

SUMMER 2013

# ARIZONA REALTOR<sup>®</sup>

QUARTERLY

**LISTING  
AGREEMENTS  
AND MORE  
CODE TALK!**

Page 2



**FOR  
SALE SOLD**

## A MESSAGE FROM 2013 AAR PRESIDENT SUE FLUCKE

**Hello!** It's summertime in our great state and the market is really heating up. With interest rates still at all-time lows, now is a great time to buy. The inventory issues we continue to face could very well be alleviated if homeowners only knew how much equity they actually had in their homes. It's up to all of us to spread the word. As the temperatures continue to rise, I think we'll also see a steady rise in homeowners looking to sell. Now is a great time to be a REALTOR® in Arizona!

As I approach the half-way mark in my presidency, I'm proud of what we've accomplished so far. Our Spring Convention was an incredible success; bringing together some of the best minds in our industry. I walked away with a bunch of new tools to help me grow personally and professionally; and I know many other attendees who left with the same enthusiasm. I'm also proud of the work we've done to keep anti-deficiency intact. We continue to work alongside the bankers to protect homeownership for all Arizona residents, and are committed to remaining steadfast in our fight. We've also introduced two new advisories, one for tenants and one for lease owners, both have been very well received and will help property managers out tremendously.

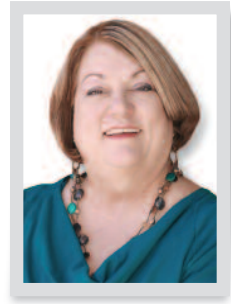
I knew coming into this term that I'd be busy, but I'm most surprised by how rewarding this non-stop pace has been.

I've had the tremendous opportunity to meet with many of you and am honored by your warm receptions. The pace also hasn't slowed at all when it comes to our interactions with ADRE and we'll continue to update you on our progress. The challenges we face overall are of the utmost importance to me, and I'm confident we'll find new ways to transform our industry together.

This month, take a little time to meet with your clients and cooperating agents (and remind yourself) to get back to basics. So often, I see transactions spiral out of control by a single instance of miscommunication. Always remember that communication is everything. Don't forget that a phone call can make a huge difference.

I'm looking towards my last six months as President of AAR with enthusiasm. I hope you have a great summer and that you remember to exceed the expectations of those around you!

Take care,  
Sue



Sue Flucke, CRB, GRI, GRMS  
2013 AAR President

Arizona REALTOR® Magazine — March 2013

### CODE TALK

# LISTING AGREEMENTS

*This month, we'll explore how the NATIONAL ASSOCIATION OF REALTORS® Code of Ethics affects the listing agreement. AAR interviewed three brokers with some great advice on creating an effective listing agreement. Overall, the biggest takeaway: **Take your time.***

For most agents, a listing agreement is the first step towards making a sale, and each aspect must be perfectly executed. The listing agreement allows REALTORS® to “market, show, enter (unless otherwise informed not to), write the contract and present the contract,” said George Watrous. Pat Leach, a broker with Keller Williams Southern Arizona in Tucson, also agrees adding that the listing agreement “allows you to procure a buyer for the property

and holds your fiduciary forever.” And while the importance is clearly evident, sometimes the execution is lacking.

“I tell my agents two things when filling out the listing agreement,” says Watrous. “First, unless it is an either/or situation, never leave a line blank. Second, write at a third-grade level.” Ron Roberts, designated broker, ABR, CRB, CRS, GRI at Dominion Real Estate Partners, LLC in Scottsdale, also agreed with Watrous. “A bad listing agreement is one where you start adding verbiage that creates ambiguities... it is just not necessary.” Agents must also make sure that they are using the right form.

>>

## ARIZONA REALTOR® QUARTERLY SUMMER 2013

### CODE TALK

4 *Fair Housing*

6 *The Case for  
Buyer-Broker  
Agreements*

### FEATURES

7 *Fair Housing's  
Disparate Impact*

9 *Property Management  
Is it a "Win-Win"  
or a "Lose-Lose"?*

12 *Get a C.L.U.E.*

13 *Legal Hotline*

CONNECT WITH AAR



FACEBOOK

<http://facebook.com/azrealtors>



TWITTER

<http://twitter.com/aarsuccess>



YOUTUBE

<http://youtube.com/azrealtors>



FLICKR

[http://flickr.com/aar\\_eventwind](http://flickr.com/aar_eventwind)

And be sure to visit AAR's Blog  
online at <http://blog.aaronline.com>



Another thing to note, said Roberts is to “explain the process so your client has realistic expectations and emphasize the importance of having all communications directed to you, their agent.” Leach adds that a listing agreement is not just a “PPP. Put up a sign, put it on MLS and pray it sells.” She says it’s a commitment to doing the right thing for your clients.

Once the Listing Agreement is filled out completely, the next step is to make sure that all additional forms are included. These forms vary from brokerage to brokerage, but here’s a list the brokers who contributed to this article gave us that they require:

**Affidavit of Disclosure**  
**County Lot Split**  
**RESPA**

**Agency Disclosure (for client)**

**Agreement Notice (for short sales)**

**ARMLS Data Input Form**

**CLUE Report**

**Domestic Water Well (if applicable)**

**IMAP Tax record**

**Lead-Based Paint Form (prior to 1978)**

**ER or EA (Exclusive Right to Sell, Exclusive Agency)**

**Listing Addendum**

**Market Condition Advisory**

**MLS Printout**

At the end of the day, all brokers agreed that a good listing agreement is complete and includes photos and video of the property; is priced well; and holds true the commitment to your clients to make recommendations on the sale of their home.

>>

## Jan Steward comments:

Below is an excerpt from *Arizona Real Estate: A Professional's Guide to Law and Practice* by K. Michelle Lind, Esq., chief executive officer of the Arizona Association of REALTORS®

“The listing agreement is an employment agreement between the seller and the listing broker. This agreement establishes the duties of the broker and seller, including the terms under which the broker will earn a commission. Some of the common issues included in a listing agreement are:

- The agency relationship between the broker and seller;**
- The amount of compensation and when it is earned;**
- Authorization for the listing broker to cooperate with and compensate cooperating broker;**
- Permission to disseminate information on the MLS, on the Internet, and in other advertising;**
- Permission to use a lockbox and access the property;**
- A seller cooperation agreement;**
- A seller warranty of ability to convey title; and**
- Dispute resolution.**

There are 14 individual multiple listing services in Arizona and each has its own listing agreement form. Thus, the terms in a listing agreement vary dramatically across the state”.

Here are some things to consider:

**Does the listing agreement touch upon any of the following Articles in the Code of Ethics?**

**Articles 1-9: Duties to Clients and Customers.**

**What about Duties to the Public, Articles 10-14?**

**What about Articles 15-17: Duties to REALTORS®?**

I challenge you this month, to review the Code of Ethics and determine which articles you think are relevant to the listing agreement. You are invited to share your opinions by using the comments area below. ❄

### ABOUT THE AUTHOR



**Jan Steward** brings a wealth of experience to the Arizona Association of REALTORS® as the Risk Management Specialist. She is a former title company manager and escrow officer with paralegal training. As a REALTOR® and broker, Jan served the Northern Arizona Association of REALTORS® (NAAR) as board president, vice-president, director, MLS chair, delegate to NAR's national convention and a member of the Professional Standards and Grievance Committees. Jan was honored as REALTOR® of the Year by NAAR. She also has served on AAR's Professional Standards Committee and a variety of ad hoc committees.

Arizona REALTOR® Magazine — April 2013

## CODE TALK

# FAIR HOUSING

BY JAN STEWARD, AAR RISK MANAGEMENT SPECIALIST

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

April 2013 marks the 45th anniversary of the 1968 landmark Fair Housing Act. Each year, REALTORS® recognize the significance of this event and reconfirm our commitment to upholding fair housing laws as well as our commitment to offering equal professional service to all in their search for real property.

If you have not read the [Fair Housing Declaration](#) in a while, I encourage you to do so.

<http://www.realtor.org/programs/fair-housing-program/fair-housing-declaration>

Every real estate licensee in Arizona is required to take a minimum of three hours of continuing education in Fair Housing each renewal period, so you are already well versed in Fair Housing issues. What can AAR impart to our members regarding their duty to offer equal services to all and thereby provide consumers with equal opportunity in housing? Article 10 states:

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation (Amended 1/11).

>>



You are therefore reminded that regardless of your client's race, color, religion, sex, handicap, familial status, national origin or sexual orientation they are entitled to the same level of care and service that you take pride in offering.

In the [March Code Talk column](#), members discussed the mechanics of listing agreements, ancillary forms for listings, MLS dissemination and advertising through the Internet as it pertains to the Code of Ethics. Standard operating procedure (SOP) 10-3 relates to listings, as well stating: "REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, national origin, or sexual orientation," (Adopted 1/94, Renumbered 1/05 and 1/06, Amended 1/11).

<http://www.aaronline.com/2013/03/code-talk-listing-agreements/>

Mary Lee Greason, a Tucson REALTOR® and Fair Housing educator, offered some sage words of advice: "In advertising our listings, we need to remember the advice I heard years ago from an attorney [who] prosecuted Fair Housing violations, 'Stick to the amenities of the property and not the people who might live there!'"

The Department of Housing and Urban Development recently shared [two scenarios](#) which may constitute housing discrimination:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/LGBT\\_Housing\\_Discrimination](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination)

A gay man is evicted because his landlord believes he will infect other tenants with HIV/AIDS. That situation may constitute illegal disability discrimination under the Fair Housing Act because the man is perceived to have a disability, HIV/AIDS.

A property manager refuses to rent an apartment to a prospective tenant who is transgender. If the housing

denial is because of the prospective tenant's non-conformity with gender stereotypes, it may constitute illegal discrimination on the basis of sex under the Fair Housing Act.

Finally, a reminder that Article 10 and SOP 10-4 extends discrimination to cover employment in real estate offices: *As used in Article 10, "real estate employment practices" relates to employees and independent contractors providing real estate-related services and the administrative and clerical staff directly supporting those individuals.* (Adopted 1/00, Renumbered 1/05 and 1/06).

I would like to leave you with the following from the National Association of REALTORS®:

*As REALTORS®, our success isn't measured by the bottom line. It's measured by the trust of our clients and customers and the esteem in which we're held by our colleagues and competitors. The National Association was founded with the goal of uniting the real estate profession through high standards to protect buyers and sellers. 100 years after its adoption, the Code of Ethics continues to be what sets us apart as REALTORS®. ❖*

#### ABOUT THE AUTHOR



**Jan Steward** brings a wealth of experience to the Arizona Association of REALTORS® as the Risk Management Specialist. She is a former title company manager and escrow officer with paralegal training. As a REALTOR® and broker, Jan served the Northern Arizona Association of REALTORS® (NAAR) as board president, vice-president, director, MLS chair, delegate to NAR's national convention and a member of the Professional Standards and Grievance Committees. Jan was honored as REALTOR® of the Year by NAAR. She also has served on AAR's Professional Standards Committee and a variety of ad hoc committees.

## CODE TALK

# THE CASE FOR BUYER-BROKER AGREEMENTS



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

"If you want to work less and make more money, it's essential," said West USA Vice President and Associated Broker Jon Kichen. Kichen is talking about the Buyer-Broker Exclusive Employment Agreement (BBEEA). The BBEEA is a signed contract between the buyer and the broker that gives the broker/agent the permission to locate property and negotiate terms and conditions acceptable to the buyer for the purchase or lease of a property. While not a required document, some Agent's wouldn't start a relationship without it.

Kichen isn't out "on the street" like he used to be. Nowadays, he spends the majority of his day assisting agents and reviewing files. However, this 30+ year real estate veteran and instructor knows a thing or two about what can happen when you don't have a BBEEA. "I tell my students that I wouldn't put a buyer in my car if they refused to sign the agreement," said Kichen. "[The BBEEA] takes the uncertainty out of who you work for, procuring cause and how you get paid." Kichen also believes that as salespeople, the BBEEA shows clients you're serious about meeting their needs and you're serious about your business.

Cara McGuire, CDPE, ePRO, GRI, SFR and REALTOR® with RE/MAX Professionals echoes Kichen's enthusiasm

for the BBEEA stating, "I've used it consistently for the past four years, since the downturn." When McGuire first started using the BBEEA, it was to ensure that her clients knew she was on "their team". McGuire started utilizing the BBEEA as a conversation starter with her clients, laying all her cards out on the table, setting expectations and showing off her ability to negotiate at the get-go. "I've only had one client question me about it," said McGuire. "He said, 'No other agent has ever asked me to sign this, why should I?' But, after I explained my reasons, he had no issue signing it."

Lauren Overton, a first-time home buyer and director of operations at Allison-Shelton Real Estate Services, AMO®, signed a BBEEA with her REALTOR® and says that she'd absolutely do it again. "I would never be opposed to this – but I could see where some buyers would be," said Overton. She added that she could see how some home buyers would be "hesitant to sign right away in fear that the agent might not find something right away and they'd be stuck with them. But if it's not working out, I think the agent should be ok with rescinding the agreement and let the buyer go elsewhere."

While many brokerages in Arizona don't require the BBEEA, Kichen believes that if one did, a domino-effect would take place. "That's what happened on the East Coast. One broker started to require it and now many do. It just takes one." ❄

&gt;&gt;

Arizona REALTOR® Magazine — April 2013

# FAIR HOUSING'S DISPARATE IMPACT

BY SCOTT M. DRUCKER, ESQ., GENERAL COUNSEL, ARIZONA ASSOCIATION OF REALTORS®

"As we've learned over the years, housing discrimination comes in many forms. Discrimination doesn't have to be intentional in order to have a damaging effect." Those were the words Department of Housing and Urban Development (HUD) Secretary Shaun Donovan uttered shortly following HUD's February 8, 2013 issuance of a final rule intended to formalize the national standard for determining how and when housing practices violate the Fair Housing Act (FHA) as a result of discriminatory effect.

Addressing "disparate impact" or unintended discriminatory effects claims, the final rule enacted by HUD provides guidance as to how a housing provider that engages in a facially neutral (unbiased) practice can nonetheless violate fair housing laws. The rule, therefore, better enables plaintiffs and governmental agencies to challenge housing or lending practices that have a disparate impact – even under circumstances in which the practice is facially non-discriminatory and not motivated by bias or prejudice. According to the rule, impact of this nature results when a neutral practice actually or predictably:

- (1) results in a disparate impact on a group of persons on the basis of race, color, religion, sex, handicap, familial status, or national origin; or
- (2) has the effect of creating, perpetrating, or increasing segregated housing patterns on the basis of race, color, religion, sex, handicap, familial status or national origin.

In its final rule, HUD created a three-step burden-shifting system to determine liability under the FHA. First, HUD or the private plaintiff must establish that the

## The BBEEA and the Code of Ethics

BY CAROLE RIDLEY, AAR PROFESSIONAL STANDARDS ADMINISTRATOR

Quite a few complaint calls and complaint filings cite a member's alleged lack of adequate explanation with regards to the Buyer-Broker Exclusive Employment Agreement. The most common issue purported is that the BBEEA was signed at the same time as a lot of other papers, and the agreement's purpose was not adequately explained.

Allegations of this nature frequently result in a claim by the complainant that they have not been treated fairly, they have been misled, and they were not provided with a copy of the fully-executed agreement until it is presented with a request for compensation. These allegations can support a violation of the Code of Ethics, Articles 1, 2, and 9.

Take a few extra minutes to explain the purpose of the BBEEA with the buyers so that buyers are not blindsided when they receive notice to compensate the REALTOR® per the terms of the BBEEA, and so that REALTORS® are not blindsided when they receive an ethics complaint. Let the buyer ask questions and then provide examples of how the agreement obligates you to perform in their best interests. ✨

### ABOUT THE AUTHOR



**Carole Ridley**, joined Arizona Association of REALTORS® (AAR) in 2003, and was promoted to her current role as professional standards administrator in 2007. With close more than 500 ethics and 200 arbitration filings since 2007, Carole has attended over 180 ethics and over 85 arbitration hearings for 21 statewide local Association of REALTORS®. Many of the disputes filed have been resolved through successful mediation and ombudsman efforts.

housing practice caused or predictably will cause a discriminatory effect on a protected class. Once a disparate impact of this nature is proven, the burden shifts to the defendant to show that the practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Any such justification must be supported by actual evidence and not be hypothetical or speculative. HUD defines a “substantial” interest as “a core interest of the organization that has a direct relationship to the function of that organization.” Finally, if such an interest is established by the defendant, HUD or the private plaintiff must prove that those same interests cannot be served by another practice that has a less discriminatory effect. If the complaining party is ultimately able to establish a practice that achieves the same interests in a less prejudicial manner, a defendant may be guilty of fair housing violations even though there is no evidence of discriminatory intent.

<http://portal.hud.gov/hudportal/documents/huddoc?id=discriminatoryeffectrule.pdf>

**EXAMPLE:** A lending institution maintains a policy by which it does not extend loans for single family residences for less than \$60,000. The policy has been in place for eight years and does not take race, color, religion, sex, handicap, familial status or national origin into account. While the policy is therefore neutral on its face, it has been found that the policy disproportionately excludes minority applicants from consideration because of the home values in certain areas in which the minority applicants predominantly live. After discovering this disparate impact, the new rule will require the lender to prove that its lending policy is justified by a substantial business necessity. Factors relevant to the lender’s justification may include cost and profitability. If the lender is able to establish a substantial, legitimate, nondiscriminatory interest in its

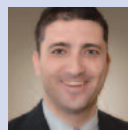
policy, a fair housing violation may still be found if the complaining party is able to establish that an alternative lending practice could serve the same purpose with a less discriminatory effect.

The final rule became effective on March 18. It applies to a broad range of housing activity including, but not limited to, the approval of loan applications, the provision of information regarding the availability of loans and housing options, the servicing of loans, and the approval and provision of homeowners insurance. So when a practice results in the denial of a housing related service (i.e. refusal to rent an apartment or approve a mortgage loan) or unfavorable terms and conditions under which that service is available to members of protected classes, it will violate the FHA unless the practice serves a substantial, legitimate, and nondiscriminatory interest that cannot be similarly served by a less discriminatory practice.

With the new rule in place, it is expected that private individuals, HUD and other fair housing enforcement agencies will be able to more effectively realize the objectives of the FHA by eliminating housing discrimination and creating strong, sustainable, inclusive communities and quality affordable homes for all. To the extent that this rule helps clarify objective, and non-discriminatory policies and practices, it should prove widely beneficial. ❖

---

#### ABOUT THE AUTHOR



**Scott M. Drucker**, a licensed Arizona attorney, is General Counsel for the Arizona Association of REALTORS® serving as the primary legal advisor to the association. This article is of a general nature and reflects only the opinion of the author at the time it was drafted. It is not intended as definitive legal advice, and you should not act upon it without seeking independent legal counsel.

## HUD Debuts Fair Housing Mobile App

The U.S. Department of Housing and Urban Development (HUD) has created a [free mobile app](#) that allows users to instantly file housing discrimination complaints.

<https://itunes.apple.com/us/app/housing-discrimination-complaint/id570755695?mt=8>

“Having this first fair housing mobile application equips people everywhere with the information they need to combat housing discrimination,” says John Trasviña, HUD assistant secretary for fair housing and equal opportunity. “We are maximizing the latest technology to make the process for filing fair housing complaints faster and easier

and arming our fair housing partners with the information they need to understand their fair housing rights and responsibilities.”

The app, available for the iPhone and iPad, includes information about the Fair Housing Act, HUD’s fair housing toll-free discrimination hotline, and information on housing rights following a natural disasters.

Source: “HUD rolls out fair housing mobile app,” Inman News (March 5, 2013) <http://www.inman.com/news/2013/03/5/hud-rolls-out-fair-housing-mobile-app>



# PROPERTY MANAGEMENT

## IS IT A “WIN-WIN” OR “LOSE-LOSE”?

In 2009, AAR published this article: [Is Property Management Right for You?](#) This month, we take a fresh look with the help of AAR President Sue Flucke, CDPE, CRB, GRI, rCRMS and veteran property manager Elise Otero, GRI, RMP.

<http://www.aaronline.com/2009/09/is-property-management-right-for-you/>

When Elise Otero, owner of Otero Realty Group of Apache Junction, got her first taste of property management it was in the early 1980s. She recalls, “REALTORS® that did property management [then] were not looked on favorably.” After moving from Globe to Apache Junction, she started acquiring homes “here and there.” By the mid-90s she had 35 properties. In 2005, she opened her own company and now manages 160 properties. And she’s not alone. Arizona’s rental market has never been hotter; and the opportunities for success have never been greater. With more leases being written and a greater number of investors in the market, there’s a lot of “win-win” in property management. “However,” cautions AAR President, Director of Property Management and Associate Broker at Keller Williams Realty Professional Partners in Glendale and Goodyear, Sue Flucke, “landlord/tenant issues are also the number one complaint at the Arizona Department of Real Estate. According to Commissioner Judy Lowe, her goal is to audit every property management company operating in Arizona within the next two years.” This could be a “lose-lose” if you are not adhering to state statutes and applicable standards of practice.

### GETTING STARTED

Some agents start out as an “accidental property manager.” How? Maybe a client wants help leasing a property while waiting to build back up equity. Or an out-of-state or out-of-town client asks you to stop by and check on their vacant home, arrange for a landscaper or add chemicals to their pool. Oops! Suddenly you find you’ve accidentally stepped over the line into property management. Before you find yourself in hot water, there are some important things to consider.

### TALK WITH YOUR BROKER

“A lot of brokers don’t want to do it because of the liability and the additional scrutiny by the Arizona Department of

Real Estate (ADRE),” says Flucke, “They don’t have or want the trust account and right now, the audits by the ADRE are extensive. Several management companies have been shut down by ADRE due to mismanagement of their trust accounts.”

Even those who handle property management sometimes restrict which agents can work on which types of jobs. For instance, some brokers allow sales agents to market a property for lease, but limit the actual management of the property to those with expertise in the field.

Here are some things to consider:

#### **Trust Accounts**

Brokers who handle property management must have a trust account and be prepared for regular and thorough auditing by the ADRE. In fact, Commissioner Lowe is promising more audits, more enforcement and fines by the department in this area.

#### **Insurance Needs**

Brokers who oversee property managers must secure appropriate E&O insurance coverage. Some brokers also require agents to have bond insurance because they are handling money.

#### **Guidance and Support**

Think twice about property management if your broker allows you to do property management, but does not offer specialized training or have written policies and procedures in place.

### FOR BROKERS

Property management opens up many benefits as well as liabilities for a broker. If you’re considering expanding into property management, consider attending AAR’s [Property Management Boot Camp](#). It will give you the basics of what you need to do as you begin.

[http://www.aaronline.com/calendar/view-day?cal\\_date=2013-4-23](http://www.aaronline.com/calendar/view-day?cal_date=2013-4-23)

#### **Interview Yourself**

“Everybody now wants to be a property manager,” said Otero. “It is an intense business, and you must have the knowledge and integrity to deal with owners, renters and

vendors.” Just because your license says you can do it doesn’t mean you should do it. The skill set and knowledge base are very different. Ask yourself:

***Do I have good instincts about people?***

You’ve got to be the type of person who relates well with all kinds of people. When you meet prospective tenants (or clients), consider the whole package not just what is written on their application. You will have to be connected with a tenant-screening service and agree to adhere to the [Federal Fair Credit Reporting Act](#) and the “[Red Flags Rule](#).”

<http://www.ftc.gov/os/statutes/fcrajump.shtm>

<http://www.ftc.gov/bcp/edu/microsites/redflagsrule/index.shtml>

***Do I handle conflict well?***

When an angry tenant or owner comes to you will you be able to react calmly to diffuse their anger to solve the problem? If you don’t remain calm under pressure, this might not be for you.

***Can I balance the needs of my clients and tenants?***

The owner is your client, but it’s crucial that you also stay on good terms with the tenants. You need to understand both parties’ points of view. Otero says, “The biggest challenge on this side of the business is dealing with the owners. We have lots of great ones who allow us to do a really great job for them, but then there are a few that want to be involved in the rental...micromanaging staff...and don’t want to spend a dime on their investment property.”

***Do I like problem solving?***

Property managers are problem solvers for the property. It helps if you enjoy the process of researching a problem and then taking action to resolve it.

## GET EDUCATED

Once you’ve received approval from your broker and have the personal skills to be a good property manager, it’s time to get educated so that you do not act outside your area of expertise. “For any REALTOR® looking to get into management, I would suggest they work for a management company and learn the ins and outs of the business.”

***Understand the Law.***

Landlord-tenant law is complicated and unfamiliar to most real estate agents. Be sure to study the [Arizona Residential Landlord and Tenant Act](#). For example, new

property managers often get into trouble with “wrongful eviction.” The term doesn’t necessarily mean that you kicked the tenant out, just that you took back possession of the property without due process. It’s also important that you understand the implications of the Federal and Arizona Fair Housing Acts. No one may refuse to rent on the basis of race, color, national origin, religion, sex, familial status or handicap. You should also review AAR’s [Legal Hotline on landlord-tenant issues](#).

[http://www.azsos.gov/public\\_services/Publications/Residential\\_Landlord\\_Tenant\\_Act/Residential.pdf](http://www.azsos.gov/public_services/Publications/Residential_Landlord_Tenant_Act/Residential_Landlord_Tenant_Act/Residential.pdf)

<http://www.aaronline.com/login/&rdr=/manage-risk/legal-hotline/legal-hotline-q-a-landlordtenant/>

***Take Classes.***

“Any and all education you can acquire will only help you,” said Otero. She earned her GRI many years ago and also holds the Residential Property Manager (RPM) designation from National Association of Residential Property Managers (NARPM). Sign up for courses that focus on property management. The state’s real estate schools are a good resource. AAR also offers courses such as GRI 318: “Property Management for Property Managers,” rCRMS: “Leasing Essentials and Property Management Boot Camp.”

***Seek Out Mentors.***

“Talk to somebody who has been doing it for awhile,” suggests Flucke. In some parts of the state, property management is seasonal. You might ask an experienced property manager if you can help out part-time during the busiest season to gain some experience. Join the monthly meetings held by NARPM. “I have been a member of NARPM for many years,” said Otero. “I’d encourage anyone to join. We like each other and help each other.”

***Choose a Specialty.***

Within the residential property management arena, there are different areas of expertise: single-family, multi-family, vacation home, long term, etc. Decide where you want to focus your time.

## DEVELOP A PLAN

Next, you’ll want to put in place a plan to minimize risk and maximize profit for your property management business.

***Establish Policies and Procedures.***

Ideally, you will build on what your broker has available. Well-developed policies and procedures take into account

landlord-tenant law, fair housing standards and other factors. They establish standards that protect your business as it grows. For example, a good property manager does a thorough tenant screening—credit reports, criminal background checks, employment verification, identity verification and reference checks. Another tip from Otero is to understand the accounting procedures, “the accounting is the core of any property management firm and without a strong base and understanding of accounting in general, they will not be successful.”

### **Seek Legal Counsel.**

In property management, the lease and property management agreements are critical to your success. Hire an experienced, specialized attorney to review these important documents regularly. As a consequence, it is important that your lease agreement spell out the responsibilities of each party and available remedies when responsibilities are not met. [View AAR’s lease agreement form.](#)

<http://www.aaronline.com/wp-content/uploads/2013/02/SAMPLE-Residential-Lease-Agreement.pdf>

The property management agreement should establish clear standards, such as a maximum amount you can spend without authorization from the owner. If a hot water heater fails and replacing it will cost more than you can authorize, don’t take action until you’ve received the okay. [View AAR’s property management form.](#)

<http://www.aaronline.com/wp-content/uploads/2012/12/sample-property-management-agreement-form.pdf>

### **Prepare for the Unexpected.**

Will you know what to do when the air conditioner goes out on a holiday weekend? Or the tenant calls that the hot water heater is leaking all over the garage – who do you call? Whether your client is obligated to fix it depends on how you represented it to the tenant. Plan ahead for problems and you’ll avoid unnecessary crises.

## REAP THE REWARDS

Most property management companies are currently booming. Property management can provide a new source of income for real estate agents and brokers. And there are other reasons agents become property managers:

### **Meet Client Needs.**

When an owner can’t sell their property for the price they want, you can offer your help finding a tenant to provide cash flow and keep the property occupied.

### **Differentiate Yourself.**

A property management niche makes you attractive to new types of clients, such as investors and builders. “I tell agents that it’s a separate business that they can eventually sell when they are ready to retire,” says Flucke.

### **Weather a Down Market.**

Property management can be a counter-cyclical revenue source. “We have very few vacancies right now — it’s a tight rental market,” reports Flucke. “The foreclosure and short-sale markets forced people that want to live in single-family homes into rental properties.” On the flipside, a struggling economy can lead to property management headaches, such as tenants who can’t make rent and owners who avoid needed repairs or are struggling to make mortgage payments.

## SAY “NO THANKS”

Perhaps you’ve weighed the risks and rewards of property management and decided it’s not for you. Here are a few items to keep in mind:

### **Refer Business to an Experienced Property Manager.**

Help your clients by putting them in contact with a reputable company. Ask an attorney who specializes in landlord-tenant issues for a recommendation. Ask your broker. Or consult the [NARPM website](#). “We belong as a company to NARPM, which handles residential rentals only. There are about 150 or so members in Maricopa County alone, representing over 60,000 properties,” Flucke explains.

<http://www.narpm.org/>

### **Do Not Give Property Management Advice.**

Remember, you should not counsel your client on issues outside your area of expertise, such as whether they should make the property an LLC, how to manage the tax implications of becoming a landlord or what specifics to include in the leasing agreement. Always advise your client to consult with the appropriate professional—attorney, accountant, insurance agent or property manager.

### **Avoid Accidental Property Management.**

If you are a listing agent and you turn on the utilities and make sure that the pool is being serviced, you should have a written employment agreement in place giving you authority to act, spelling out what will be reimbursed

and protecting you from liability. Just because you are not collecting rent or charging your client a fee will not relieve you of statutory requirements according to ADRE.

## CONCLUSION

Property management can provide a steady source of income, even in a down economy. The commission checks come in each month and can build up over time.

There are challenges in property management. But if you develop systems, know the rules and love solving problems, you can succeed with this specialty. “People ask all the time ‘why do I continue to do property management?’,” says Flucke. “If you do it right, there’s not a problem with it. It’s been over 20 years and I still love what I do. It is a wonderful career.” ❖

# GET A C.L.U.E.

BY SCOTT M. DRUCKER, ESQ, AAR GENERAL COUNSEL

In February 2013, Independent Insurance Agents and Brokers of Arizona, Inc. (IIAB of Arizona) issued a bulletin to its members addressing the proper manner in which Comprehensive Loss Underwriting Experience Reports (CLUE Reports) are to be obtained by insurance policyholders. While the bulletin was directed exclusively to insurance producers, its message will likely impact the manner in which property owners and REALTORS® obtain CLUE Reports moving forward.

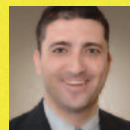
By way of its bulletin, IIAB of Arizona emphasized to its members that directly obtaining and conveying a CLUE Report may result in the loss of the insurance producer’s license. A CLUE Report is considered a “consumer report” under federal<sup>1</sup> and state law. Arizona defines the term “consumer report” as “any written, oral or other communication of information that bears on a natural person’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living and that is used or expected to be used in connection with an insurance transaction.” See A.R.S. § 20-2102(4). In addition to the Federal Credit Reporting Act, Arizona regulates how “consumer reports” and the personal information contained therein must be handled and protected. See A.R.S. § 20-2113. IIAB of Arizona therefore cautions its members that “an insurance producer that provides a CLUE Report to ANYONE is subject to regulatory action such as revocation of their license, civil penalties, and civil action by the consumer.”

As a result of the restrictions placed upon insurance producers, IIAB of Arizona has provided specific

instructions to its members when responding to a CLUE Report request made by a policyholder or the policyholder’s REALTOR®. Specifically, IIAB has instructed its members to respond to any such request by stating, “Federal law mandates that the policyholder has a right to obtain information contained on a CLUE Report, but that process must be accomplished by the policyholder directly with LexisNexis.” It is therefore expected that sellers and REALTORS® will be directed to <https://personalreports.lexisnexis.com> when seeking to obtain a CLUE Report. This is consistent with the information contained in the Buyer Advisory which advises property owners of their right to “purchase a C.L.U.E. report online at <https://personalreports.lexisnexis.com/index.jsp> or by calling 866-527-2600.”

Much like REALTORS®, insurance producers are eager to assist their clients, but must do so within the confines of the law. It is therefore important for REALTORS® to ensure that their clients are obtaining insurance/claims information in the proper manner. ❖

## ABOUT THE AUTHOR



**Scott M. Drucker**, a licensed Arizona attorney, is General Counsel for the Arizona Association of REALTORS® serving as the primary legal advisor to the association. This article is of a general nature and reflects only the opinion of the author at the time it was drafted. It is not intended as definitive legal advice, and you should not act upon it without seeking independent legal counsel.

<sup>1</sup> A CLUE Report falls into the Federal Credit Reporting Act’s definition of a “consumer report” because it is a report bearing on an individual’s “credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.” See 15 USC § 1681a(d)(1).

# LEGAL HOTLINE

The following is for informational purposes only and is not intended as definitive legal or tax advice. You should not act upon this information without seeking independent legal counsel. If you desire legal, tax or other professional advice, please contact your attorney, tax advisor or other professional consultant.

## BROKERAGE

<http://www.aaronline.com/legal-hotline-q-a-brokerage>

### An Agent's Bankruptcy Need Not Be Reported To The Arizona Department Of Real Estate

#### ISSUE:

Does a real estate agent have to disclose a personal bankruptcy to the Arizona Department of Real Estate?

#### ANSWER:

No. Under A.A.C. R4-28-301, an agent is required to notify the department within 10 days of (a) conviction, (b) adverse decision involving dishonesty or real estate, (c) restriction, suspension or revocation of a professional license, and (d) an order enjoining the agent from engaging in real estate activity. However, there is no obligation for an agent to report a personal bankruptcy to the Arizona Department of Real Estate. ❖

Category: *Brokerage*  
Arizona REALTOR® Magazine – April 2013

### Licensee May List And Sell A Mobile Home Under Some Circumstances

#### FACTS:

A mobile home on leased land is listed in the MLS. An affidavit of affixture has been recorded with respect to the mobile home.

#### ISSUE:

Can a real estate licensee represent a party in connection with the lease of the mobile home?

#### ANSWER:

An agent may represent the owner in connection with the lease of the mobile home as long as the mobile home is listed in a contract for transfer of an interest in real property executed by its owner and is installed on the real property. See A.R.S. § 41-2178(B)(1). ❖

Category: *Brokerage*  
Arizona REALTOR® Magazine – May 2013

**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.

### Listing Agent Must Submit All Offers To Seller

#### FACTS:

The listing agent placed a residential property into the MLS. The seller had previously met with a different real estate agent and does not want to do business with him. The seller has requested that the listing agent refuse to accept any offers from the agent, or any offers in which the agent may potentially obtain a referral fee.

#### ISSUE:

Can the listing agent refuse to accept offers from a particular agent?

#### ANSWER:

Generally speaking, a listing agent is bound to present any and all offers to the seller unless precluded by law, government rule or regulation, or agreed otherwise in writing between the seller and the listing subscriber. A.A.C. R4-28-802(B). As a practical matter, there is no requirement that the seller accept those offers. ❖

Category: *Brokerage*  
Arizona REALTOR® Magazine – May 2013

## CONTRACTS

<http://www.aaronline.com/legal-hotline-q-a-contracts>

### The Inspection Period Does Not Include the Time the Seller Has to Respond to the BINSR

#### FACTS:

The seller's counteroffer, which the buyer accepted, stated that "earnest deposit is nonrefundable after the 10-day inspection period" (the Provision).

#### ISSUE:

For purpose of the Provision, does the 10-day inspection period include the time period stated in Section 6j of the purchase contract where the seller, upon the buyer's election, has five days to respond to the buyer's request that the seller correct the disapproved items?

#### ANSWER:

Probably not.

**DISCUSSION:**

The “inspection period” is defined in paragraph 185 of the purchase contract as “ten (10) days...after contract acceptance.” Furthermore, the Provision specifically provides that the earnest deposit is to be non-refundable after the 10-day inspection period. Neither paragraph 185 nor the Provision mention any additional time periods provided for in the BINSR and Section 6j of the purchase contract. Therefore, the earnest deposit becomes non-refundable after the 10-day inspection period. ✱

Category: *Contracts*  
Arizona REALTOR® Magazine – March 2013

## After Delivering A Short Sale Agreement Notice, A Seller May Not Unilaterally Cancel A Short Sale Contract

**FACTS:**

In a short sale transaction, after the buyer received the Short Sale Agreement Notice in which no underlying contract terms were modified and after the inspection period expired, the seller unilaterally cancelled the contract. The buyer thereafter provided a Cure Period Notice to allow the seller to cure his or her noncompliance. The seller failed to cure within the requisite time period.

**ISSUE:**

Does the seller have the right to cancel the contract?

**ANSWER:**

See Discussion.

**DISCUSSION:**

No, the seller does not have the right to cancel the contract. The seller’s failure to cure within the cure period constituted the seller’s breach of the contract. A breach of the contract is the failure to perform his or her contractual duties. In this instance, the seller’s unilateral cancellation of the contract after issuance of the agreement notice and refusal to cure resulted in the seller’s breach. Pursuant to the remedies section of the contract, the non-breaching party, (e.g. the buyer), can

pursue all legal remedies, subject to the mediation and arbitration obligations in Section 7c of the contract. ✱

Category: *Contracts*  
Arizona REALTOR® Magazine – March 2013

## Is a Water Softener a Warranted Item?

**FACTS:**

The seller is selling a home with an installed water softener owned by the seller. Upon inspection, the buyer discovers that the water softener is non-functional. The buyer demands that the seller correct the water softener, alleging it is a warranted item.

**ISSUE:**

Is the seller required to correct the water softener as a warranted item?

**ANSWER:**

See Discussion.

**DISCUSSION:**

Yes. Pursuant to Section 5a of the Contract, (Warranties) the seller warrants, among other things, that the plumbing on the property shall be in good working condition at the time of close of escrow. As the water softener is an integrated fixture of the plumbing, and if owned by the seller, included in the Contract, Section 1g, line 43, the seller is required to repair the water softener prior to close of escrow. ✱

Category: *Contracts*  
Arizona REALTOR® Magazine – March 2013

## In The Event Of A Seller’s Breach The Buyer May Sue For Damages, Specific Performance Or Retain The Earnest Money

**FACTS:**

Despite the seller’s contractual obligations, it appears the seller will not close escrow and complete the transaction, because she does not have sufficient funds to move.

>>

## LEGAL HOTLINE

**ABOUT THE AUTHOR**

**Richard V. Mack** is a shareholder at *Mack, Watson & Stratman*, which provides the AAR Legal Hotline service. He is a State Bar of Arizona Board Certified Real Estate Specialist and AV rated by Martindale Hubbell. He has also been designated as a Southwest Super Lawyer. Mr. Mack practices commercial litigation with an emphasis on real estate litigation.

He is admitted to practice in the state and federal courts of Arizona and before the 9th Circuit Court of Appeals. Mr. Mack graduated Magna Cum Laude from Southwestern College in Winfield, Kansas with a Bachelor of Business Administration, with an emphasis in economics, and received his Juris Doctor from the University of Arizona.  
<http://www.mackwatsonstratman.com>

**ISSUE:**

If the seller does not close escrow, what are the remedies? If the seller does close escrow, but does not move, what are the remedies?

**ANSWER:**

See Discussion.

**DISCUSSION:**

If the seller does not timely close escrow, the buyer is to issue a Cure Period Notice. If the breach is not timely cured, the buyer has three remedies. The buyer can cancel the contract and accept the earnest deposit as damages. The buyer can file a suit for specific performance to enforce the contract and attach a *Lis Pendens* to the property. Or, the buyer can sue for monetary damages for the breach (*i.e.*, the replacement cost of purchasing a different house).

If the seller does close escrow, but does not timely move, the buyer should issue a Five-Day Notice to Vacate. If after expiration of the five-day period the seller remains in the property, the buyer can proceed with a forcible entry and detainer action and seek to have the buyer removed from the property. That requires a formal action being filed in Justice Court to obtain the required order. ✱

Category: *Contracts*  
Arizona REALTOR® Magazine – March 2013

## BINSR Must Be Sent To Correct Email Address To Be Effective

**FACTS:**

The buyer's agent uses DocuSign for sales transactions. In this instance, the buyer's agent attempted to send the BINSR to the listing agent through DocuSign on the 10th day of the inspection period. Unfortunately, the wrong email address was used and the BINSR was not delivered to the listing agent within the time period prescribed by the purchase contract.

**ISSUE:**

If the buyer attempts to cancel the contract, will he forfeit his earnest money deposit?

**ANSWER:**

Probably.

**DISCUSSION:**

Section 6i of the purchase contract provides that a buyer must deliver a signed notice to the seller of any items disapproved, prior to expiration of the inspection period. Pursuant to section 8m of the purchase contract, "delivery of all notices and documentation required or

permitted hereunder shall be in writing and deemed delivered and received when: ... (iii) **sent via electronic mail**, if email addresses are provided herein." According to A.R.S. § 44-7015(A) (1):

Unless otherwise agreed to by the sender and the recipient, **an electronic record is sent if the record is properly addressed** or otherwise properly directed to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record.

In this case, the email **was not properly addressed** to the listing agent's designated email address. Therefore, when the BINSR was sent to the wrong email address, delivery of the BINSR was not effectuated within the applicable timeframe. If the buyer now attempts to cancel the contract due to disapproved items, he will forfeit his earnest money deposit. ✱

Category: *Contracts*  
Arizona REALTOR® Magazine – March 2013

## Seller Is Not Required To Have the Property Vacant For The Final Walkthrough

**ISSUE:**

Does a property have to be vacant for the final walkthrough?

**ANSWER:**

The seller is obligated to make the premises available for all inspections and walkthroughs upon reasonable notice by the buyer. The seller is also obligated [purchase contract, lines 268-271], to have all utilities on, including any propane, until close of escrow to enable the buyer to conduct the inspection and walkthrough according to K. Michelle Lind, *Arizona Real Estate: A Professional Guide to Law and Practice*, 166 (Arizona Associations of REALTORS®, Second Ed., 2011). Further, lines 265 through 268 of the purchase contract only require that the seller grant the buyer reasonable access to inspect the premises and ensure that all warranted items are in working condition and the premises is substantially in the same condition as the date the contract was accepted. Thus, there is no requirement that the property be vacant for the final walkthrough. ✱

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

Category: *Contracts*  
Arizona REALTOR® Magazine – April 2013

## Septic Must Be Inspected Even In An "As Is" Transaction

### FACTS:

The buyer and seller entered into a AAR Residential Resale Purchase Contract and the AAR As Is Addendum. Waste water for the property is treated by a septic system. The seller is refusing to inspect the septic and also refusing to allow the buyer to inspect the septic system prior to closing, citing the "As Is" Addendum.

### ISSUE:

Must the seller at a minimum provide access to the septic system so that it can be inspected prior to closing?

### ANSWER:

Yes. In the AAR "As Is" Addendum lines 19-21 specifically carves out onsite waste water treatment facility. In other words, even though the transaction is otherwise "as is," the parties still have an obligation to comply with the septic inspection process. ❖

Category: *Contracts*  
Arizona REALTOR® Magazine – May 2013

## Seller Warrants Sprinklers Are In Working Condition Under The AAR Contract

### FACTS:

The plumbing for the sprinkler and irrigation system is not in working condition.

### ISSUE:

Is the plumbing for the sprinkler and irrigation system a warranty item that must be repaired by the seller?

### ANSWER:

Yes. The AAR Residential Resale Purchase Contract, lines 166 through 171, provides in relevant part, "Seller warrants and shall maintain and repair the premises so that at the earlier of possession or COE: (i) all heating, cooling, mechanical, plumbing, and electrical systems (including swimming pool and/or spa, motors, filter systems, cleaning systems, and heaters, if any)...will be in working condition." As such, if the buyer, upon discovery, notifies the seller that the plumbing for the sprinkler and irrigation system is not in working condition, the seller is obligated to repair the plumbing under the purchase contract. ❖

Category: *Contracts*  
Arizona REALTOR® Magazine – May 2013

## COMMISSIONS

<http://www.aaronline.com/legal-hotline-q-a-commissions>

## A Broker May Not Pay a Referral Fee To a Non-Licensed Person

### FACTS:

A designated broker represented the seller in a short sale transaction. The ownership structure of the brokerage firm, of which the designated broker is a co-owner, is comprised of the designated broker and two non-licensed individuals. After the close of escrow, an individual approached one of the non-licensed owners and the designated broker and requested that he be provided a portion of the commission. According to the designated broker, the individual requesting the commission is a friend of one of the non-licensed co-owners of the brokerage and referred the short sale transaction to the brokerage.

### ISSUE:

Is the designated broker obligated to pay a portion of the commission to the unlicensed individual for his referral of the transaction to the brokerage?

### ANSWER:

No. Paying compensation to an unlicensed person is a violation of A.R.S. § 32-2153(A)(10), (A)(14), (B)(6) and A.R.S. § 32-2155 (A) and (B). The designated broker risks ADRE sanction for providing compensation to an unlicensed individual. ❖

Category: *Commissions*  
Arizona REALTOR® Magazine – May 2013

## Real Estate Broker May Not Pay A Commission To A Mortgage Broker

### FACTS:

A real estate licensee represented the seller in a short sale transaction. A mortgage broker referred the short seller to the real estate licensee and was under the impression that a portion of the real estate commission would be provided as a finder's fee at closing, as the mortgage broker had made similar arrangements with other real estate licensees.

>>



At closing, the mortgage broker demanded that a portion of the real estate commission be directed to him as a finder's fee. The title company refused to comply with the request. The mortgage broker is now demanding that the seller's brokerage pay him outside of escrow for his "finder's fee".

**ISSUE:**

Should the designated broker pay the requested finder's fee to the mortgage broker for his referral?

**ANSWER:**

No. Although the mortgage broker maintains a license granted by the State of Arizona, he is not a real estate license. As a result, paying compensation for real estate services to an unlicensed person is a violation of A.R.S. § 32-2153(A)(10), (A)(14), (B)(6) and A.R.S. § 32-2155 (A)(B). \*

Category: *Commissions*  
Arizona REALTOR® Magazine — May 2013

**DISCLOSURE**

<http://www.aaronline.com/legal-hotline-q-a-disclosure>

## An Agent Is Not Required To Disclose That A Murder Occurred In A Residence

**FACTS:**

The broker represents the seller. There was a murder in the property that is being sold. The seller/owner does not want the real estate agent/broker to disclose this information to any potential buyer(s).

**ISSUE:**

Does the broker/agent have to disclose the murder? If the potential buyer asks about a murder/death, does the broker/agent have to disclose?

**ANSWER:**

See Discussion.

**DISCUSSION:**

Neither the seller nor the brokers in the transaction have to disclose the murder/death to a potential buyer. See A.R.S. § 32-2156. Similar to Fair Housing guidelines, if directly asked by the buyer if there have been any deaths in the home, however, the seller and the brokers must respond truthfully. They cannot deny that there has been a death in the home. \*

Category: *Disclosure*  
Arizona REALTOR® Magazine — March 2013

## Buyer Who Noticed Animal Odor During Escrow Must Object During The Inspection Period

**FACTS:**

The sellers sold their home to the buyers under a standard form purchase contract. Throughout the transaction, the buyers were aware that dogs and cats were present in the home. After close of escrow, the buyers complained of strong urine odor in the home. The sellers claim they were unaware of the odor. As a result, the sellers did not check box 182 of the Seller's Property Disclosure Statement (SPDS) disclosing the presence of an odor. The buyers are now claiming a lack of disclosure and requesting that the sellers pay for new carpeting throughout the home.

**ISSUE:**

Are the sellers liable to the buyers for a lack of disclosure?

**ANSWER:**

Probably not.

**DISCUSSION:**

Assuming the sellers were actually unaware of the presence of an odor in the home, the sellers had no cause to disclose an odor in the SPDS. Moreover, the buyers were aware of the presence of the animals that are claimed to be the cause of the odor, and were afforded an inspection period. If the potential for pet odors was of concern to the buyers, that issue should have been examined and addressed in the Buyer's Inspection Notice and Seller's Response (BINSR). Upon the buyers' failure to give notice of disapproval in the BINSR, pursuant to lines 252 through 254 of the purchase contract, the buyers are conclusively deemed to have opted to proceed with the transaction without a correction of any pet odors on the property. \*

Category: *Disclosure*  
Arizona REALTOR® Magazine — March 2013

## Buyer's Loss of Job Should Be Disclosed

**FACTS:**

The broker represents a buyer in escrow, who just informed the broker that she recently quit her job as a teacher. The buyer still intends to complete the transaction with a \$30,000 down payment towards the \$55,000 purchase price, while financing the remainder. The buyer has some other sources of income, such as social security, but has not updated her disclosures to the lender.

**ISSUE:**

What disclosure obligations, if any, does the broker have?

**ANSWER:**

The broker may be required to disclose the loss of the buyer's job to the seller and listing agent. Pursuant to A.A.C. R4-28-1101(B)(2), a real estate licensee is required to "disclose in writing to all other parties any information the licensee possesses that materially or adversely affects the consideration to be paid...including...[a]ny information that the buyer or lessee is, or may be unable, to perform." Accordingly, if the buyer is unable to perform in light of the job loss, that fact must be promptly disclosed in writing to the seller and seller's agent. ✳

Category: *Disclosure*  
Arizona REALTOR® Magazine — April 2013

## A Homicide in The Property Need Not Be Disclosed

**FACTS:**

The broker represents the seller. There was a murder in the property that is being sold. The seller/owner does not want the real estate agent/broker to disclose this information to any potential buyer(s).

**ISSUE:**

Does the broker/agent have to disclose the murder? If the potential buyer asks about a murder/death, does the broker/agent have to disclose?

**ANSWER:**

Neither the seller nor the brokers in the transaction have liability for failing to disclose the murder/death to a potential buyer. See A.R.S. § 32-2156. If directly asked by the buyer if there have been any deaths in the home, the seller and broker are not obligated to respond. However, if the seller and/or broker choose to answer the question, they must respond truthfully and cannot deny that there has been a death in the home nor can they provide a misleading response. ✳

Category: *Disclosure*  
Arizona REALTOR® Magazine — May 2013

## There Is No Obligation To Disclose An Appraisal

**ISSUE:**

Where seller is demanding that buyer disclose the actual appraisal of the residence that buyer paid for, is the buyer required to do so?

**ANSWER:**

No. The contract does not require the buyer to disclose the appraisal. The appraisal constitutes an "opinion of value," which is addressed in Line 173 of the contract. A buyer has a duty to disclose to the seller all known facts materially affecting the transaction. *Lombardo v. Albu*, 199 Ariz. 97, 14 P.3d 288 (2000). An appraisal is not a fact materially affecting the transaction, but rather, an opinion of value. ✳

Category: *Disclosure*  
Arizona REALTOR® Magazine — May 2013

---

## FINANCING

<http://www.aaronline.com/legal-hotline-q-a-financing>

## Dodd-Frank Rules Are Not Effective Until January 2014

**ISSUE:**

When do the requirements under Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") concerning seller financing become effective?

**ANSWER:**

The new requirement under the Dodd-Frank Act becomes effective January 10, 2014. ✳

Category: *Financing*  
Arizona REALTOR® Magazine — April 2013

---

## FORECLOSURES, REOS, & LIENS

<http://www.aaronline.com/legal-hotline-q-a-foreclosure>

## Even a Bank REO Seller Must Comply With the Septic Transfer Statutes

**FACTS:**

The broker listed an REO property on the MLS stating it was connected to a septic system, but failed to provide a Notice of Transfer form at close of escrow indicating that a septic inspection had taken place. The 15-day time limit for submitting Notice of Transfer has expired, but the lender refuses to work with the buyer to obtain a septic inspection.

**ISSUE:**

Who is financially responsible for the septic inspection?

**ANSWER:**

The Arizona Department of Environmental Quality (ADEQ) states that when a lender forecloses on an REO property with an on-site wastewater system, the ADEQ does not consider that act as a transfer between a buyer

>>

and a seller. Therefore, no Notice of Transfer is required upon foreclosure. However, when the lender sells the REO property, the parties must comply with the Notice of Transfer requirement. Thus, the lender must obtain a septic inspection prior to sale of the property; however, payment for the inspection is negotiable. ✽

Category: *Foreclosures, REOs, & Liens*  
*Arizona REALTOR® Magazine — April 2013*

---

## LANDLORD/TENANT ISSUES

<http://www.aaronline.com/legal-hotline-q-a-landlordtenant>

### Residential Landlord Must Use Reasonable Effort To Mitigate Damages After A Tenant's Default

#### FACTS:

The tenant entered into a two-year lease agreement with the landlord. Shortly after the tenant took possession of the property, the tenant notified the landlord that the tenant intended to terminate and vacate the property at the end of the month. The landlord was unwilling to release the tenant from the lease agreement or work out a settlement.

#### ISSUE:

In the event the tenant breaches the lease agreement with the landlord by terminating the lease and vacating the premises in violation of the lease agreement, is the landlord required to mitigate its damages?

#### ANSWER:

Yes.

#### DISCUSSION:

Pursuant to A.R.S. § 33-1305 of the Residential Landlord and Tenant Act (the Act), an aggrieved party has a duty to mitigate damages. In this instance, where the tenant breaches the lease agreement, the landlord being the aggrieved party, has a duty and an obligation under the Act to mitigate its damages. If the lease agreement is terminated by the tenant prior to the expiration of the lease term, in accordance with A.R.S. § 33-1373, the landlord may have a claim for unpaid rents in addition to a separate claim for actual damages. To mitigate damages for unpaid rent, Arizona law requires a landlord to take reasonable steps to re-rent the vacant property. See *Dushoff v. Phoenix Co.*, 23 Ariz. App. 238, 532 P2d 180 (1975). ✽

Category: *Landlord/Tenant Issues*  
*Arizona REALTOR® Magazine — March 2013*

### Property Management Company's Right To Collect Rents Terminated At The Trustee's Sale.

#### FACTS:

The residential property was foreclosed and the bank took title by way of a trustee's sale. The tenant occupying the property was not aware of the Trustee's Sale and continued to pay rent to the prior homeowner's property management company. In fact, the tenant paid two months of rent after the trustee's sale to the property management company.

#### ISSUE:

What should the property management company do with the post-trustee's sale rental payments?

#### ANSWER:

Once the lender took title by way of the trustee's sale, the property management company no longer had a valid property management contract. The property management company should contact the lender, explain the situation, and forward the rental payments to the lender – the new owner. ✽

Category: *Landlord/Tenant Issues*  
*Arizona REALTOR® Magazine — May 2013*

---

## REMEDIES

<http://www.aaronline.com/legal-hotline-q-a-remedies>

### Seller Must Repair Damage Created By Alarm System Removal

#### FACTS:

The residential property had a leased alarm system. The buyer was given the opportunity to assume the lease in escrow but declined. The seller made arrangements for the alarm company to remove the alarm system. In so doing, the alarm company caused damage to the property.

#### ISSUE:

Who is responsible for the damage to the property?

#### ANSWER:

In the AAR Residential Resale Real Estate Purchase Contract, the seller warrants that the property will be in "substantially the same condition as on the same date of contract acceptance." Based on this language, the repair of the damage caused by the removal of the alarm system is the seller's responsibility. ✽

Category: *Remedies*  
*Arizona REALTOR® Magazine — April 2013*



REAL SOLUTIONS. REALTOR® SUCCESS.



255 East Osborn Road, Suite 200  
Phoenix, Arizona 85012  
602.248.7787 | Toll-free in AZ 800.426.7274

[www.aaronline.com](http://www.aaronline.com)



NATIONAL  
ASSOCIATION *of*  
REALTORS®

# Broker Involvement Program

***Are you a broker owner or managing broker?  
Are you involved with NAR's Broker Involvement Program?***

This dynamic program provides you, the broker-owner, with a quick and effective tool to rally your agents on critical legislative issues affecting our industry.

## What Does the Broker Involvement Program Offer?

### VOICE ON CAPITOL HILL

The program is an opportunity to bring a strong and united REALTOR® voice to members of Congress. With over 10,000 broker owners and 380,000 agents in the program, the REALTOR® voice will be heard loud and clear.

### EASY-TO-MANAGE SOLUTION

Nothing needs to be downloaded and there is no cost to the broker. NAR gives the broker-owner or managing broker access to the Broker Portal.

### PROVEN RESULTS

Calls for Action response rates are significantly higher when agents receive their message from their broker. Nearly 42 percent of all responses on 2011 Calls for Action were from agents in the Broker Involvement Program.

***Learn more about the program on  
the REALTOR® Action Center or join today.***

**[www.realtoractioncenter.com/realtors/brokers](http://www.realtoractioncenter.com/realtors/brokers)**

