and bill the owner for the cost, along with imposing a fine.

**2. Driveways and Parking Area Paving** – The initial legislative draft would allow a city, town or

county to enforce paving requirements of **any new or existing** non-paved driveway or parking area against the owner. AAR was able to negotiate two exemptions to this proposal. Driveways 3000 square feet and less are exempt from a stabilization requirement. Stabilization other than paving (e.g. granite rock a border) is an allowable dust suppression technique.

**3. Dirt Roads to Lots** – The initial proposal would require property owners seeking **any** building permit to first pave their access (dirt road) to county standards **from their lot to the nearest publicly maintained road**. The owners of lots using the county standard access would have been required to maintain the access at their expense without the ability to turn over the access for maintenance to the county. This proposal was removed from the legislation after many contentious meetings between AAR and Maricopa County.

### Water Adequacy and Infrastructure Amendments SB 1575 & HB 2692 — SUCCESS!

SB 1575 adds several amendments to areas outside of Active Management Areas including a requirement for an Adequate Water Supply designation for new subdivision approval for adoption by cities, towns and counties. AAR spent numerous hours working with the Arizona Department Water Resources, Arizona Cattlemen's Association and members of the legislature on this legislation. HB 2692 establishes a Water Infrastructure Development Fund to assist areas outside of Active Management Areas in transporting water to their communities. Due to the numerous amendments contained in SB 1575 and HB 2692, we encourage interested members to [logon to RALLinLOW](#) to review the briefing papers on these two legislative efforts.

### County Transfer Tax for Affordable Housing HB 2762 — DEFEATED!

This session brought legislation proposing the

establishment of the "home equity theft act," otherwise known as a real estate transfer tax, with the new revenue stream ironically being linked to affordable housing. HB 2762 would have established a sales tax on the sales price of property with the funds going to a county housing trust fund. HB 2762 was defeated with the assistance of Rep. Steve Yarborough. You can't tax something and make it more affordable!

### AAR's Success Was a Team Effort

These are just a few of the legislative efforts in which AAR was involved during the 2007 legislative session. While the legislative session may have had its share of ups and downs, AAR volunteer members and staff worked very hard on your behalf. Your 2007 leadership team of AAR President Frank Dickens, Government Affairs Committee Chairman Ron Volkman and Public Policy Oversight Committee Chairman Doug Groppenbacher and their respective committees deserve your thanks for the many hours they volunteered on your behalf at the Arizona Legislature.

As we close out this legislative session, we are already preparing for the 2008 Legislative Session, which begins with the REALTOR® Caucus held in September. More details on this event will be published soon and we hope you will consider attending this important event. 📍

## FINDING THE RIGHT MEDIA ANGLES IN YOUR REAL ESTATE PRACTICE

By Robin Vitols

**Each and every day, media outlets throughout** the state strive to reach their audiences with the most informative and thought-provoking news possible. A massive number of topics are available to address and there are even more ways to approach each of those stories. If you want an element of your real estate practice highlighted by the media, you need to be smart about finding the angle and be wise about pitching it.

The media is always interested in the biggest, the most valuable, “the first” and even “the last” of most things. If you sold the most expensive home in your market, or the last home in a subdivision, that could constitute a good story. Find the unusual in your story and capitalize on it.

When it comes to covering real estate, the media likes covering trends that impact the home buying and home selling public. Has the Tuscan influence helped people sell homes? Maybe you think it’s made all the difference in rejuvenating older ranch houses in your community. Find examples and show how those who invested a small amount in stone facings on their facade were able to sell their homes twice as fast. Now this may be a silly example, but it gets the point across.

Real estate reporters cover all sorts of subjects that may apply to your practice. Some are very interested in design elements and trends as they relate to sale ability. Others are interested in “pitfalls” to consider when buying or selling. Perhaps you have noticed that a particular item on the SPDS form has been problematic in your area and is keeping homes from selling. That could be a good story when properly developed.

Another very newsworthy topic is the tracking of in-migration. Many times, real estate agents are the first to discover when a large influx of residents from a particular area relocates to your

town. Is there really a crush of Californians coming to your area? If you think so, document the trend and call your local paper.

One of the best ways to get your expertise into the media is by providing the public with the same advice you give your clients. Home buyers and sellers rely on you to advise them on a multitude of topics. Use that expertise to communicate with the public. Perhaps you can convince the local television station to tour around town with you for a “How to Prepare Your Home for Sale” segment. Much like a cable television makeover show, you could show viewers houses with great curb appeal and those in need of help. Offer advice as to how these homes could be improved for better positioning. The same could be done with the interiors of homes on the market. This type of story is entertaining and interesting to the viewers.

When pitching a story, remember to consider the audience. Who are you trying to reach with your message? Every story has a specific audience; very few are appealing to the entire public. You need to make sure that the group you want to reach is also the audience most interested in the story you are telling.

When you have identified the target market, make sure to select a media outlet that reaches that audience. If a story has a strong visual opportunity, pitch it to television. If not, it’s likely more of a print story. If your angle requires a large amount of explanation, it might make for a great interview show on radio.

Once you establish which type of media outlet you think works best for the story, select an individual paper or station that best reaches the appropriate audience. Pay attention to which reporters at that media establishment cover the type of story you want to pitch. Know how the outlet covers things so you are prepared to appropriately position the story when you call to suggest they run it.

Pitching your story to the media requires knowledgeable sales technique. You are trying to convince a reporter or editor that your story is a good product for his/her customers. Treat your media contacts as you would clients. Be respectful and

understand that they know best what works for their viewers/listeners/readers. You’ll have successes and failures at this endeavor. The better you craft your angle and strategize the appropriate placement, the more success you will find. 📌

*Robin Vitols is the public relations consultant to the Arizona Association of REALTORS® and is the owner of the Rodie Company, a public relations firm specializing in real estate in the Valley since 1989.*

## RECORD GASOLINE PRICE IMPACT ON COMMERCIAL REAL ESTATE

**According to a recent analysis by Net Gain Real Estate**, record gasoline prices are bringing about significant change in the shopping and buying habits of the American consumer. The company says more and more consumers are not getting into their cars to shop and buy. All the anchors, national franchises, and independent lessees at the different retail centers have hedged their bets with their own Internet websites. Consumers are finding these websites more reliable and able to satisfy their needs, and they are using them at a progressively faster rate. The result of these changes will be weaker leases and lower cash flows at many retail properties.

Multi-housing communities built in close proximity to major roads, public transportation, and employment centers will benefit from record gas prices. Office buildings located near public transportation and residential areas will also fare well. Large, modern warehouses located near major highways and railroads will contribute to more efficient businesses and offset the higher transportation costs. 📌

## ONLY IN THE ARDONLINE

**SOLD UP SHORT HOW TO SUCCEED AT SHORT SALES**

**Unfortunately, short sales are a reality for home owners who owe more than their property is worth. If you have patience, persistence, and a knack for problem-solving, this niche could be for you.**

*By Mariwyn Evans*

You're so happy you got the listing — at least until the sellers inform you the price you're suggesting based on your careful CMA just isn't enough. Why? They owe more than that on their mortgage and home equity loans. Welcome to the world of short sales.

Flat or falling home prices, home-equity credit lines, 100-percent financing that sucked out equity, and spiking interest rates on adjustable mortgages are converging to create a regrettable, but expanding, niche for real estate practitioners: the short sale.

To help you gain a better understanding of short sales and what it takes to specialize in this growing area, we took a look at some of the most common questions on this topic that you and your customers likely will face today. Armed with this information, you can decide whether short sales are an avenue worth exploring for your business.

**What is a short sale?**

A short sale occurs when the net proceeds from the sale of a home are not enough to cover the sellers' mortgage obligations and closing costs, such as property taxes, transfer taxes, and the real estate practitioner's commission. The seller is unwilling or unable to cover the difference.

Some — although by no means all — short sellers may also be in default on their mortgage loans and be headed for foreclosure. However, home owners who bought at the top of the market or who took out large amounts of equity with a refinance and who now need to sell because of

divorce or job transfer may also find themselves upside down, owing more than the home is currently worth when closing costs are factored in.

**Tip:** Losing your home can be very emotional and most people don't want to face up to the reality until foreclosure sets in. "You have to have a very soft sell approach, but still keep sellers focused on getting forms and paperwork complete," says Sheryl Thomson, associate broker, Exit Island and Beach Realty, Merritt Island, Fla.

Other sellers simply don't understand that if they have assets, such as stocks or a high-salaried job, a lender is not going to let them just walk away from a short sale without signing a note to repay what they owe, says Steve White, broker with Keller Williams VIP Properties, Santa Clarita, Calif.

**How do I know it's short?**

A CMA will be your first indicator, but you also need to ask the seller what their outstanding debt is and calculate the cost associated with a sale — from transfer taxes to your commission. This will give you an estimate of the net proceeds that will be realized, often called the net sheet. This information can then be entered into a HUD-1 Settlement Statement to calculate out the final, negative result at closing. Some lenders also have their own forms.

Check with the title company and the lender to get exact figures on closing costs and loan balances and to find out what procedures they have in place. If they can afford it, sellers should also consider getting a home inspection to determine what repairs are needed on a home and how this might affect its value, says White.

**Tip:** Get the seller to send a brief letter to all mortgage holders, giving them permission to speak with you. Otherwise, privacy laws will prevent them from talking to you about the loans, says Larry Hollingsworth, associate with HomeCity Realty,

Dallas/Frisco, Texas, and a short-sale course instructor. It's also critical to build a relationship with the seller's lender. Once you have credibility, the entire process becomes easier, he says.

**Who do I and the seller need to talk to about the problem?**

If there are a first and second mortgage or a home equity line of credit, you may have to talk to more than one lender to get approval for a short sale. In addition, you may also need approval from the entity that holds the pool of loans if the mortgage has been securitized.

"The presence of two lenders makes a short sale more complicated since it's often the lender holding the second, or junior, mortgage that has to absorb most of the loss," says White, who with Gina Covello, e-Pro®, broker associate at Keller Williams Realty, Studio City, Calif., teaches a course called "The Anatomy of the Short Sale."

Opinions differ, but most experts suggest that you let the lender involved know as soon as possible of the potential short sale. Others say you should wait until you have an offer because you'll get no action until then. "Without a viable purchase offer, your deal won't be considered by mortgagees," says Margot Cole-Murphy, broker with RE/MAX Equity Group, Portland, Ore.

**Tip:** Be sure you contact the bank's loss mitigation department, which will be the group to decide whether to accept a short sale, rather than the collection or customer service department, which is only interested in recouping past due loan payments. "Finding the decision maker is often one of the biggest initial challenges in a short sales," says Thomson.

**What information will the bank need to decide whether to accept a short sale?**

The sellers' submission package should include

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W-2 forms from employers (or a letter explaining the seller is unemployed), bank statements, two years of tax returns, and other financial documents outlining income and debt obligations. The bank will also need comps or a broker's price opinion showing your estimate of value.

In addition, the sellers should submit a "hardship letter," explaining the circumstances that make it impossible for them to pay the full amount of the loan. The seller needs to be able to show true financial hardship. Someone with the assets or the income to pay is unlikely to be considered, say most interviewees.

**Tip:** In preparing the package, be careful about discrepancies between the seller's income and the income used to obtain the loan, cautions Lance Churchill, an attorney and instructor on short sales and REOs with [FrontLine Seminars](#). A big gap may indicate mortgage fraud, unless employment circumstances have drastically changed.

#### What are the options besides a short sale?

Thanks to programs such as those proposed by Fannie Mae and Freddie Mac to assist subprime borrowers, many lenders are more willing to offer loan modification options. This option can extend the term of the loan, add on delinquent payments to the loan principal, and/or reduce the interest rate to make the loan more manageable for the home owner.

Another option is a repayment plan that requires home owners to increase their monthly payments until the loan is current, says Loni Parmelly, a real estate practitioner and consultant who specializes in short sales. Parmelly also is author of *Success in Short Sales* (2004), a book she sells on her [Web site](#). It may be possible to refinance an adjustable rate loan with a Federal Housing Authority or conventional fixed loan. Note that lenders will not postpone a foreclosure just because a property is listed, although they may postpone if you have a reasonable offer in the works.

**Tip:** The ideal candidate for a short sale is still making loan payments and has a credit rating worth

preserving. Otherwise, it may not be worth going through the complicated process, says Steve Pierce, broker and operating principal of Keller Williams Benchmark Properties, Fremont, Calif.

#### How should I price a short sale property?

In general, most short sale experts say to price the property at or near fair market value, although a few will begin with the total payoff amount owned by the seller. How frequently prices are dropped will depend in part on whether the property is in preforeclosure. Most banks have a formula for what percentage under market value they will accept, say interviewees. Figures cited vary from 8 percent under to almost 20 percent under.

"I always price the property 10 percent lower than comparable to peak buyer interest and initiate buyer activity," says Cole-Murphy, who's also founder and curriculum developer for [Real Estate Pro Guides](#), a line of educational books for practitioners. However, it's important for buyers to understand that the bank will not give away the property, she says.

**Tip:** Most lenders will want to get a broker's price opinion or even an appraisal to see what the property is worth before you and seller set a list price. One way to help ensure that the bank's estimate of value is realistic is to offer comps of recent sales — both traditional and REO, says Churchill, who is also the author of *The Foreclosure Specialist: A Real Estate Agent's Complete Guide on Working in the Foreclosure Market* (Valco Press, 2007). "Practitioners who do BPOs are rated in part on how close their estimates are to the final sale price, so they usually welcome information on legitimate comps," he says.

#### What and how should I disclose about the short-sale property to prospective buyers?

Opinions vary on this topic, although most experts favor disclosing that a property is a short sale in the comments section of the MLS listing. Others suggest waiting to disclose the need for lender approval of the sale until a buyer is ready to make an offer. Debra Allen, ABR®, e-Pro®, with Prudential Arizona Properties, Gilbert, Ariz., uses a disclosure form

prepared by her brokerage just for short sales. She also had a special sign rider for the yard sign made indicating a property is a short sale.

**Tip:** Watch out for unethical investors who will try to convince an owner facing foreclosure to sign a quit-claim deed for the property, and then lease the property, warns Jim Cacioppo, broker/owner of Grand Realty Group, Grayslake, Ill. In such cases, the former owners will still be liable for the mortgage payments, even though they no longer own the house.

#### How long does it take to complete a short sale?

Although response times vary from lender to lender, it can take two weeks or as long as 60 days to receive an approval of a short sale from a lender. That's why it's critical that buyers and their representative understand and accept that time frame before they make an offer.

An addendum to the California Association of REALTORS® purchase contract includes a provision allowing either party to cancel a short-sale contract within a set period if the seller hasn't gotten the deal approved, says White. Properties with securitized loans (which are the majority these days) may require a longer time to get an approval of a short sale because of the possible need for approval from the entity holding the pool of securities, says Churchill.

**Tip:** Keep in mind that the purchase contract on a short-sale property is a legally binding agreement once the earnest money has been deposited. Without language in the contract stating that the lenders must approve the offer and release all liens on the property, the seller may face a legal problem for failing to execute the contract if the short sale is not approved, says Hollingsworth.

#### What can the seller and I do to make a short sale more attractive to a lender?

Getting a lender to approve a short sale is primarily a question of economics. You have to provide hard numbers to show that the amount of money a bank will realize on the short sale is better than the amount it may recoup from foreclosing on the

— CONTINUED, PAGE 4

property and selling the property as an REO, says Todd Ruckle, ABR®, RE/MAX Associates Inc., Newark, Del.

A 2002 study by Craig Focardi of the Tower Group estimated that the entire cost of a foreclosure was \$58,759 and took 18 months. Other factors that can influence a bank's decision include the liability risk it assumes by owning the property after foreclosures, the money tied up during the holding period for a foreclosure and REO resale, additional costs associated with an REO such as attorneys' fees, and the additional reserves it will need if REOs rise in the bank's portfolio.

**Tip:** A buyer that is willing to close in 30 days and who can make a substantial down payment may make the deal more attractive than a buyer who wants 95 percent financing, notes Michael Termine, GRI, CRB, associate broker, Prudential Rand Realty, New York City. All buyers should be preapproved for a mortgage before submitting the offer.

However, to avoid unnecessary costs, buyers should wait on having a home inspection and an appraisal for the loan until after the bank has accepted the short sale proposition, say Cole-Murphy. Genuine hardship, such as a lost job or high medical bills from an illness may also have an influence, says Covello.

#### **What are the seller's options if a short sale is rejected by the lender?**

There are a variety of reasons a bank will reject a short sale — from too low a price to too many files on the loss mitigator's desk. You can look for another buyer or even try resubmitting the same contract. "Banks don't want to take properties back in foreclosure, so they are going to do everything they can to make it work," says Pierce. You also need to prepare your seller in advance for the possibility of foreclosure if a short sale fails, says Parmelly.

**Tip:** A short sale might be rejected if the loan is less than a year old. In such cases, the servicer that's bought the loan can often require the original lender to buy it back, says Hollingsworth.

#### **What financial or credit liabilities will a seller have as a result of a short sale?**

Many lenders ask sellers to sign a promissory note for all or part of the difference between the proceeds of the short sale and the debt obligation as a condition to a short sale. In such cases, the note gives lenders the right to sue a seller and attach other assets if the note is not paid when due.

It's particularly important to understand this distinction if you work in states such as California that have a nonrecourse mortgage, says Churchill. In such states, the lender cannot pursue a deficiency judgment against a seller for any deficiencies after a property is foreclosed. Because of this distinction, sellers who are already in default on a mortgage and do not have the resources to pay off a separate promissory note after a short sale might be better off letting the lender foreclose, he says. If you are working in a state in which mortgage loans are nonrecourse, be sure and alert your seller-clients to this distinction.

**Tip:** Having a portion of a loan forgiven may have an adverse affect on the seller's credit. Encourage your client to try and sign a lease on an apartment before credit is further damaged, suggests Roberta Murphy, an associate broker with Windermere Exclusive Properties, San Diego.

#### **What tax liabilities will a seller have as a result of a short sale?**

One often overlooked aspect of short sales is that a seller must count any amount forgiven by the lender as income and pay taxes on that income, even if no actual money was received. The IRS requires lenders to submit a Form 1099 stating the forgiven amount. Sellers who meet the Internal Revenue Service definition of insolvency (either in bankruptcy or with debts exceeding assets) will not have to pay taxes on the forgiven amount.

**Tip:** The U.S. House of Representatives has introduced the Mortgage Cancellation Tax Relief Act (H.R. 1876), which would eliminate taxes on any debt forgiven on a principal residence through either short sale or

foreclosure. The NATIONAL ASSOCIATION OF REALTORS® has been working to support this bill.

#### **What compensation will I receive as the real estate salesperson or broker in a short sale?**

Banks are going to want you to discount your commission. "It's the first place they'll look to save on closing costs," says Ruckle. Rates offered can vary, but are typically 1 percent to 2 percent below averages in the market, say interviewees. However, says Hollingsworth, more lenders now seem willing to pay a full commission on sales.

**Tip:** Instead of stating a specific percentage of compensation for buyers' representatives when posting the listing in the MLS, offer a split (50/50, 70/30, etc.), suggests White. In this way, if the lender pressures for a lower commission, you can divide the fee, rather than give a stated percentage to the buyer's representative. Many MLSs also require that you disclose a short sale in your listing.

#### **Where can I find clients if I'm interested in specializing in short sales?**

Word of mouth remains the biggest source of new business, experts say, but you can also promote your services to individuals attending credit counseling classes (now required prior to filing bankruptcy), to people who receive state notices of loan defaults, and to home owners named on lists of ARMs that will be resetting in the next few months. To find buyer clients, creativity is a plus. For example, Thomson is developing a monthly "Short Sale Hot Sheet" she e-mails to investors.

**Tip:** FSBOs are another good source since many upside-down sellers think they can't afford to pay a commission and so try to sell on their own. Many don't realize that in a short sale, the lender pays the broker's commissions, says Churchill.

#### **Are short sales for me?**

With many more adjustable rate mortgages ready to reset to higher loan amounts in the next couple of

— CONTINUED, PAGE 4

years, short sales represent a growing sector of the market. However, because sales are time consuming, they aren't for everyone. "I always say that if you're going to succeed in short sales, you need the 3 Ps — patience, persistence, and problem solving," says Cacioppo. 📍

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**ARDONLINE AWARD**

**AAR PUBLICATION WINS NATIONAL AWARD**

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



The *Arizona REALTOR®* magazine and the *ARDonline* are provided as AAR member benefits. We hope you enjoy them. Please let us know if you have any comments or suggestions for articles — we're here to serve you.

*Communications Director Diane Cole  
Art Director J. Thurston*

**MONSOON SEASON CLEANUP SCAMS**

After the winds and rains of the monsoon season do their damage, the clean-up and repairs begin. The attorney general's office reminds residents to be careful of unsolicited contractors going door-to-door and offering help. "They seem friendly and interested in helping homeowners fix storm damage to their homes," Goddard said. "Don't fall for it — they will take your money and run." Some workers will claim to have extra materials because they are doing work in the neighborhood. They will offer the homeowner a "discounted" price so the contractor won't have to throw away the materials (often for roofing or paving). Typically, the homeowner is given a verbal quote, but not a written estimate for the job.

After the job is complete, the homeowner may get a final bill that is thousands of dollars more than what was originally quoted. In some cases, the scammer will claim to have performed additional work without the homeowner's consent. The scammer demands immediate payment, and in some cases refuses to leave, trying to intimidate the homeowner to pay in full.

If residents are approached by people who appear to be repair scam artists, please report them to the attorney general's office by visiting the [attorney general's website](#) and submitting an online "Consumer Complaint" or calling the office at 602-542-5763 in Phoenix, 520-628-6504 in Tucson, or 1-800-352-8431 outside the metro areas. 📍

**EDUCATION**

**NEW GRI MODULE: 204 – RISK MANAGEMENT**

This two-day module reviews the risks that impacts every day real estate practice, the specific major problem areas that cause risk for real estate licensees; the different standards as defined and directed by law, Commissioner's Rules, and the Code of Ethics; how to protect yourself from problems and risks; and dispel common myths and fantasies related to risk and risk management. This is an elective module for the remainder of 2007 and will be a required module for everyone who starts their GRI classes on January 1, 2008, and later.

**GRI/NAR DESIGNATION CLASSES IN ARIZONA, AUGUST 2007**

1-2	.....GRI	.....202
2-3	.....CRS	.....201
3	.....GRI	.....100
8-9	.....GRI	.....314
9-10	.....GRI	.....202
10	.....GRI	.....307
13-14	.....ABR	.....Buyer
		.....Representation
13-14	.....ABR	.....Core
13-17	.....CCIM	.....101
15-16	.....GRI	.....308
16-17	.....GRI	.....201
17	.....GRI	.....311
17	.....GRI	.....313
20	.....GRI	.....306
23-24	.....GRI	.....202
23	.....GRI	.....312
27-28	.....GRI	.....308
28-29	.....GRI	.....203
30	.....GRI	.....309

For more information, go to [AARonline.com](#) and [AZGRI.com](#).



IN HONOR OF DESIGNATIONS EARNED FROM JANUARY – JUNE 2007

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WANT IT. GET IT. LIVE IT!

## YEAR 2009 AAR OFFICER ELECTION

The election for year 2009 AAR officers will be held in Prescott during the Winter Real Estate Conference, March 13-14, 2008. The filing period is now open for the positions of **President-elect**, **First Vice President** and **Treasurer**, with one-year terms beginning December 1, 2008. The filing deadline is **January 15, 2008**, to the AAR office. [Applications are available on AARonline.](#)

**Applications received for 2009 to date: 2009 Treasurer: Gary Best**, Tucson

The two-year term (2009-10) positions of AAR **Regional Vice President** (RVP) for Regions 2 (Phoenix; West Maricopa County Regional) and 4 (Scottsdale Area; SouthEast Valley Regional; Western Pinal) are open for election as well. If you are interested in applying, please contact your current RVP. RVPs must notify AAR by **February 1, 2008**.

Region 2: Fred LaBell, 602-867-2000, [flabell@cox.net](mailto:flabell@cox.net)

Region 4: Duane Washkowiak, 602-430-7404, [duane@propertyinaz.com](mailto:duane@propertyinaz.com)

**NOTE:** 2008 NAR director election information for October 2007 AAR director meeting (if an election is needed) for term beginning January 1, 2008, will be announced after August 1 as soon as we have the entitlement numbers from NAR, which are figured based on July 31 ending NRDS numbers.

### ARIZONA SCENE

**Tucson** Northwest Fire/Rescue District cannot charge the "facilities benefit charge" being levied on each new house; the state Supreme Court ruled the charge illegal... *Tucson Daily Star*, 6/30/07

**Oro Valley** impact fee increases will be phased in over five years, from \$1,300 on September 19, 2007, in about \$1,000 increments each year until it reaches its full amount of \$5,182 in 2011... *Tucson Daily Star*, 6/29/07



Nick Pryor, general manager

Award Realty, with 140 associates and 9 staff members in Sun City and Surprise, has achieved 100 percent RAPAC participation for 2007. This is the largest office in the history of RAPAC to make 100 percent participation.

*"The importance of RAPAC in the 21<sup>st</sup> century to REALTORS® cannot be stressed enough."*

## ETHICALLY SPEAKING By AAR EVP Alice Martin, CAE, GRI, RCE

### CHANGE TO APPRAISAL LAW DOES NOT CHANGE SOME OF THE REALTOR®'S OBLIGATIONS TO PROVIDE INFORMATION ON PRICE OPINIONS

A recent change to A.R.S. 32-3602 (1), effective now, clarifies the exemption for real estate licensees under the appraisal licensing statute by removing the words, "for the purposes of prospective listing or sale." The statute now exempts from the appraisal licensing requirement: "[a] real estate broker or salesperson who is licensed in this state and who, when acting as such, gives an opinion as to the price of real estate if this opinion is not referred to as an appraisal."

The Code of Ethics, Article 11, allows REALTORS® to prepare any type of opinions of real

property value or price. However, as explained in Standard of Practice 11-1, REALTORS® are obligated to provide certain information when preparing such opinions that are NOT done in the pursuit of a listing or assisting purchasers with an offer. Those types of opinions must also include the following:

1. identification of the subject property
2. date prepared
3. defined value or price
4. limiting conditions, including statements of purpose(s) and intended use(s)

5. any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
6. basis for the opinion, including applicable market data
7. if the opinion is not an appraisal, a statement to that effect

Bottom line? To make sure REALTORS® follow both the law and the Code, they can prepare price opinions on any property, as long as they don't call it an appraisal, and as long as they follow the seven steps above when the opinion is *other than* in pursuit of a listing or assisting the buyer in formulating an offer. 📌

# RISK MANAGEMENT

By AAR General Counsel Michelle Lind

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*.

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



## MAKE REFERRALS THE RIGHT WAY

Generally, brokers are encouraged to give their clients more than one name of a qualified inspector, contractor or other professional when making a referral. However, as long as the recommended person is competent, the broker should have no liability to the client, even if the person performs the service negligently. Nonetheless, brokers should encourage their clients to ask about the person's qualifications, experience and E&O insurance coverage before determining who to employ. And, brokers should never directly hire a person on the client's behalf.

Section 8 of RESPA prohibits a person from giving or accepting anything of value for referrals of "settlement service" business in most real estate transactions. A "settlement service" includes any service provided in connection with a real estate transaction. A "thing of value" includes any payment, advance, funds, loan, service, or other consideration. Therefore, brokers should not accept a fee for referring a client to a company or individual providing title insurance, attorney services, surveys, credit reports, appraisals, pest and fungus inspections, loan origination (the taking of loan applications, processing, underwriting and funding) or any other related business.

## REVIEW THE TITLE COMMITMENT

The AAR contracts require the escrow company to obtain and distribute to the buyer a Title Commitment. Make sure the buyer understands that the Title Commitment must be reviewed within five days after receipt so that notice of any items disapproved can be delivered to the seller.

The brokers should also review the Title Commitment. Check the policy to be issued in Schedule A of the Title Commitment to insure that the best policy type available will be issued. The American Land Title Association ("ALTA") Homeowner's Title Insurance Policy is generally considered the best available for residential transactions. Check Schedule B of the Title Commitment for disclosure items and for restrictions on the use of the property. Refer the buyer to the escrow officer or an attorney if there are questions or concerns. The Requirements section lists what must be done before escrow can close and title insurance will be issued. If a requirement cannot be met, close of escrow may be prevented or delayed. The brokers should talk to the escrow officer about any unusual requirements as soon as possible to avoid a delay in close of escrow.

## BE PROACTIVE IN THE LOAN PROCESS

Both brokers in the transaction should be active in the buyer's loan process and follow up with the buyer and lender to insure that the loan approval process is completed by the close of escrow. Communication between the real estate brokers, the buyer and the lenders is vital.

By staying active in the buyer's loan approval process and communicating with the lender, the brokers should have a good idea prior to the close of escrow date whether or not the buyer will obtain loan approval and be able to close escrow as agreed.

AAR's Loan Status Report ("LSR") provides valuable information about the buyer's ability to obtain financing. The AAR Loan Status Update ("LSU") will assist both brokers to determine

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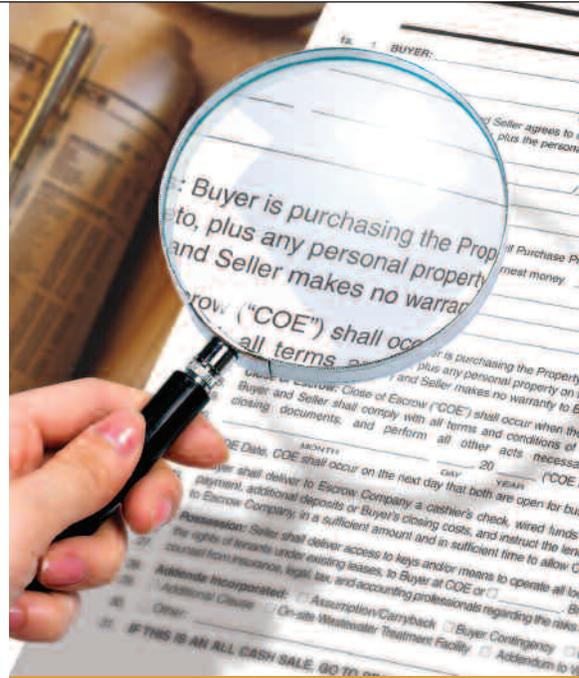
what action needs to be taken to facilitate the loan process. These forms together essentially outline the steps necessary to obtain loan approval without conditions.

Remember that in most transactions the lender will update the buyer's credit report, employment status and verify other funds at least once, and possibly several times, before close of escrow. Therefore, advise the buyer that any credit applications, changes in employment or major expenditures may jeopardize loan approval.

## RECOGNIZE HOA ISSUES

A transaction involving a property in a homeowners association ("HOA") requires additional follow-up by the brokers. Both brokers are responsible for ensuring that the AAR H.O.A. Condominium/Planned Community Addendum ("Addendum") is incorporated into the purchase contract. The Addendum addresses all the issues unique to HOAs. There are generally fees that must be paid upon the transfer of a property in a HOA and the Addendum specifies which party will be responsible for paying the fees and any other assessments related to the sale. Both listing broker and buyer's broker must find out what fees are due and payable at close of escrow and discuss these fees with the client before executing the Addendum.

The buyer's broker should advise the buyer to carefully read the CC&Rs (and any other association documents) because the buyer will be obligated to comply with all the rules and restrictions. The broker should explain to the buyer in a new home transaction that the CC&Rs must be reviewed before signing the contract. In a resale transaction, the AAR contract allows the buyer five days to review and disapprove of the CC&Rs. The broker can use the CC&Rs table of contents to point out sections that may be of particular importance to a buyer, such as use restrictions and architectural control. 🏠



## CONTRACTS 101

By AAR General Counsel Michelle Lind

**Q:** Is the buyer entitled to make changes in the lender, loan program or financing terms without the seller's approval?

**A:** Pursuant to the Contract at Section 2j, a buyer may make changes in the loan program, financing terms, or lender described in the Loan Status Report without the seller's prior written consent as long as the changes do not: (1) adversely affect the buyer's ability to obtain loan approval without conditions, (2) increase the seller's closing costs, or (3) delay close of escrow.

# LEGAL HOTLINE

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Find more Hotline questions and answers addressing the following topics by clicking on the category above each question.

By Christopher A. Combs

**Christopher A. Combs**, Phoenix attorney, is a partner with the firm of [Combs Law Group, P.C.](#), and is on the AAR Legal Hotline team.

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## BROKERAGE

### LICENSE REQUIRED AT TIME COMMISSION EARNED

**Q:** The agent let his license lapse in June 2006, and did not renew his license until February 2007. During this period that the agent's license had lapsed, the agent conducted real estate activity and earned a commission. The transaction is closing now in May 2007. Is the agent entitled to be paid a commission now if the commission was earned during the time period that the agent's license had lapsed?

**A:** No. An individual must have an active real estate license "at the time the service is rendered." A.R.S. §32-2155(B). If the individual does not have an active real estate license at the time that the service is rendered, the agent is not entitled to any compensation, even if the agent is licensed at the time that the commission will be paid.

## CONTRACTS — CANCELLATION

### BUYER CAN CANCEL BASED ON INSPECTION REPORT

**Q:** During the ten-day Inspection Period, the buyer elects to cancel the contract, and attaches to the BINSR a copy of the inspection report, which contains more than twenty problems with the property, and states: "Elects to cancel due to inspection report." Seller claims that buyer did not specifically delineate the items disapproved, and should forfeit the earnest money. Is buyer entitled to a return of the earnest money?

**A:** Yes. The buyer attached to the BINSR the inspection report with the list of disapproved items. Therefore, the buyer is entitled to a return of the earnest money under lines 234-236 of the Contract.

## LANDLORD CAN CANCEL BECAUSE OF "BOUNCED" CHECK

**Q:** The landlord and the tenant executed a commercial lease which required the tenant to pay three months rent "up front." The tenant provided a check to the landlord, but the check was subsequently denied for insufficient funds. The lease provides that any failure by the tenant to provide readily available funds is grounds for the landlord to cancel the lease. Can the landlord cancel the lease?

**A:** Probably. Inasmuch as the lease provides that the landlord can cancel the lease due to the tenant's failure to provide readily available funds, the landlord can probably cancel the lease because the tenant bounced its "up front" rental payment check. In addition, the validity of the "up front" payment check was probably a condition precedent to an enforceable lease.

## CONTRACTS — GENERAL

### BUYER CAN GENERALLY ASSIGN CONTRACT TO PURCHASE HOME

**Q:** Buyer #1 and Seller enter into a contract to purchase a home. Buyer #1 would like to assign his interest in the contract to a third party. Can Buyer #1 assign his interest in the contract to a third party?

**A:** Probably. A contract is generally assignable, unless a provision in the contract provides otherwise. The Contract does not include boilerplate language prohibiting assignment, so unless language was added to the contract prohibiting such assignment, Buyer #1 is allowed to assign his interest in the contract to purchase the home.

*Note: If Buyer #2 (the person to whom Buyer #1 assigns his interest) fails to close the transaction, Buyer #1 will still be liable to close the transaction, unless there is a novation, i.e., new contract between the Seller and Buyer #2 releasing Buyer #1.*

— CONTINUED, PAGE 11



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**LISTINGS****NO OBLIGATION TO SELL  
EVEN FOR LIST PRICE**

**Q:** Three sisters own the home. Two sisters sign a listing agreement with a list price of \$749,000. A \$750,000 cash offer with no contingencies, not even a home inspection, is made by a buyer. The third sister still refuses to sell the home, so the \$750,000 cash offer is not accepted.

1. Are the two sisters liable to the buyer for not accepting the buyer's \$750,000 cash offer?
2. Are the two sisters who signed the listing agreement liable for a commission?

**A:**

1. No. In offering to sell a property for a list price, the seller is simply "making an invitation to have a buyer make an offer." The seller is under no obligation to accept an offer at list price or higher, and the buyer has no right for specific performance, damages, or any other remedy for breach of contract.
2. Probably. If the broker produces a ready, willing, and able buyer with no material contingencies pursuant to the listing agreement, the two signing sisters will probably be liable for the listing commission. The non-signing sister will not be liable for the listing commission.

**DISCLOSURE AND OTHER LIABILITIES****LOSS OF CONTRACTOR'S  
LICENSE PROBABLY NEEDS  
TO BE DISCLOSED**

**Q:** Seller's home was built by a builder who has recently lost his contractor's license due to poor construction. Does seller have to disclose to buyers the fact that the builder of the home has recently lost his license for poor construction?

**A:** Probably. A seller has a duty to disclose facts materially affecting the value of the property that are not readily observable and are not known to the buyer. See *Hill v. Jones*, 151 Ariz. 81, 725 P.2d 1115 (App. 1986). The fact that the builder of a home lost his license for poor construction probably affects the value of the property. Therefore, disclosure is probably required.

**"AS-IS" SALE DOES NOT  
REQUIRE TERMITE TREATMENT**

**Q:** The home was sold "as-is." During the ten-day Inspection Period, active termite damage is discovered. The Buyer is demanding treatment of this termite damage. In an "as is" sale of a home, does the Seller have to pay for termite treatment?

**A:** No. If the Seller is selling the home "as is," the Seller is under no obligation to pay for any repairs or maintenance costs relating to the home. Therefore, the Buyer only has the right to cancel the Contract because of the termite problems, and has no right to demand termite treatment. Arizona law does not require either a termite inspection or treatment in the sale of a home.

**FINANCING****SPECIFIC LANGUAGE  
CONTROLS OVER INCONSISTENT GENERAL  
LANGUAGE**

**Q:** Under Lines 72-78 of the Contract, the seller agreed to pay loan costs such as discount points and the loan origination fee. In Lines 304-306 of the Contract ("Additional Terms and Conditions"), the seller limited the amount of the loan costs that the seller would pay to \$6,000. If the loan costs are more than \$6,000, does the seller have to pay more than \$6,000?

**A:** Probably not. If the parties specifically agreed that the amount of the loan costs would be "capped" at \$6,000, this specific language probably controls. In other words, the seller should not be responsible for more than \$6,000 in loan costs, even though the loan costs that the seller agreed to pay exceed \$6,000.

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**AAR CALENDAR OF EVENTS**

- 9 Industry Partners Conference, Tucson
- 16-17 NAR Leadership Summit, Chicago

AUG

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