ARIZONA

THIRD QUARTER 2015

BROKER & MANAGER

QUARTERLY

TRID CHANGES TO AAR FORMS

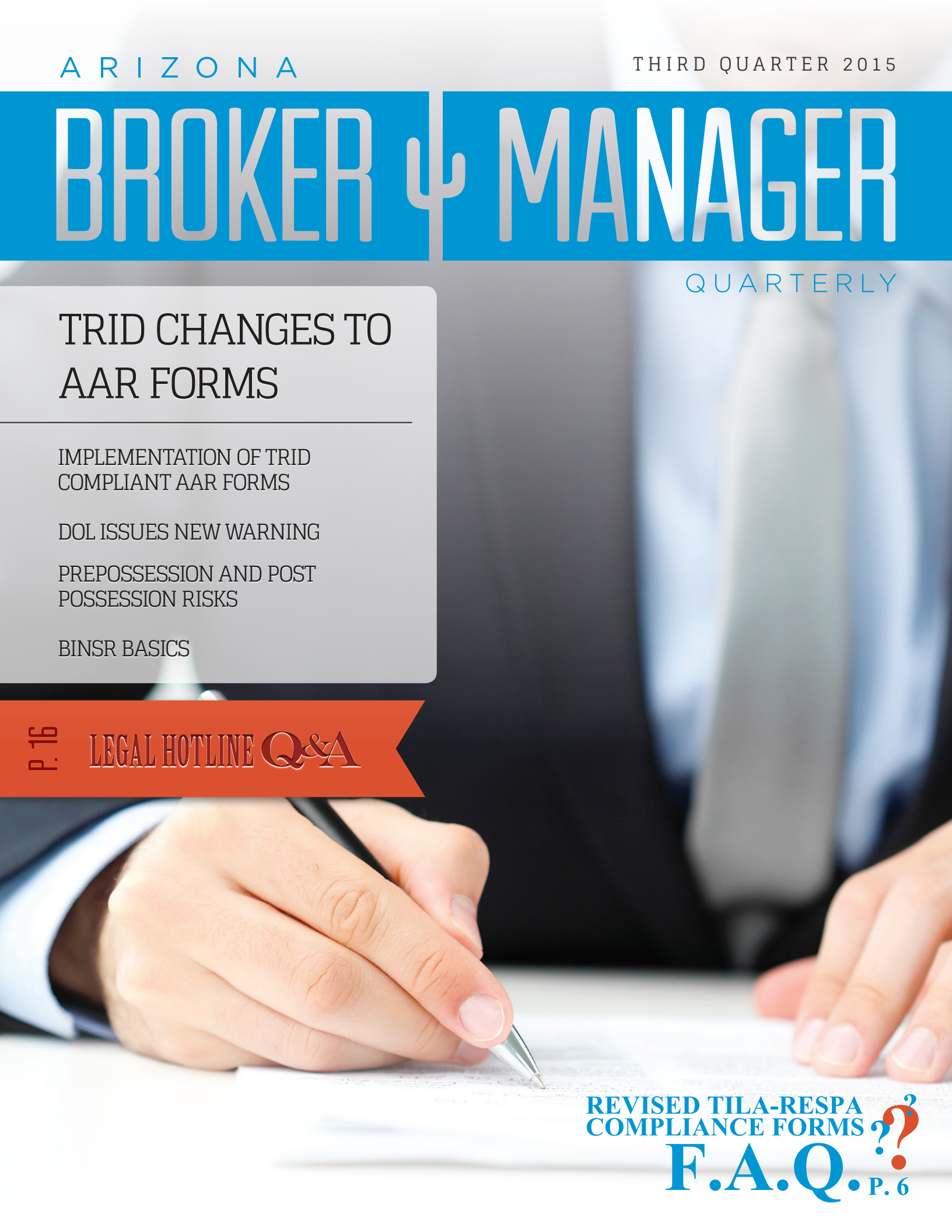
IMPLEMENTATION OF TRID COMPLIANT AAR FORMS

DOL ISSUES NEW WARNING

PREPOSSESSION AND POST POSSESSION RISKS

BINSR BASICS

P. 16 LEGAL HOTLINE Q&A



REVISED TILA-RESPA COMPLIANCE FORMS ??

F.A.Q. P. 6

Questions or Comments: editor@aaronline.com | Excluding author photos (or if otherwise indicated), images are © iStockphoto LP.

ARIZONA association of REALTORS®

BROKER & MANAGER

THIRD QUARTER 2015 | ARIZONA BROKER/MANAGER QUARTERLY

IN THIS ISSUE

TRID Changes to AAR Forms

BY MARTHA APPEL, 2015 ARIZONA ASSOCIATION OF REALTORS® RISK MANAGEMENT COMMITTEE CHAIR

The Consumer Financial Protection Bureau (CFPB) published the TILA-RESPA Integrated Disclosure rule (TRID) which combines and replaces disclosures that consumers receive in connection with applying for and closing on a mortgage loan under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). The proposed effective date for TRID is October 3, 2015.

As Chair of the workgroup charged with implementing the TRID compliant changes, it is my pleasure to inform you that the Arizona Association of REALTORS® has revised four forms to ensure their compliance with the new rule. Those forms are: (1) Pre-Qualification Form; (2) Loan Status Update; (3) Residential Resale Real Estate Purchase Contract; and (4) Vacant Land/Lot Purchase Contract. The revised forms will be released in mid to late September.

Highlighted below are the major TRID related changes to each of the forms.

Pre-Qualification Form
The Pre-Qualification Form is now required to be submitted in conjunction with the Residential Resale Real Estate Purchase Contract (Contract) at the time of offer. If a buyer has not consulted with a lender when submitting a Contract, the buyer should simply check the box at line 3 and complete only lines 4-5.

Loan Status Update (LSU)
The initial LSU must be delivered within "ten (10) days after Contract acceptance" instead of "five (5)" days. The reason for this is because TRID requires that a Loan Estimate must be completed by the lender and provided to the borrower three days after the borrower provides to the lender six pieces of information (loan application). And, because lenders have to abide by this timeframe, providing the LSU within five days of contract acceptance would prove very difficult.

Because of the new TRID requirements, page 2 of the LSU now identifies additional steps in the lending process. Those steps include the following: (1) the lender receiving the six loan application pieces of information from the buyer; (2) the lender sending the buyer the Loan Estimate; (3) the buyer indicating to the lender an intent to proceed with that lender; (4) the lender providing a Closing Disclosure to the buyer; and (5) the buyer's receipt of the Closing Disclosure from the lender.

Residential Resale Real Estate Purchase Contract
As stated above, Section 2a now requires the Pre-Qualification Form is now required to be submitted in conjunction with the Contract at the time of offer.

Section 2b now provides that, three days prior to close of escrow the Buyer must either: (i) sign all loan documents; or (ii) deliver to Seller or Escrow Company notice of loan approval without PTD conditions AND date(s) of receipt of Closing Disclosure(s) from Lender; or (iii) deliver to Seller or Escrow Company notice of inability to obtain loan approval without PTD conditions. The reason (ii) was added is because if the loan documents are not to the escrow company three

days prior to the close of escrow, (ii) gives the Seller written assurance by the Buyer that their loan has been approved without PTD conditions, a Closing Disclosure has been issued and the loan documents are expected to be delivered and signed by the Buyer by the close of escrow date. Additionally, section 2f requires the buyer to provide the lender with the "Buyer's name, income, social security number, Premises address, estimate of value of the Premises, and mortgage loan amount sought" within three days after Contract acceptance. The reason for this is because the above information (loan application) triggers TRID timelines and assures the seller that the buyer is moving forward with their financing.

Finally, on page 9 of the Contract, lines have been included for: (1) each salesperson's state license number; and (2) each firm's state license number. These changes were made because the new Closing Disclosure requires the state license number of the agents and their respective brokerage.

Vacant Land/Lot Purchase Contract

The Pre-Qualification Form is only required with the Vacant Land/Lot Purchase Contract if the buyer is using "Conventional, FHA, VA, or USDA financing." Additionally, as is now the case with the Contract, an LSU must be submitted within ten (10) days after Contract acceptance.

For more information on the changes to the forms, please see the FAQs on page 6.

Implementation of TRID Compliant AAR Forms

On September 28, 2015, zipForm will simultaneously post two versions of the Residential Resale Real Estate Purchase Contract (RPC) and Pre-Qualification Form within the zipForm and dotloop libraries. The current RPC, dated June 2014, and revised TRID compliant RPC, dated September 2015, will both be active within zipForm for a period of five days. Then, on October 3, 2015, the June 2014 RPC will be removed, leaving only the September 2015 RPC. The same will be true for the Pre-Qualification Form.

From September 28, 2015 to October 3, 2015, REALTORS® will need to determine which version of the RPC and Pre-Qualification Form to utilize. In undertaking this analysis, the sole question that must be answered is whether the buyer's lender will receive a loan application prior to October 3rd. For transactions in which the lender receives a loan application prior to October 3rd, the HUD-1 Settlement Statement will still be used at close of escrow, meaning that the June 2014 RPC should be utilized. In the event that the buyer's lender receives the loan application on or after October 3rd, the REALTOR® should select the September 2015 RPC.

The remaining TRID compliant forms, the Vacant Land/Lot Purchase Contract and the Loan Status Update, revised versions of which will be dated September 2015, will be active in zipForm® and dotloop on October 3rd.

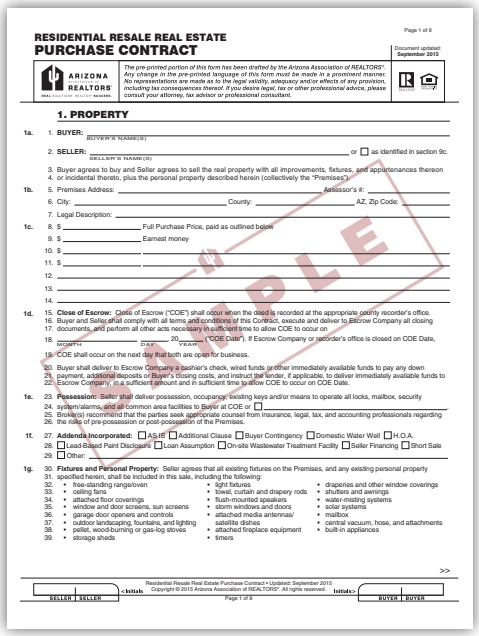
Finally, zipForm and dotloop users will note that revised versions of two additional forms will be posted on October 3rd: (1) the "AS IS" Addendum; and (2) the Short Sale Addendum to the Residential Resale Real Estate Purchase Contract. Neither of these forms were changed in any substantive way. Rather, the only changes made pertain to referenced line numbers within the RPC.

Summary

- Two different versions of the Residential Resale Real Estate Purchase Contract (RPC) will be in zipForm® and dotloop® from September 28 – October 3.
  - When the lender receives a loan application prior to October 3rd, the June 2014 RPC should be used.
  - When the lender receives a loan application on or after October 3rd, the September 2015 RPC should be used.
- Two different versions of the Pre-Qualification Form will be in zipForm® and dotloop® from September 28 – October 3.
  - The Pre-Qualification Form dated February 2013 should be used with the June 2014 RPC.
  - The Pre-Qualification Form dated September 2015 should be used with the September 2015 RPC.
- Revised TRID compliant versions of the Loan Status Update and Vacant Land/Lot Purchase Contract will be available in zipForm® and dotloop® on October 3.

For more information as to what to expect on October 3rd, and to review the revised TRID compliant AAR forms, go to page 6.

Click on the Forms to See Highlighted Changes



RESIDENTIAL RESALE REAL ESTATE
PURCHASE CONTRACT

Document updated: September 2015

ARIZONA REALTORS

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1. PROPERTY

1a. 1. BUYER: BUYER'S NAME(S)

2. SELLER: SELLER'S NAME(S) or ☐ as identified in section 9c.

3. Buyer agrees to buy and Seller agrees to sell the real property with all improvements, fixtures, and appurtenances thereon
4. or incidental thereto, plus the personal property described herein (collectively the "Premises").

1b. 5. Premises Address: Assessor's #:

6. City: County: AZ, Zip Code:

7. Legal Description:

1c. 8. $ Full Purchase Price, paid as outlined below

9. $ Earnest money

10. $

11. $

12.

13.

14.

1d. 15. **Close of Escrow:** Close of Escrow ("COE") shall occur when the deed is recorded at the appropriate county recorder's office.
16. Buyer and Seller shall comply with all terms and conditions of this Contract, execute and deliver to Escrow Company all closing
17. documents, and perform all other acts necessary in sufficient time to allow COE to occur on
18. MONTH DAY YEAR ("COE Date"). If Escrow Company or recorder's office is closed on COE Date,
19. COE shall occur on the next day that both are open for business.

20. Buyer shall deliver to Escrow Company a cashier's check, wired funds or other immediately available funds to pay any down
21. payment, additional deposits or Buyer's closing costs, and instruct the lender, if applicable, to deliver immediately available funds to
22. Escrow Company, in a sufficient amount and in sufficient time to allow COE to occur on COE Date.

1e. 23. **Possession:** Seller shall deliver possession, occupancy, existing keys and/or means to operate all locks, mailbox, security
24. system/alarms, and all common area facilities to Buyer at COE or ☐
25. Broker(s) recommend that the parties seek appropriate counsel from insurance, legal, tax, and accounting professionals regarding
26. the risks of pre-possession or post-possession of the Premises.

1f. 27. **Addenda incorporated:** ☐ AS-IS ☐ Additional Clause ☐ Buyer Contingency ☐ Domestic Water Well ☐ H.O.A.
28. ☐ Lead-Based Paint Disclosure ☐ Loan Assumption ☐ On-site Wastewater Treatment Facility ☐ Seller Financing ☐ Short Sale
29. ☐ Other:

1g. 30. **Fixtures and Personal Property:** Seller agrees that all existing fixtures on the Premises, and any existing personal property
31. specified herein, shall be included in this sale, including the following:
32. • free-standing range/oven • light fixtures • draperies and other window coverings
33. • ceiling fans • towel, curtain and drapery rods • shutters and awnings
34. • attached floor coverings • flush-mounted speakers • water-misting systems
35. • window and door screens, sun screens • storm windows and doors • solar systems
36. • garage door openers and controls • attached media antennas/ satellite dishes • mailbox
37. • outdoor landscaping, fountains, and lighting • attached fireplace equipment • central vacuum, hose, and attachments
38. • pellet, wood-burning or gas-log stoves • timers • built-in appliances
39. • storage sheds

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Residential Resale Real Estate Purchase Contract • Updated: September 2015
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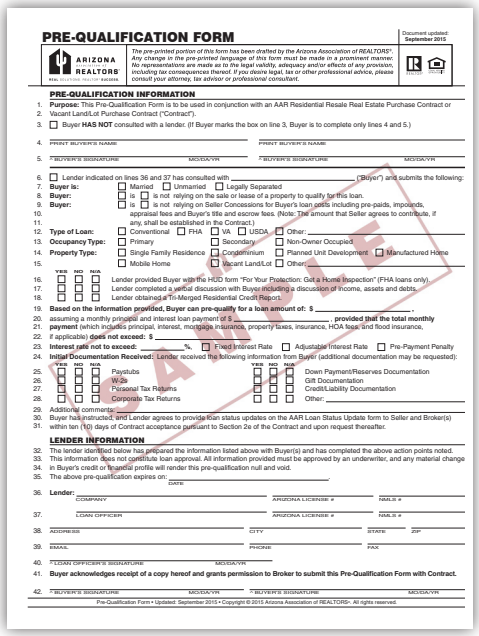
SELLER | SELLER <Initials Initials> BUYER | BUYER

Page 1 of 9



PRE-QUALIFICATION FORM

Document updated: September 2015

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PRE-QUALIFICATION INFORMATION

1. **Purpose:** This Pre-Qualification Form is to be used in conjunction with an AAR Residential Resale Real Estate Purchase Contract or
2. Vacant Land/Lot Purchase Contract ("Contract").
3. ☐ Buyer **HAS NOT** consulted with a lender. (If Buyer marks the box on line 3, Buyer is to complete only lines 4 and 5.)

4. PRINT BUYER'S NAME PRINT BUYER'S NAME

5. * BUYER'S SIGNATURE MO/DA/YR * BUYER'S SIGNATURE MO/DA/YR

6. ☐ Lender indicated on lines 36 and 37 has consulted with ("Buyer") and submits the following:
7. **Buyer is:** ☐ Married ☐ Unmarried ☐ Legally Separated
8. **Buyer:** ☐ is ☐ is not relying on the sale or lease of a property to qualify for this loan.
9. **Buyer:** ☐ is ☐ is not relying on Seller Concessions for Buyer's loan costs including pre-paids, impounds,
10. appraisal fees and Buyer's title and escrow fees. (Note: The amount that Seller agrees to contribute, if
11. any, shall be established in the Contract.)
12. **Type of Loan:** ☐ Conventional ☐ FHA ☐ VA ☐ USDA ☐ Other:
13. **Occupancy Type:** ☐ Primary ☐ Secondary ☐ Non-Owner Occupied
14. **Property Type:** ☐ Single Family Residence ☐ Condominium ☐ Planned Unit Development ☐ Manufactured Home
15. ☐ Mobile Home ☐ Vacant Land/Lot ☐ Other:

YES	NO	N/A	
☐	☐	☐	16. Lender provided Buyer with the HUD form "For Your Protection: Get a Home Inspection" (FHA loans only).
☐	☐	☐	17. Lender completed a verbal discussion with Buyer including a discussion of income, assets and debts.
☐	☐	☐	18. Lender obtained a Tri-Merged Residential Credit Report.

19. **Based on the information provided, Buyer can pre-qualify for a loan amount of: $ _____,**
20. assuming a monthly principal and interest loan payment of $ _____, **provided that the total monthly**
21. **payment** (which includes principal, interest, mortgage insurance, property taxes, insurance, HOA fees, and flood insurance,
22. if applicable) **does not exceed: $ _____**
23. **Interest rate not to exceed: _____%.** ☐ Fixed Interest Rate ☐ Adjustable Interest Rate ☐ Pre-Payment Penalty
24. **Initial Documentation Received:** Lender received the following information from Buyer (additional documentation may be requested):

YES	NO	N/A		YES	NO	N/A	
☐	☐	☐	25. Paystubs	☐	☐	☐	Down Payment/Reserves Documentation
☐	☐	☐	26. W-2s	☐	☐	☐	Gift Documentation
☐	☐	☐	27. Personal Tax Returns	☐	☐	☐	Credit/Liability Documentation
☐	☐	☐	28. Corporate Tax Returns	☐	☐	☐	Other:

29. Additional comments:
30. Buyer has instructed, and Lender agrees to provide loan status updates on the AAR Loan Status Update form to Seller and Broker(s)
31. within ten (10) days of Contract acceptance pursuant to Section 2e of the Contract and upon request thereafter.

LENDER INFORMATION

32. The lender identified below has prepared the information listed above with Buyer(s) and has completed the above action points noted.
33. This information does not constitute loan approval. All information provided must be approved by an underwriter, and any material change
34. in Buyer's credit or financial profile will render this pre-qualification null and void.
35. The above pre-qualification expires on: DATE

36. **Lender:** COMPANY ARIZONA LICENSE # NMLS #

37. LOAN OFFICER ARIZONA LICENSE # NMLS #

38. ADDRESS CITY STATE ZIP

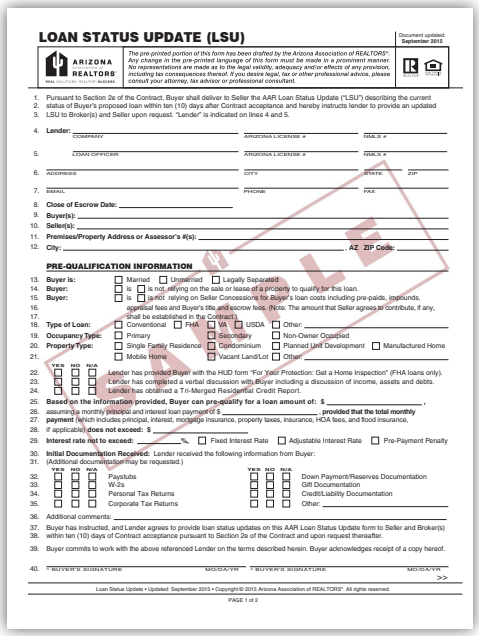
39. EMAIL PHONE FAX

40. LOAN OFFICER'S SIGNATURE MO/DA/YR

41. **Buyer acknowledges receipt of a copy hereof and grants permission to Broker to submit this Pre-Qualification Form with Contract.**

42. * BUYER'S SIGNATURE MO/DA/YR * BUYER'S SIGNATURE MO/DA/YR

Pre-Qualification Form • Updated: September 2015 • Copyright © 2015 Arizona Association of REALTORS®. All rights reserved.



LOAN STATUS UPDATE (LSU)

Document updated: September 2015

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1. Pursuant to Section 2e of the Contract, Buyer shall deliver to Seller the AAR Loan Status Update ("LSU") describing the current
2. status of Buyer's proposed loan within ten (10) days after Contract acceptance and hereby instructs lender to provide an updated
3. LSU to Broker(s) and Seller upon request. "Lender" is indicated on lines 4 and 5.

4. **Lender:** COMPANY ARIZONA LICENSE # NMLS #

5. LOAN OFFICER ARIZONA LICENSE # NMLS #

6. ADDRESS CITY STATE ZIP

7. EMAIL PHONE FAX

8. **Close of Escrow Date:**

9. **Buyer(s):**

10. **Seller(s):**

11. **Premises/Property Address or Assessor's #(s):**

12. **City:** **AZ ZIP Code:**

PRE-QUALIFICATION INFORMATION

13. **Buyer is:** ☐ Married ☐ Unmarried ☐ Legally Separated
14. **Buyer:** ☐ is ☐ is not relying on the sale or lease of a property to qualify for this loan.
15. **Buyer:** ☐ is ☐ is not relying on Seller Concessions for Buyer's loan costs including pre-paids, impounds,
16. appraisal fees and Buyer's title and escrow fees. (Note: The amount that Seller agrees to contribute, if any,
17. shall be established in the Contract.)
18. **Type of Loan:** ☐ Conventional ☐ FHA ☐ VA ☐ USDA ☐ Other:
19. **Occupancy Type:** ☐ Primary ☐ Secondary ☐ Non-Owner Occupied
20. **Property Type:** ☐ Single Family Residence ☐ Condominium ☐ Planned Unit Development ☐ Manufactured Home
21. ☐ Mobile Home ☐ Vacant Land/Lot ☐ Other:

YES	NO	N/A	
☐	☐	☐	22. Lender has provided Buyer with the HUD form "For Your Protection: Get a Home Inspection" (FHA loans only).
☐	☐	☐	23. Lender has completed a verbal discussion with Buyer including a discussion of income, assets and debts.
☐	☐	☐	24. Lender has obtained a Tri-Merged Residential Credit Report.

25. **Based on the information provided, Buyer can pre-qualify for a loan amount of: $ _____,**
26. assuming a monthly principal and interest loan payment of $ _____, **provided that the total monthly**
27. **payment** (which includes principal, interest, mortgage insurance, property taxes, insurance, HOA fees, and flood insurance,
28. if applicable) **does not exceed: $ _____**
29. **Interest rate not to exceed: _____%.** ☐ Fixed Interest Rate ☐ Adjustable Interest Rate ☐ Pre-Payment Penalty
30. **Initial Documentation Received:** Lender received the following information from Buyer:
31. (Additional documentation may be requested.)

YES	NO	N/A		YES	NO	N/A	
☐	☐	☐	32. Paystubs	☐	☐	☐	Down Payment/Reserves Documentation
☐	☐	☐	33. W-2s	☐	☐	☐	Gift Documentation
☐	☐	☐	34. Personal Tax Returns	☐	☐	☐	Credit/Liability Documentation
☐	☐	☐	35. Corporate Tax Returns	☐	☐	☐	Other:

36. Additional comments:
37. Buyer has instructed, and Lender agrees to provide loan status updates on this AAR Loan Status Update form to Seller and Broker(s)
38. within ten (10) days of Contract acceptance pursuant to Section 2e of the Contract and upon request thereafter.

39. Buyer commits to work with the above referenced Lender on the terms described herein. Buyer acknowledges receipt of a copy hereof.

40. * BUYER'S SIGNATURE MO/DA/YR * BUYER'S SIGNATURE MO/DA/YR

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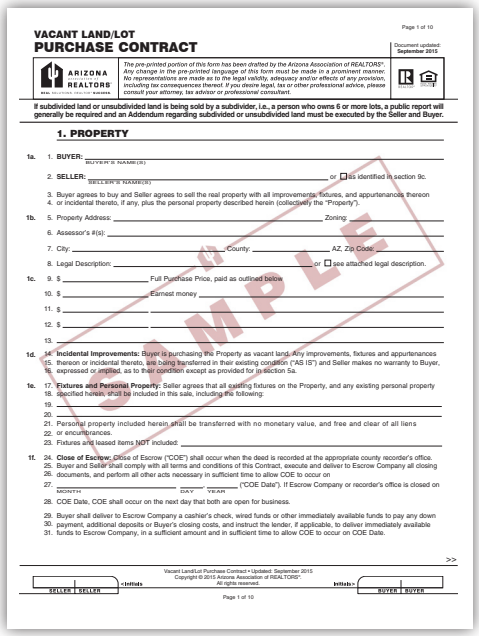
PAGE 1 of 2

Residential Resale Real Estate Purchase Contract

Pre-Qualification Form

Loan Status Update Form



VACANT LAND/LOT
PURCHASE CONTRACT

Document updated: September 2015

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If subdivided land or unsubdivided land is being sold by a subdivider, i.e., a person who owns 6 or more lots, a public report will generally be required and an Addendum regarding subdivided or unsubdivided land must be executed by the Seller and Buyer.

1. PROPERTY

1a. 1. BUYER: BUYER'S NAME(S)

2. SELLER: SELLER'S NAME(S) or ☐ as identified in section 9c.

3. Buyer agrees to buy and Seller agrees to sell the real property with all improvements, fixtures, and appurtenances thereon
4. or incidental thereto, if any, plus the personal property described herein (collectively the "Property").

1b. 5. Property Address: Zoning:

6. Assessor's #(s):

7. City: County: AZ, Zip Code:

8. Legal Description: ☐ or ☐ see attached legal description.

1c. 9. $ Full Purchase Price, paid as outlined below

10. $ Earnest money

11. $

12. $

13.

1d. 14. **Incidental Improvements:** Buyer is purchasing the Property as vacant land. Any improvements, fixtures and appurtenances
15. thereon or incidental thereto, are being transferred in their existing condition ("AS IS") and Seller makes no warranty to Buyer,
16. expressed or implied, as to their condition except as provided for in section 5a.

1e. 17. **Fixtures and Personal Property:** Seller agrees that all existing fixtures on the Property, and any existing personal property
18. specified herein, shall be included in this sale, including the following:

19.

20.

21. Personal property included herein shall be transferred with no monetary value, and free and clear of all liens
22. or encumbrances.
23. Fixtures and leased items NOT included:

1f. 24. **Close of Escrow:** Close of Escrow ("COE") shall occur when the deed is recorded at the appropriate county recorder's office.
25. Buyer and Seller shall comply with all terms and conditions of this Contract, execute and deliver to Escrow Company all closing
26. documents, and perform all other acts necessary in sufficient time to allow COE to occur on
27. MONTH DAY YEAR ("COE Date"). If Escrow Company or recorder's office is closed on
28. COE Date, COE shall occur on the next day that both are open for business.

29. Buyer shall deliver to Escrow Company a cashier's check, wired funds or other immediately available funds to pay any down
30. payment, additional deposits or Buyer's closing costs, and instruct the lender, if applicable, to deliver immediately available
31. funds to Escrow Company, in a sufficient amount and in sufficient time to allow COE to occur on COE Date.

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Vacant Land/Lot Purchase Contract • Updated: September 2015
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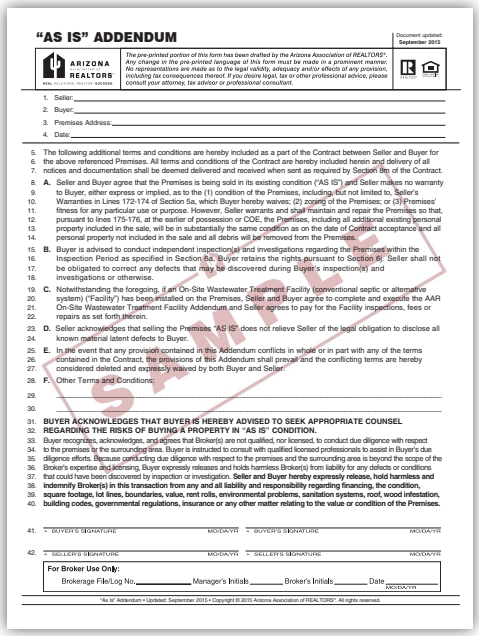
SELLER | SELLER <Initials Initials> BUYER | BUYER

Page 1 of 10



"AS IS" ADDENDUM

Document updated: September 2015

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

5. The following additional terms and conditions are hereby included as a part of the Contract between Seller and Buyer for
6. the above referenced Premises. All terms and conditions of the Contract are hereby included herein and delivery of all
7. notices and documentation shall be deemed delivered and received when sent as required by Section 9m of the Contract.

8. **A.** Seller and Buyer agree that the Premises is being sold in its existing condition ("AS IS") and Seller makes no warranty
9. to Buyer, either express or implied, as to the (1) condition of the Premises, including, but not limited to, Seller's
10. Warranties in Lines 172-174 of Section 5a, which Buyer hereby waives; (2) zoning of the Premises; or (3) Premises'
11. fitness for any particular use or purpose. However, Seller warrants and shall maintain and repair the Premises so that,
12. pursuant to lines 175-176, at the earlier of possession or COE, the Premises, including all additional existing personal
13. property included in the sale, will be in substantially the same condition as on the date of Contract acceptance and all
14. personal property not included in the sale and all debris will be removed from the Premises.

15. **B.** Buyer is advised to conduct independent inspection(s) and investigations regarding the Premises within the
16. Inspection Period as specified in Section 6a. Buyer retains the rights pursuant to Section 6i. Seller shall not
17. be obligated to correct any defects that may be discovered during Buyer's inspection(s) and
18. investigations or otherwise.

19. **C.** Notwithstanding the foregoing, if an On-Site Wastewater Treatment Facility (conventional septic or alternative
20. system) ("Facility") has been installed on the Premises, Seller and Buyer agree to complete and execute the AAR
21. On-Site Wastewater Treatment Facility Addendum and Seller agrees to pay for the Facility inspections, fees or
22. repairs as set forth therein.

23. **D.** Seller acknowledges that selling the Premises "AS IS" does not relieve Seller of the legal obligation to disclose all
24. known material latent defects to Buyer.

25. **E.** In the event that any provision contained in this Addendum conflicts in whole or in part with any of the terms
26. contained in the Contract, the provisions of this Addendum shall prevail and the conflicting terms are hereby
27. considered deleted and expressly waived by both Buyer and Seller.

28. **F.** Other Terms and Conditions:

29.

30.

31. **BUYER ACKNOWLEDGES THAT BUYER IS HEREBY ADVISED TO SEEK APPROPRIATE COUNSEL**
32. **REGARDING THE RISKS OF BUYING A PROPERTY IN "AS IS" CONDITION.**
33. Buyer recognizes, acknowledges, and agrees that Broker(s) are not qualified, nor licensed, to conduct due diligence with respect
34. to the premises or the surrounding area. Buyer is instructed to consult with qualified licensed professionals to assist in Buyer's due
35. diligence efforts. Because conducting due diligence with respect to the premises and the surrounding area is beyond the scope of the
36. Broker's expertise and licensing, Buyer expressly releases and holds harmless Broker(s) from liability for any defects or conditions
37. that could have been discovered by inspection or investigation. **Seller and Buyer hereby expressly release, hold harmless and**
38. **indemnify Broker(s) in this transaction from any and all liability and responsibility regarding financing, the condition,**
39. **square footage, lot lines, boundaries, value, rent rolls, environmental problems, sanitation systems, roof, mold infestation,**
40. **building codes, governmental regulations, insurance or any other matter relating to the value or condition of the Premises.**

41. * BUYER'S SIGNATURE MO/DA/YR * BUYER'S SIGNATURE MO/DA/YR

42. * SELLER'S SIGNATURE MO/DA/YR * SELLER'S SIGNATURE MO/DA/YR

For Broker Use Only:
Brokerage File/Log No. Manager's Initials Broker's Initials Date MO/DA/YR

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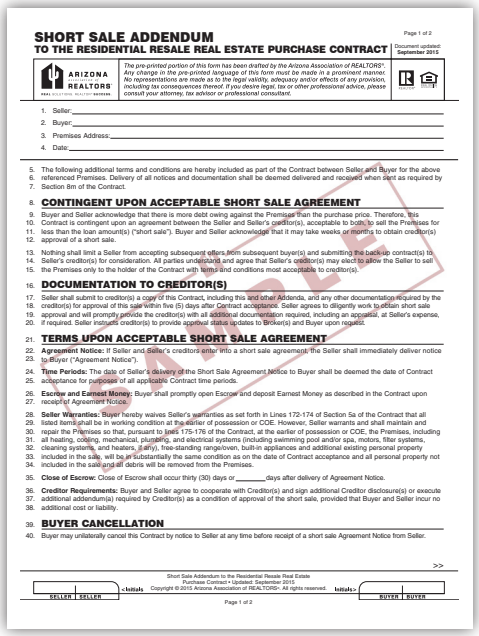

SHORT SALE ADDENDUM
TO THE RESIDENTIAL RESALE REAL ESTATE PURCHASE CONTRACT

Page 1 of 2

Document updated: September 2015

ARIZONA REALTORS

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.

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

5. The following additional terms and conditions are hereby included as part of the Contract between Seller and Buyer for the above
6. referenced Premises. Delivery of all notices and documentation shall be deemed delivered and received when sent as required by
7. Section 9m of the Contract.

8. CONTINGENT UPON ACCEPTABLE SHORT SALE AGREEMENT

9. Buyer and Seller acknowledge that there is more debt owing against the Premises than the purchase price. Therefore, this
10. Contract is contingent upon an agreement between the Seller and Seller's creditor(s), acceptable to both, to sell the Premises for
11. less than the loan amount(s) ("short sale"). Buyer and Seller acknowledge that it may take weeks or months to obtain creditor(s)
12. approval of a short sale.

13. Nothing shall limit a Seller from accepting subsequent offers from subsequent buyer(s) and submitting the back-up contract(s) to
14. Seller's creditor(s) for consideration. All parties understand and agree that Seller's creditor(s) may elect to allow the Seller to sell
15. the Premises only to the holder of the Contract with terms and conditions most acceptable to creditor(s).

16. DOCUMENTATION TO CREDITOR(S)

17. Seller shall submit to creditor(s) a copy of this Contract, including this and other Addenda, and any other documentation required by the
18. creditor(s) for approval of this sale within five (5) days after Contract acceptance. Seller agrees to diligently work to obtain short sale
19. approval and will promptly provide the creditor(s) with all additional documentation required, including an appraisal, at Seller's expense,
20. if required. Seller instructs creditor(s) to provide agreed-to short sale updates to Broker(s) and Buyer upon request.

21. TERMS UPON ACCEPTABLE SHORT SALE AGREEMENT

22. **Agreement Notice:** If Seller and Seller's creditors enter into a short sale agreement, the Seller shall immediately deliver notice
23. to Buyer ("Agreement Notice").

24. **Time Periods:** The date of Seller's delivery of the Short Sale Agreement Notice to Buyer shall be deemed the date of Contract
25. acceptance for purposes of all applicable Contract time periods.

26. **Escrow and Earnest Money:** Buyer shall promptly open Escrow and deposit Earnest Money as described in the Contract upon
27. receipt of Agreement Notice.

28. **Seller Warranties:** Buyer hereby waives Seller's warranties as set forth in Lines 172-174 of Section 5a of the Contract that all
29. listed items shall be in working condition at the earlier of possession or COE. However, Seller warrants and shall maintain and
30. repair the Premises so that, pursuant to lines 175-176 of the Contract, at the earlier of possession or COE, the Premises, including
31. all heating, cooling, mechanical, plumbing, and electrical systems (including swimming pool and/or spa, motors, filter systems,
32. cleaning systems, and heaters, if any), free-standing range/oven, built-in appliances and additional existing personal property
33. included in the sale, will be in substantially the same condition as on the date of Contract acceptance and all personal property not
34. included in the sale and all debris will be removed from the Premises.

35. **Close of Escrow:** Close of Escrow shall occur thirty (30) days or _____ days after delivery of Agreement Notice.

36. **Creditor Requirements:** Buyer and Seller agree to cooperate with Creditor(s) and sign additional Creditor disclosure(s) or execute
37. additional addendum(a) required by Creditor(s) as a condition of approval of the short sale, provided that Buyer and Seller incur no
38. additional cost or liability.

39. BUYER CANCELLATION

40. Buyer may unilaterally cancel this Contract by notice to Seller at any time before receipt of a short sale Agreement Notice from Seller.

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Short Sale Addendum to the Residential Resale Real Estate
Purchase Contract • Updated: September 2015
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SELLER | SELLER <Initials Initials> BUYER | BUYER

Page 1 of 2

Vacant Land Lot Purchase Contract

AS IS Addendum

Short Sale Addendum

F.A.Q.

REVISED TILA-RESPA COMPLIANCE

By Scott Drucker, Esq. Arizona Association of REALTORS® General Counsel

In September 2015, the Arizona Association of REALTORS® will release revised versions of the following four forms: (1) Pre-Qualification Form; (2) Loan Status Update; (3) Residential Resale Real Estate Purchase Contract; and (4) Vacant Land/ Lot Purchase Contract. To better understand the changes made to these forms, the reason for the changes, and how the revised forms should be utilized, below are frequently asked questions (FAQs) followed by answers and pertinent analysis. Please read these FAQs carefully before viewing the sample forms below.

Q1: Why were these forms revised?
A1: The Consumer Financial Protection Bureau (CFPB) is implementing revised rules and forms that combine disclosures consumers receive in connection with applying for and closing on a mortgage loan. To ensure that AAR's forms comply with these rules and follow the new timelines, revisions were required.

Q2: In revising the Residential Resale Real Estate Purchase Contract and the Vacant Land/Lot Purchase Contract, were any changes made that are unrelated to the new TILA-RESPA Integrated Disclosure (TRID) rules imposed by the CFPB?
A2: No. At this time, the only changes made to these two contracts are those necessitated by the new TRID rules.

Q3: When do I need to start using these new forms?
A3: The new forms should be used in conjunction with transactions in which the lender receives a loan application after October 3, 2015.

Q4: Line 54 of the Residential Resale Real Estate Purchase Contract now requires that an AAR Pre-Qualification Form be attached to the Contract. What should the buyer do if they have not yet obtained a Pre-Qualification form, but nonetheless wish to submit a purchase offer?
A4: Under these circumstances, the buyer should indicate on line three of the Pre-Qualification Form that "Buyer HAS NOT consulted with a lender." The buyer should then print their name on line four and sign and date on line five. If the box on line three is marked, the buyer does not complete lines six through 42 of the Pre-Qualification Form.

Q5: When must the buyer first deliver to seller a completed Loan Status Update?
A5: As evidenced by Section 2e of the Residential Resale Real Estate Purchase Contract, an initial Loan Status Update must be delivered to the seller "within ten days after Contract acceptance." This is a change from the prior Residential Resale Real Estate Purchase Contract, which required initial delivery of the Loan Status Update within five days after Contract acceptance.

Q6: What should a buyer do if their lender refuses to complete a Loan Status Update?
A6: As is currently the case, the buyer should complete, at a minimum, lines 1-40 of the Loan Status Update. The failure of the buyer's lender to complete the Loan Status Update is not a potential breach and, therefore, not subject to a cure period notice because the lender is not a party to the Contract.

Q7: Line 39 of the Loan Status Update states "Buyer commits to work with the above referenced Lender on the terms described herein." Is the term "commits to work with" synonymous with the term "intends to proceed" as used in 12 CFR §1026.19?
A7: No. Intends to proceed is a defined term of art by which a borrower communicates to the lender that they choose to proceed with the loan transaction after having received the Loan Estimate. A buyer can therefore commit to work with a lender via the Loan Status Update and not yet have given formal notice of intent to proceed. If that is the case, the buyer would sign on line 40 of the Loan Status Update, but the box on line 45 would be marked "NO" as that line asks if the "Buyer indicated to Lender an intent to proceed with the transaction after having received the Loan Estimate."

Q8: Section 2f of the Residential Resale Real Estate Purchase Contract now requires the buyer, "within three days after Contract acceptance," to provide the lender with "Buyer's name, income, social security number, Premises address, estimate of value of the Premises, and mortgage loan amount sought." Why was this requirement inserted?
A8: The CFPB has defined a loan application as the borrower's submission to the lender of the above-referenced six pieces of

information. Submission of the loan application triggers the lender's delivery of the Loan Estimate to the borrower, thereby beginning the timeline that will be followed through close of escrow. To ensure a timely closing, it is important that the timeline commence as early as possible, and for that reason, the borrower is now required to submit these six pieces of information to the lender within three days after Contract acceptance.

Q9: As part of their Loan Application, the borrower is required to provide the lender with an "estimate of value of the Premises," in addition to five other pieces of information. What does "estimate of value of the Premises" mean?
A9: The estimate of value of the Premises will typically be the contract price.

Q10: What action must the buyer take three days prior to close of escrow?
A10: Three days prior to close of escrow the Buyer must either: (i) sign all loan documents; or (ii) deliver to Seller or Escrow Company notice of loan approval without PTD conditions AND date(s) of receipt of Closing Disclosure(s) from Lender; or (iii) deliver to Seller or Escrow Company notice of inability to obtain loan approval without PTD conditions. See Section 2b of the Residential Resale Real Estate Purchase Contract.

Q11: Why is it important for the seller to know the date(s) on which the buyer received the Closing Disclosure(s) from their lender?
A11: This information is important to the seller because it will help the seller understand when the transaction may close escrow. More specifically, the loan cannot be consummated (i.e. – execution of the promissory note and deed of trust) less than three business days after the Closing Disclosure is received by the buyer.

Q12: What changes were made to page nine of the Residential Resale Real Estate Purchase Contract and page ten of the Vacant Land/Lot Purchase Contract? Why were these changes made?
A12: The last page of these two contracts now require the agent's state license number and the brokerage's state license number. Page five of the new Closing Disclosure contains a section titled "Contact Information." Within that section, the lender must enter the "State License ID" for the real estate agent and the "State License ID" for their Brokerage. This is a new requirement as this information did not appear on the HUD-1. By identifying these license numbers in the Contract, it will ensure that the lender is in possession of the information needed to properly complete the Closing Disclosure.

Q13: Lines 397 and 409 of the Residential Resale Real Estate Purchase Contract ask for the "Firm Address." If the agent works out of a branch location and not the corporate headquarters, which address should be entered?
A13: The address listed should be "the identified person's place of business where the primary contact for the transaction is located (usually the local office) rather than a general corporate headquarters address."

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

DOL Issues New Warning: Do Not Misclassify Workers As Independent Contractors

BY ART BOURQUE, ESQ., BOURQUE LAW FIRM, P.C.

The United States Department of Labor (DOL) and other government agencies are aggressively pursuing businesses who misclassify employees as independent contractors.

On July 15, 2015 the DOL announced that it will be further cracking down on businesses that misclassify workers. The DOL also provided guidance as to how businesses should determine whether workers are employees or independent contractors. This HR Law Insider edition helps businesses interpret the DOL's guidance in order to ensure compliance with the law (and avoid costly penalties).

THE DOL AND OTHER GOVERNMENT AGENCIES ARE ON A MISSION

On Monday the DOL proclaimed:
"The DOL continues to receive numerous complaints from workers alleging misclassification, and the Department continues to bring successful enforcement actions against employers who misclassify workers. In addition, many states have acknowledged this problematic trend and have responded with legislation and misclassification task forces. Understanding that combating misclassification requires a multi-pronged approach, the DOL has entered into memoranda of understanding with many of these states, as well as the Internal Revenue Service. In conjunction with these efforts, the DOL believes that additional guidance regarding the application of the standards for determining who is an employee under the Fair Labor Standards Act (FLSA) may be helpful to the regulated community in classifying workers and ultimately in curtailing misclassification."

Thus, businesses should *immediately* evaluate all of their independent contractor relationships with counsel — ensuring that each relationship has been properly classified.

THE STANDARD TO DETERMINE WHETHER A WORKER IS AN EMPLOYEE OR INDEPENDENT CONTRACTOR: THE DOL'S TEST FAVORS FINDING THAT WORKERS ARE EMPLOYEES

The FLSA's definition of "'employ' includes to suffer or permit to work." This "suffer or permit" concept has broad applicability and is critical to determining whether a worker is an employee and thus entitled to the FLSA's protections. An "entity 'suffers or permits' an individual to work if, *as a matter of economic reality, the individual is dependent on the entity.*"

The Supreme Court has developed a multi-factor "economic realities" test to determine whether a worker is an employee or an independent contractor under the FLSA. The factors typically include: (A) the extent to which the work performed is an integral part of the employer's business; (B) the worker's opportunity for profit or loss depending on his or her managerial skill; (C) the extent of the relative investments of the employer and the worker; (D) whether the work performed requires special skills and initiative; (E) the permanency of the relationship; and (F) the degree of control exercised or retained by the employer.

The DOL's guidance states that "applying the economic realities test, *most workers are employees under the FLSA.*"

In undertaking the test, each factor is examined and analyzed in relation to one another, and no single factor is determinative. The factors should be considered in totality to determine whether a worker is economically dependent on

the employer, and thus an employee. The factors should not be applied as a checklist, but rather the outcome must be determined by a qualitative rather than a quantitative analysis. The application of the economic realities factors is guided by the overarching principle that the FLSA should be liberally construed to provide broad coverage for workers, as evidenced by the Act's defining "employ" as "to suffer or permit to work."

In applying the economic realities factors, courts have described independent contractors as those workers with economic independence who are operating a business of their own. On the other hand, workers who are economically dependent on the employer, regardless of skill level, are employees covered by the FLSA. "Ultimately, in considering economic dependence, the court focuses on whether an individual is 'in business for himself' or is 'dependent upon finding employment in the business of others.'"

Conclusion
The DOL concluded its new guidance with the following message/warning to employers:

"In sum, *most workers are employees under the FLSA's broad definitions*. The very broad definition of employment under the FLSA as "to suffer or permit to work" and the Act's intended expansive coverage for workers must be considered when applying the economic realities factors to determine whether a worker is an employee or an independent contractor. The correct classification of workers as employees or independent contractors has critical implications for the legal protections that workers receive, particularly when misclassification occurs in industries employing low wage workers."

In my experience, the DOL has been true to its word: audits and penalties are on the rise. This week's DOL pronouncement is a clarion call to employers that enforcement will further increase. Companies should thus conduct audits with counsel now to either (1) reclassify improperly classified workers or (2) make changes that will cause improperly classified workers to properly fit within their existing classification.

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Articles and Resources from AAR and NAR:
Common Provisions in Independent Contractor Agreements
https://www.aaronline.com/2014/07 /common-provisions-indep-contr/

Independent Contractor Agreements
https://www.aaronline.com/2014/06/independent-contractor-agrmt/

Managing Your Independent Contractor Relationships
http://blog.aaronline.com/2014/05/managing-your-independent-contractor-relationships/

Independent Contractor Status FAQ's
http://www.realtor.org/law-and-ethics/independent-contractor-status-frequently-asked-questions

CALLING ALL BROKERS

As a broker, have you ever wondered which one of your agents responds to the REALTOR® issued Calls For Action (CFA)? If so, wonder no more. In order for you to know which of your agents completed the CFA, you need to log-on using the link below to access the information. Once you have logged-in you will see a screen with an "Agent Report" button next to the Calls for Action category. In the most recent case, it is Stop Patent Trolls. It will show the agents who have NOT responded. So while it isn't a percentage, you can easily calculate the number of agents who haven't responded vs. the total number of agents within the company. As an added bonus, you can click on the link on the page of non-responding agents to send them a reminder email to complete the CFA.

Broker Report:
http://www.realtoractioncenter.com/realtors/brokers/broker-reports-login.html

Prepossession and Post Possession Risks

Prepossession and Post Possession agreements carry inherent risks and raise a variety of issues. However, there are times that a buyer would like to move into the property before close of escrow (prepossession) or the seller would like to stay in the property following close of escrow (post possession). For instance, the buyer's lease may be terminating before close of escrow, or the seller may not be able move into their new home until after close of escrow. While these are situations that seemingly warrant prepossession or post possession of a property, both parties should be aware of the many issues that can arise in a prepossession or post possession. For that reason, Commissioner's Rule R4-28-1101(K) provides that **"A salesperson or broker shall recommend to a client that the client seek appropriate counsel from insurance, legal, tax, and accounting professionals regarding the risks of pre-possession or post possession of a property."**

Because of the issues involved with prepossession or post possession of a property, a buyer and seller should enter into a written agreement so as to ensure the parties' rights and obligations are documented. Numerous times in the past, the Arizona Association of REALTORS® Risk Management Committee has considered requests to develop a "standard" prepossession and post possession agreement. However the committee has never approved the development of such a form due to the inherent risk and liability. Consequently, some brokers have developed prepossession or post possession agreement forms but many advise against the agreements altogether.

Prepossession

Typically, the seller is responsible for any damage to the property prior to close of escrow. However, in the event a buyer prepossesses the property, the buyer is now responsible. More specifically, the Purchase Contract at the "Seller Warranties" and "Risk of Loss" provisions provides that the seller is responsible only until close of escrow or possession, whichever is earlier. Accordingly, once the buyer prepossesses the property, the seller is no longer responsible for seller warranties or damage to the property because those obligations are terminated under the terms of the Purchase Contract.

If the buyer and seller opt to enter into a lease agreement for the prepossession, the parties' rights and obligations during the tenancy are now governed by the Arizona Residential Landlord and Tenant Act ("ARLTA"). This can be problematic as ARLTA provides that the landlord is responsible for maintaining fit premises. A.R.S. §33-1324. In other words, under ARLTA, the landlord/seller is responsible to ensure that the electrical, plumbing, and heating/cooling are in good and safe working condition during the tenant's tenancy. Thus, if the parties enter into a lease agreement, the seller is again responsible for the property despite the fact the seller has moved out and the home is now exclusively occupied by the buyer.

Due to the inherent conflict between ARLTA and the Purchase Contract, the buyer and seller should probably opt to enter into a prepossession agreement by way of an addendum rather than a lease. Significantly, if the parties make the prepossession agreement an addendum to the parties' Purchase Contract, ARLTA should not apply. See A.R.S. § 33-1308.

Items the buyer and seller may want to address in a prepossession agreement are:

- **Insurance:** Who is responsible in the case of damage to the property? What damage is insured? The seller of the home should review their homeowners policy and confirm with their insurer whether a tenant in the property changes any of the terms of their policy. Additionally, the buyer may want to purchase renter's insurance until the buyer legally owns the home.

- **Walkthrough:** Did the parties agree on the condition of the premises prior to the buyer's prepossession (e.g. walk through inspection)? What if the buyer claims the property is not in substantially the same condition and requests additional items for the seller to correct?

- **Repairs and Maintenance:** Who is responsible for repairs? The parties should address who is responsible for any repairs and maintenance of the property during the prepossession. The parties may want to consider purchasing a home warranty that will cover the property prior to close of escrow.

- **Occupancy Rights:** Who will occupy the property? Are animals allowed? Is smoking allowed?

- **Rental Payments:** How much rent will be charged for the prepossession? Who pays the utility bills during the prepossession?

- **Security Deposit:** Will there be an additional security deposit in case the sale falls through and the property is damaged?

- **Buyer Contingencies:** What if there are contingencies that have not been met prior to the buyer's prepossession? Have the parties decided to waive the contingencies or are they still in place therefore allowing the buyer to cancel the Purchase Contract if a contingency is not met?

- **Alterations:** What if the buyer moves in and begins to alter the property and later finds out they cannot purchase the property?

- **Buyer's Remorse/Failed Transaction:** What happens if the sale is not completed? When does the buyer/tenant have to move out? What happens if the buyer/tenant refuses to move out?

Post Possession

Because the obligations in the Purchase Contract are fulfilled following close of escrow, the parties can choose to either enter into a lease agreement (which would be governed by ARLTA) or a post possession agreement. The decision of which type of agreement is appropriate may include a discussion of whether the post possession is for 3 days or 30 days. Regardless of which avenue the parties decide, the parties should be aware that the obligations to repair and maintain the property are no longer the seller's responsibility; they are the buyer's responsibility. Accordingly, at a minimum, the parties should address the following:

- **Insurance – Homeowners and Renters:** The buyer will most likely have a homeowners policy. The seller should purchase a renters policy.

- **Property Condition:** The condition of the property prior to tenancy should be well documented and agreed on by both parties (e.g. move in/move out inspection). The parties may further want to consider purchasing a home warranty.

- **Term:** The tenancy period should be determined. The parties should further discuss what happens if the seller needs to stay in the property for a longer or shorter period of time than the agreement states.

- **Security Deposit:** Will there be a security deposit in case the seller damages anything in the property during seller's tenancy? If using a lease agreement, ARLTA provides that a landlord cannot charge more than 1.5 times the amount of one month's rent. SeeR.S. §33-1321.

- **Rental Payments:** How much is rent? Will rent be prorated?

- **Occupancy Rights:** Who will occupy the property? Are there any animals? Is smoking permitted?

- **Utilities:** Who pays the utility bills?

Due to the risk and liability involved with prepossession and post possession of a property, the best practice is for the parties to not enter into a prepossession or post possession agreement. However, if the parties insist on entering into such an agreement, the real estate agent should consult with their broker and advise their client to seek appropriate counsel from insurance, legal, tax, and accounting professionals regarding the risks.

About the Authors: Arizona Association of REALTORS® ("AAR") Chief Executive Officer K. Michelle Lind is an attorney, a State Bar of Arizona board certified real estate specialist, and the author of Arizona Real Estate: A Professional's Guide to Law and Practice. AAR is the largest professional trade association in the state comprised of 40,000 members involved in the real estate industry, allied industries and firms.

Nikki J. Salgat, Esq. is associate counsel to the Arizona Association of REALTORS®. 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.

BINSR Basics

K. MICHELLE LIND, ESQ., ARIZONA ASSOCIATION OF REALTORS® CHIEF EXECTUTIVE OFFICER

"Is the BINSR the Time to 'Renegotiate' the Price?" and Other Frequently Asked Questions

Although the form has been around for several years, we have received multiple inquiries on the Legal Hotline addressing the use of the Residential Buyer's Inspection Notice and Seller's Response (BINSR). The purpose of the BINSR is two-fold. First, the buyers acknowledge that they have done all desired inspections, verified important information, and make certain acknowledgements with respect to the inspection and the information available. The second purpose is for the parties to negotiate the repair of items disapproved during the inspection.

Below are some frequently asked questions that summarize the issues that we have addressed on the hotline recently:

Is the BINSR the time to "renegotiate" the price?
No.The BINSR is not designed to be used as tool to renegotiate the purchase price. The BINSR is designed to give the seller an opportunity to fix or correct items disapproved during the inspection process. In the real world, the parties often use the BINSR as a mechanism to negotiate purchase price. Bear in mind, however, that is not the proper use of the form.

Do the parties have to sign the BINSR?
Yes. The BINSR is in effect an addendum to the contract. Accordingly, based on the statute of frauds, the BINSR must be signed by all parties to be enforceable. Additionally, based on community property principals, if a husband and wife are involved, both spouses need to sign the BINSR.

Must a licensed contractor be utilized to make the requested repairs?
A contractor's license is required by statute for work that exceeds $1,000 in value. Thus, to the extent that the requested repairs exceed $1,000, the seller should hire a licensed contractor to make those repairs.

If the buyer forgets to request that an item be repaired, may he reissue another BINSR?
The BINSR specifically says on the first page that the "Buyer is not entitled to change or modify Buyer's election after this notice is delivered to Seller." Therefore, it is critical that the buyer identify all items to be repaired in the BINSR the first time.

Does the buyer need to ask that warranted items be repaired as part of the BINSR?
Yes. The seller warrants in section 5(a) of the contract that all heating, cooling, mechanical, plumbing and electrical systems will be in working condition at the close of escrow. Lines 255 – 256 of the contract state "Buyer shall provide Seller with notice of any non-working warranted item(s) of which Buyer becomes aware during the Inspection Period or the Seller warranty for that item(s) shall be waived." In the event that a warranted item is not working, buyer should therefore notify the seller by way of the BINSR which provides a section on the second page whereby the buyer can advise the seller of the specific non-working warranted item(s). .

Can a buyer waive the inspection and BINSR process?
Under virtually all circumstances, the buyer should not waive an inspection. However, if the buyer disregards the advice given by the agent and set forth in multiple AAR transaction forms, a buyer may waive an inspection. Assuming that the buyer elects to waive the inspection, the signature line on page 2 of the BINSR should be signed by the buyer. The agent should keep a copy of the BINSR waiving the inspections for safe keeping in case a claim subsequently arises.

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

ARIZONA association of REALTORS® + ARIZONA MORTGAGE LENDERS ASSOCIATION + ASEA

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INDUSTRY PARTNERS CONFERENCE 2015

GET READY FOR THE NEW CLOSING RULES, THE REVISED CONTRACT, THE NEW FORMS!

- Learn how to embrace and manage your transactions under the new TRID rules.
- Learn how the changes to the AAR Residential Resale Real Estate Purchase Contract, the PQF, the LSU all interact with the Closing Dislcosure.
- Learn the chain of events and their timelines that must occur before a transaction can close.

UNDER THE NEW RULES STARTING ON OCTOBER 3, 2015:

- Do you really need to add 15 days to the close of escrow?
- What happens if the seller gives a credit in lieu of repairs?
- Can you still do simultaneous closings?

JOIN US ON

SEP. 16 2015 @ CHAPARRAL SUITES

5001 North Scottsdale Road Scottsdale, Arizona

REALTOR® CE:
3 CONTRACT LAW, 3 LEGAL ISSUES

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$79 *INCLUDES BREAKFAST & LUNCH*	$99 *INCLUDES BREAKFAST & LUNCH*	$119 *INCLUDES BREAKFAST & LUNCH*

8-8:45 AM
CONTINENTAL BREAKFAST

8:45-4:15 PM
PROGRAM

4:30-6 PM
WCR COCKTAIL PARTY*
*Additional $25 cost, includes two drink tickets & hors d'oeuvres

REGISTER ONLINE: **WWW.REGONLINE.COM/2015IPC**

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GAME NIGHT!

DETAILS

Arizona Association of REALTORS® is hosting *Game Night!* Join us for 20 minute mini tournament games in poker, cornhole, bunco and more for only $5 a game with prizes each round!

TIME

4:00 p.m. Registration
First Tournament Begins Promptly at 4:30 p.m.
4:30 - 6:30 p.m. on Wednesday, September 2

LOCATION

Tempe Mission Palms Rooftop Pool & Terrace
Cash Bar Available!

WINNERS EVERY 20 MINUTES!

CLICK HERE FOR PRINTABLE REGISTRATION FORM

ARIZONA ASSOCIATION OF REALTORS®

LEGAL HOTLINE

A RESOURCE FOR BROKERS NEEDING LEGAL INFORMATION

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* As a member benefit for Designated REALTORS® (Designated Brokers) to have direct access to a qualified attorney who can provide information on real estate law and related matters.
* To answer legally related questions about the many diversified areas of today's real estate industry.

The Hotline is provided by the attorneys at Manning & Kass

Primary access to the Hotline is for Designated Brokers, who may also give access to one REALTOR® or REALTOR-ASSOCIATE® member per office and/or branch.

For More Information

Please contact Jamilla Brandt, AAR Risk Management Coordinator, at jamillabrandt@aaronline.com or 602-248-7787.

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LEGAL HOTLINE

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

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.

A Designated Broker Must Review and Initial Contracts and Listings Within Ten Days of Execution

FACTS: The broker originally understood that administrative review and initialing listing agreements and purchase contracts pursuant to A.R.S. § 32-2151.01(G) was ten days after close of escrow. Therefore, there were approximately twenty transactions handled by the brokerage firm where the broker did not initial the documents until after the close of escrow. The broker reviewed the documents in these circumstances as they were processed. However, he did not initial them within the timeframe as required by the statute.

The broker is concerned about losing his license over this administrative mistake.

ISSUE: Is the broker's license in jeopardy?

ANSWER: Probably not.

DISCUSSION: A.R.S. § 32-2151.01(G) does require that the designated broker "review each listing agreement, purchase or non-residential lease agreement or similar instrument within ten days of the date of execution by placing the broker's initials and date of review on the instrument. . . ." Thus, the initials are required ten (10) days after the document is fully executed, not ten days after the close of escrow. However, here the broker complied in substance with the rule by reviewing the transaction documents as they came in. The administrative error of initialing after close of escrow, instead of after the document was fully executed, should not place the broker's license in jeopardy. Nonetheless, it should be noted the broker may be penalized by the Arizona Department of Real Estate for his non-compliance.

Financing Contingency Expires Three Days Before the Close of Escrow

FACTS: Two weeks before the close of escrow, the buyer failed to qualify for financing. The buyer notified the seller that she failed to qualify. However, the buyer reassured the seller that she would be able to qualify with another lender. Nonetheless, the seller issued a Cure Notice citing that the change in financing would delay close of escrow under Section 2L of the AAR Residential Resale Real Estate Purchase Contract ("Contract").

ISSUE: Is the Seller's Cure Notice valid where the change in financing will not delay the close of escrow?

ANSWER: No.

DISCUSSION: Under Section 2b of the Contract, the financing contingency does not expire until three days before close of escrow. At such time, if the loan is not approved and loan documents are not signed, the seller can issue a Cure Notice under Section 7a of the Contract for: (1) failure to sign loan documents; and (2) the unfulfilled loan contingency. During the three day cure period, the buyer still has the ability to issue an Unfulfilled Loan Contingency Notice to the seller to cancel the Contract and receive her earnest money back. Alternatively, if the buyer does not qualify, for a loan the buyer can still waive the financing contingency by the closing date, assuming the buyer has access to the necessary funds to do so.

Buyer Cannot Switch Between Identified Lenders Without Potential Consequences

FACTS: When the buyer submitted the Pre-Qualification Form (Pre-Qual) with the Residential Resale Real Estate Purchase Contract (Contract), Lender A was identified. Thereafter, when the Loan Status Update (LSU) was submitted to seller, Lender B was identified. Although buyer was moving forward with Lender B, buyer switched back to Lender A because buyer decided he liked Lender A's loan program more.

ISSUE: Can the buyer switch back to Lender A without either notifying the seller or obtaining seller's written consent?

ANSWER: See discussion.

DISCUSSION: Although Lender A and Lender B are each identified during the transaction, it does not give the buyer the right to switch back and forth between the two without consequences. In determining when a lender change requires notification and/or seller's written consent, the parties should look to which form prevails – the Pre-Qual or LSU. The form that prevails is the form that is most recent in time. Typically, this will be the lender identified in the LSU.
Assuming Lender B is the most recent identified lender,

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buyer must immediately notify seller of the change in lender pursuant to section 2l of the Contract. Additionally, if switching to Lender B "adversely affect[s] Buyer's ability to obtain loan approval without PTD conditions, increase Seller's closing costs, or delay COE" buyer must receive seller's written consent prior to changing lenders.

BINSR Response Times Are Critical

FACTS: The buyer and seller executed an AAR Residential Resale Real Estate Purchase Contract ("Contract"). The buyer thereafter requested certain non-warranted repairs in the Residential Buyer's Inspection Notice and Seller's Response ("BINSR"). The seller did not respond within five days as required. After being prompted, the seller eventually did respond to the BINSR eight days after it was issued. In that response, the seller indicated that she would make no repairs. Five days after the seller's response, the buyer elected to cancel the Contract.

ISSUE: Is the buyer's cancellation effective?

ANSWER: See Discussion.

DISCUSSION: Section 6j of the Contract (lines 241-242) provides that the seller's failure to respond to the buyer's request for repairs within five days is conclusively deemed to be the seller's refusal to correct any of the items disapproved. Accordingly, by virtue of the language in the Contract, the lack of a timely response by the seller is deemed to be a rejection of the requested repairs.

Additionally, lines 246-249 of the Contract address the buyer's ability to cancel if the seller rejects the requested repairs. Specifically the language provides that the "Buyer may cancel this Contract within five (5) days after delivery of Seller's response or after expiration of the time for Seller's response, whichever occurs first...." Thus, to effectively cancel, the buyer needed to provide notice within five days after the seller's response was due. The purported cancellation five days after the seller provided the notice of rejection (which was late in the first place) was not timely and does not cancel the Contract.

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.

Agent Must Recommend Professional Advice Prior to Pre-Possession Agreement

FACTS: The buyer wants to take possession of the property before the close of escrow. The seller, who does not occupy the premises, has no objection to this pre-possession.

ISSUE: May the listing agent draft a pre-possession agreement to facilitate the parties' desires?

ANSWER: See Discussion.

DISCUSSION: The listing agent may assist the parties in preparing a pre-possession agreement. However, the Commissioner's Rules require that the listing agent recommend that the clients seek "appropriate counsel from

insurance, legal, tax and accounting professionals regarding the risks of a pre-possession" agreement beforehand. See A.A.C. R4-28-1101(K).

These situations are fact-specific. A broker should consult with counsel about the specific situation before taking action.

ABOUT THE AUTHOR

Richard V. Mack

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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