ARIZONA

SECOND QUARTER 2018

BROKER & MANAGER

QUARTERLY

INTRODUCING THE REVISED ON-SITE WASTEWATER TREATMENT FACILITY ADDENDUM

ARIZONA REALTORS®

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ARIZONA REALTORS®

BROKER & MANAGER

SECOND QUARTER 2018 | ARIZONA BROKER/MANAGER QUARTERLY

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Introducing the Revised On-Site Wastewater Treatment Facility Addendum

On June 1, 2018, the Arizona REALTORS® will release a revised On-Site Wastewater Treatment Facility Addendum ("Addendum")[1]. The revisions were completed by a workgroup chaired by REALTOR® Jan Leighton.

Assisting Jan in revising the form were workgroup members Beth Adams, James Burton, LeAnn Carver, Frank Dickens, Kevin Dunn, Lowell Fagen, Tony Fernicola, Clark Jones, Holly Mabery, Laura Mance, Stacey Onnen, Ed Patterman, Bradley Ryan, and Renee Zeising, along with Arizona REALTORS® staff members Scott Drucker, Nikki Salgat, Jan Steward and Jamilla Brandt.

To better comprehend the revised form and understand why changes were made, members are encouraged to carefully review the following series of frequently asked questions.

FREQUENTLY ASKED QUESTIONS

Q1. Why was the On-Site Wastewater Treatment Facility Addendum ("Addendum") revised?

A1. At the request of several members, the Risk Management Committee approved a revision of the Addendum primarily to: (i) revise timelines that were causing closing delays; and (ii) clarify under what circumstances the seller was required to pay for repairs to correct physical or operational deficiencies in the Facility. While some members took the position that repairs by the seller were required only when the Facility was identified in the Report of Inspection as "not functional," others took the position that repairs were required even when the Facility was identified as "functional with concerns."

Q2. How were the members of the On-Site Wastewater Treatment Facility Addendum Workgroup (the "Workgroup") selected?

A2. First and foremost, Workgroup members were required to have vast experience in the transfer of On-Site Wastewater Treatment Facilities. In fact, two members of the Workgroup have been appointed to serve on the Arizona Department of Environmental Quality State Advisory Committee for On-Site Wastewater Systems. Second, it was important that the Workgroup consist of members from across the state, thereby ensuring that all areas of Arizona were represented. Finally, it was critical for the Workgroup to consist of brokers and agents, representing large and small brokerages alike.

Q3. Was the Workgroup assisted by industry partners?

A3. Yes. The Workgroup was assisted by qualified and licensed on-site wastewater treatment facility inspectors. Various county officials were also consulted.

Q4. Line 8 of the Addendum indicates that one or more on-site wastewater treatment facility is located on the Property/Premises, either a conventional septic system or an alternative system. What are the differences between the two systems?

A4. Conventional septic systems are installed completely below the surface of the soil and use gravity to distribute the effluent from the tank. There are two components to conventional systems: the septic tank and the drain field (also called the leach field). When site conditions, such as lot size or soil, are not appropriate for a conventional system, other types of systems, called alternative systems, are sometimes →

used. These types of systems may consist of a series of tanks, a compressor, a pump and a specialized drain field. Therefore, an alternative system generally refers to any wastewater disposal method other than the widely used conventional septic tank and leach field.

Q5. The prior draft of the Addendum allowed the seller to complete the Facility inspection up until three days prior to close of escrow. Was this language causing problems?

A5. Yes. Members expressed that when the Facility inspection was performed just days before the scheduled close of escrow date, problems identified in the Report of Inspection would often cause delays in the closing. In many cases, the subject repairs were unable to be completed in the few remaining days prior to close of escrow. In other cases, problems identified in the Report of Inspection caused the parties to engage in negotiations for a credit or price change, which often necessitated a change to the Closing Disclosure.

Q6. Why did the Workgroup revise the Addendum to now require the seller to have the Facility inspected "no later than twenty (20) days or ____ days after Contract acceptance."?

A6. To avoid delays in close of escrow as described in FAQ number 5, the Workgroup deemed it beneficial to have the Facility inspected well in advance of the previous timeframe, which was "in no event later than three (3) days prior to Close of Escrow." In the event of a thirty-day closing, twenty days after Contract acceptance allows the parties ten days to review the Report of Inspection and correct any Facility deficiencies, hopefully without the need to extend the closing date.

Q7. Can the parties extend the deadline by which the seller must complete the Facility inspection?

A7. Yes. Lines 10 – 11 of the Addendum state, "Facility Inspection: Seller shall have the Facility inspected at Seller's expense within six (6) months prior to Close of Escrow, but in no later than twenty (20) or ____ days after Contract acceptance." If the parties want to extend this deadline, they simply write on the blank line that appears on line 11 of the Addendum the number of days after Contract acceptance the seller will have to complete the Facility Inspection.

Q8. Why do lines 13 – 17 of the Addendum require that the Facility be pumped prior to close of escrow, unless one of three exemptions exist?

A8. Lines 13 – 17 of the Addendum mirror Arizona Administrative Code R18-9-A316(C)(2).

Q9. If the Report of Inspection identifies the Facility as "functional with concerns," is the seller required to repair the Facility, provided that such repairs do not exceed 1% of the purchase price?

A9. No. Mandatory repairs by the seller, not to exceed 1% of the purchase price, come into play only if: (i) the Report of Inspection identifies the Facility as "not functional"; or (ii) the Facility cannot be certified by the applicable government authority.

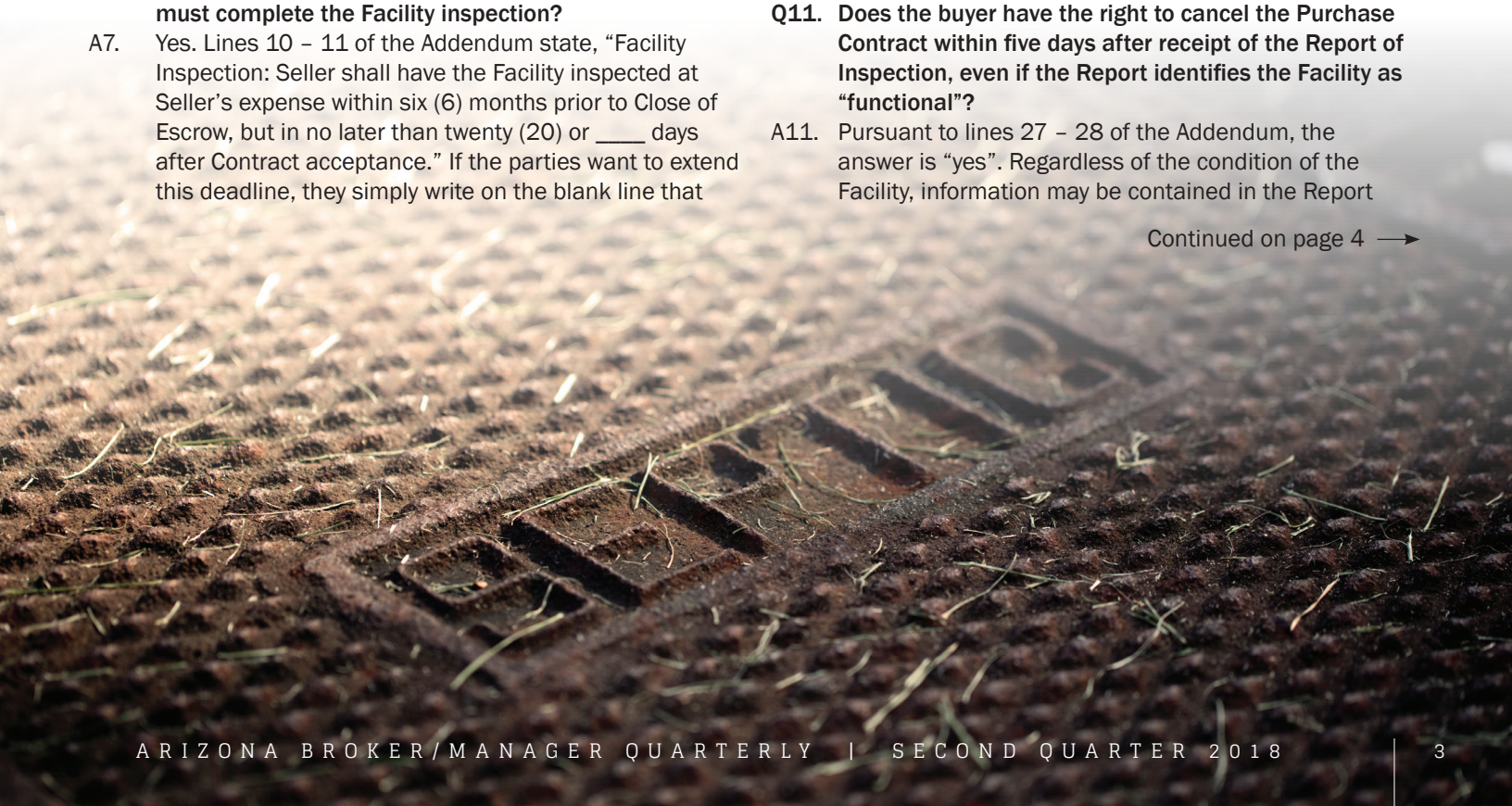
Q10. The Report of Inspection identifies the Facility as "functional with concerns" and reveals a condition that the buyer deems problematic. What options are available to the buyer under this scenario?

A10. Because the Report of Inspection identifies the Facility as "functional with concerns," the buyer cannot force the seller to complete repairs. However, as noted in lines 25 – 26, the parties can engage in negotiations for repairs/improvements to the Facility. If the result of those negotiations is not satisfactory to the buyer, they can deliver to the seller a signed notice of cancellation, provided that they do so within the Inspection Period or five days after receipt of the Facility Documents, whichever is later. At such time, the buyer will be entitled to a return of the Earnest Money.

Q11. Does the buyer have the right to cancel the Purchase Contract within five days after receipt of the Report of Inspection, even if the Report identifies the Facility as "functional"?

A11. Pursuant to lines 27 – 28 of the Addendum, the answer is "yes". Regardless of the condition of the Facility, information may be contained in the Report

Continued on page 4 →



of Inspection that would cause a buyer to cancel. For example, the Report of Inspection may disclose that the location of the Facility precludes the buyer from using the property as intended; i.e. – building a garage or constructing an extra bedroom. Additionally, even if the Facility is "functional," the Report of Inspection may reveal that it is too small to continue serving the property.

Q12. Do Pima County on-site wastewater treatment facility inspectors utilize the Arizona Department of Environmental Quality Report of Inspection?

A12. Typically, Pima County on-site wastewater treatment facility inspectors do not utilize the Arizona Department of Environmental Quality Report of Inspection. Rather, they utilize the Pima County Department of Environmental Quality Report of Inspection. One major difference between the two documents is that the Pima County form does not identify the Facility as being "functional," "functional with concerns" or "not functional." Regardless, the June 2018 Addendum can be used state-wide.

Q13. Why does Pima County utilize a different Report of Inspection?

A13. The Pima County Municipal Code imposes requirements different than what is imposed by the Arizona Administrative Code. For example, pursuant to Arizona Administrative Code R18-9-A316, a Facility can be certified even if it is not functional. On the other hand, the Pima County Municipal Code, section 7.21.050(B), states that the Facility cannot be certified unless it "is in good repair and functioning properly." It is for this reason that the seller is required to repair the facility provided that the repairs do not exceed 1% of the purchase price in the event that the Facility "cannot be certified by the applicable government authority." See lines 21 – 22. For specific questions regarding Pima County septic transfer requirements, the Pima County Department of Environmental Quality can be reached at (520) 724-7400.

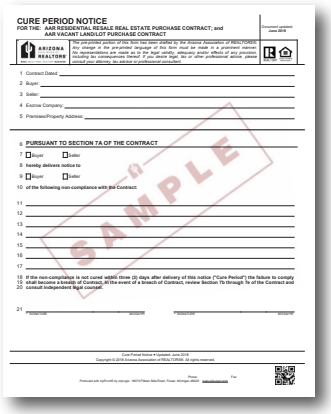
[1] A red-line draft of the prior version of the form evidencing the changes that have been made can be found here.

June 2018 Form Revisions

In addition to the release of the revised On-Site Wastewater Treatment Facility Addendum, four other revised forms will be released on June 1, 2018:

1. Cure Period Notice;
2. Seller Financing Addendum – Only One Residential Property;
3. Seller Financing Addendum – Three or Fewer Residential Properties; and
4. Buyer Advisory.

The revisions are as follows:

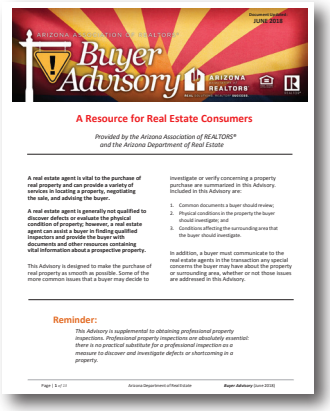

CURE PERIOD NOTICE
FOR THE: AAR RESIDENTIAL RESALE REAL ESTATE PURCHASE CONTRACT; and AAR VACANT LAND/LOT PURCHASE CONTRACT
SAMPLE

Cure Period Notice

Previously, beneath the title "Cure Period Notice" was verbiage stating, "For the AAR Residential Resale Real Estate Purchase Contract." However, the form itself can also be used in conjunction with the Vacant Land/Lot Purchase Contract. Accordingly, the sentence immediately under the form's title has been revised to state:

FOR THE: AAR RESIDENTIAL RESALE REAL ESTATE PURCHASE CONTRACT; and AAR VACANT LAND/LOT PURCHASE CONTRACT

The form will be redated "June 2018."


Buyer Advisory
A Resource for Real Estate Consumers
Provided by the Arizona Association of REALTORS® and the Arizona Department of Real Estate
Reminder:

Buyer Advisory

On page 9, under "Other Property Conditions Cooling/Heating," new verbiage has been added advising buyers of their right to hire a qualified heating/cooling inspector. Immediately following the new verbiage is a link to the Environmental Protection Agency. This link provides information about the phaseout of ozone-depleting substances which is to occur by the year 2020. Additionally, broken links have been updated. The Advisory will be redated "June 2018."

Seller Financing Addenda (separate links below)

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") mandates that a loan originator for a consumer credit transaction secured by an owner-occupied dwelling be registered and/or licensed. However, there exist two categories of seller financing excluded from the "loan originator" definition.

To facilitate seller-financed transactions under these two exemptions, Arizona REALTORS® published the following two forms in February 2014:

1. **SELLER FINANCING ADDENDUM; CONSUMER CREDIT TRANSACTION SECURED BY A DWELLING** – Seller Providing Financing for **Only One** Residential Owner Occupied Property in any 12-Month Period; and →

2. **SELLER FINANCING ADDENDUM; CONSUMER CREDIT TRANSACTION SECURED BY A DWELLING** – Seller Providing Financing for **Three or Fewer** Residential Owner Occupied Properties in any 12-Month Period.

At the top of both forms, the federal definition of the term "dwelling" is provided, clarifying the fact that it includes manufactured and mobile homes.

At the time these Addenda were originally drafted, an Arizona real estate licensee was limited in the actions she or he could take in regard to the sale of mobile and manufactured homes.

For risk reduction purposes, a reminder of this fact was placed at the top of the form, stating, "An Arizona real estate licensee is permitted to act in the sale of a used mobile home when the mobile home is installed on the real property and listed in a contract for transfer of an interest in real property executed by its owner."

In 2017 via HB 2072, and in 2018 via HB 2150, a real estate licensee's ability to sell mobile and manufactured homes has been greatly expanded, making the aforementioned reminder legally incorrect.

As a result, the reminder at the top of both Seller Financing Addenda advising real estate licensees of their limited abilities in regard to the sale of mobile and manufactured homes has been removed.

Because no change was made to the substantive text of either Addendum, they will remain dated "February 2014."

REALTORS® Successful in Expanding Areas to Sell

In 2017, the Arizona REALTORS® helped pass HB 2072 that allowed for a real estate broker or sales person to act on behalf of a licensed manufactured housing dealer in the sale of mobile homes and new or used manufactured homes located in a mobile home park.

However, this legislation did *not* permit the sale of a manufactured home that is not affixed to the land outside of a mobile home park. Acknowledging that this activity was occurring on the MLS, REALTOR® members brought forward their concerns at the September 2017 REALTOR® Caucus and requested that the law be changed to allow for such sales outside of a mobile home park which are not affixed to the land.

Since Representative Jeff Weninger (R-Chandler) championed HB 2072 last year, the association once again asked for him to champion our bill this legislative session.

And so, HB 2150 was introduced in the House of Representatives in early January. In addition to the Arizona REALTORS®, the Manufactured Housing Communities of Arizona and Manufactured Housing Industry of Arizona signed in support of the legislation. The bill unanimously sailed through the House of Representatives as well as the Senate and on March 16, 2018 was signed by Governor Doug Ducey.

The bill will become effective 90-days after the legislative session adjourns Sine Die.

As passed into law, the bill does the following:

- Allows a real estate broker or sales person to sell:
  - New or used manufactured homes, mobile homes or factory-built buildings that are affixed to real property and are listed in a contract by its owner for transfer of real estate; and
  - New manufactured homes, if the real estate broker or sales person is acting as an agent for a licensed manufactured housing dealer and the dealer is filing all paperwork and paying all fees.

For more information on HB 2150, please visit the chaptered fact sheet on the legislation.

Important Changes to Arizona's Residential Landlord and Tenant Act

A.R.S. § 33-1321 is that portion of the Arizona Residential Landlord and Tenant Act that governs security deposits. Pursuant to this statute, upon move-in, a landlord is required to furnish a tenant with a **signed copy of the lease, a move-in form for specifying any existing damages to the unit**, and **written notification to the tenant that they may be present at the move-out inspection.**

Within 14 days, excluding Saturdays, Sundays or legal holidays, after termination of the tenancy and delivery of possession, the landlord must provide the tenant with an itemized list of all deductions from the tenant's security deposit, together with the amount due and payable to the tenant.

> **Unhappy that they are not receiving a complete refund of their deposit, it is not uncommon for tenants to dispute any money retained by the landlord. However, to contest these deductions, tenants must now do so within a 60-day period.**

H.B. 2651 was passed this legislative session and will take effect on August 3, 2018. Pursuant to this bill, A.R.S. 33-1321(D) has been amended to include the following language:

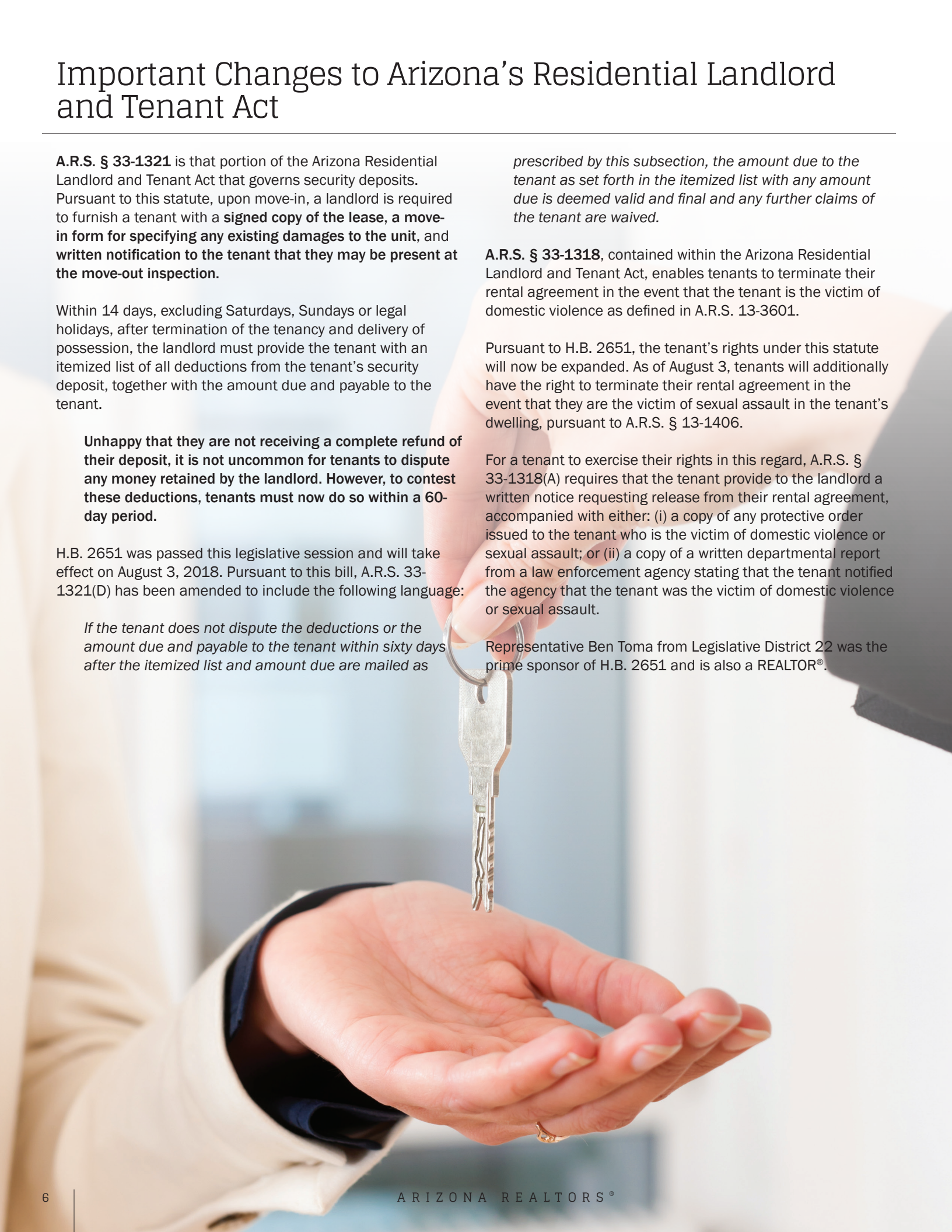
> *If the tenant does not dispute the deductions or the amount due and payable to the tenant within sixty days after the itemized list and amount due are mailed as prescribed by this subsection, the amount due to the tenant as set forth in the itemized list with any amount due is deemed valid and final and any further claims of the tenant are waived.*

A.R.S. § 33-1318, contained within the Arizona Residential Landlord and Tenant Act, enables tenants to terminate their rental agreement in the event that the tenant is the victim of domestic violence as defined in A.R.S. 13-3601.

Pursuant to H.B. 2651, the tenant's rights under this statute will now be expanded. As of August 3, tenants will additionally have the right to terminate their rental agreement in the event that they are the victim of sexual assault in the tenant's dwelling, pursuant to A.R.S. § 13-1406.

For a tenant to exercise their rights in this regard, A.R.S. § 33-1318(A) requires that the tenant provide to the landlord a written notice requesting release from their rental agreement, accompanied with either: (i) a copy of any protective order issued to the tenant who is the victim of domestic violence or sexual assault; or (ii) a copy of a written departmental report from a law enforcement agency stating that the tenant notified the agency that the tenant was the victim of domestic violence or sexual assault.

Representative Ben Toma from Legislative District 22 was the prime sponsor of H.B. 2651 and is also a REALTOR®.



Protect Your Brokerage From Political Assaults in One Easy Step

Protecting your brokerage and your agents from serious political threats is as easy as 1, 2, 3. Well, it's really just one step: Enroll in the free Broker Involvement Program (BIP).

The BIP is managed by the National Association of REALTORS® and it is a simple and effective way to mobilize hundreds of thousands of REALTORS® across the country through Calls for Action to ensure we have a strong and unified voice on critical political issues.

During the recent passage of tax reform NAR mobilized REALTORS® through the BIP and their action led to key deductions and programs, such as the Mortgage Interest Deduction for second homes and maintaining the current rules on Capital Gains Taxes for residential home sales, being kept in the tax code. When Congress was wavering on renewing the National Flood Insurance Program, which is critical for homeowners in Arizona, NAR reached out to REALTORS® through the BIP and the flood insurance program was renewed.

The BIP works by allowing NAR to send an email to your REALTORS® that appears to come from you whenever there is a Call for Action. Each email is sent to you for prior approval, but by having your name on it NAR is able to increase the open and response rates from our members, which is one of the best ways we can remind our politicians that we are paying attention to what they do.

Are you ready to enroll in the BIP and help NAR protect your business? All you have to do is email Charles Siler, Arizona REALTOR® Party Director at charles@aaronline.com and he will handle the entire process for you. It's never been easier!

Does the Fair Housing Act Apply to a Member of the LGBT Community?

BY NIKKI SALGAT, ESQ.

The Fair Housing Act (FHA) protects people from discrimination when renting, buying, or securing financing for housing. It prohibits discrimination based on race, color, national origin, religion, sex, disability, and familial status. It does not expressly prohibit discrimination on the basis of sexual orientation or gender identity. However, discrimination against a lesbian, gay, bisexual, or transgender (LGBT) person may be covered by the FHA if it is based on non-conformity with gender stereotypes.

Last year, in *Smith v. Avanti*, 249 F.Supp.3d 1194 (2017), the Tenth Circuit of the United States District Court ruled that a property owner discriminated against potential tenants on the basis of sex in violation of the FHA when the property owner refused to rent a home to the family because of the family's "unique relationship."

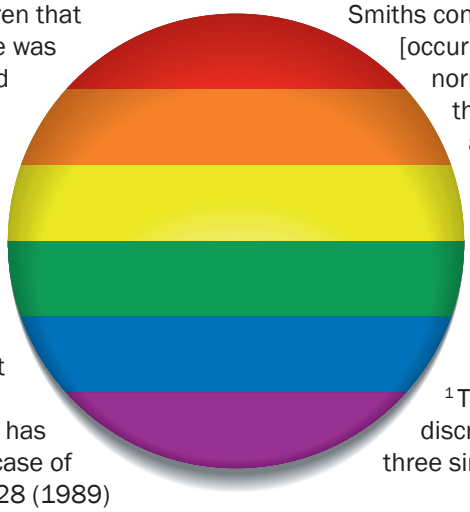
In that case, Rachel Smith, a transgender woman, was married to Tonya for more than five years and the couple had two minor children. The Smiths were in the process of looking for a new home to rent in Colorado when they came across an advertisement by private owners[1] on Craigslist. Tonya Smith responded to the ad and emailed the property owner. In the email, Tonya mentioned that Rachel was transgender and that they had children, along with other information. The property owner responded discussing a couple of properties they had for rent and asked for pictures of the family. The parties then agreed to meet that evening to view the properties.

Upon viewing the properties, the Smiths met the neighbors to one of the properties. After visiting the properties, the property owner emailed Tonya that night and told her that the Smiths could not rent the property next to the neighbors they met because the neighbors were concerned about the children and "noise." Another email from the property owner said she talked to her husband and they have "kept a low profile" and "want to continue it" that way. Ultimately, the property owner declined to rent either property to the Smiths.

Tonya responded to the property owner's email asking her what she meant by "low profile." The property owner responded by saying that the Smiths had a "unique relationship" and the "uniqueness" would become the town focus and would jeopardize the property owner's "low profile" in the community. →

Eventually, the Smiths found housing in a less desirable location—surroundings and school—and which required a further commute to work. The Smiths then sued the property owner claiming the property owner discriminated against the Smith family based on sex and familial status in violation of the FHA and Colorado's Anti-Discrimination Act.

It was clear the Smiths were discriminated against based on familial status as they were denied an opportunity to rent one of the properties because they had children that would live in the home. The murkier issue was whether the property owner discriminated against the Smiths based on sex.



In considering this issue, it should be noted that in 2007, the Tenth Circuit declined to extend Title VII (civil rights) protections to discrimination based on a person's sexual orientation. Moreover, the Tenth Circuit has held that discrimination on the basis of sex against a transsexual is not legally actionable under Title VII. However, the Tenth Circuit has recognized that many courts rely on the case of *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) to recognize a Title VII cause of action based on an employee's failure to conform to stereotypical gender norms.

In this case, the Smiths' sex discrimination claim was brought on the basis of gender stereotyping under two separate arguments; discrimination against females and discrimination against males. The Smiths first argued that "discrimination against women (like them) for failure to conform to stereotype norms concerning to or with whom a woman should be attracted, should marry, and/or should have children is discrimination on the basis of sex under the FHA." The court agreed with this argument because "such stereotypical norms are no different from other stereotypes associated with women, such as the way she should dress or act (*e.g.*, that a woman should not be overly aggressive, or should not act macho), and are products of sex stereotyping." The Smiths then argued that discrimination against a transgender individual (Rachel) because of her gender non-conformity is sex discrimination. The court stated that "[t]o the extent the Smiths contend that discrimination against Rachel [occurred] because she does not conform to gender norms of a male, e.g., does not act or dress like the stereotypical notions of a male, the court agrees."

Based on the outcome of this case, although the FHA does not include sexual orientation or gender identity as a protected status, the FHA can still be violated on the basis of sex should gender stereotyping occur.

[1] The owners were not exempt from FHA's anti-discrimination provisions due to owning more than three single-family houses at a time.

For more info on LGBT and fair housing issues see: https://www.hud.gov/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination.

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.*

Dos and Don'ts of Screening Tenants Legally

BY ROBBIE CRONROD | FEBRUARY 2018 | REALTOR® MAG

Property managers can use these eight recommendations to keep discrimination lawsuits at bay.

In October, a Massachusetts landlord who refused to rent to pregnant women or families with minor children was found guilty of violating the federal Fair Housing Act and fined $40,000. The same month, the Fair Housing Justice Center in New York sued a landlord for allegedly quoting higher rental rates to black prospective tenants, rejecting applicants with public rent assistance, and making children undergo unnecessary lead tests. Five months earlier, a federal jury in Montana fined a landlord $37,000 after she charged a disabled tenant $1,000 to have a service animal.

Cases such as these are stark reminders for property managers and landlords that neglecting to follow antidiscrimination rules designed to protect renters can come with big consequences. You know the fundamentals of fair housing: You shouldn't ask any questions or base any housing-related decisions on an applicant's race, color, religion, sex, national origin, disability, or familial status, and you mustn't promote a property in terms such as "great building for single professionals." But knowing the law and complying with it are two different things, which can be made difficult by the continual evolution of case law related to housing discrimination.

Tenant screening provides a first line of defense against discrimination complaints. That's because differences in factors such as an applicant's income, employment, references, and credit histories can help justify the selection of one tenant over another and thereby help landlords avoid discrimination charges. Here are eight recommendations for using the screening process to keep discrimination lawsuits at bay. →

DO apply your policies and procedures uniformly. Avoid running a full tenant screening report on some applicants and only a credit check on others. If you have a policy of renting to applicants with the best credit, don't make an exception for a would-be tenant with a better personality but a less positive credit report. Be consistent or be vulnerable to discrimination complaints.

DON'T get too personal on rental application forms. Ask about jobs, previous addresses, income, and references. But stay away from specific questions about spouses or children, as well as other protected characteristics under the Fair Housing Act. (You can provide space for an applicant to list all the individuals who would be living in the apartment.) Even asking the question may give the impression that you would limit housing access based on the answers.

DO choose a "colorblind" screening service. Some services have a scoring system that enables landlords to establish their preferred tenant profile based on specific parameters, such as income, past evictions, and credit score. The software then evaluates each applicant according to the criteria and returns a "recommend" or "not recommend" verdict completely independent of race, religion, or other potentially discriminatory factors. This ensures that applicants are evaluated equally, providing a strong defense, assuming you follow the software's recommendations.

DON'T automatically reject an applicant with a criminal record. In 2016, the U.S. Department of Housing and Urban Development issued a memorandum on housing providers' use of arrest and conviction records to make housing-related decisions. According to Jodie McDougal, a partner at the Davis Brown Law Firm in Des Moines, Iowa, these guidelines mean that you cannot have blanket policies excluding all applicants who are felons or consider arrest records. Instead, you should perform a case-by-case evaluation. Read McDougal's explanation and recommendations.

DO stay abreast of new developments affecting screening. One of them is a pending amendment to the Fair Credit Reporting Act, introduced in Congress last August. Currently, eviction reports used in the tenant screening process can include records dating back seven years. Under the proposed amendment, called the Tenant Protection Act, only eviction records no older than three years and resulting in a judgment that is not being appealed would be allowed. Use of older records would be viewed as discriminatory.

DO keep all documentation for up to 10 years. That includes rental applications, signed releases, tenant screening reports, and any other data or documents collected during the screening process—even if you don't rent to the applicant. This information may be crucial if a rejected applicant questions your denial or selection of a different tenant. A paper trail can help you prove that the person was not denied residency based on discrimination but because a more qualified tenant was selected instead.

DO send a declination letter when rejecting a potential tenant. This document, also called an "adverse action letter," specifies the reason or reasons for rejecting a rental application, such as income, employment, or credit history. Some screening services provide free declination letters with all the federally required language, along with a checklist of legitimate reasons for turning down a candidate.

DO call your attorney when in doubt. With new legal challenges and decisions coming out on a regular basis, it's wise to have a legal resource you can turn to with questions. Find an attorney who can periodically review your rental application form to make it sure it complies with the latest antidiscrimination requirements. It will help prevent you from making a mistake that may land you in court.

Also find this article on realtormag.realtor.org at http://realtormag.realtor.org/law-and-ethics/feature/article/2018/02/dos-and-don-ts-screening-tenants-legally

SINGLE SIGN-ON IS HERE!

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!

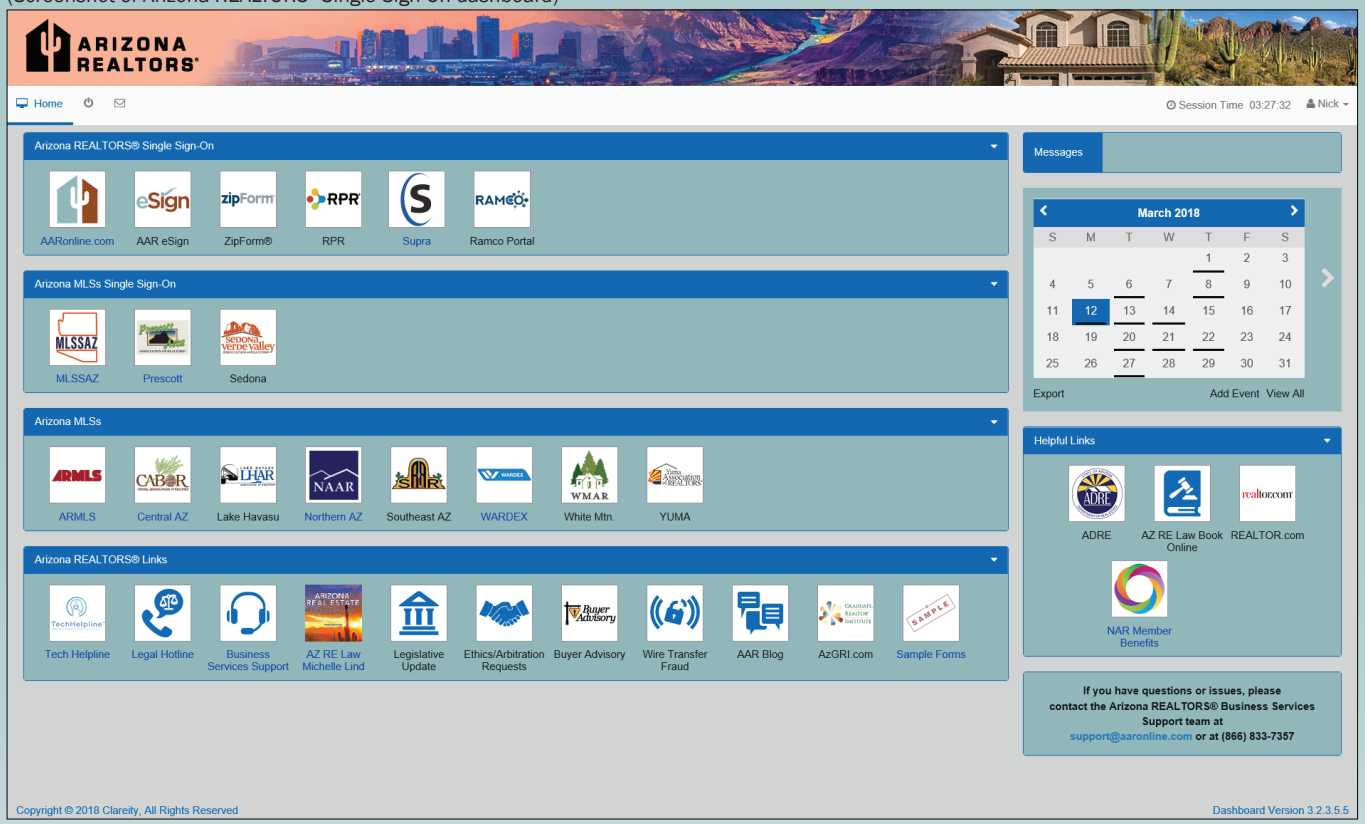
The dashboard [pictured] will be the new center of your work day, bringing you a more convenient way to access all of your applications. Don't worry, you'll still log-in to the same MLS, we're just upgrading how you can get there!

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.

- **LOGIN TODAY!** 1) Go to ***DASHBOARD.AZREALTORSSO.COM***, 2) login using your NRDS ID as your username and your last name as your password, and 3) go through a brief one-time enrollment process. You're in! You now have access to the SSO Dashboard:

(Screenshot of Arizona REALTORS® Single Sign-On dashboard)

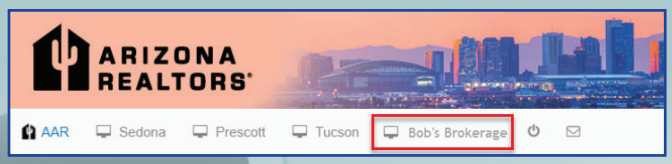


You'll be surprised, just how easy it is! If you need help, contact:
Arizona REALTORS® Support at support@aaronline.com or at (866) 833-7357.

Three Broker SSO Options

Because the Arizona REALTORS® Single Sign-On (SSO) Dashboard interfaces with our membership database, the SSO "knows" what brokerage a member belongs to. It's because of this integration that allows SSO to display custom links that only the member can see. Brokers have 3 ways in which they can participate on the SSO. In each of the cases, only the broker's agents would see the choices; not all Arizona REALTORS® members:

- **Full SSO members** – As Arizona REALTORS® and several of the local associations have done, a broker can contract with our SSO provider, Clareity, to have their very own SSO Dashboard page. The advantages are that the broker can customize the look and content of their dashboard to the programs and websites they provide their members. The broker's dashboard would appear as a tab on the members' Arizona REALTORS® SSO page:



- **Arizona REALTORS® SSO deep-link** – Another option would be to have a single link on the Arizona REALTORS® SSO that would take the agent directly into his/her broker's secure website. From that point, the agent would be able to access any of the broker's secure links in that website. The cost for this type of access is a one-time $2,500 setup fee along with $400 per month. The broker's deep-link button would appear in the Arizona REALTORS® Single Sign-On section:

- **Arizona REALTORS® SSO quick-link** – This is simply a link taking the agent to the website for the broker; it is not a single sign-on. The agent would still have to login upon arriving at the broker's website. There is no setup fee and no ongoing charge for this quick-link. The broker's quicklink would appear in the Helpful Links section:

For more information contact Michelle Sinclair at michellesinclair@aaronline.com or at (602) 248-7787.

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

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.

Brokerage Sign Requirements

ISSUE: What information must be provided on the sign at the entrance of the broker's place of business?

ANSWER: See discussion.

DISCUSSION: Pursuant to Arizona Revised Statutes ("A.R.S.") § 32-2126(B): Each designated broker and, if applicable, each employing broker, shall cause a sign to be affixed at the entrance to the broker's place of business ... with the name of the broker, the name under which the broker is doing business if other than the broker's given name, and sufficient wording to establish that the person is a real estate broker, cemetery broker or membership camping broker.

For example: ABC REALTY, LLC
John Smith, Designated Broker

Assignment Of Agency Not Required Within Brokerage

FACTS: Agent A has a property listed for sale. Agent A wishes to go on vacation. She will have Agent B from her brokerage attend to the listing while she is out of town.

ISSUE: Does the Arizona Department of Real Estate require an assignment of agency from Agent A to Agent B?

ANSWER: No.

DISCUSSION: Arizona courts recognize the agency relationship between the broker and client in a real estate transaction. See *Jenkins v. Irvin*, 20 Ariz. 164, 178 P. 33 (1919). Therefore, no assignment of agency is required as both agents, through the broker, have agency with the seller.

As a best business practice tip, the broker should have a Policy and Procedures Manual detailing what is required of an agent when they go on vacation.

Broker / Licensee Security Deposits In Trust Account Likely Commingling

FACTS: A brokerage has a property management division and manages 300 properties. Licensees John, Jill and Joe have their license with the brokerage, and they personally own rentals that are managed by the brokerage. The brokerage has one trust account to hold all of the security deposits and rent for the 300 rentals.

ISSUE: May the brokerage hold the security deposit or other funds on behalf of John, Jill and Joe in the brokerage's trust account?

ANSWER: No.

DISCUSSION: In Arizona, under the laws of Agency a licensee is viewed as the same person as the broker. Therefore, if the brokerage holds John, Jill and Joe's funds in the trust account, the brokerage has likely commingled funds.

Based on the above, the brokerage should open a second trust account to separately hold John, Jill and Joe's funds.

See Arizona Department of Real Estate Model Broker's Policy and Procedures Manual, page 32.

Seller Not Obligated To Sell Even If Full Price Offer Received

FACTS: Seller has subdivided three acres. Seller will retain two acres to live on, but has offered one acre for sale.

Seller receives a full-price offer from a buyer who wants to live on the one acre, and intends to open a trapeze school at the property, as well. The County states the zoning of the property would allow the trapeze school.

The seller subsequently rejects the buyer's offer because he doesn't want to live next to a business (the trapeze school).

ISSUE: Can a seller reject an offer by a buyer based on the intended use of the property by the buyer?

ANSWER: Yes.

DISCUSSION: A listing agreement is not a binding agreement to sell. The seller is simply making an invitation to have a buyer make an offer. →

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

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www.aaronline.com/manage-risk/legal-hotline

In this instance, the seller has rejected the buyer's offer because the seller does not want to live next to a business and may therefore reject the buyer's offer, even if the offer is full price.

A Counter Offer Is a Rejection of the Offer

FACTS: Buyer presented an offer on a commercial property to a seller. Seller signed the offer, failed to mark "counter offer is attached," but subsequently sent the signed offer together with a counter offer to the buyer.

The next day, before buyer sent the signed, accepted counter offer, seller sent a written withdrawal stating he "withdrew the counter offer."

ISSUE: Is there a contract if the seller withdrew the counter offer prior to it being accepted?

ANSWER: No.

DISCUSSION: The seller's counter offer had the same legal effect as rejecting the buyer's offer. Therefore, because the buyer had not yet accepted and delivered the signed counter offer, once the seller withdrew the counter offer the negotiations ended.

Multiple-Counter Offer Form May Be Used At Any Time During Negotiations

FACTS: Buyer's agent submitted an offer on behalf of buyer to listing agent. Listing agent subsequently sent counter-offer 1 to buyer's agent. While buyer is reviewing counter-offer 1, listing agent receives another offer.

Listing agent thereafter withdraws counter-offer 1 and sends over a multiple counter-offer form to the buyer.

ISSUE: Can the listing agent use a multiple counter-offer form if negotiations were already underway with buyer?

ANSWER: Yes.

DISCUSSION: The Statute of Frauds holds that a contract for the sale of real property must be in writing and signed by the party to be charged to be enforceable. A.R.S. §44-101(6).

Because the buyer did not sign and deliver acceptance of counter-offer 1, the seller is entitled to withdraw the counter-offer and negotiate with multiple parties until a contract is formed using the Multiple Counter-Offer form.

Time Stamp Not Required For Contract To Be Valid

FACTS: Seller accepted buyer's offer. When the listing agent sent the acceptance over to the buyer's agent, the buyer's agent insisted the acceptance was not valid without a "time stamp".

ISSUE: Does the seller need to put the time on the contract?

ANSWER: No.

DISCUSSION: A contract consists of an offer, acceptance, consideration, and delivery of the document. When the listing agent sent the accepted offer over to the buyer's agent within the acceptance timeframe, the electronic delivery provided a time stamp, and the buyer can rely on that electronic communication time stamp. However, if an offer is dropped off at an office or otherwise delivered without a time stamp, it would be prudent for the agent to establish a paper trail such as a text or email indicating that the offer was delivered. Best business practice tip: *The listing agent can ask the seller to provide the time when the seller is signing the offer, so there won't be any doubt the seller signed the document within the acceptance time frame.*

Professional Office Building Owner and Tenant Are Obligated To Make Public Restrooms Wheelchair Accessible

FACTS: The commercial office building was constructed in 1960. The building has multiple offices and rents office space to various types of business. The owner/landlord (Landlord) recently rented office space to a tenant who operates a professional services business (Tenant) and who happens to have a disabled employee that requires the use of a wheelchair (Employee). The door to the office bathroom is only 24-inches wide. In this regard, the Employee's wheelchair will not fit through the bathroom door and the Employee cannot access the bathroom.

ISSUE: Must the Landlord and/or Tenant alter the bathroom so that it is accessible to a disabled person in a wheelchair?

ANSWER: Yes. Title III of the Americans with Disabilities Act (ADA) covers, in pertinent part, "places of public accommodation" and "commercial facilities" and extends to private entities. See 28 CFR § 36.101, et al. Pertinent →

here, places of public accommodation are facilities whose operations affect commerce and include various categories enumerated under the ADA. Of these categories, service establishments such as offices of accountants and lawyers, insurance offices, and professional offices of health care providers are included.

According to the ADA, both the Landlord and the Tenant have full responsibility for complying with all of the Title III requirements applicable to that place of public accommodation, i.e., the Tenant's office. The Title III regulation permits the Landlord and the Tenant to allocate responsibility in the lease for complying with particular provisions of the regulation. However, any allocation made in a lease or other contract is only effective as between the parties, and both the Landlord and the Tenant remain fully liable for compliance with all provisions of the ADA relating to that place of public accommodation.

Title III of the ADA prohibits discrimination against any individual with a disability. Accordingly, individuals with disabilities may not be denied full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations offered by a place of public accommodation. Under Title III, architectural barriers must be removed when it is "readily achievable" to do so. According to the ADA, architectural barriers are physical elements of a facility that impede access by people with disabilities. Determining if barrier removal is readily achievable is necessarily a case-by-case judgment under Title III. However, the ADA presumes that "widening doors" is readily achievable. That being said, in this case, it would likely be found that widening the bathroom door to accommodate the Employee's wheelchair would be readily achievable. Therefore, the Landlord and the Tenant are responsible for accommodating the Employee by widening the bathroom door for wheelchair accessibility.

Note: This does not address Title I of the ADA dealing with an employer's obligations to a disabled employee with respect to making accommodations, as this would be outside the scope of the AAR Legal Hotline.

A Call For "Highest and Best" Does Not Create An Auction

FACTS: Broker A listed a property in the MLS. Broker A received eight offers. Broker A notified all eight buyers that the seller would like everyone's highest and best offer.

Broker B has filed a complaint stating Broker A is conducting an auction.

ISSUE: Is a call for "highest and best" an auction?

ANSWER: No.

DISCUSSION: "[T]he function of an auction is to permit the highest bidder to purchase the property offered for sale, and the choice of that highest bidder is therefore beyond the control of the seller." *Winfield Collection, Ltd.*, 105 F.Supp.2d at 749.

Here, the Seller received eight bids to purchase the property and proceeded to request the best offer from each of the eight buyers. Therefore, seller had control of who would purchase the property and Broker A was not conducting an auction.

Financing Terms (Section 2) Do Not Apply In All Cash Sale

FACTS: Buyer makes a cash offer to seller. Seller accepts the offer and escrow is opened. Thereafter, the buyer decides he would like to get a loan. Buyer drafts an addendum stating that buyer will obtain a loan, but if financing fails for any reason, buyer will still pay cash and close on time. Seller refuses to sign the addendum.

ISSUE: Can the seller refuse to sign the addendum allowing the buyer to get a loan?

ANSWER: Yes.

DISCUSSION: Pursuant to the contract, when a buyer makes a cash offer, section 2 (Financing) of the contract does not apply. Therefore, section 2k is not in effect and the buyer has no right to change the financing terms without seller agreement.

ABOUT THE AUTHOR

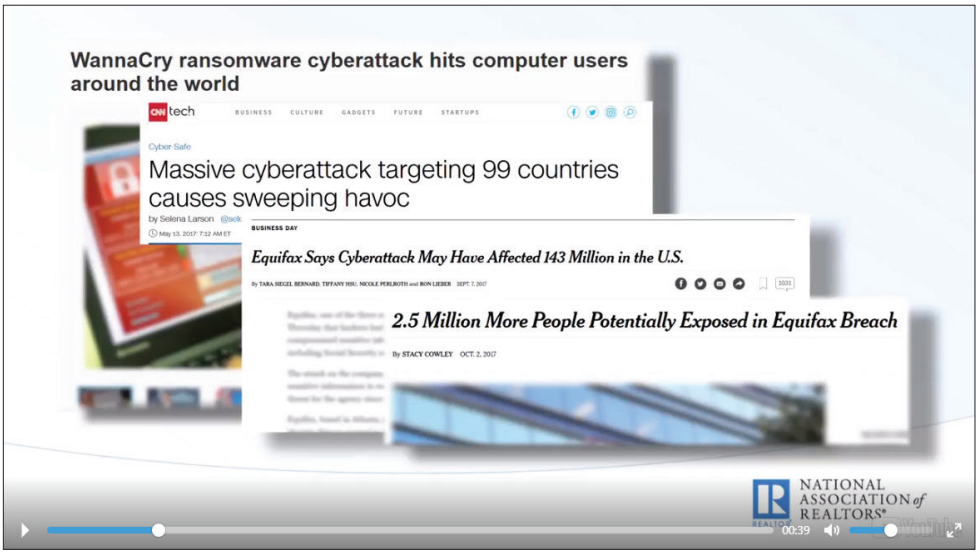
Richard V. Mack

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.

Q&A Legal Hotline

Window to the Law: Creating a Cybersecurity Program

Brokerages can learn about the steps to follow when implementing a cybersecurity plan to help to protect the firm's assets from outside threats.



Watch the video here: https://www.nar.realtor/videos/window-to-the-law/window-to-the-law-creating-a-cybersecurity-program

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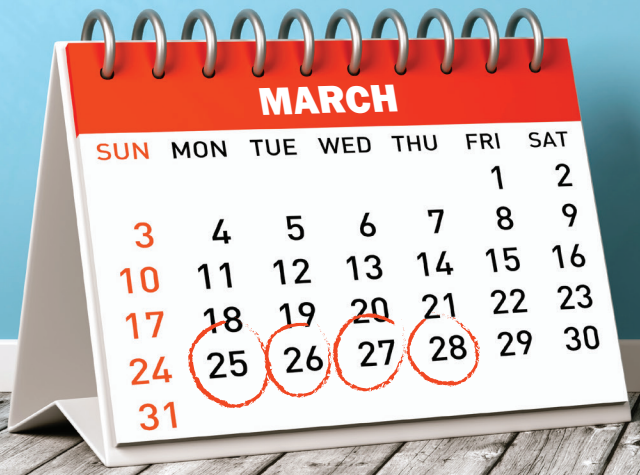

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