

BROKER & MANAGER

QUARTERLY

SOMEONE IS TRYING TO HACK YOU RIGHT NOW

CYBERSECURITY AND WIRE FRAUD POLICIES AND PROCEDURES

WIRE FRAUD ADVISORY

SIMPLE ADVICE TO MINIMIZE CYBER RISK

MONITOR EMAIL SETTINGS TO AVOID CYBERFRAUD

FORMS RELEASED - OCTOBER 2017

SOLAR LEASE / SOLAR LOAN ASSUMPTION ADDENDUM FAQs

WHAT YOUR DUES DOLLARS GET YOU

ATTENTION PROPERTY MANAGERS - NEW TPT E-FILE PROGRAM STARTS JANUARY 1, 2018

REALTOR® CAUCUS 2017

AGENT SAFETY ALERT PROGRAM (ASAP)

CONTRACT CONVERSATIONS





BROKER & MANAGER

FOURTH QUARTER 2017 | ARIZONA BROKER/MANAGER QUARTERLY

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Someone is Trying to Hack You Right Now

In today's technology-driven world, no one is safe from cybercrime...no one. BUT there are steps you can take to minimize risk for you and your clients.

In June of 2017, the Risk Management Committee (RMC) created a task force¹ chaired by J.T. Tsighis. The task force was charged with determining the best way to educate the real estate industry about the dangers associated with cybersecurity and wire fraud, and how to minimize that risk.

In an effort to assist REALTORS® and their clients, the task force created two documents:

1. **Wire Fraud Advisory**; and
2. **Cybersecurity and Wire Fraud Policies and Procedures** for brokers.

Wire Fraud Advisory

The Wire Fraud Advisory (Advisory) is available as a downloadable [Word Document](#) (and ultimately available in zipForm®). Brokers are free to brand the Advisory and are encouraged to share it with their clients.

The intent behind the Advisory is that brokers will have a uniform document that advises clients of wire fraud and its potentially-devastating consequences. Included are ways for clients to protect themselves, reminders to verify emails, information clients receive during the transaction and more information about cybercrime.

Cybersecurity and Wire Fraud Policies and Procedures

Brokers may pick and choose those portions from the Cybersecurity and Wire Fraud Policies and Procedures that they would like to include within their own brokerage policies and procedures. This downloadable [Word Document](#) includes best practices for using technology and dealing with electronic transactions. It also contains information related to reporting cybercrime in the event a brokerage or their client falls victim.

These documents are not meant to be all-inclusive and brokers may change information as they see fit, along with branding the documents. The hope of the task force is that these documents will be utilized to raise awareness and instill good practices when using technology.

For more information on cybercrime and cybersecurity, see this [video from the National Association of REALTORS®](#).

¹Members of the task force include Gerry Russell, Jon Kichen, Tahona Epperson, Patti Shaw, Sherry Olsen, Ryan Halldorson, Matt Sager and Richard Mack. The task force was assisted by Arizona REALTORS® staff members Jan Steward, Jamilla Brandt, Nikki Salgat, Matthew Howard, and Nick Catanesi. Additionally, Jason Kichen, an expert in cybercrime, made a special guest appearance.

Cybersecurity and Wire Fraud Policies and Procedures

THIS DOCUMENT IS FOR INFORMATIONAL PURPOSES ONLY. BROKERS MAY CHOOSE TO IMPLEMENT SOME OR ALL OF THE BELOW POLICIES AND PROCEDURES AS THEY SEE FIT FOR THEIR BROKERAGE.

BROKERS SHOULD USE THE BELOW INFORMATION ONLY AFTER HAVING CONSULTED INSURANCE AND LEGAL PROFESSIONALS.

In order to protect yourself and your brokerage, the below provisions, which are not all-inclusive, are intended to assist Brokers in establishing office policies and procedures related to cybersecurity and wire fraud. These provisions are not a substitute for the retention of independent legal counsel. Brokers are strongly encouraged to seek the advice of an insurance professional regarding cyber fraud insurance coverage.

Overview

- Cybersecurity threats and wire fraud are on the rise. Criminals find creative ways to breach cybersecurity which could have negative results such as loss of monies, exposure of confidential information, identity theft, etc.
- The purpose of these policies is to outline the appropriate use of technology to safeguard business transaction files.

Cybersecurity

1. Passwords

- a. Use strong passwords by making them unique and complex
- b. Regularly change passwords
- c. Do not use the same password for all accounts

2. Email Security

- a. Do not open any suspicious emails, click on any links, or open any attachments; delete these emails
- b. Clean out your email account on a regular basis
- c. Use encrypted emails when sending sensitive or confidential information

3. Wireless Use Security

- a. Use encrypted wireless for work matters
- b. Stay away from free / unsecured Wi-Fi (i.e., coffee shops, hotels, libraries, restaurants)
- c. Consider using a Virtual Private Network (VPN)

4. Use of Electronic Devices

- a. Lock your screen or log out when you walk away from your device to prevent unauthorized access
- b. Report stolen or lost devices

5. Software

- a. Antivirus and firewall software should be regularly monitored and updated
- b. Data should be backed up on several different platforms

6. Record Keeping/Disposal

- a. Shred any and all documents that contain personal information such as account numbers, driver's license number, social security number, credit card, debit card numbers, etc.

7. Social Media

- a. Do not post transactional information on social media such as names and addresses as this information may be used by criminals

8. Other – Include any other items of importance



Wire Fraud

1. Client Discussions
 - a. Discuss with your client your communication practices so the client knows what to expect and can exercise caution if contacted by a different means than previously discussed
 - b. Provide a document to clients describing wire fraud risk
2. Transactional Wire Instructions
 - a. Prior to wiring funds, advise your client to contact the intended recipient via a verified telephone number to confirm the wiring information is accurate
 - b. Advise your client not to respond to any emails changing wire instructions by replying to that email or calling the number contained in the email
 - c. Consider including in your email signature a warning about wire fraud
NAR suggests the following:
IMPORTANT NOTICE: Never trust wiring instructions sent via email. Cyber criminals are hacking email accounts and sending emails with fake wiring instructions. These emails are convincing and sophisticated. Always independently confirm wiring instructions in person or via a telephone call to a trusted and verified phone number. Never wire money without double-checking that the wiring instructions are correct.
3. Evaluate communications
 - a. Thoroughly review emails, texts and other forms of communications for typos and suspicious links
 - b. Do not click on links
 - c. Only call trusted phone numbers
4. Other – Include any other items of importance

Reporting Cyber Crime

- If you become aware of a breach of data or wire fraud, you should:
 - Contact the sender of the funds so that they can contact their bank to try to stop the funds from being delivered
 - Notify your broker immediately
 - Notify all affected parties so that they may take appropriate action
 - Change all of your passwords and usernames
- Following a breach, you as the broker may want to:
 - Talk to an attorney as there may be notification laws
 - Contact the police
 - Report the breach to the FBI Internet Crime Complaint Center at <https://www.ic3.gov/default.aspx>
 - Report the breach to your REALTOR® Associations

WIRE FRAUD ADVISORY



Criminals are targeting social media and email to steal information. This is particularly common in real estate transactions because sensitive data, including social security numbers, bank account numbers, and wire instructions are often sent by electronic means. We do not want you to be the next victim of wire fraud. Money wired to a fraudulent account is stolen money that typically cannot be recovered. Additionally, there is generally no insurance for this loss. You may never get the money back.

PROTECT YOURSELF

DO NOT TRUST EMAILS CONTAINING WIRE INSTRUCTIONS

- If you receive an email containing wire transfer instructions, immediately call your escrow officer to ensure the validity of the instructions.

DO NOT TRUST EMAILS SEEKING PERSONAL/FINANCIAL INFORMATION

- If you receive an email requesting personal/financial information or asking you to download, click on a link, send, and/or do anything that may seem unusual to you, call your escrow officer immediately prior to acting on the suspicious email to verify the validity of the email.

TRUST YOUR SOURCE OF INFORMATION

- Never direct, accept or allow anyone in the transaction to consent to receiving transfer instructions without a direct personal telephone call to the individual allegedly providing the instructions.
- It is imperative that this call be made to a number obtained in person from the individual or through other reliable means, not from a number provided in the email or the wiring instructions.

ONLINE RESOURCES:

There are many online sources that can provide useful information regarding similar topics including, but not limited to, the following sites:

- The Federal Bureau of Investigation @ www.fbi.gov/scams-and-safety
- The Internet Crime Complaint Center @ www.ic3.gov
- The National White Collar Crime Center @ www.nw3c.org/research
- On Guard Online @ www.onguardonline.gov

VERIFY AND NOTIFY

Before you wire funds to any party (including your lawyer, title agent, mortgage broker, or real estate agent) personally meet them or call a verified telephone number (not the telephone number in the email) to confirm before you act!

Immediately notify your banking institution and Settlement/Title Company if you are a victim of wire fraud.

The undersigned acknowledges receipt of this Wire Fraud Advisory.

Client

Date

Client

Date

Simple Advice to Minimize Cyber Risk

BY GUEST BLOGGER JASON KICHEN

The pace of business requires us to always be connected. This uber-connectivity in turn increases what's known as your "attack surface".

For hackers, your computer, cell phone, tablet and public Wi-Fi present expanding opportunities for hackers to gain access to your digital life and wreak havoc. Making yourself an even slightly harder target will likely convince hackers to find someone else. Here are some simple steps to minimize your digital vulnerabilities:

- 1. Stop clicking links.** Instead of throwing caution to the wind and just clicking, evaluate it first. Who sent it? Do I recognize the sender? Do I trust them? Does this link make sense, given the link itself and who sent it?
If it's something easy, like your banks' website, use your browser's bookmark or just type the link in yourself. Ninety percent of a hackers' success comes through sending someone a link that they trust and click. All you need to do is be more cautious before clicking a link.
- 2. Make sure your Internet browser is set to auto-update.** It doesn't matter which browser you use, all of them have the same feature. In the settings menu, make sure the box is checked to auto update the browser whenever an update is released. Browser vulnerabilities are one of the main ways that hackers exploit your computer, and ensuring that the browser is up to date with the latest security patches is critical. Having the browser update automatically means you don't have to worry about it.
- 3. Don't use public Wi-Fi** (airports, hotels, etc.). It isn't secure and it's downright dangerous. It is much safer to use your cell phone as a hotspot, if possible. But sometimes Wi-Fi is the only option, and if it is, use a Virtual Private Network (or VPN). A VPN makes sure your internet traffic is encrypted. Even though you're on someone else's network, you can feel at ease doing business and managing your digital life. VPN services can be found online for free or for small monthly or yearly fees.

These steps aren't overly technical, nor will they ensure that you won't get hacked, but they are easy-to-do steps that will make 90 percent of the hackers out there move on from you and find an easier target. That's really what the cybersecurity battle is all about: You can't stop all the adversaries, but you can make yourself a harder target.

[Jason Kichen](#) is director of cybersecurity services at [Versive](#), a machine-learning company. His father, Jon Kichen, sits on the Arizona REALTORS® 2017 Risk Management Committee.



Monitor Email Settings to Avoid Cyberfraud

It is often said that the worst problems are the ones you do not even know about.

This can be especially true when it comes to cyber fraud — a systematic approach to criminal activity in which personal and financial information is stolen online by a hacker and used in an illegal manner.

We often think of email as a direct communication between the sender and the recipient. However, hackers have the ability to alter email settings so that electronic correspondence is covertly forwarded to another email address.

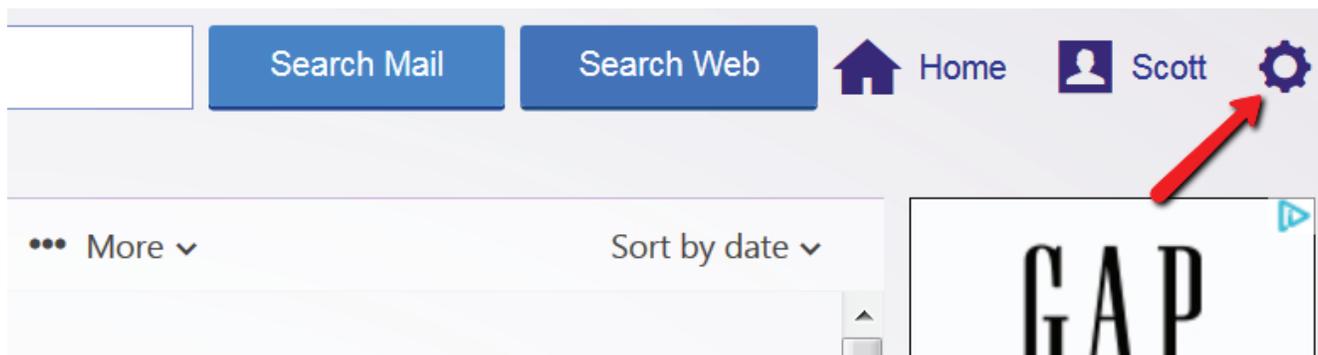
In these cases, the user is unaware that their incoming messages are being forwarded to a third party because, from their perspective, email messages are appearing in their in-box in the customary manner.

There is no simple defense to avoid online hacking of this nature. However, there are steps you can take via your email provider to monitor your account in an effort to ensure that your incoming messages are not simultaneously being forwarded to a fraudster without your knowledge.

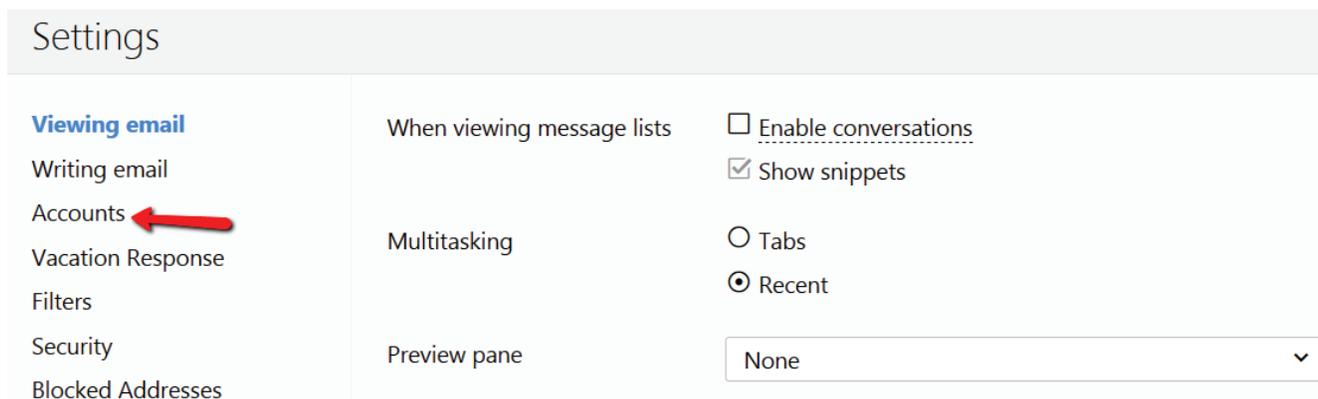
While there are a number of email service providers, this article will explain how Yahoo and Gmail email subscribers can review their email settings to ensure that their messages are not impermissibly being auto-forwarded.

Yahoo Mail Automatic Forwarding

- Login to your Yahoo Email account and click on the gear icon in the upper right-hand corner



- After clicking the gear icon, scroll down and click on Settings; from the Settings menu, click on Accounts then your Yahoo account



Settings

- Viewing email
- Writing email
- Accounts**
- Vacation Response
- Filters
- Security
- Blocked Addresses

Email addresses

 Yahoo

Social networks

 Facebook [Connect](#)

 LinkedIn [Connect](#)

- If Automatic Forwarding has been set on your account, the Forward box will be checked and you will see an email address next to the Verify button (if the box is unchecked, no Automatic Forwarding is set up)

Access your Yahoo Mail elsewhere

Forward: Your mail is forwarded to the specified address, so you can check it there. [Learn more](#)

[Verify](#)

Store and forward ▼

- To turn off Automatic Forwarding, uncheck the box beside Forward and click Save.

Access your Yahoo Mail elsewhere

Forward: Your mail is forwarded to the specified address, so you can check it there. [Learn more](#)

[Verify](#)

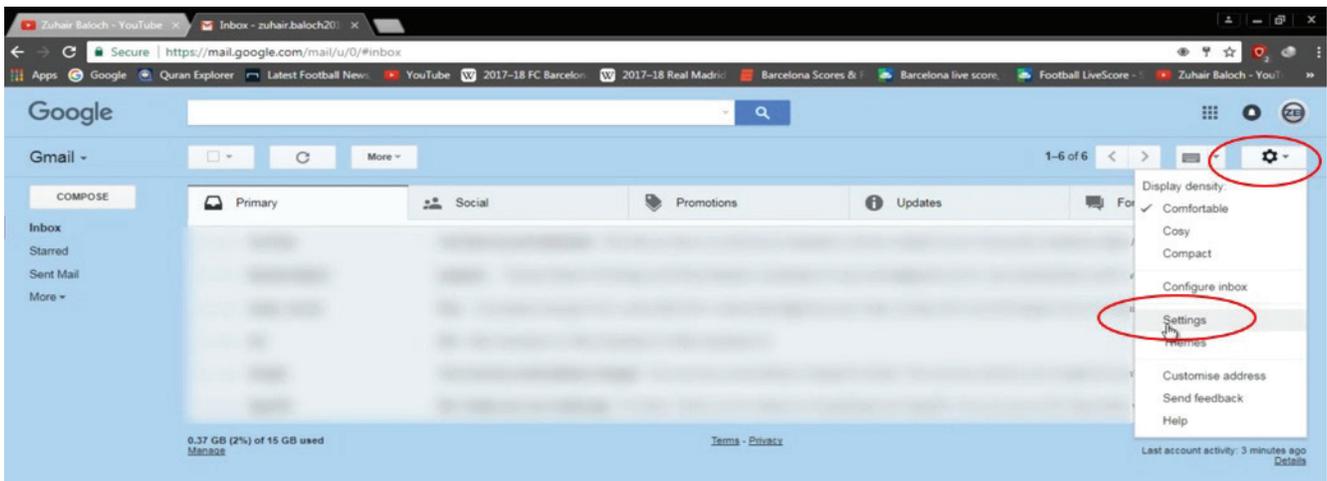
Store and forward ▼

1TB of storage
0.07% used
 Space for 54 million more emails

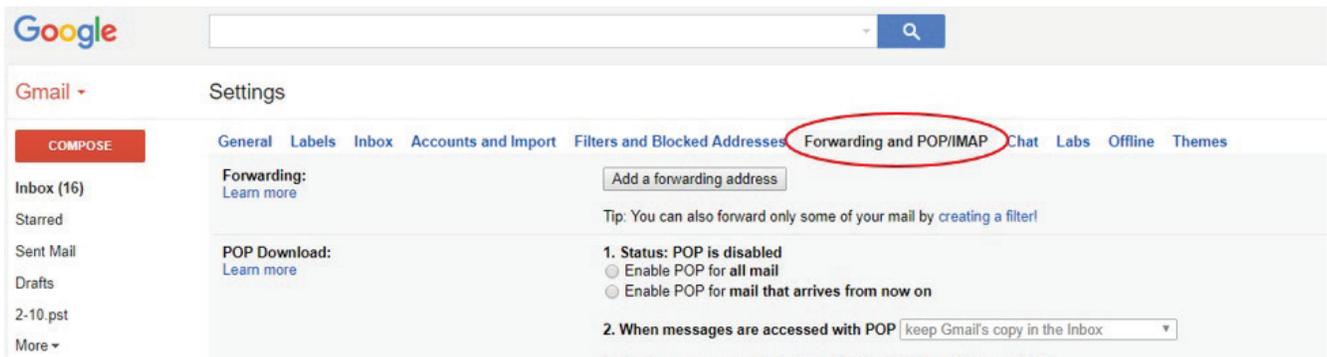
[Save](#) [Cancel](#)

Gmail Automatic Forwarding

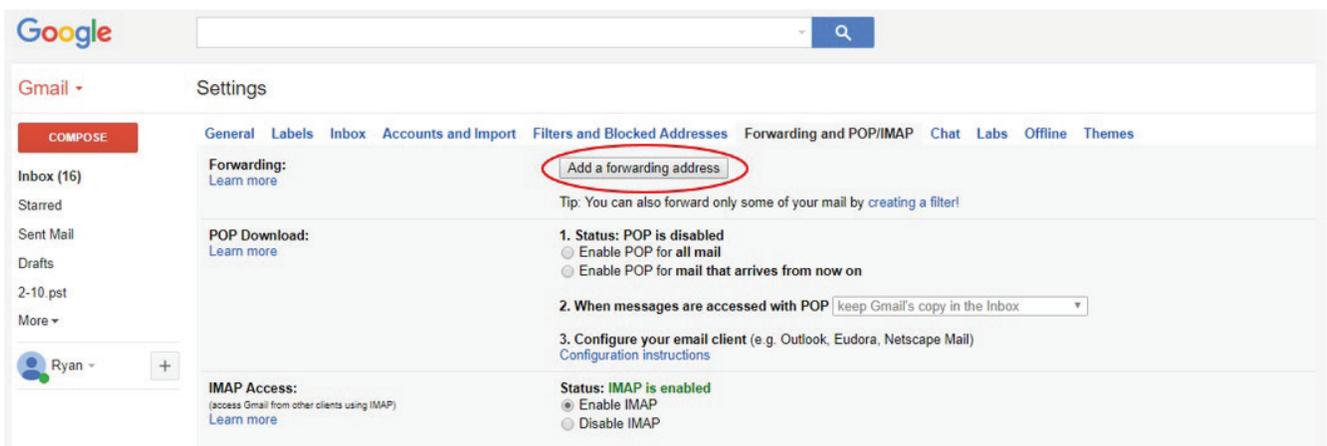
- Click on the gear icon in the upper right-hand corner, then click Settings



- Click on Forwarding and POP/IMAP



- If Automatic Forwarding is *not* enabled, your screen should look like this...



- If Automatic Forwarding *is* enabled, your screen will look like this...

General Labels Inbox Accounts and Import **Filters and Blocked Addresses** Forwarding and POP/IMAP Chat Labs Offline Themes

Forwarding:
Learn more

Disable forwarding
 Forward a copy of incoming mail to and

Tip: You can also forward only some of your mail by [creating a filter!](#)

POP Download:
Learn more

1. Status: POP is disabled
 Enable POP for all mail
 Enable POP for mail that arrives from now on

2. When messages are accessed with POP

3. Configure your email client (e.g. Outlook, Eudora, Netscape Mail)
[Configuration instructions](#)

- To disable Automatic Forwarding, select Disable forwarding, then click Save Changes

General Labels Inbox Accounts and Import **Filters and Blocked Addresses** Forwarding and POP/IMAP Chat Labs Offline Themes

Forwarding:
Learn more

Disable forwarding
 Forward a copy of incoming mail to and

Tip: You can also forward only some of your mail by [creating a filter!](#)

POP Download:
Learn more

1. Status: POP is disabled
 Enable POP for all mail
 Enable POP for mail that arrives from now on

2. When messages are accessed with POP

3. Configure your email client (e.g. Outlook, Eudora, Netscape Mail)
[Configuration instructions](#)

IMAP Access:
(access Gmail from other clients using IMAP)
Learn more

Status: IMAP is enabled
 Enable IMAP
 Disable IMAP

When I mark a message in IMAP as deleted:
 Auto-Expunge on - Immediately update the server. (default)
 Auto-Expunge off - Wait for the client to update the server.

When a message is marked as deleted and expunged from the last visible IMAP folder:
 Archive the message (default)
 Move the message to the Trash
 Immediately delete the message forever

Folder Size Limits
 Do not limit the number of messages in an IMAP folder (default)
 Limit IMAP folders to contain no more than this many messages

Configure your email client (e.g. Outlook, Thunderbird, iPhone)
[Configuration instructions](#)

Forms Released - October 2017

- Revised Additional Clause Addendum
- Revised Residential Seller's Property Disclosure Statement
- New Solar Lease / Solar Loan Assumption Addendum

Continue reading for an overview of all the form changes. →

ADDITIONAL CLAUSE ADDENDUM



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association of
REALTORS®
REAL SOLUTIONS. REALTOR® SUCCESS.

The pre-printed portion of this form has been drafted by the Arizona Association of REALTORS®. Any change in the pre-printed language of this form must be made in a prominent manner. No representations are made as to the legal validity, adequacy and/or effects of any provision, including tax consequences thereof. If you desire legal, tax or other professional advice, please consult your attorney, tax advisor or professional consultant.

Document updated:
October 2017



1. Buyer: _____
2. Seller: _____
3. Premises Address: _____
4. Date: _____

RESIDENTIAL SELLER DISCLOSURE ADVISORY



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association of
REALTORS®
REAL SOLUTIONS. REALTOR® SUCCESS.

WHEN IN DOUBT - DISCLOSE!

Document updated:
October 2017



5. The following _____
6. for the above _____
7. the Contract _____
8. received with _____
9. **BAC** _____
10. ackno _____
11. a bac _____
12. or mo _____
13. Buye _____
14. Buye _____
15. the d _____
16. back _____
17. _____

Arizona law _____
the proper _____
These disc _____
no Seller's _____

SOLAR LEASE / SOLAR LOAN ASSUMPTION ADDENDUM



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1. Seller: _____
2. Buyer: _____
3. Premises Address: _____
4. Date: _____

18. **SIGN** _____
19. this C _____
20. _____
21. _____
22. **COR** _____
23. is cor _____
24. or ex _____
25. _____
26. **NON** _____
27. to cal _____
28. of Lo _____
29. earne _____
30. conti _____
31. _____
32. **WAIV** _____
33. secti _____
34. that E _____
35. value _____
36. _____

The SPDS _____
avoid inad _____
yourself ag _____
truthfully an _____
reports, and _____
your answer _____
- use the b _____



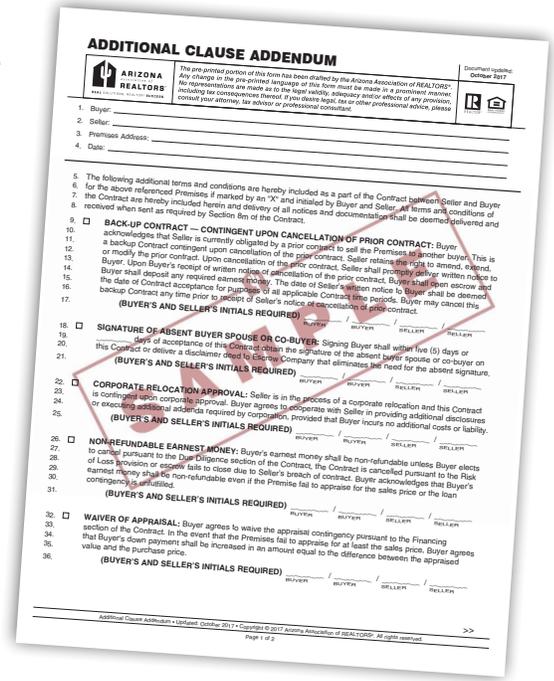
If th _____
info _____
to c _____
mis _____
If y _____
Un _____
not _____

5. The following additional terms and conditions are hereby included as a part of the Contract between you and the Buyer.
6. above referenced Premises.
7. A solar photovoltaic ("PV") panel system ("Solar System") has been installed on the Premises that is subject to a Solar System lease/loan.
8. The Solar System shall convey with the Premises and, pursuant to the terms set forth below, Buyer's assumption of the Solar System lease/loan.
9. contingent on Buyer's assumption of the Solar System lease/loan.
10. **Lessor/Lien Holder:** The term "Lessor," as used herein, shall refer to the company that leases the Solar System to Buyer.
11. the unpaid loan used by Seller to purchase the Solar System.
12. **Seller Disclosure:** Within three (3) days after Contract acceptance, Seller shall: (i) deliver to Buyer the Solar System lease/loan; (ii) deliver to Buyer all other Solar System documents in Seller's possession; (iii) provide to Buyer the name of Lessor; and (iv) notify Lessor of the sale, the name of Buyer, and the name of the Escrow Company.
13. System lease/loan; (ii) deliver to Buyer all other Solar System documents in Seller's possession; (iii) provide to Buyer the name of Lessor; and (iv) notify Lessor of the sale, the name of Buyer, and the name of the Escrow Company.
14. number of Lessor; and (iv) notify Lessor of the sale, the name of Buyer, and the name of the Escrow Company.
15. the Contract. The Solar System lease/loan and other documents in Seller's possession are collectively referred to as the "Solar System Documents."
16. System Documents."
17. **Buyer Due Diligence:** Buyer is advised that if the cost, insurability, operation, or value of the Solar System is to be investigated within the allotted timeframe set forth below. This may include, but is not limited to:
 - Maintenance
 - Output and production guarantees
 - Payment increases
 - Utility and
 - Utility bill
 - Warrant
18. must be investigated within the allotted timeframe set forth below. This may include, but is not limited to:
19. • Age
20. • End of lease terms

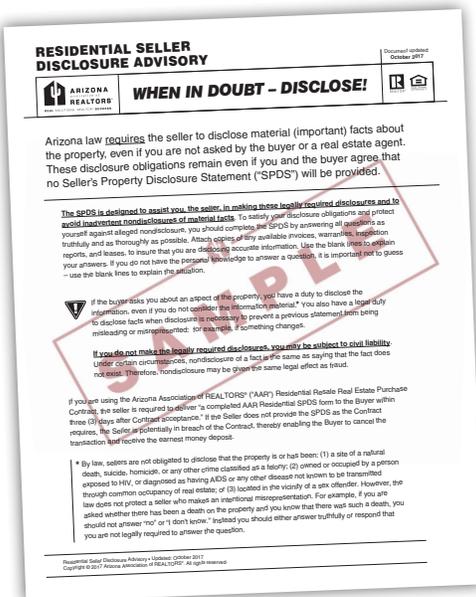
Additional Clause Addendum Includes All-Cash Sale Appraisal Contingency

Simply because a buyer is paying cash in exchange for the Premises does not necessarily mean that they wish to eliminate the Appraisal Contingency set forth in Section 21 of the Arizona Association of REALTORS® Residential Resale Real Estate Purchase Contract (Purchase Contract).

- For this reason, a revised [Additional Clause Addendum](#) was released on October 1, 2017 that contains an appraisal contingency for all cash sales.
- In the event of an all cash sale, line 68 of the Purchase Contract informs the parties that “Section 2 does not apply – go to Section 3.” Section 2 is titled Financing and contains the aforementioned appraisal contingency.
- Pursuant to that contingency, “Buyer’s obligation to complete this sale is contingent upon an appraisal of the Premises acceptable to lender for at least the purchase price.” However, if Section 2 of the Purchase Contract does not apply, no appraisal contingency exists.
- To address an all cash buyer’s desire for an appraisal contingency, lines 37-44 have been added to the Additional Clause Addendum. This section, titled “All Cash Sale Appraisal Contingency,” states that “Buyer’s obligation to complete this all cash sale is contingent upon an appraisal of the Premises for at least the purchase price.”
- Accordingly, if the Premises fails to appraise, even in conjunction with an all cash sale, the buyer will now have the right to cancel the Purchase Contract and receive a return of the earnest money, provided they act five days after notice of the appraised value, or 20 days after contract acceptance, whichever occurs first.



Residential Seller’s Property Disclosure Statement (SPDS) Revision Effective Oct. 1, 2017



On October 1, 2017, a revised [Residential Seller’s Property Disclosure Statement \(SPDS\)](#) was released. By way of this minor revision, the text box found on lines 205-206 of the February 2017 form was deleted. These lines currently provide the buyer with notice that the “Arizona Board of Technical Registration (BTR) maintains a list of unremediated sites” on which drugs were illegally manufactured. However, pursuant to SB 1256, Arizona’s drug lab remediation program has been transferred from BTR to the Arizona Department of Environmental Quality. Perhaps more importantly, this same legislation repealed the law that: (1) mandated remediation of properties used as drug labs; and (2) required disclosure of the fact that the property had served as an illegal drug lab and remains unremediated. With lines 205-206 being deleted, a new text box has been added to lines 190-191 of the October 2017 form, stating: “NOTICE TO BUYER: If the Property is served by a solar system, Buyer is advised to read all pertinent documents and review the cost, insurability, operation and value of the system, among other items.”

Due to the increase in residential solar systems and assumption of those systems by buyers, the Arizona REALTORS® Risk Management Committee deemed this addition important and wishes to stress to buyers the due diligence they should consider performing when purchasing a home with a preexisting solar system.

Solar Lease / Solar Loan Assumption Addendum

BY SCOTT M. DRUCKER, ESQ., GENERAL COUNSEL

With the expectation that solar panels will create more efficient energy usage than electricity, as well as decreasing expenses after installation, the residential solar system is becoming a popular form of alternative energy. This is especially true in Arizona, which boasts 300 days of sunshine a year.

However, the steep up-front costs for residential solar systems are leading more and more Arizona homeowners to lease their solar system, as opposed to buying it outright. For those who do purchase their solar system, many need to finance the purchase.

In both cases, when sellers place their home on the market before the lease is up or prior to the loan being repaid, sellers will have to satisfy their financial obligations or have the buyer assume the lease or loan prior to the home being sold.

While it is becoming increasingly common to have buyers assume the seller's solar lease/loan financial obligations, any such assumption poses complications to residential resales. To simplify this process, the Arizona REALTORS®, by way of a workgroup chaired by Laurie McDonnell¹, has created a new form titled [Solar Lease / Solar Loan Assumption Addendum](#) (Solar Assumption Addendum).

Taking effect on October 1, 2017, the form is designed to clarify the obligations of buyers and sellers in those transactions in which the buyer is assuming an ongoing solar lease or unpaid loan.

Pursuant to the Solar Assumption Addendum, within three days after Contract acceptance, the seller must:

- Deliver to buyer the most recent version of the solar system lease/loan;
- Deliver to buyer all other solar system documents in seller's possession;
- Provide to buyer the name and phone number of the company that leases the solar system to seller, or the servicer of the unpaid loan used by seller to purchase the solar system (collectively hereinafter the "Lessor"); and
- Notify Lessor of the sale, the name of the buyer, and the name of the escrow company as set forth in Section 3a of the Purchase Contract.

While the buyer has until the end of the Inspection Period or five days after receipt of the above-referenced documents to deliver a signed notice of cancellation, should they choose to proceed with their purchase they must immediately apply for lease/loan assumption approval.

Unfortunately, despite a buyer's best efforts, their assumption request may ultimately be denied. It is for this reason that the Solar Assumption Addendum creates a contingency allowing the buyer to cancel the Purchase Contract and recover their earnest money if, not later than three days prior to close of escrow, the buyer is unable to obtain assumption approval.

It is the hope of the workgroup that this new form will streamline and add clarity to the assumption of solar leases and loans in conjunction with residential real estate transactions. For more information on the Solar Assumption Addendum and how it applies to specific scenarios, please view the list of [Frequently Asked Questions](#) (FAQs) that have additionally been prepared.

¹Laurie McDonnell would like to thank the other members of the workgroup who generously volunteered their time to prepare this form: Martha Appel, William "Bill" Ashker, Tony Ray Baker, Paul Bruce, Melisa Camp, Wednesday Enriquez, Holly Eslinger, Robert Foreman, Rob Hallberg, Dani Lawrence, Liz Recchia, Gerry Russell, Tara Rutkowski, and Barbara Wilson, along with Arizona REALTORS® staff members Jamilla Brandt, Scott Drucker, Nikki Salgat and Jan Steward.

About the Author

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.



Solar Lease / Solar Loan Assumption Addendum FAQs

BY SCOTT M. DRUCKER, ESQ., GENERAL COUNSEL

Below are some Frequently Asked Questions (FAQs) about the new (Solar Assumption Addendum) effective Oct. 1, 2017.

Q1: In which transactions should the new Solar Assumption Addendum be used?

A1: The form is designed to apply to those transactions in which the Solar System installed on the Premises is subject to a lease or unpaid loan.

Q2: Why does the form address only solar lease and solar loan assumptions, not owned solar systems?

A2: Owned solar systems are already addressed on lines 51-53 of the [Residential Resale Real Estate Purchase Contract](#). That portion of the Purchase Contract states, in part, "If owned by Seller, the following items are also included in this sale: affixed alternate power systems serving the Premises (i.e. – solar)." Furthermore, no approval from a third party is needed to transfer an owned solar system.

Q3: What is a "solar photovoltaic (PV) panel system" per line 7 of the Solar Assumption Addendum?

A3: Generally speaking, a photovoltaic system employs solar panels, each comprising a number of solar cells, which generate electrical power. PV installations may be ground mounted, but are most commonly roof mounted.

Q4: Whose responsibility is it to obtain Assumption Approval: Buyer or Seller?

A4: Pursuant to lines 26-27, buyer has the obligation to apply for Assumption Approval in the manner required by Lessor. However, the seller must fully cooperate in this process.

Q5: If the buyer receives and approves the Solar System Documents, but subsequently fails to obtain Assumption Approval, can the buyer still cancel and obtain a return of their Earnest Money?

A5: Yes. The contingency set forth on lines 23-28 is separate and distinct from the contingency set forth on lines 32-38. Therefore, even after the first contingency is satisfied, the second contingency remains.

Q6: What constitutes "notice" as that term is used on lines 24 and 34 of the Purchase Contract?

A6: Section 8m of the Purchase Contract defines "notice" and clarifies that notices must be in writing and will be deemed delivered and received when: (i) hand-delivered; (ii) sent via facsimile transmission; (iii) sent via electronic mail, if email addresses are provided; or (iv) sent by recognized overnight courier service.

Note: Pursuant to lines 24 and 34, the notices described therein must also be signed.

Q7: A scenario exists in which the buyer receives the Solar System Documents on day nine of the 10 day inspection period. Two days later, buyer reads the Solar System lease and disapproves of its end of lease terms. Can the buyer cancel and obtain a return of their earnest money even though the Inspection Period has expired?

A7: Yes. Pursuant to lines 23-24 of the Solar Assumption Addendum, in this situation the buyer would have five (5) days after receipt of the Solar System Documents to deliver to the seller a signed notice of cancellation and obtain a return of their earnest money deposit.

Q8: Pursuant to lines 29-31, buyer's obligation to complete the sale is contingent upon buyer receiving Assumption Approval "no later than three (3) days prior to Close of Escrow (COE) date." Why did the workgroup decide on three days?

A8: Unfortunately, in many instances it takes the Lessor a lengthy period of time to issue Assumption Approval. The workgroup therefore wanted to provide enough time for the buyer to complete this process.

If a shorter timeframe were implemented, buyers may choose to cancel upon expiration of that shorter timeframe in the event that Assumption Approval has not yet been obtained. Additionally, the workgroup deemed it beneficial to have this timeline mirror the loan approval timeline set forth in the Purchase Contract.

Q9: A scenario exists in which the buyer believes Assumption Approval is forthcoming, but will not be issued until after the deadline set forth on line 30, which is three days prior to COE. How should the buyer proceed?

A9: The buyer should seek to execute an addendum with the seller to extend the deadline by which Assumption Approval must be obtained. If the seller declines to do so, the buyer has the right to deliver to the seller a signed notice of inability to obtain assumption approval, provided that the buyer does so no later than three days prior to COE.

Q10: A scenario exists in which the buyer is approved to assume the Solar System lease, but under conditions less favorable than set forth in the seller's Solar System lease. Can the buyer cancel and obtain a return of their earnest money deposit?

A10: Yes. If the buyer does not receive approval to assume the Solar System lease "under the existing terms and conditions," the buyer is permitted to cancel and obtain a return of their earnest money.

Q11: How will the seller know that the buyer applied for lease/loan Assumption Approval as required by lines 26-28?

A11: In the event that this information cannot be ascertained from the buyer, the seller can contact the Lessor directly to determine whether the buyer has applied for lease/loan Assumption Approval.

About the Author

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.



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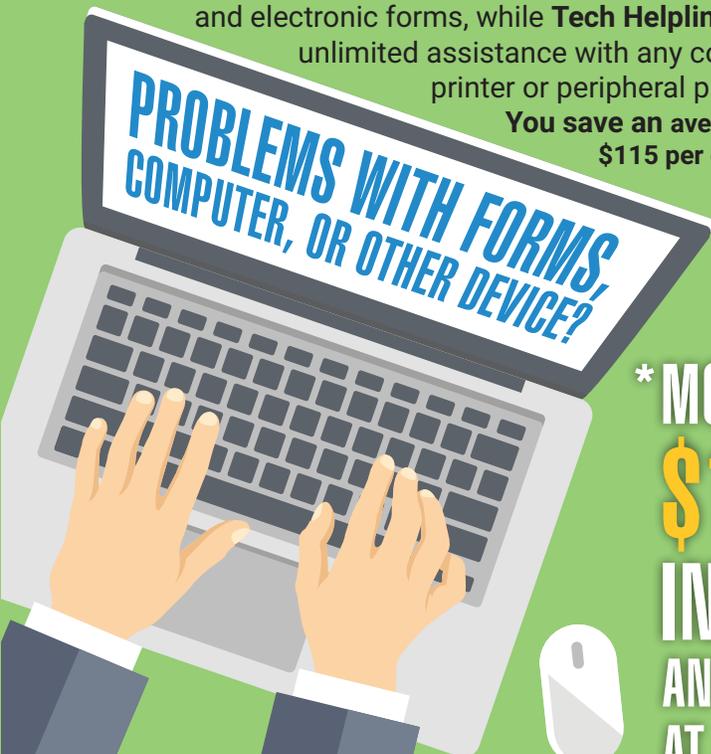


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Attention Property Managers - New TPT e-File Program Starts January 1, 2018

If you are a REALTOR® who practices property management, you are all too familiar with the hassle of collecting and remitting Rental Transaction Privilege Tax (TPT) to the Arizona Department of Revenue.

The Arizona Department of Revenue will have a new TPT electronic filing program in place for property management companies (PMCs) by the start of 2018. PMCs will be able to begin licensing to participate in the new program after November 1, 2017.

Over the years, REALTORS® have been faced with bureaucratic hurdles and roadblocks, but the Arizona REALTORS® state association has been there every-step-of-the-way to defend members' interests at the state capitol and Arizona Department of Revenue (ADOR).

In 2014, ADOR attempted to require all homeowners be licensed with the department by January 1, 2015. The department also compounded the collection and remittance process by changing course to no longer allow property managers to remit taxes on behalf of their clients.

Acknowledging that both the licensing timeline and prohibition on tax remittance by a property manager was entirely unrealistic, Arizona REALTORS® worked to have the licensure requirement pushed back a year, and obtained a full reversal that allowed property managers to continue to collect and remit Rental Transaction Privilege Taxes (TPT).

Recognizing that the remittance process remained cumbersome, the state association attempted to run legislation in 2015 that would require a municipality that levies Rental TPT to allow property managers to file a consolidated tax return on behalf of their clients.

Though the legislation had almost unanimous bipartisan support, ADOR asserted that the cost to implement a consolidated tax program would cost more than \$4.0 million. As a result, the legislation did not make it to the finish line.

During the legislative interim, the Arizona REALTORS® Government Affairs Department worked hard to educate members of the legislature and the governor's office on the crucial need to implement an electronic consolidated tax return for use by property managers.

Through the association's hard work, the bill sailed through the legislature and was signed into law in 2016. The law specifically mandated the establishment of an electronic, consolidated tax-return system to be in place by January 1, 2018. So, the time for this program to take effect will soon be upon us.



REALTOR® Caucus 2017



During REALTOR® Caucus 2017 on September 7, Arizona REALTORS® Vice President of Government Affairs Nicole LaSlavic shared a legislative update and preview to hundreds of members in attendance. Here are some of the highlights from her presentation.

- Last year, there were 1,079 bills introduced and members of your Legislative & Political Affairs Committee reviewed every *piece* of legislation; 150 pieces directly impacted the real estate industry.
- At REALTOR® Caucus 2016, we went forward with some legislative priorities including:
 - **HB 2067: Real Estate Licensing; Applicability; Exemptions**
This bill establishes real estate licensing regulations do not apply to unlicensed person in the employ of a real estate licensee to perform clerical, bookkeeping, accounting and other administrative and support duties. The bill was signed by the governor on March 31 and took effect on August 9. *If you have individuals who are working in your office wondering, "Is this person able to do this without being a licensee?" Please reference the [Substantive Policy Statement](#) to make sure that you're within what is legally permissible.*
 - **HB 2072: Manufactured Homes; Real Estate Transactions**
This bill authorizes real estate brokers and salespersons licensed by ADRE to sell manufactured homes and mobile homes located in a mobile home park. The bill further requires ADRE licensees and Arizona Department of Housing Division licensees to abide by their respective licensing requirements for submitting paperwork and filings upon the completion of sale.
 - **HB 2088: Incorporation; Urbanized Areas**
Requires the county board of supervisors to take action on the petition to incorporate an area as a municipality without a resolution approving the incorporation from the nearby municipalities if the area has a population of 15,000 or more persons and that population is more than the population of any adjacent municipality that opposes the proposed incorporation.

- **HB 2237: Forcible Entry; Detainer; Prohibited Rules**
Prohibits a state agency or court from adopting or enforcing a rule or policy that requires a mandatory or technical form for providing notice or for pleadings in an action for forcible entry or forcible or special detainer. The form of any notice or pleading that meets statutory requirements for content and formatting of a notice or pleading is sufficient to provide notice and pursue an action for forcible entry or forcible or special detainer.

Fun Fact: *When you look at what kind of careers legislators have, most were either REALTORS® or real estate agents at one point in their life.*

- Here's what is on the horizon for the 2017 legislative session:
 - **Water**
The governor's office has convened a group of stakeholders to examine the current status of Arizona's water laws, policies and practices with respect to both Colorado River and groundwater issues with the goal of determining where improvements should be made. There are some areas where the REALTORS® need to be concerned, specifically anything that addresses assured water supply, wells and water rights.
 - **Signs**
Various municipalities have attempted to revamp their sign ordinances as a result of the Supreme Court Ruling in *Reed v. Gilbert*. Some of the proposed ordinances are more aggressive than others in their treatment of real estate signage. Arizona REALTORS® went to the National Association of REALTORS® and were awarded a \$75-thousand-dollar grant to examine ways to utilize a reasonable time, place, and manner restrictions as a possible solution to the placement of the signs in private and public right-of-ways.
 - **Taxes**
Arizona continues to face funding challenges as it pertains to K-12 and higher education. The legislature will be tasked with figuring out a way to fund these areas. One potential funding mechanism is through increase in property taxes, implantation of a tax on services or the removal of the Homeowner's Rebate.
 - **HOAs**
Every year there are a slew of bills introduced to address HOA's. Last year, there was a group of individuals who brought forward 57 pieces of HOA legislation; some of them were good and we worked with them, but it is also important to note that Governor Ducey penned a letter last session stating, "I do not believe that the government should micro manage the operation of Home Owners Associations." Keeping this statement in mind, we do not anticipate a high number of bills to be signed by the governor that address HOA legislation.

To see photos from the REALTOR® Caucus 2017, [click here](#).

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Q&As are not “black and white,” so experienced attorneys and brokers may disagree. Agents are advised to talk to their brokers/managers when they have questions.

When is Contract Delivery?

FACTS: A buyer sent a seller a counter-offer to the Residential Resale Real Estate Purchase Contract (Contract). The seller signed the counter-offer and provided it to his listing agent with instructions to deliver the acceptance to the buyer.

Before the listing agent could deliver the accepted Contract to the buyer, the seller called the listing agent and directed him not to deliver the acceptance.

ISSUE: Was Contract acceptance already delivered?

ANSWER: No.

DISCUSSION: Section 8o of the Contract states “This offer will become a binding Contract when acceptance is signed by Seller and a signed copy delivered in person, by mail, facsimile or electronically, and received by Broker named in Section 8q.”

In this case, the accepted offer never left the seller’s possession. Therefore, acceptance was neither delivered nor received.

Note: If the listing agent was a *dual* agent, then the accepted offer would have been delivered to the buyer once it was in the dual agent’s possession and the seller could not have withdrawn the acceptance.

Cure Notice Sent Via Text Message Is Improper

FACTS: During a transaction, a listing agent sent an image of a Cure Period Notice via text message to the buyer’s agent.

ISSUE: Can a Cure Notice be provided by text message?

ANSWER: No.

DISCUSSION: Section 8m of the Residential Resale Real Estate Purchase Contract states: “Unless otherwise provided, delivery of all notices and documentation required or permitted hereunder shall be in writing and **deemed delivered** and **received** when: (i) hand-delivered; (ii) sent via facsimile transmission; (iii) sent via electronic mail, if email addresses are provided herein; or (iv) sent by recognized overnight

courier service . . .”. As such, the listing agent did not deliver the Cure Period Notice properly. The listing agent should proceed with sending the Cure Notice again via one of the options listed above.

Terms of Residential Resale Real Estate Purchase Contract Must be Expressed

FACTS: A buyer submits an offer to the seller. On line 17 of the Contract, the Buyer indicates earnest money funds will be provided by a wire transfer.

After two days, the seller issues a Cure Period Notice because the wire transfer has not been received. The buyer then notifies the seller that the wire is coming from another country, therefore, it will take more than two days for the wire transfer to be completed.

ISSUE: May the Seller issue a cure notice?

ANSWER: Yes.

DISCUSSION: In this instance, the Seller may deliver a Cure Period Notice to the buyer. The February 2017 Contract allows a buyer to provide earnest money in the form of wired funds. If a buyer cannot initiate the wire transfer upon acceptance, as the Contract calls for, then the buyer should indicate under what terms the wire transfer shall occur on page one of the Contract. Example: Buyer shall wire funds to escrow within two business days.

Unlicensed Assistant Must be Identified as Unlicensed in All Advertising

FACTS: A real estate team held an open house. An unlicensed assistant attending the open house posted video to a social media site. The video featured the unlicensed assistant who stated, “Come down to our open house and join us!”

ISSUE: Must the unlicensed assistant disclose that she is not licensed in the video?

ANSWER: Yes.



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DISCUSSION: Arizona Department of Real Estate Substantive Policy Statement 2017.01 states: All inclusions of the unlicensed assistant in advertising or marketing must indicate the individual as being “unlicensed” (A.R.S. § 32-2165(A)). Therefore, the unlicensed assistant should identify herself as unlicensed in any advertisement or marketing.

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.

Cure Notice Not Needed If Buyer Does Not Accept Seller Response On BINSR

FACTS: Buyer and seller are in the Inspection Period. The buyer timely delivered a Buyer’s Inspection Notice and Seller’s Response (“BINSR”) to the seller requesting six items be repaired. The seller responded stating he would repair four of

the six items.

Thereafter, the buyer did not deliver the BINSR to the seller with acceptance of the seller’s response. However, buyer did not cancel either.

Now, the seller has sent the buyer a Cure Notice for failing to sign the BINSR accepting the seller’s BINSR response.

ISSUE: Should the seller send a Cure Notice if the buyer does not sign the BINSR, but proceeds toward closing?

ANSWER: No.

DISCUSSION: Section 6(j)(2)(c) of the contract states: “If Buyer does not cancel this Contract within five (5) days as provided, Buyer shall close escrow without correction of those items that Seller has not agreed in writing to correct.”

Therefore, no Cure Notice is required. Buyer must proceed to closing, and the seller is obligated to repair the four items he agreed to repair.

Seller Is Entitled To Earnest Money Where Buyer Failed To Timely Provide Unfulfilled Loan Contingency Notice

FACTS: Pursuant to the AAR Residential Resale Real Estate Purchase Contract (the “Purchase Contract”), the close of escrow date was scheduled for July 18, 2014. On July 21, 2014, the seller issued a Cure Period Notice to the buyer pursuant to Section 7a of the Purchase Contract for the buyer’s failure to close escrow and failure to sign loan documents. The cure period expired without the buyer signing loan documents and closing escrow. After the cure period expired, the seller received an Unfulfilled Loan Contingency Notice from the buyer.

ISSUE: Is the seller entitled to the earnest deposit?

ANSWER: Yes.

DISCUSSION: Section 7a of the Purchase Contract provides that “if a noncompliance is not cured within three (3) days after delivery of such notice, the failure to comply shall become a breach of the contract.” Here, the buyer failed to close escrow on July 18, 2014, the scheduled closing date as prescribed by Section 1d of the Purchase Contract. As a result, the seller provided a Cure Period Notice allowing the buyer three (3) days to cure as prescribed by Section 7a of the Purchase Contract. The buyer failed to close escrow within the cure period. Instead of closing escrow, the buyer could have

alternatively provided an Unfulfilled Loan Contingency Notice pursuant to Section 2c of the Purchase Contract within the three (3) day cure period, provided the reason for failure to close was loan disapproval without Prior to Document (“PTD”) conditions. Unfortunately, the buyer failed to either close escrow or send the Unfulfilled Loan Contingency Notice within the three (3) day cure period. As such, the buyer breached and the seller is entitled to the earnest deposit.

HOA Cannot Impose Additional Fee On Tenant For Service Animal

FACTS: A tenant signed a lease and is going to move into a townhouse. The tenant has a service dog.

The HOA wants to charge the tenant \$75, which is charged to all pet owners to pay for DNA testing. The HOA has DNA testing performed, so they can identify individual pet owners to enforce the HOA policy that residents must clean up after their pets.

ISSUE: Can the HOA charge \$75 to the tenant for the DNA testing of the dog?

ANSWER: No.

DISCUSSION: Reasonable Accommodations for Assistance Animals under the FHA and Section 504 states: “An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability.” Therefore, the tenant’s service animal is not considered a pet, and the HOA cannot impose the \$75.00 fee. To do so would be an act of discrimination under the Fair Housing Act.

There Is No Breach If Closing Date Was Extended By An Addendum

FACTS: A buyer and seller had agreed upon a close of escrow date of October 12. The seller lived out of the country. The seller was not able to overnight the executed closing documents by October 12, and therefore offered the buyer pre-possession.

The buyer agreed to the offer of pre-possession. Additionally, an addendum was drafted extending the close of escrow to October 18. The buyer and seller both signed the addendum.

The buyer moved into the property and issued a Cure Notice to the seller on October 14 for failure to close escrow.

ISSUE: Can the buyer issue a Cure Notice to the seller for failure to close escrow?

ANSWER: No.

DISCUSSION: The buyer and seller both signed the addendum extending the close of escrow date to October 18, therefore,

no party is in breach at this time.

Property Manager Must Maintain Records for Three Years

FACTS: A landlord and his property manager became entangled in a dispute regarding the cost of a repair performed at the subject rental property. As a result of the dispute, the landlord has demanded that the property manager produce receipts for each and every repair performed at the property at the direction of the property manager over the last five years.

ISSUE: Must the property manager comply with the landlord’s request?

ANSWER: See Discussion.

DISCUSSION: A.R.S. § 32-2175(c) requires property managers to “keep all financial records pertaining to clients for at least three years from the date each document was executed, including bank statements, canceled checks or bank generated check images, deposit slips, bank receipts, receipts and disbursement journals, owner statements, client ledgers and applicable bills, invoices and statements.” Therefore, although the property manager is not required to produce five years of receipts, three years of receipts will need to be conveyed.

ABOUT THE AUTHOR

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Richard V. Mack is a partner at [Manning and Kass](#), 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.



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