

ARIZONA ASSOCIATION *of* REALTORS®

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# BREAKTHROUGH



2017 ARIZONA REALTOR CONVENTION

## RISK MANAGEMENT EXCHANGE: CONSEQUENCES

Holly Eslinger

Evan Fuchs

John Mijac

James "J.T." Tsighis

Moderator: Scott Drucker, Esq.



Holly Eslinger, ABR, CRB, CRS, GRI, was the 2010 president of the Arizona Association of REALTORS®. Holly has over 30 years of experience in the real estate industry and is the owner/broker of Exclusive Homes and Land in Scottsdale.

Holly was the 2002 president of the Scottsdale Area Association of REALTORS® and was honored as the 2006 REALTOR® of the Year. Her committee involvement includes serving as Vice Chair of NAR's Risk Management Issues Committee, Membership, MLS, Housing Opportunity and Grievance committees for SAAR. In 1996, Holly served as president of the Scottsdale Chapter of Women's Council of REALTORS® (WCR). She has served on a number of committees for the WCR and was honored in 1998 as the Scottsdale Chapter REALTOR® of the Year.

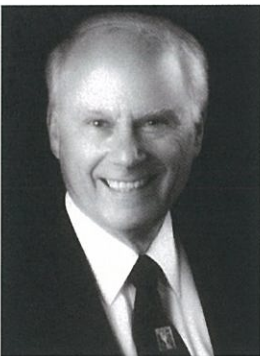
At the state level, Holly has served on the Public Policy Oversight Committee and Professional Development KRA, and she is currently serving on the Legislative Political Affairs Committee, Legislative Committee and Risk Management Committee. She was the founder of Broker University, which is a training vehicle for designated brokers provided by the Arizona Association of REALTORS®. Holly has distinguished herself by earning several professional designations and is an advocate for continuing education and professional development.



Evan Fuchs trains and speaks nationally on leadership, sales, and team-building. He is 2017 Risk Management Chair and Past President of the Arizona REALTORS®, as well as 2017 NAR Professional Development Committee Vice Chair, co-creator of the Arizona REALTORS® Leadership Training Academy, and co-founder of reLaunch Conferences. In addition to designations and certifications such as ABR, GRI, SRS, and e-PRO, Evan teaches and designs custom programs for individuals and teams who aspire to produce their best work.



John Mijac joined Long Realty Company in 2012 after many years in small Tucson brokerages. There he distinguished himself at local, state and national levels. Nationally, working with the National Association of Gay and Lesbian Professionals (NAGLREP) he helped spearhead a successful change in the REALTOR® code of Ethics to include protections for Gay, Lesbian and Transgender people. John worked at State to revise the Arizona Purchase Contract to make it compatible with TRID guidelines, and on AAR Committees that explored subjects as diverse as regionalization and Transaction Management. Locally, in Tucson, John has served on the TAR and TARMLS Boards where he led the committee which researched and changed the TARMLS MLS vendor, and as a result, received the REALTOR of the year award in 2009 for his association. He then led a task force to rewrite the MLS Bylaws and change the governance structure of the MLS. Since joining Long, John has been a contract manager at the Tanque Verde Office and after that a Sales Manager at the Foothills Office. Widely recognized for creative thinking, communication skills, and a compassionate approach to conflict, Mr. Mijac was appointed Long Realty Company's Broker November 1, 2015.



James "JT" Tsighis ABR, CRB, rCRMS, CRS, GRI, ePRO serving the real estate industry and REALTOR® members having chaired dozens of workgroups and committees for Arizona REALTORS® in areas involving risk management , forms development and professional standards as well as, the AAR Executive Committee, AAR Board of Directors and NAR Board of Directors. JT has REALTOR® Emeritus status, is an Associate Broker with Keller Williams Southern Arizona and proudly a long-standing RAPAC Major Investor.

2007-2017 NAR Risk Management Committee as Chair, Past Chair and Member  
2017 AAR Risk Management Risk Management Committee  
2016 NAR Chair Risk Management License and Law Forum

## TIMELINE FOR 2018 COMMITTEE APPOINTMENT PROCESS

\*Dates subject to change\*

March 27, 2017	Instruction documents about the application and selection process are available on <a href="http://nar.realtor/governance/committees">nar.realtor/governance/committees</a> .
April 3 – May 23, 2017	<ul style="list-style-type: none"> <li>• Committee Application Website opens on April 3.</li> <li>• Members complete/update their Expertise Profiles.</li> <li>• Members submit a committee application for up to five (5) committees, and seek up to three (3) endorsements per application.</li> <li>• Members submit endorsements for applicants.</li> </ul>
May 23, 2017	<b>DEADLINE:</b> Committee Application Website closes.
May 24 – June 7, 2017	<ul style="list-style-type: none"> <li>• State AEs recommend members for their state representative positions on committees.</li> <li>• Institute, Societies, and Councils (ISC) EVPs recommend members for their ISC representative positions on committees.</li> <li>• State Associations review and rank committee applications for members within their state.</li> </ul>
June 7, 2017	<b>DEADLINE:</b> State Associations review and ranking period closes.
July 2017	<ul style="list-style-type: none"> <li>• Committee appointment notifications for chairs and vice chairs are emailed.</li> </ul>
September 11 – 18, 2017	State Associations AEs and ISCs EVPs review the preliminary committee rosters with appointments for all members within their organization.
September 18, 2017	<b>DEADLINE:</b> State associations and ISCs feedback due.
September 30, 2017	REALTOR® Party Committee appointment notifications are emailed to members.
October 13, 2017	<ul style="list-style-type: none"> <li>• Non - REALTOR® Party Committee appointment notifications are emailed to members.</li> <li>• NAR committee rosters are posted on <a href="http://nar.realtor/governance/committees">nar.realtor/governance/committees</a>.</li> </ul>
November 1 – 6, 2017	REALTORS® Conference & Expo – Chicago, IL
November 27 – 30, 2017	REALTOR® Party Training Conference – San Antonio, TX
May 14 – 19, 2018	REALTORS® Legislative Meetings & Trade Expo – Washington, DC
October 31 – November 5, 2018	REALTORS® Conference & Expo – Boston, MA

# Identifying Elderly Client Competency

by Frank Dickens ABR, SRES, SFR, SRS and Nikki Salgat, Esq.

The elderly population is on the rise. Currently, almost 13 percent of the population is age 71 to 92 and 1.5 percent is over 92 years old. With this increase in growth, real estate practitioners today are finding that many transactions involve senior citizens.

Consequently, real estate professionals may find themselves in a situation where they suspect competency issues or even elder abuse.

First and foremost, it is not up to agents to determine whether someone is competent or if abuse exists. In fact, it is beyond our scope of expertise. However, when we spot problematic signs, it may be up to us as professionals to refer family members or the elder to helpful resources.

## Part One: Competency\*

According to the Mayo Clinic, Alzheimer's disease is the most common cause of dementia in people age 65 and older. As such, if your client is over the age of 65 there is a possibility that competency issues may arise. As the real estate professional, you may recognize some of the following signs that present themselves when cognitive issues are present.

Signs of incompetency:

- **Cognitive changes**
  - Memory loss
  - Difficulty communicating or finding words
  - Difficulty reasoning or problem-solving
  - Difficulty handling complex tasks
  - Difficulty with planning and organizing
  - Difficulty with coordination and motor functions
  - Confusion and disorientation
- **Psychological changes**
  - Personality changes
  - Depression
  - Anxiety

- Inappropriate behavior
- Paranoia
- Agitation
- Hallucinations

The legal concept of competency generally considers whether a person has the mental capacity to decide in accordance with their goals, concerns and values. If you have an elderly client that displays any of the above signs, you may run into competency issues. If that is the case, you should enlist the help of family members who, in turn, can seek assistance from a health care professional and/or an elder law attorney.

If these options are unavailable, it may prove beneficial to put the elderly client in touch with the Arizona Department of Economic Security – Aging and Disability Services Division (ADS). ADS serves to protect the rights of older adults and provides information and assistance on rights, benefits and options.

Additionally, every county in Arizona has a local agency on aging designed to provide services, offer information and advocate for older adults.

You may also want to consider asking your client if they have executed a Power of Attorney (POA). A POA is a legal document that gives another adult the authority to act on that person's behalf. In other words, a POA assigns a person(s) to step into another person's shoes and make legal decisions in the same way that they would.

The following are different types of POAs:

1. General – permits the person to do any legal act on behalf of the grantor
2. Specific/Special – gives limited authority to only perform certain acts such as a one-time business transaction or a specific sale of real or personal property
3. Durable – extends the duration of the agent's authority in the event of mental incompetence at the time the POA expires, rendering the POA legally enforceable until mental competency is regained
  - a. POA can be effective immediately; or
  - b. Springing – POA only becomes effective when the grantor becomes disabled or incapacitated
4. Health Care – gives another person authority over the grantor's health care decisions

Significantly, Arizona law provides that if the person with POA is directed to transfer real property, the POA must be recorded. The POA does not have to be recorded immediately, but will need to be recorded at the time of the transaction. See A.R.S. §§ 33-411 through 33-423.

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#### **\*Part Two: Abuse** (Feb. 10, 2017)

For more information on the prevention of abuse and neglect, visit the Area Agency on Aging, Region One (Maricopa County) and watch Window to the Law: Prevent Elder Abuse (video).

# Identifying Elderly Client Abuse

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Consequently, real estate professionals may find themselves in a situation where they suspect competency issues or even elder abuse.

First and foremost, it is not up to agents to determine whether someone is competent or if abuse exists. In fact, it is beyond our scope of expertise. However, when we spot problematic signs, it may be up to us as professionals to refer family members or the elder to helpful resources.

**Part One: Competency** (posted February 6, 2017)

## **Part Two: Abuse**

Elder abuse generally refers to any knowing, intentional or negligent act by a caregiver, or other person that causes harm or a serious risk of harm to a vulnerable adult.

While there are many different forms of elder abuse, it typically occurs by way of financial or material exploitation via illegal or improper use of property and assets. It often occurs by way of criminal financial abuse and identity theft. Unfortunately, caregivers and family members are also found to be perpetrators.

One popular scam is calling an elderly person and posing as a relative who asks for money to "get out of trouble." You might think that the victim would be anxious to report fraud of this nature, but many are hesitant to report the incident because they fear losing their independence or are simply embarrassed.

Another common form of elder abuse is physical abuse due to neglect.

### **Signs of abuse:**

- Assets are transferred to a friend or family member who is assisting in financial decisions. While there are legitimate transfers of assets, this is typically unnecessary when assisting an elderly person with their finances.
- Changes in an elder's mood, personality and interaction can be a sign of someone taking advantage financially and physically. These changes are typically observed in those who are isolated, alone and located far away from family members.
- Changes in spending habits can be prevalent in the elder population as they are often approached by so-called "non-profit" organizations for donations and even systematic withdrawals to satisfy a scam

pledge.

- Missing property and lost valuables can be a sign of scammers or dementia as the elder is afraid of theft and begins hiding valuables without recalling where they are hidden. Alternatively, the abuser could have removed the valuables from the elder's home.
- Family members or caregivers attempting to isolate the elder, changes in daily habits and circles of friends, lack of hygiene, empty refrigerators and kitchen shelves can all be signs of abuse or dementia.
- Changes in or the inability to perform activities of daily living (ADLs) can be a telltale sign of abuse or dementia. ADLs include bathing, dressing, toileting, eating, moving from a bed to a chair and maintaining continence.
- Legal issues such as a receipt of a foreclosure notice, unpaid bills, changing bank accounts, unusual transfers of money, checks made out to CASH, forged signatures, quitclaim deeds and new property liens are examples of what may be a scam or opportunism.

If you see signs of abuse, you should be cautious about making accusations. Instead, consider enlisting the proper assistance of family members, elder law attorneys and maybe even law enforcement officials. If appropriate, an available resource is [Adult Protective Services](#), a governmental entity that receives and evaluates reports of suspected adult abuse, neglect and exploitation.

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Related story: [Look Out for Older Clients](#) to see how real estate scams often target seniors. – REALTOR®Mag

Tags: [abuse](#), [Activities of Daily Living](#), [ADLs](#), [Adult Protective Services](#), [aging](#), [elder abuse](#), [elderly](#), [mental capacity](#), [senior citizens](#)

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☰ Aging and Disability Services (/services/aging-and-adult/aging-and-disability-services-ads)

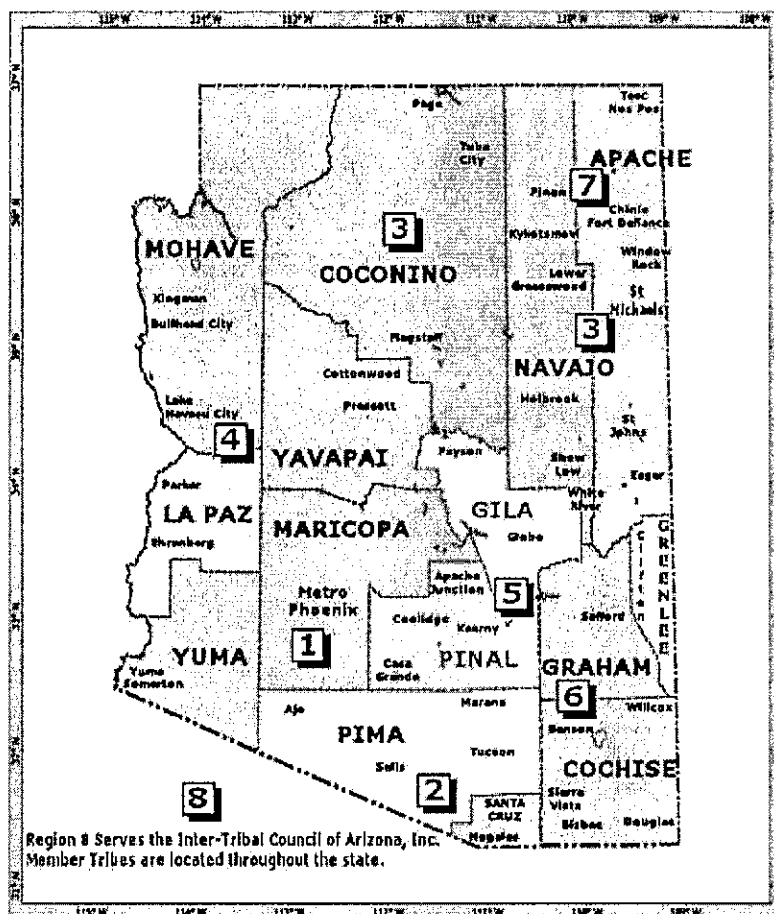


## Locate Your Local Area Agency on Aging

Español (/es/services/aging-and-adult/independent-living/locate-your-local-area-agency-aging)

Click on your county on the map for your AAA's contact information.

1. Maricopa County – Area Agency on Aging, Region One (/services/aging-and-adult/aging-and-disability-services/area-agency-aging/area-agency-aging-region-0) ([www.aaaphx.org](http://www.aaaphx.org)) (<http://aaaphx.org/>) Phone: 602-264-2255
2. Pima County – Pima Council on Aging, Region Two (/services/aging-and-adult/aging-and-disability-services/area-agency-aging/area-agency-aging-region-1) ([www.pcoa.org](http://www.pcoa.org)) (<https://www.pcoa.org/>) Phone: 520-543-2007
3. Yavapai, Coconino, Navajo, Apache Counties – NACOG AAA (/services/aging-and-adult/aging-and-disability-services/area-agency-aging/area-agency-aging-region) ([www.nacog.org](http://www.nacog.org)) ([https://nacog.org/index.cfm?fuseaction=dep\\_menu&menu\\_id=5016&dept\\_id=7](https://nacog.org/index.cfm?fuseaction=dep_menu&menu_id=5016&dept_id=7)) Phone: 877-527-3500
4. Mohave, La Paz, Yuma Counties – WACOG AAA (/services/aging-and-adult/aging-and-disability-services/area-agency-aging/area-agency-aging-region-2) ([www.wacog.com](http://www.wacog.com)) ([http://www.wacog.com/senior\\_services.html](http://www.wacog.com/senior_services.html)) Phone: 928-753-7038 (Mohave County), 928-217-7114 (La Paz, Yuma Counties)
5. Pinal and Gila Counties – Pinal-Gila Council for Senior Citizens (/services/aging-and-adult/aging-and-disability-services/area-agency-aging/area-agency-aging-region-3) ([www.pgscsc.org](http://www.pgscsc.org)) (<http://www.pgscsc.org/>) Phone: 1-800-293-9393
6. Cochise, Graham, Greenlee, Santa Cruz Counties – SEAGO AAA (/services/aging-and-adult/aging-and-disability-services/area-agency-aging/area-agency-aging-region-4) ([www.seago.org/?q=area-agency-aging](http://www.seago.org/?q=area-agency-aging)) Phone: 520-432-2528
7. Navajo Nation – Area Agency on Aging, Region Seven (/area-agency-aging-region-seven) (<http://www.naaa.navajo-nsn.gov/>) (<http://www.naaa.navajo-nsn.gov/>) Phone: 928-729-4520
8. Inter Tribal Council of Arizona – Region Eight (/services/aging-and-adult/aging-and-disability-services/area-agency-aging/area-agency-aging-region-5) (<http://itcaonline.com/>) (<http://itcaonline.com/>)



**ADULT PROTECTIVE SERVICES INTAKE REPORT**

Report Date (M/d/yyyy) / /	Time (Hh:mm) : <input type="checkbox"/> AM <input type="checkbox"/> PM	Reporting Method <input type="checkbox"/> Telephone <input type="checkbox"/> Fax <input type="checkbox"/> Online Report
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**REPORTER INFORMATION**

Reporter Name (First)	(Last)	(M.I.)	Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
Mailing Address (Street No.)	Street Name / Apt No. / P.O. Box	City	State (AZ) 5 Digit ZIP
Email Address	Day Phone Number ( ) -	<input type="checkbox"/> Home <input type="checkbox"/> Work <input type="checkbox"/> Cell	
Place of Employment	Evening Phone Number ( ) -	<input type="checkbox"/> Home <input type="checkbox"/> Work <input type="checkbox"/> Cell	

**Reporter's Relationship to Client / Victim:**

<input type="checkbox"/> Adult Day Care	<input type="checkbox"/> Guardian	<input type="checkbox"/> Power of Attorney	<input type="checkbox"/> Other:
<input type="checkbox"/> Caregiver	<input type="checkbox"/> Hospital	<input type="checkbox"/> Rehab Facility	
<input type="checkbox"/> Case Manager	<input type="checkbox"/> Law Enforcement	<input type="checkbox"/> Relative	
<input type="checkbox"/> Conservator	<input type="checkbox"/> Legal Services	<input type="checkbox"/> Religious Services	
<input type="checkbox"/> Court System	<input type="checkbox"/> Medical Services	<input type="checkbox"/> Resident Manager	
<input type="checkbox"/> Daughter	<input type="checkbox"/> Neighbor	<input type="checkbox"/> Self	
<input type="checkbox"/> Doctor's Office	<input type="checkbox"/> Other Private Services	<input type="checkbox"/> Sibling	
<input type="checkbox"/> Financial Services	<input type="checkbox"/> Other Public Services	<input type="checkbox"/> Social Services	
<input type="checkbox"/> Fire Department	<input type="checkbox"/> Parent	<input type="checkbox"/> Son	
<input type="checkbox"/> Friend	<input type="checkbox"/> Payee	<input type="checkbox"/> Spouse	

**CLIENT INFORMATION AND MAILING ADDRESS**Is the Client / Victim a Vulnerable Adult? ☐ Yes ☐ No

Client Name (First)	(Last)	(M.I.)	Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
DATE OF BIRTH (M/d/yyyy)	<b>MARITAL STATUS</b>		<b>ETHNICITY</b>
APPROXIMATE AGE:	<input type="checkbox"/> Married		<input type="checkbox"/> African American / Black
	<input type="checkbox"/> Separated		<input type="checkbox"/> American Indian / Alaskan Native
	<input type="checkbox"/> Never Married		<input type="checkbox"/> Asian / Pacific Islander
	<input type="checkbox"/> Divorced		<input type="checkbox"/> Hispanic
	<input type="checkbox"/> Widowed		<input type="checkbox"/> White / Caucasian
SOC. SECURITY NO. - -	<input type="checkbox"/> Co-Habitation		<input type="checkbox"/> Other
<input type="checkbox"/> Unknown		<input type="checkbox"/> Unknown	
Mailing Address (Street #)	Street Name / Apt No./P.O. Box	City	State (AZ) 5 Digit ZIP

Is this person currently in a Facility?	If Yes, What Type of Facility?	Facility Name, Address & Phone No.
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Hospital <input type="checkbox"/> Assisted Living <input type="checkbox"/> Long Term Care <input type="checkbox"/> Veteran's Home	

**CLIENT RESIDENCE ADDRESS & CONTACT INFORMATION**

Residence Address (Street No.)	Street Name / Apt #. / P.O. Box	City	State (AZ)	5 Digit ZIP
Cross Streets	<b>Residence Type:</b>		Is the Client currently at a home address?	
	<input type="checkbox"/> Home <input type="checkbox"/> Group Home <input type="checkbox"/> Apartment <input type="checkbox"/> Other <input type="checkbox"/> Nursing Facility <input type="checkbox"/> Homeless		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown	
Present location of Client if other than home address			Client's Contact Phone # ( ) -	<input type="checkbox"/> Home <input type="checkbox"/> Work <input type="checkbox"/> Cell
Does the client speak English? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know			If No, what language?	

**CLIENT FINANCIAL INFORMATION (From All Sources)**

Amount: \$	Source:
Amount: \$	Source:
Amount: \$	Source:

**CLIENT SAFETY & SECURITY INFORMATION**

Are there weapons or any dangers present in the Client's Home? (Guns, Dogs, Drugs, etc.)

☐ Yes ☐ No

If Yes, please describe:

Has Law Enforcement been contacted? (Police / Fire / EMT, etc.)

☐ Yes ☐ No

If Law Enforcement was contacted, please provide any report numbers (if available):

**ALLEGED PERPETRATOR (Who do you think caused mistreatment)**

Name (First)

(Last)

(M.I.)

Gender

☐ Male ☐ Female

Mailing Address (Street No.)

Street Name / Apt No./P.O. Box

City

State (AZ)

5 Digit ZIP

Place of Employment

Date of Birth (M/d/yyyy) (if available)

Daytime Phone No.

☐ Home☐ Work☐ Cell

Primary Language Spoken

Social Security No. (if available)

Evening Phone No.

☐ Home☐ Work☐ Cell**Alleged Perpetrator's Relationship to Client / Victim**
☐ Adult Day Care  
☐ Caregiver  
☐ Case Manager  
☐ Conservator  
☐ Court System  
☐ Daughter  
☐ Doctor's Office  
☐ Financial Services  
☐ Fire Department  
☐ Friend

☐ Guardian  
☐ Hospital  
☐ Law Enforcement  
☐ Legal Services  
☐ Medical Services  
☐ Neighbor  
☐ Other Private Services  
☐ Other Public Services  
☐ Parent  
☐ Payee

☐ Power of Attorney  
☐ Rehab Facility  
☐ Relative  
☐ Religious Services  
☐ Resident Manager  
☐ Self  
☐ Sibling  
☐ Social Services  
☐ Son  
☐ Spouse
☐ Other:Does the alleged perpetrator still have access to the client? ☐ Yes ☐ No ☐ Don't Know**ALLEGED PERPETRATOR ~ SAFETY & SECURITY INFORMATION**

Are there weapons or any dangers present at this person's Home? (Guns, Dogs, Drugs, etc.)

☐ Yes ☐ No

If YES, please describe:

**SIGNIFICANT OTHER**Are there other people who witnessed this incident or condition? ☐ Yes ☐ No ☐ Don't knowAre other professionals currently involved in providing services, medical attention, shelter, investigation, or other intervention that ensures the client's immediate safety? ☐ Yes ☐ No ☐ Don't Know

Name (First)

(Last)

(M.I.)

Gender

☐ Male ☐ Female

Address (Street Number)

Street Name / Apt # / P.O. Box

City

State (AZ)

5 Digit ZIP

**CLIENT RISK FACTORS ~ Select all that apply ~ At least one selection is required**
☐ Animal waste on floor / furniture  
☐ Appears to be dehydrated  
☐ Appears to be malnourished  
☐ Bleeding  
☐ Broken Bones  
☐ Burns / Scalding  
☐ Debatable Housekeeping  
☐ Decubitus (Pressure / Bed sores)  
☐ Dirty skin / Body odor  
☐ Flies / Fleas / Lice on Person  
☐ Hoards  
☐ Human bites  
☐ Human waste on floor / furniture  
☐ Improper use of medications  
☐ Inadequate clothing  
☐ Inadequate grooming  
☐ Inadequate heating or cooling  
☐ Inappropriate chemical restraints  
☐ Inappropriate physical restraints  
☐ Injury by neglect  
☐ Internal injuries

☐ Intimidated / Frightened / Humiliated  
☐ Mismanagement of Banking  
☐ Missing funds or valuables  
☐ Misuse of Client's home or resources  
☐ Pest control problems  
☐ Pet control problems  
☐ Pushed / Grabbed / Kicked  
☐ Refused medical treatment  
☐ Requires help getting benefits  
☐ Sexual abuse / Assault  
☐ Skin tears  
☐ Soiled with urine or feces  
☐ Sprains / Bruises  
☐ Threatened with a weapon  
☐ Unreasonable confinement  
☐ Untreated medical condition  
☐ Useless utilities or appliances  
☐ Verbal abuse  
☐ Wandering
☐ None☐ Other :

**NARRATIVES**

Describe how the client is vulnerable (Physical or mental impairment).

Describe how the client is being ☐ Abused ☐ Neglected ☐ Exploited (If more space is needed: ☐ check here & use reverse)

Describe any injuries, illness or other medical conditions resulting from abuse or neglect.

List the name of the client's doctor and any medication they are taking.

Is this a one-time incident? ☐ Yes ☐ No ~ AND/OR ~ an ongoing problem? ☐ Yes ☐ No ☐ Don't knowDoes 911 or other emergency services need to be called? ☐ Yes ☐ No ☐ Don't Know

If yes to the above: Name of person that will call

Name of service to be called

Additional details and information about the allegations, vulnerability or concern for Client or information about the Alleged Perpetrator (Criminal Record, Substance Abuse, Violence, etc.)

Equal Opportunity Employer/Program • Under Titles VI and VII of the Civil Rights Act of 1964 (Title VI & VII), and the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, the Department prohibits discrimination in admissions, programs, services, activities, or employment based on race, color, religion, sex, national origin, age, and disability. The Department must make a reasonable accommodation to allow a person with a disability to take part in a program, service or activity. For example, this means if necessary, the Department must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the Department will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity. If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. To request this document in alternative format or for further information about this policy, call (602) 542-4446; TTY/TDD Services: 7-1-1. - Disponible en español en línea o en la oficina local.

## *Sample letter for Companion Animal*

DATE

NAME OF PROFESSIONAL (therapist, physician, psychiatrist, rehabilitation counselor)

ADDRESS

Dear [HOUSING AUTHORITY/LANDLORD]:

[NAME OF TENANT] is my patient, and has been under my care since [DATE]. I am intimately familiar with his/her history and with the functional limitations imposed by his/her disability. He/She meets the definition of disability under the Americans with Disabilities Act, the Fair Housing Act, and the Rehabilitation Act of 1973.

Due to mental illness, [FIRST NAME] has certain limitations regarding [SOCIAL INTERACTION/COPING WITH STRESS/ANXIETY, ETC]. In order to help alleviate these difficulties, and to enhance his/her ability to live independently and to fully use and enjoy the dwelling unit you own and/or administer, I am prescribing an emotional support animal that will assist [FIRST NAME] in coping with his/her disability.

I am familiar with the voluminous professional literature concerning the therapeutic benefits of assistance animals for people with disabilities such as that experienced by [FIRST NAME]. Upon request, I will share citations to relevant studies, and would be happy to answer other questions you may have concerning my recommendation that [FULL NAME OF TENANT] have an emotional support animal. Should you have additional question, please do not hesitate to contact me.

Sincerely,  
*Signature*

[NAME OF PROFESSIONAL]

# Rejecting Prospective Residents Based on Criminal History May Violate Fair Housing Laws

Throughout the United States, individuals with criminal records, regardless of whether they pose little or no threat, face significant barriers when seeking to buy or rent a home.

Amazingly, between 70 million and 100 million Americans, or as many as one in three American adults, have some type of criminal record. And while many have been convicted of only minor offenses, having a criminal record carries a lifetime of consequences. This often includes an inability to secure housing.

The Federal Fair Housing Act prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status or national origin. Ex-convicts and individuals with a criminal history are not explicitly identified by the Act as a protected class. Nonetheless, the United States Department of Housing and Urban Development (HUD) recently opined that housing providers rejecting tenants or buyers based on their criminal records may violate the Fair Housing Act.

At its core, the issue is whether exclusionary policies based on criminal background checks have an unfair or disparate impact on certain racial minorities who are protected under federal laws governing housing.

On April 4, 2016, HUD's Office of General Counsel issued guidance concerning how the Fair Housing Act applies to prospective buyers and tenants with criminal records. According to the opinion, landlords and sellers must differentiate between arrests and convictions, and must steer clear of blanket policies that restrict access to housing solely on the basis of criminal history.

HUD's opinion does not mean that housing providers are entirely prohibited from considering criminal records. However, they must now ensure that their screening policy is necessary to achieve a substantial, legitimate, nondiscriminatory interest.

As HUD notes, "A housing provider must, however, be able to prove through reliable evidence that its policy or practice of making housing decisions based on criminal history actually assists in protecting resident safety and/or property." To meet this burden, housing providers must consider factors like the nature and severity of the crime, as well as the length of time since the conviction. By conducting this analysis, housing providers can establish that their policy "accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property, and criminal conduct that does not."

At the heart of HUD's opinion lies the doctrine of disparate impact, sometime referred to as unintentional discrimination. Pursuant to this doctrine, a policy may be considered discriminatory if it has a disproportionate adverse impact against a protected class. For example, a policy that applies to everyone may still prove discriminatory if it tends to affect a protected group or minority more than others.

As applied to its position on criminal history based restrictions, HUD notes that across the United States, certain minorities are arrested, convicted and incarcerated at rates "disproportionate to their share of the general population." As a result, restricting access to housing on the basis of criminal history is likely to have a disproportionate adverse impact on racial minorities which constitute a protected class.

HUD's April 4th guidance also outlines the three steps considered when analyzing claims that housing was denied on the basis of criminal history:

1. Whether the policy or practice has a discriminatory effect;
2. Whether the policy or practice is necessary to achieve a legitimate, nondiscriminatory interest; and
3. Whether there is a less discriminatory alternative.

If nothing else, landlords and property managers should take the time to update and revise their screening policies to ensure that their use of criminal background checks does not act as an arbitrary and overbroad ban on those with criminal records. All criminal records are not alike, and not all ex-convicts pose a risk to safety or property. And now, housing providers who do not take this into account may find themselves on the wrong side of the law.

Scott M. Drucker, Esq., 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.

Related article: [Fair Housing Act: Criminal History-Based Practices and Policies](#)

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Have You Seen....?

[eSign](#)

[REALTOR® Search](#)

[Ancillary Forms Roll Out in February 2017](#)

[Eviction and Post-Eviction Myths – Part 1](#)

[2017 Residential Resale Purchase Contract FAQs](#)

["As-is" Addendum Not Needed with February 2017 Contract](#)

[Buyer Advisory](#)

[Residential Resale Real Estate Purchase Contract Form \(2-2017\) SAMPLE](#)

[Introduction to 2017 Residential Resale Purchase Contract](#)

[My Account](#)

## RISK MANAGEMENT ISSUES REPORT

(Responses received: 18 responses from 16 states)

OCTOBER 2016

### ADVERTISING

#### Arkansas

- Social media "advertising" is another concern to our Realtors as well as the Arkansas Real Estate Commission. I believe more education is needed for our Realtors to understand that what they post on certain social media sites comes under the "advertising" regulations.

#### Mississippi

- Proper display of brokerage information when advertising on the internet

### ADA WEBSITE COMPLIANCE

#### Iowa

- We are encouraging members to research the ADA Website Compliance.

#### Texas

- There has been much recent discussion about issues with ADA website compliance.

### AGENCY

#### Arizona

- Buyers, sellers, landlords and tenants unsure how to proceed after their agent's license has been terminated or their agent has received a cease and desist letter from the Department of Real Estate.
- Unrepresented sellers by listing agents – agency issues when a buyer's agent presents and discusses a contract with an unrepresented seller.

#### New Hampshire

- Present the Brokerage Relationship form at the first business meeting.

#### U.S. Virgin Islands

- Our license law is outdated and only recognizes agency and sub agency to Sellers. We also still have temporary licensees without any real estate education.

### APPRAISALS

#### Colorado

- There is a shortage of Appraisers in Colorado and we are experiencing delays meeting closing deadlines if the Brokers are not careful. We are seeing 3-5 weeks before an agent receives a call from appraiser to set up the physical inspection, then another 2 weeks before the appraisers report is delivered to the lender. VA is the most time delayed due to the shortage.



#### Washington

- Difficulty in obtaining timely appraisals. We're hearing horror stories of up to three months for waiting periods. Of course a number of "entrepreneurial" appraisers' are offering expedited services for horrendous premium charges (500% of normal fees).

#### AUDIO/VIDEO SURVEILLANCE

#### New Mexico

- We recently created a form to deal with tenant-occupied properties. There was an incident in northern New Mexico in which a tenant threatened to bring an invasion of privacy suit against an owner/seller and broker because the broker had taken interior photos of the home for purposes of selling the home and those photos ended up on public-facing websites (via MLS syndication). The matter was settled prior to litigation.

#### BROKER ISSUES

#### Louisiana

- Broker responsibility, or lack thereof, is a hot topic in Louisiana. Many agent issues could be avoided with strong broker leadership. In LA, for the first time in 2017 mandatory education for brokers will be required on broker's responsibilities. It will be required that brokers take this four-hour mandatory class in person, not on line. In addition, all broker licensees will be required to take the agent licensees' mandatory class topic (2017 topic is on various insurances) and on a four hours topic of their choice for a total of 12 mandated hours for the year. Responsible brokerage was also brought up as a concern by many at the recent ARELLO meetings.

#### U.S. Virgin Islands

- Lack of training, guidance, supervision and education by brokers.

#### COMING SOON LISTINGS

#### Alaska

- We are seeing a growing number of "Coming Soon" listings and I would like to hear how other states and areas are handling that issue. In many instances properties are being advertised before a licensee even has a signed listing agreement.

#### Arkansas

- Coming soon signs are another issue that I know is a problem here and across the nation.

#### Louisiana

- "Pocket" and "coming soon" business practices are emerging. These practices call into question the negative impact of the consumer's property not being exposed to the broadest possible audience.

#### CONTRACT ISSUES

#### Arizona

- Unilateral canceling of contracts and ignoring obligations of the contract by both sellers and buyers.

#### New Mexico

- Liability arises when brokers who lack familiarity with the contracts and forms that they utilize fail to inform their clients/customers of their options and responsibilities under those contracts and addenda.

### CRIMINAL BACKGROUND CHECKS

#### Texas

- There has been much recent discussion about HUD's Criminal History Background Check Policy.

### CYBER SECURITY/DATA SECURITY

#### Alaska

- Scams on Craigslist continue to be a problem. Scammers are obtaining our listing information and copyrighted photos through real estate portals and running ads for homes at ridiculously low lease rates. When called, they say they have an extensive list of people who are interested and the caller must put up a deposit to hold the home. Law enforcement is unclear who has jurisdiction over these types of scams since many are outside the USA. Perhaps NAR and Craigslist could put their heads together and figure out a way to stop it.

#### Arizona

- Lax monitoring of social media, email and websites and client information not being secure in emails – there is a need for more education regarding advertising in social media and how to handle security on the internet. The Arizona Association of REALTORS® offers, as a member benefit, free tech support. We must support tighter security.

#### Colorado

- We are experiencing Wire Instruction fraud. Buyer are becoming victims to online banking fraud, whereby our clients are receiving false emails containing Wire Instructions to a location that is off-shore or who knows where. Very savvy operations where the emails look very authentic from the title company or the real estate broker. Brokers are more aware and bringing to their client's attention.

#### Florida

- Cyber-security, e.g. hijacking of agent and closing agent emails and the altering of wiring instructions

#### Idaho

- The newest issue is related to wire fraud. Most of these examples are related to the agent/brokerage and the title companies, however we also have had cases where our Association office as well as our legal counsel have both been targets. We cannot express enough how serious this is and how smart these predators are as they actually log into your email accounts and watch correspondence between you and your contacts and know exactly when to strike! Everyone, please be careful.

#### Iowa

- We are encouraging members to be vigilant on Cyber issues.

#### Ohio

- Ohio is experiencing Wiring Fraud and email cyber-attacks. Closing funds have been been victim to hackers.

#### Texas

- We are continuing to see issues with cyber fraud and security concerns including situations of wire fraud.

#### U.S. Virgin Islands

- Agents emails have been hacked and fraudulent instructions were sent to the customers instruction them to wire money to hackers.
- Homes that are for sale for many millions of dollars are appearing in rental ads on Craig's List. Totally fraudulent and customers send money to scammers to rent them.

#### Washington

- Wire fraud

### FAIR HOUSING

#### New Mexico

- I'm concerned about the Supreme Court's holding in Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc. in which the Court held that a disparate impact claim is viable under the FFHAct. I believe it will arise in New Mexico in the context of denying the rental applications of felons and/or Section 8 housing voucher recipients.

### FINANCING ISSUES

#### Washington

- Using incompetent lenders thus wreaking havoc on buyers and sellers.

### FLOOD PLAINS

#### Louisiana

- Flood mapping dictates what homes are required to have insurance in order to finance through any federal program. If in certain high risk zones flood insurance is mandated. Many who don't get flood insurance based on this system should. Unfortunately, even higher areas that are not required to have flood insurance have experienced severe flooding in recent years. The reauthorization for the program is up in 2017 (again). If not reauthorized by congress, next year thousands of homes will not be eligible for financing programs because they can't obtain reasonable flood insurance rates thorough FEMA's subsidized program. And due to a confusing mapping system that tells property owners that they do or don't fall into a high risk category, many don't get flood insurance who may really need it. Other natural disasters also occur each year. Is there a better way to insure all property owners who are subject to experiencing catastrophic losses (tornados, earthquakes, mudslide, etc.)? Is it time to look at a system where everyone pays something that goes towards immediate disaster relief when these tragedies occur?

## **LANDLORD/TENANT ISSUES**

### **Arkansas**

- Landlord / Tenant issues are very much on the Arkansas Realtors Association radar. We know that there will be a lot of conversation in the 2017 Legislature in regards to these issues. There is a group that is wanting swing the pendulum too far in the tenant's direction to make it almost impossible to evict a tenant for non-payment of rent.

## **MONEY LAUNDERING**

### **Florida**

- Agents in 3 Florida counties need to be aware of the treasury's Fin Cen "Targeting Order". While the latest order affects only 3 of our counties, they are 3 of our most populous and therefore affect tens of thousands of Florida agents.

## **PROPERTY CONDITION/DISCLOSURE**

### **Arizona**

- Seller Property Disclosure – incomplete information and lack of explanation when issues are raised.

### **Colorado**

- Brokers taking it upon themselves to write poor disclosures. Not understanding the legal ramifications, the contract, and not seeking legal counsel.
- Broker's failure to disclose defects/ adverse material facts has been a big concern.

### **New Hampshire**

- Reminding agents to not fill out the sellers disclosure for their sellers.

### **New Mexico**

- Disclosure/Misrepresentation, including erroneous square footage measurements, description of properties (for example, calling a 2 BR w/a basement a 3 BR home), failure to disclose that building permits were not obtained for additions/remodels and representing a property could be purchased using FHA financing when it could not (for example, due to FHA flipping rules).

### **U.S. Virgin Islands**

- Sellers Disclosure of Property condition issues.

## **PROPERTY MANAGEMENT**

### **Mississippi**

- Property management services provided by licensees who lack adequate understanding of specialized skills, responsibilities, and liability that stems from these services.

### **U.S. Virgin Islands**

- We have many management companies and individuals handling short term vacation rentals. Some may not be handling funds properly as escrow accounts cannot earn interest.

## PRIVACY

### Arizona

- Violations of the DNC List by REALTORS® and the Arizona Attorney General's filing of consumer fraud lawsuits against "telemarketers who ignore the law and continue to harass Arizonans on the Do Not Call List".

## REALTOR® PROFESSIONALISM

### Arizona

- Additional information and classes on the Code of Ethics (more than every 2 years).

## SHORT TERM/VACATION RENTALS

### Arizona

- The question is "An American citizen owns a rental property and wants to offer it for rent through AirBNB". Are they bound to the Federal Fair Housing laws? AirBNB just posted some changes to their rules for owners, but they are muddy and do not reflect what happens when an owner asks their agent for advice.

## SOLAR PANELS

### Arizona

- Leased versus owned and how it affects a sale, and the buyer's ability to qualify under a lease.

### Colorado

- Brokers not disclosing the lease terms for solar panels installed on homes at the time of listing to potential buyers. Buyers must qualify for the lease amount and because of lack of awareness of lease terms being undisclosed is causing delays in closing or worse.

### New Mexico

- Several issues have arisen as of late. For example, in one, the buyer had to qualify with the financing company to assume the solar panels loan, but they had not done this before closing. In another, the buyer was not keeping the solar panels and they were removed. However, the financing company would only move them to another property, not take them back, so the debt still existed until the seller relocated the panels which delays closing.

### Utah

- **CEO Message: The Solar Storm**

It seems like every time I turn around another neighbor has installed solar panels. It's an exciting advancement in clean energy and home tech, but what does it mean for home buyers and sellers?

It means that you, as agents, need to know a little about solar. Here are a few questions to ask if you are listing a home with solar panels or if your buyer is interested in a home with solar panels:

### **Does the seller own the solar equipment?**

Some homeowners buy the solar panels and equipment outright, others lease them. This is important info to know. If they are owned, then the seller could leave them and there may be no further obligation for the buyer. If they are leased, then the buyer may be expected to assume the lease and begin making the payments. The lease would need to be looked at to see what options the seller has to terminate the lease if the buyer is not interested in picking up the payments. Either way, this is a good conversation to have early on in the buying process so that you can avoid misunderstandings at settlement.

### **Does the seller plan on taking the equipment?**

Some sellers may plan on taking their solar panels and or equipment and installing it at their new home. Some solar companies have an option where if the seller is financing the solar equipment, the solar company will move it to a new home for a nominal fee. Just like any other included/excluded item, a buyer needs to know if the solar equipment is staying or not.

### **Is there a lien on the property for the equipment?**

Even if the seller "owns" the solar equipment, they have usually financed it. Sometimes in financing the solar equipment, the homeowner will agree to let the solar company put a lien on the home. As you can imagine, this can become a problem at settlement. Who is paying off the lien? Are those funds coming out of the proceeds? These are all questions that should be addressed long before settlement.

Solar technology keeps evolving and is likely to become more and more common. Brush up on how some of the more popular solar companies approach the cost and installation and make sure you ask these basic questions to avoid any potential issues at settlement.

## **TEAMS**

### **Arizona**

- Unclear signage, unclear MLS agent websites, and non-identification of the agent writing the contract. Who is the "real" agent?

### **Louisiana**

- Louisiana is still experiencing issues with teams. Some months ago the LA Commission required that team names shall not contain any of the following: real estate, brokerage or real estate brokerage, realty or company. The intent was for the public to not be misled or confused as to with whom the team/agents are affiliated and clarify that they are not the Broker but licenses. The enforcement of this change is ongoing. Additionally, in advertising, especially on signs and printed ads, the broker's name, logo and contact information is often so small, shadowed or non-existent that the public is misled. In recent ARELLO meetings it appears that most states have similar issues.

### **Mississippi**

- Questions center around the operation of teams

## MISCELLANEOUS ISSUES

### Alaska

- Alaska, because of its size (one REALTOR® per 400 square miles) faces some challenges with remote listings where no licensees reside. Since it is not economically feasible to incur thousands of dollars in travel expenses to take a listing, many of these properties are sold without the licensee ever seeing the home or meeting the seller in person. Additionally, the licensee is often left with no alternative but to hire local unlicensed help to conduct some of the activities on site (showings, scheduling inspections, etc.).
- Alaska is a non-disclosure state, and we are frequently seeing sites such as Zillow obtaining sales data, presumably from licensees. Are other N.D. states experiencing similar issues?

### Arizona

- Zillow -- there is no control over incorrect information or expired ads.

### Colorado

- A couple title company and brokers organized/created their own joint venture. Title premium is split between the title company that does all the work and the created "title company" that is the joint venture. The whole point is to pay back the brokers for sending their title business to the small title company. Clearly, potential for the public to be harmed.
- CO Division of Insurance regulation 8-1-3 is a very comprehensive re-write of what Title Companies can do in their business development activities. Colorado took that further than RESPA does. The changes and restrictions are significant. The purpose of this regulation is to ensure that consumers receive the benefits of competition in the area of title insurance and to ensure consumer protection. The regulation also proscribes unlawful inducements, deceptive trade practices, and discriminatory acts, all of which are detrimental to the consumer and, in the aggregate, may threaten the solvency of title insurance companies and title insurance agents.

### New Hampshire

- Agents understanding what they can and can't do depending on their relationship with the consumer particularly as a Facilitator.

### New Mexico

- Several suits have been brought in the last three months dealing with seller-financed transactions in which the buyer did not obtain title insurance or even a title search. When the buyer went to refinance the property, the buyer learned there were excessive liens against the property. In a couple of these transactions, brokers were involved on one or both sides.
- Realtor.com and its associated sites are accepting listing data from anywhere. They should only be allowed to post listings from accredited broker sources. This fraudulent ad was syndicated from VFlyer (see attached). By not assuring their source of data, Move Inc is dragging the Realtor brand through the mud. I would suggest that if their contract with NAR does not currently say so, that they be precluded from accepting data from non-broker sources. I just got off the phone with VFlyer, and they are doing what they can, but it's not enough.

Here's what happened to a NM broker this week:

This is not the first time this has happened to one of my listings. In this case, it was a rental managed under my property management company – M&S Property Services, LLC. The property was at 4542 Pyrite Ct NE in Rio Rancho, NM. I had placed an ad on my own website and syndicated it to 9 other sites, including Zillow and Trulia. I was working at the home yesterday, and several potential tenants stopped by the home and asked to see it. When we started talking about rent and deposits they kept quoting a rent of \$750, although the advertised rent was \$1095. When I inquired as to where they were getting their numbers, one person showed me an ad on Realtor.com, and another on Doorsteps.com, which is a Realtor.com controlled site. I immediately contacted Realtor.com, who contacted VFlyer.com and had the ad removed. Below is a copy of the ad on backpage.com. Notice the last sentence in the description which begins "Landlord pays all utilities and no credit and income checks..." that was not in my ad of course. I am trying to get VFlyer to return a call to identify the user for this flyer. There is a flyer number bottom right. VFlyer charges a subscription fee to users and syndicates their rental ads to 10 different websites. There is no individual or company name, and the link is no longer working as I had the ad killed, but all that was there was a gmail.com email address. This may have been anatomized by the web site, but one of the prospects received emails. They make these ads so enticing and convincing it's hard for a strapped consumer to resist.

I find these ads based upon my photos and my copy all the time, primarily with homes for sale which they advertise for rent.

This is a daily fraud perpetrated on New Mexico consumers. I believe this issue deserves some immediate attention.

\*Update: Since my post, realtor.com reached out to me with the following:

Realtor.com thanked me for the detailed information as they do not want bogus listings appearing on the realtor.com website. They advised that we do not need to call VFlyer directly if we find these inaccurate postings on realtor.com. To have any bogus listing removed, they are requesting that we call realtor.com Customer Care at 800-878-4166. Realtor.com will also request that VFlyer permanently block anyone found posting inaccurate listings so they cannot send any further listings to the realtor.com website. Although this type of listing is seldom found on realtor.com, if this continues to be a problem, they will take further action.

I am pleased with realtor.com responded quickly to this concern, please feel free to share this with your members.

Washington

- Waiver of contingencies in a competitive market
- Bidding purchase prices well above a sustainable market value



# Hackers Perpetrate Wire Transfer Fraud Scams Across Arizona

Update: January 04, 2017

## Fraudsters are Becoming More Aggressive in Their Effort to Intercept Wired Funds

A fraudster contacted a Buyer via email, sending them bogus wiring instructions using the title company's letterhead. The correspondence instructed the Buyer to immediately wire funds for closing to a different bank account – one actually controlled by the fraudster. Even more alarming than the fraudster's bogus letter, the perpetrator impersonated the Escrow Officer and placed a call to the Buyer to confirm the new wiring instructions. Fortunately, the Buyer was suspicious of the phone call and came to see the Escrow Officer at her office, only to learn that the Escrow Officer had not sent an email or called the Buyer.



According to REALTORS® and title companies across the state, Arizona real estate transactions are once again being targeted by hackers perpetrating wire transfer fraud.

It is customary for parties in a real estate transaction to receive, and comply with, wire transfer instructions. Unfortunately, it has become increasingly common that those instructions were not generated by a legitimate party, and that the funds are being wired to a bank account controlled by an online hacker.

Although the scam is perpetrated in a variety of ways, it typically begins with the email account of a party to a pending real estate transaction being hacked. The hacker then identifies specific details regarding the transaction, such as sales price, the parties' names and contact information, identity of the lender, name of the escrow officer, close of escrow date, and escrow number. Upon ascertaining this information, the hacker begins directly emailing the buyer or lender making it appear as though the email was sent by the real estate agent or title company. These fraudulent emails contain instructions to wire the closing funds into a bank account controlled by the hacker. In one incident that recently occurred in Southern Arizona, the hacker went so far as to generate a bogus electronic signature authorizing the funds to be wired to an account belonging to the hacker. Once the money is wired as instructed, it is immediately withdrawn by the hacker and gone for good.

To combat this scheme, REALTORS® and their clients should remain vigilant and verify all emails that convey wire instructions for disbursement of funds from escrow. Fortunately, many title companies are now unwilling to accept an email from a customer containing wiring instructions without calling the customer to verify the information.

And while a myriad of technical precautions can be taken, such as the use of encrypted emails, perhaps the best advice comes via an alert issued by the Silicon Valley Association of REALTORS®, stating:

"Buyers and sellers should confirm all email wiring instructions directly with the escrow officer by calling the escrow officer on the telephone. In that conversation, the correct account number information should be repeated verbally before taking any steps to have the funds transferred."

If you or your client believe that you are being targeted in a scam of this nature, immediately notify the title company and do not hesitate to contact the authorities.

**Also READ: the [Fraud Alert!](#)**

Have You Seen...?

[eSign](#)

[REALTOR® Search](#)

[Ancillary Forms Roll Out in February 2017](#)

[Eviction and Post-Eviction Myths - Part 1](#)

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[Residential Resale Real Estate Purchase Contract Form \(2-2017\) SAMPLE](#)

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[My Account](#)

## Section 5

# RESOURCES

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### Market Conditions Advisory

The real estate market is cyclical and real estate values go up and down. The financial market also changes, affecting the terms on which a lender will agree to loan money on real property. It is impossible to accurately predict what the real estate or financial market conditions will be at any given time.

The ultimate decision on the price a buyer is willing to pay and the price a seller is willing to accept for a specific property rests solely with the individual buyer or seller. The parties to a real estate transaction must decide on what price and terms they are willing to buy or sell in light of market conditions, their own financial resources and their own unique circumstances.

The parties must, upon careful deliberation, decide how much risk they are willing to assume in a transaction. Any waiver of contingencies, rights or warranties in the Contract may have adverse consequences. Buyer and seller acknowledge that they understand these risks.

Buyer and Seller assume all responsibility should the return on investment, tax consequences, credit effects, or financing terms not meet their expectations. The parties understand and agree that the Broker(s) do not provide advice on property as an investment. Broker(s) are not qualified to provide financial, legal, or tax advice regarding a real estate transaction. Therefore, Broker(s) make no representation regarding the above items. Buyer and seller are advised to obtain professional tax and legal advice regarding the advisability of entering into this transaction.

<http://bit.ly/1sSTprj> (AAR - Sample Forms)

### Fair Housing and Disability Laws

The Fair Housing Act prohibits discrimination in the sale, rental, and financing of dwellings based on race,

color, national origin, religion, sex, familial status (including children under the age of 18 living with people securing custody of children under the age of 18), and handicap (disability).

<http://1.usa.gov/1pbD5iW> (US Government – HUD)

<http://www.ada.gov/pubs/ada.htm>  
(Americans with Disabilities Act)

### Wire Fraud

Beware of wiring instructions sent via email. Cyber criminals may hack email accounts and send emails with fake wiring instructions. You should independently confirm wiring instructions in person or via a telephone call to a trusted and verified phone number prior to wiring any money.

### Additional Information

NATIONAL ASSOCIATION OF REALTORS® (NAR)  
<https://www.nar.realtor/>

NAR'S Ten Steps to Homeownership  
<http://bit.ly/YweGug>

Home Closing 101  
[www.homeclosing101.org](http://www.homeclosing101.org)

### Information about Arizona Government, State Agencies, City & County Websites

Arizona Department of Real Estate  
Consumer Information  
[www.azre.gov/InfoFor/Consumers.aspx](http://www.azre.gov/InfoFor/Consumers.aspx)

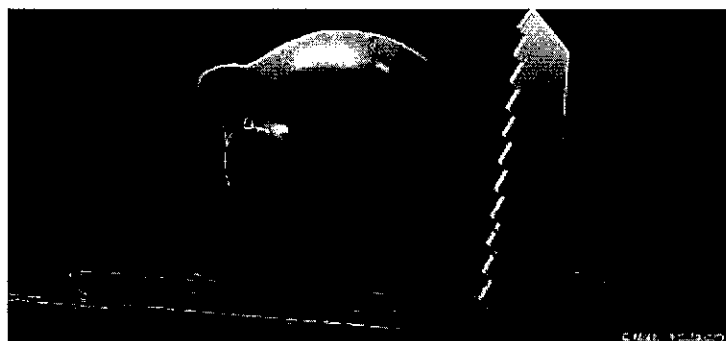
Arizona Association of REALTORS®  
[www.aaronline.com](http://www.aaronline.com)

# REALTOR<sup>®</sup>Mag

## The Threat of Wire Fraud Is Real

Help buyers avoid falling victim to a growing real estate scam that dupes them into giving their purchase money to hackers.

MAY 2016 | BY ERICA CHRISTOFFER, GRAHAM WOOD



When NAR General Counsel Katie Johnson asked a group of real estate professionals whether they or someone they knew had clients that were victims of wire fraud, more than one-third of the audience at the Idea Exchange Council for Brokers raised their hands.

Johnson laid out the top legal friction points currently facing practitioners during the REALTORS<sup>®</sup> Legislative Meetings & Trade Expo

in Washington, D.C. last week. Wire fraud topped the list as a sophisticated scam causing consumers to lose millions of dollars each year.

Hackers are gaining access to e-mail accounts through captured passwords, and they'll search inboxes for messages related to real estate transactions, Johnson said. Once they find a victim who's in the process of buying a home, they'll send a spoof e-mail that looks like it's from their agent, title representative, or attorney, and it will say there are "new" wiring instructions, which includes a fraudulent account. The home buyer will then unwittingly wire funds directly into the hacker's account, Johnson said.

"Once they send it, the money is gone," she added. "Millions of dollars are lost on this."

Jessica Edgerton, NAR associate counsel, presented suggestions during the Professional Standards Forum & Committee Meeting to help clients avoid falling victim to wire fraud. "The more we raise awareness of these scams, the more red flags consumers will recognize," Edgerton says.

Here are six tips for keeping the transaction secure:

1. Build a standard warning about wire scams into your e-mail signature or include a disclaimer at the bottom of your e-mails that says you will not discuss personal financial information over e-mail.
2. At the beginning of every transaction, tell clients what your communication practices are.
3. If you or your agents do engage in a wire transfer with a client, call them on the phone immediately prior to the

transfer of funds so they know they're sending money to the legitimate source.

4. You and your clients should avoid free Wi-Fi with no firewall to protect against hackers capturing an e-mail password or other sensitive information.

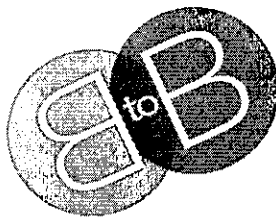
5. Always use strong passwords and change them regularly; advise your clients to do the same. It also wouldn't hurt for your client to change their password before wire instructions are sent.

6. Brokers should consider employing a staff person who's responsible for monitoring, updating, and implementing information security systems and procedures at your company.

"We can implement every technical safeguard we can think of, but if our people [agents and staff] aren't following protocol, it's like leaving the door to the citadel wide open," Edgerton says.

The video below will also help educate your clients on the threat of wire fraud. Feel free to embed this video on your website or share it with your clients via e-mail or on social media.

### Wire Fraud Alert for Buyers



*Broker-to-Broker is an information network that provides insights and tools with business value through timely articles, videos, Q&As, and sales meeting tips for brokerage owners and managers. Get more [Broker-to-Broker content here](#).*

#### RELATED CONTENT:

4 Cyber Scams Targeting Brokerages

Alert: E-mail Scams Hitting Real Estate Transactions

Massive Ad Scam Targeted Real Estate Agents

The Riskiest Business

**Average**

**Your rating**

Average: 2 (1 vote)

Your rating: None