

# BROKER & MANAGER

QUARTERLY

## THE STATE OF OUR HOUSING MARKET

NEW AND REVISED FORMS AND ADVISORIES

REAL ESTATE OPTIONS WITHOUT KEY TERMS WILL NOT BE ENFORCED

CELEBRATING THE 50TH ANNIVERSARY OF THE FAIR HOUSING ACT

REJECTING PROSPECTIVE RESIDENTS BASED ON CRIMINAL HISTORY MAY VIOLATE FAIR HOUSING LAWS

ADRE RELEASES REVISED MODEL BROKER'S POLICY & PROCEDURES MANUAL

SINGLE SIGN-ON MEMBER BENEFIT SET TO DEBUT

WINDOW TO THE LAW: AML ADVISORY FOR REAL ESTATE

P.17 LEGAL HOTLINE Q&A





# BROKER & MANAGER

FIRST QUARTER 2018 | ARIZONA BROKER/MANAGER QUARTERLY

## IN THIS ISSUE

2	February 1, 2018 – NEW and REVISED FORMS and ADVISORIES:	9	Single Sign-On Member Benefit Set to Debut
3	The State of Our Housing Market	10	Legal Hotline
5	Real Estate Options Without Key Terms Will Not Be Enforced	11	Legal Hotline Q&A
6	Celebrating the 50th Anniversary of the Fair Housing Act	14	Window to the Law: AML Advisory for Real Estate
7	Rejecting Prospective Residents Based on Criminal History May Violate Fair Housing Laws		
8	ADRE Releases Revised Model Broker’s Policy & Procedures Manual		

## February 1, 2018 – NEW and REVISED FORMS and ADVISORIES:

### (New) Wire Fraud Advisory:

The Wire Fraud Advisory (Advisory) is now available in zipForm® and Dotloop® and as a downloadable Microsoft Word document at [www.aaronline.com/wire-transfer-fraud](http://www.aaronline.com/wire-transfer-fraud). Brokers are free to brand the Advisory and are encouraged to share it with their clients.

The intent of the Advisory is for brokers to have a document that advises clients about the threat of criminals targeting social media and email in an attempt to steal sensitive information. This new Advisory also warns clients about wire transfer fraud whereby hackers instruct money to be electronically wired to fraudulent accounts. Included are suggestions as to how clients can protect themselves, reminders to verify emails and information received during the transaction, and best practices to combat cybercrime.

### Additional Wire Fraud documents that may be downloaded at [www.aaronline.com/wire-transfer-fraud](http://www.aaronline.com/wire-transfer-fraud) include:

- Broker Policies for Cyber Security and Wire Fraud
- Wire Transfer Fraud (flyer)

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

### (Revised) Buyer Advisory:

On page 8 under “Indoor Environmental Concerns,” you will see new verbiage regarding mold. This new language has been included to expand and strengthen the current information provided about mold and indoor air quality concerns.

The additional language is as follows:

“Attention has been given to the possible health effects of mold in homes, apartments and commercial buildings.

Certain types of mold may cause health problems in some people while triggering only common allergic responses in others. Mold is often not detectable by a visual inspection. To determine if the premises you are purchasing contains mold or airborne health hazards, you may retain an environmental expert to perform an indoor air quality test. This is particularly important if any of the inspection reports or disclosure documents indicate the existence of past or present moisture, standing water, visible water stains, or water intrusion in the Premises.”

With the inclusion of this language in the Buyer Advisory, the Risk Management Committee has determined that a new “Mold Disclosure” form is unnecessary as the expanded Buyer Advisory verbiage provides sufficient information to buyers to investigate any concern about mold-related issues.

### (Revised) Additional Clause Addendum:

An addition on page 1, line 30, under NON-REFUNDABLE EARNEST MONEY, extends the last sentence to read: “Buyer acknowledges that Buyer’s earnest money shall be non-refundable even if the Premises fail to appraise for the sales price or the loan contingency is unfulfilled, **unless prohibited by federal law.**” The verbiage was added to mirror the same in the Appraisal Contingency, section 2I, line 110 of the Residential Resale Real Estate Purchase Contract.

### (Revised) Residential Lease Owner’s Property Disclosure:

The Arizona law pursuant to which the government maintained a list of properties previously utilized as a clandestine drug laboratory was repealed. Due to the repeal of this law, the NOTICE TO TENANT on page 4, lines 112-114, addressing where to find such a list was removed from the form.

# The State of Our Housing Market

BY GUEST BLOGGER WENDY SHAW, GRI, CRS

Welcome to 2018! Now that we are off to a fresh New Year, it makes sense to note where the market currently stands.

## Supply

Undoubtedly our serial readers are already well aware that the \$500K and under range has been in a “sellers” market for all of 2017. What most may not know is that inventory usually sees a buildup in the fall as demand tapers off.

Fall 2017 saw a very minimal increase in inventory. The under \$200K single-family supply was so paltry it seemed to be headed for extinction. Entering 2018, Active Listings are down 12 percent from this time last year. There appears to be no relief on the horizon.

As our favorite real estate market watcher [The Cromford Report](#)\* states: *It is easy to get complacent about the low inventory and assume that this is somehow the ‘new normal’. The long-term decline in Active Listings just keeps going and we have now reached the point where days of inventory is the lowest we have seen for Week 50 since 2004...To try to get a handle on what life is like in the regular market, let us focus on homes priced at under \$500,000 in Greater Phoenix. The inventory for this segment is 52 days. If we use \$250,000 as the price limit we have just under 40 days of inventory. These are not normal readings and we start to wonder how low can these numbers go.*

This means buyers are going to have an even tougher time buying than last year in any price range other than luxury. For most sellers, they should enjoy competition from buyers and stronger pricing.

## Demand

Demand has remained relatively stable and unremarkable, especially compared to its counterpart supply. Demand was on a weakening trend in the 3rd Quarter, but that seemed to shift upwards mid-November and certainly provided a busier than normal December. An interesting side note is that buyers are now primarily in-state buyers (i.e. local house changers). The Cromford Report notes:

*Migration into Arizona is weaker than it was during the 2000-2007 era. In 2004, we saw 30,564 purchases by out-of-state buyers. 2017 year-to-date is 16,443...The total sales count is lower and the percentage of sales going to out-of-state buyers has dropped from 20% to 16%...The flip side of this is that in-state demand has increased from 80% to 84%. Areas that appeal most to in-state buyers have seen stronger appreciation.*

## Appreciation

Supply and demand ultimately dictate appreciation. It should come as no surprise that appreciation was greatest in the lower price ranges due to low supply.

Turning back to The Cromford Report, we can see exactly how true this is: *After peaking on July 28 at 8.6%, the appreciation rate for all areas and types went into a declining trend until November 9 when it bottomed out at 3.6%. It then changed course and over the last 5 weeks has risen sharply to reach between 7% and 7.5%...Such a rapid change in direction is quite unusual.*

The overall appreciation rate based on annual sale price per square foot in Greater Phoenix is 6.2%. However, Supply and Demand are not the same by price range. The greatest appreciation rates are under \$200K due to a lack of new construction that would typically balance out the supply shortage.

Sales under \$200K are 33% of all sales this year, so their rate has a large effect on the overall average. New multi-family and single-family homes are being added to the \$200K-\$500K price range to accommodate increased demand, but it's still not quite enough.



The market is balanced between \$500K-\$1M, while supply is still higher than demand over \$1M despite a 10% rise in 4th quarter contracts. As a result, appreciation rates are as follows by price range:

- Under \$200K: 7.7%
- \$200K-\$500K: 3.5%
- \$500K-\$1M: 1.7%
- Over \$1M: 0.1%

Continued on page 4 →

## Agents

We rarely talk about real estate agents, although they certainly can impact the marketplace in subtle ways. It may be of interest that there was a 6.6% increase in the number of real estate agents since last year as rookies continue to enter the field. While agents certainly don't set the marketplace (supply and demand does) they certainly can influence the buying and selling experience. Agent skill impacts the counsel clients receive on market behavior or not; negotiate the highest market value or not. They should be the client's biggest advocate and legally in fact have a fiduciary relationship to the client.

As institutional investment companies are swarming the Valley, sellers can learn the hard way the impact that a missing real estate advocate has in terms of reduced proceeds.

Particularly disturbing is the institutional buyers' offers of "no commission sale" while charging fees of more than 9 percent—far beyond what might be charged as a commission. Add-in the typically lower than market value and imaginary "repair costs", and sellers are paying dearly for that lack of representation.

Lower than true market value sales can impact appraisals and subsequent neighboring sales—a sobering thought for all of us vested in defending neighborhood values. As 2018 continues to progress, we will endeavor to keep you apprised of the emerging trends.

---

\*Reprinted with permission.



# Real Estate Options Without Key Terms Will Not Be Enforced

BY GUEST BLOGGER MICHAEL CHARLES BROWN, ESQ.

An option to purchase is often part of a lease contract. But beware: if an option lacks key terms, the courts in Arizona will likely not enforce it. At least that was the key takeaway in a recent Arizona Court of Appeals decision, which held that specific performance of an option was unavailable where that option's express terms were vague and incomplete.

In *Offerman v. Granada LLC*, the parties—landlord and tenant of a residential property—had entered into a lease with the following option for the tenant to purchase: At the completion of the 24 month lease, the Tenant has the option to purchase [the] property ... for a sales price to be determined at that time by an independent appraiser acceptable to both Tenant and Landlord. (Terms and Conditions to be stipulated by both parties at such time).

If the Tenant chooses to exercise his right to purchase this property at the end of the 2 year lease agreement, he shall be credited \$200.00 of each \$1900.00 of monthly rent paid towards purchase.

The acceptable condition of the property when Tenant takes occupancy will be considered the condition Tenant agrees to accept at time of closing. All inspections and contingencies to be performed and satisfied prior to initial move-in. Property to be sold AS-IS.

As the end of the lease term neared, Tenant informed Landlord he intended to exercise the option, and when the Landlord failed to respond to Tenant's request to appoint an independent appraiser, Tenant hired his own, who appraised the property at \$240,000.

Tenant shared this appraisal with Landlord, who then sent Tenant a draft purchase contract with a proposed \$350,000 sale price. Tenant rejected this proposal. Tenant subsequently sued Landlord for specific performance of the option at the appraised value of \$240,000, and the trial court ultimately ordered specific performance of the option at that value.

The trial court also named a title agency to hold escrow, determined the date for close of escrow, divided the transaction fees between the parties, and ordered Landlord

to arrange for a property inspection. Notably, none of these terms were agreed to, or even mentioned by, the parties in their contract—they were all determined by the court.

The Court of Appeals reversed, holding that while an option contract does not require "completeness in every detail," this option was so lacking that it could not be enforced. The parties did not agree to—or establish a means to determine—many key terms of a real estate transaction, such as how to select an appraiser if the parties could not agree, the timing of payment or closing, terms of payment, condition of title, method of conveyance, and whether escrow would be handled by a title agency.

Instead, the parties had simply agreed to defer negotiating these terms until the end of the lease term. As such, the parties had made merely an "agreement to make an agreement" rather than an option with clear terms on which a court can order specific performance.

Because "it is not within the superior court's authority to flesh out an option agreement that lacks certainty," the appellate court held specific performance of the option could not be ordered. The court left open whether the Tenant could seek other remedies (such as money damages) against the Landlord.

This case is a reminder that options in real estate-related contracts must be detailed and include key terms in order to be enforced by the courts. Simply referring to an "option" in a contract, but leaving key terms for future negotiation, is insufficient to create an enforceable option.

Related story: [Lease/purchase and Lease/option Agreements](#)



# Celebrating the 50th Anniversary of the Fair Housing Act

BY JAN STEWARD, ARIZONA REALTORS® RISK MANAGEMENT MANAGER

Every April, our nation celebrates Fair Housing Month. This year, we are celebrating the entire year because 2018 marks the 50th anniversary of the passage of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968).

The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex, disability, familial status and national origin.

In 2014, the National Association of REALTORS® (NAR) amended the federally-mandated protected classes in [Article 10 of the Code of Ethics](#) to also include “sexual orientation or gender identity.”



## Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Amended 1/14)

As members of the national association, REALTORS® agree to a Fair Housing Declaration and to inform clients about their rights and responsibilities. NAR also encourages its members to work with state, local municipalities and county organizations to promote Fair Housing.

Click this link to watch the *Fair Housing Makes US Stronger* video:  
<https://www.nar.realtor/videos/an-overview-of-the-fair-housing-act>

Also visit the NAR website page on Fair Housing Makes US Stronger:  
<https://www.nar.realtor/fair-housing/fair-housing-makes-us-stronger-commemorating-50-years-of-the-fair-housing-act>



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

BY SCOTT M. DRUCKER, ESQ., GENERAL COUNSEL

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

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

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

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

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

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

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

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

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

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

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

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

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

## 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.

# ADRE Releases Revised Model Broker's Policy & Procedures Manual

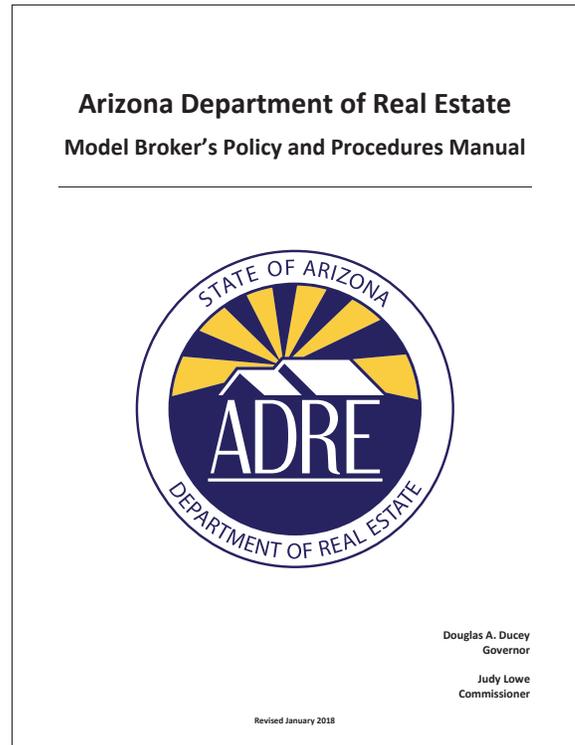
Included under A.C.C. R-28-1103, Broker Supervision and Control, is the obligation for a brokerage to establish and enforce written policies, procedures and systems.

In January 2018, ADRE released the revised [Model Broker's Policy and Procedure's Manual](#) ("the Manual"). Available on ADRE's homepage, the Manual offers new and expanded topics that may be incorporated into existing policies and procedures, or in the case of the new brokerage, the Manual can easily be used as a guide to establish and generate policies and procedures.

ADRE thanked the following groups and persons who collaborated with the department in the process of updating the new version of the Manual:

*Real Estate Industry Partners in Residential, Commercial, Property Management, Land, and the Real Estate Educators for your time and commitment to updating the 2017 version of the ADRE Model Broker's Policy and Procedures Manual.*

*Special thanks to Martha Appel, Holly Eslinger, Sue Flucke, Michael Hammond, Courtney LeVinus, Nate Nathans, Jan Steward, A. Patrick Sheahan and Lisa Suarez.*



## Agent Safety Alert Program (ASAP)



ASAP is a program to alert REALTORS® of critical safety issues. Members may submit reports of incidents they see or know about using the link below. A response team will evaluate the report and may take action, up to and including issuing a text alert to all affected members.

[Click here to submit an Incident Report](#) (must be an active REALTOR®)

To ensure that your cell phone is in our system for alerts, please contact your local association or [edit your own information at NAR's site](#). For details about the ASAP program, [here is a list of FAQs](#).

Visit AAR's REALTOR® Safety Page:

<https://www.aaronline.com/manage-risk/realtor-safety/>

# Single Sign-On Member Benefit Set to Debut

Arizona REALTORS® is committed to providing its members with everything you need to succeed.

We've listened closely to your feedback and have some exciting news: the Arizona REALTORS® Single Sign-On (SSO) dashboard is set to launch!

The dashboard [pictured] will be the new center of your work day, bringing you a more convenient way to access all of your applications. Don't worry, you'll still log-in to the same MLS, we're just upgrading how you can get there!

The new dashboard will simplify your workflow:

- **Access all your applications from ONE location!**

The new dashboard will offer all of your Arizona REALTORS® membership benefits AND third-party applications for easy access. You'll be surprised at everything that is just one click away.

- **YOU ONLY NEED ONE PASSWORD to log-in to everything!**

Remembering multiple usernames and passwords can be a hassle. The new dashboard is SSO enabled, which means you only need to remember ONE PASSWORD to log-in to multiple applications.

Related story: [Lease/purchase and Lease/option Agreements](#)

Screenshot of Arizona REALTORS® Single Sign-On dashboard:

Copyright © 2018 Clarity, All Rights Reserved. Dashboard Version 3.2.3.5.2

ARIZONA ASSOCIATION  
OF REALTORS®

# LEGAL HOTLINE



A RESOURCE  
FOR **BROKERS**  
NEEDING  
**LEGAL INFORMATION**

The AAR Legal Hotline is designed...

- \* 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

For More Information  
Please contact Jamilla Brandt,  
AAR Risk Management Coordinator,  
at [jamillabrandt@aaronline.com](mailto:jamillabrandt@aaronline.com)  
or 602-248-7787.

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.



**ARIZONA  
REALTORS®**

Get Answers Today!

[www.aaronline.com/legal-hotline](http://www.aaronline.com/legal-hotline)

REAL SOLUTIONS. REALTOR® SUCCESS.

# LEGAL HOTLINE

By Manning & Kass | Copyright © 2018, all rights reserved.

*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.*

## Generally, Transaction Coordinators Cannot Work For Two Separate Brokerage Firms

**FACTS:** Two Designated Brokers enter into an agreement to allow a real estate licensee to work as a transaction coordinator for both offices.

**ISSUE:** Can a licensee work for two Designated Brokers at the same time?

**ANSWER:** See discussion.

**DISCUSSION:** Pursuant to A.A.C. R4-28-306(A)(2), an agent can only perform real estate services on behalf of the agent's employing broker. Accordingly, the ADRE takes the position that a licensee cannot be shared by two separate brokerage firms.

## SPDS Waiver Does Not Eliminate Disclosure Obligations

**FACTS:** Contained in the listing is a comment that the seller will not be providing a Residential Seller's Property Disclosure Statement (SPDS) and that such must be waived by the buyer.

**ISSUE:** If the buyer agrees to waive the SPDS, is the seller still required to disclose to the buyer known facts about the property?

**ANSWER:** Yes.

**DISCUSSION:** Arizona law requires the seller to disclose material (important) facts about the property, even if not asked by the buyer or a real estate agent. These disclosure obligations remain even if the parties agree that no SPDS will be provided. As such, an agreement to waive the SPDS does not excuse the seller's disclosure obligations. Rather, it often makes it: (1) harder for sellers to satisfy their disclosure obligations; and (2) more likely that sellers will inadvertently fail to disclose a material fact.

**NOTE:** Even when a property is sold in as-is condition, sellers are still subject to the same legally imposed disclosure obligations.

## Authorized Party Must Sign For Entity

**FACTS:** Buyer, ABC Limited Liability Partnership ("LLP"), submitted an offer to the seller. The signature for the buyer appeared as "ABC, LLP".

**ISSUE:** May the authorized person signing for the LLP sign the contract as "ABC, LLP"?

**ANSWER:** No. See discussion

**DISCUSSION:** In instances in which an LLP, LLC, Corporation, or other entity is the principal in a contract, the signature line should be signed by the individual who has authority to sign on behalf of the entity. When appropriate, proof of authority to sign should be submitted to the seller with the offer. Below is one example of how the authorized person may sign on behalf of the LLP.

\_\_\_\_\_ (signature of authorized person here)

John E. Doe  
Partner of ABC, LLP, an Arizona Limited Liability Partnership

## Broker Generally Not Responsible for Agent Selling Own Property

**ISSUE:** The broker's agent owns twenty lots in northern Arizona, which the broker's agent is subdividing and selling. The broker's agent is properly disclosing in advertising to prospective buyers that the broker's agent is an "owner/agent" and is disclosing in writing that the broker's agent is a real estate licensee who has an ownership interest in the twenty lots. Does the broker have any liability for the sale of these twenty lots by the broker's agent?

**ANSWER:** Probably not. The broker is generally not responsible for an agent who is not acting "for another," i.e. the agent is acting personally either as a buyer or seller, unless the agent expressly or apparently represents to other parties in the transaction that the brokerage firm is involved in the transaction. Apparent authority could be conducting business from the brokerage office, e.g. making telephone calls or meeting prospective buyers in the brokerage office or handing out business cards with the brokerage name. →



# Have you signed up for the Legal Hotline?

The Legal Hotline provides all Arizona REALTORS® broker members (designated REALTORS®) free access to a qualified attorney who can provide information on real estate law and related matters.

## FIND OUT HOW BROKERS CAN ACCESS THE LEGAL HOTLINE

[www.aaronline.com/wp-content/uploads/2016/02/Legal-Hotline-Memorandum-2016-02-11.pdf](http://www.aaronline.com/wp-content/uploads/2016/02/Legal-Hotline-Memorandum-2016-02-11.pdf)

## BROWSE MORE LEGAL HOTLINE TOPICS ONLINE

[www.aaronline.com/manage-risk/legal-hotline](http://www.aaronline.com/manage-risk/legal-hotline)

### Name of PLLC Must Be Changed Upon Husband's Retirement

**FACTS:** A husband and wife formed Smith and Smith PLLC while affiliated with Broker A. Thereafter, husband retired from real estate and his license became inactive.

**ISSUE:** Can wife continue to be paid as Smith and Smith, PLLC following husband's retirement?

**ANSWER:** No.

**DISCUSSION:** Pursuant to the Arizona Department of Real Estate (ADRE), "A Professional Corporation or a Professional Limited Liability Company is limited to natural person(s) each holding an *active* status real estate license as a salesperson or associate broker and may be licensed as one or more salespersons or associate brokers."

The ADRE further states that the Professional Corporation or Professional Limited Liability Company name "shall reflect whether it comprises one or more licensees (single or plural as in John Smith, P.C. or Smith & Smith, P.C.)."

Since the husband is no longer licensed, he cannot be included in the PLLC and the name of the entity must be changed to reflect the fact that the PLLC is comprised of a single licensee.

### Employment Records Must Be Retained For Five (5) Years

**FACTS:** Broker executes an employment (listing) agreement with seller for six (6) months. The property does not sell within the six month period. The seller does not renew the listing with Broker.

**ISSUE:** How long does Broker have to retain a copy of the employment (listing) agreement?

**ANSWER:** Five years.

**DISCUSSION:** A.R.S. § 32-2151.01 provides that "The records of each transaction and employment records shall be kept by the broker for a period of at least five years from the date of the termination of the transaction or employment."

### Husband and Wife Can Retain PLLC Although Affiliated With Different Brokerages

**FACTS:** A husband and wife formed Jones and Jones PLLC while affiliated with Broker A. Thereafter, husband went to work with Broker B, while wife remained with Broker A.

**ISSUE:** Can husband and wife each continue to be paid as Jones and Jones, PLLC although they are now licensed with different brokerages?

**ANSWER:** Yes.

**DISCUSSION:** Pursuant to the Arizona Department of Real Estate, "Two licensees who are married to each other and licensed through a PC or PLLC are not required to be employed by the same employing brokers, even though the PC or PLLC receives compensation from the other member's broker."

### Management Fees Should Not Be Charged On Sales Tax

**FACTS:** A Property Manager and property owner use the Arizona REALTORS® Property Management Agreement ("PMA"). The Property Manager collects \$2,500 in rent, and an additional 1.65% in rental tax from the tenant.

**ISSUE:** May the Property Manager charge a management fee based on the total amount collected (\$2,541.25)?

**ANSWER:** No.

**DISCUSSION:** Pursuant to Section five, page four of the PMA, management fees shall not be charged on sales tax.

Note: As a best business practice, the Property Manager should enter the collected rent and tax as separate entries in the owner's ledger.

### Transfer of Ownership Into an LLC May Affect Your Title Insurance

**FACTS:** John Smith, a single man, purchased a property as his sole and separate property. After close of escrow, John Smith formed an LLC for tax purposes. John Smith then transferred ownership of the property by executing a Quit Claim Deed from himself to his LLC.

**ISSUE:** Is the title insurance policy affected when an individual transfers his property into an LLC?

**ANSWER:** Probably.

**DISCUSSION:** An LLC is a legal person, therefore, the property is now owned by the LLC, not John Smith. Therefore, John Smith would no longer have title insurance on the property unless he paid for an additional insured endorsement.

Best business practice tip: If an individual is transferring ownership of a property into an LLC, or other entity, he/she should consult with a title company for information on obtaining an additional insured endorsement.

### Guardianship May Be Needed if Seller is Incapacitated

**FACTS:** Husband and wife were facing a financial emergency and decided to sell their house. Only husband's name is on the deed. Husband signed a listing agreement with Broker.

One week later, husband is in a coma.

**ISSUE:** Can wife sign a purchase contract for husband if he is in a coma?

**ANSWER:** No.

**DISCUSSION:** Because husband is the only name on the deed, only husband can sign a purchase contract.

Therefore, wife will likely have to file for a temporary or permanent guardianship, which would provide her the legal authority to sign a purchase contract on behalf of husband as he currently does not have the capacity to sign.

Wife should consult an attorney or visit the Superior Court web site under the self-help page to begin guardianship proceedings.

<https://www.azcourts.gov/selfservicecenter/Self-Service-Forms>

---

#### 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.

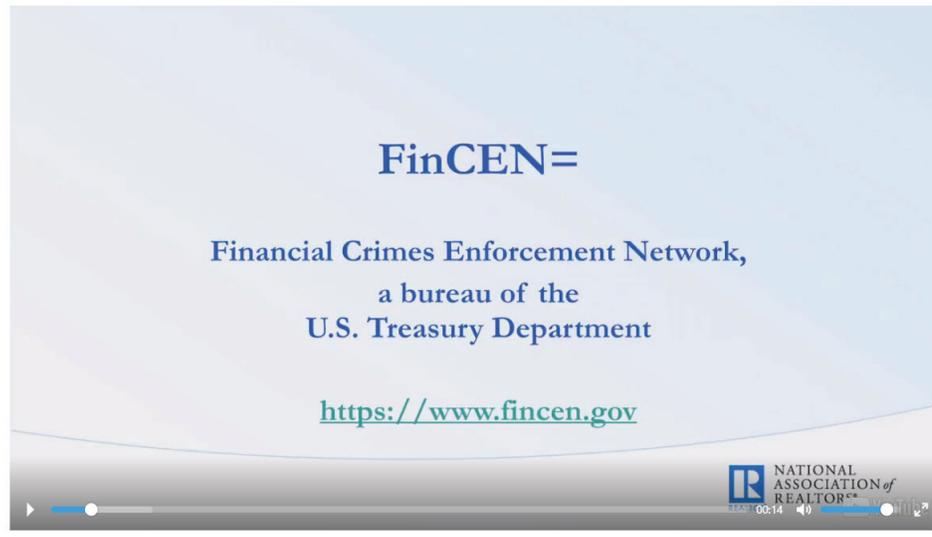
Legal  
Hotline

# Window to the Law: AML Advisory for Real Estate

FinCEN's recent advisory urges real estate professionals to voluntarily help combat, and report, money laundering concerns in the real estate market. Learn how to spot red flags, and learn more about FinCEN's recent efforts to fight money laundering.

## Window to the Law: AML Advisory for Real Estate

f t in +



Watch the video here: <https://www.nar.realtor/videos/window-to-the-law/window-to-the-law-aml-advisory-for-real-estate>

To learn more about FinCEN visit: <https://www.fincen.gov>

### Window to the Law

Window to the Law is a monthly video series focusing on a legal topic of interest. Not just for legal professionals, Window to the Law covers topics applicable to legal compliance for real estate professionals, brokerages, and REALTOR® associations. To view videos visit: <https://www.nar.realtor/videos/window-to-the-law>

### NAR YouTube Channel

In addition to the Window to the Law video series, view [Legal Updates on NAR's official YouTube channel](#).

### More Legal Information

View NAR's Legal topics <https://www.nar.realtor/legal>



NATIONAL ASSOCIATION of REALTORS®

