

BROKER & MANAGER

QUARTERLY

COMMUNICATING WITH AN APPRAISER

THE SALE OF MOBILE AND MANUFACTURED HOMES:
A SUMMARY

EARLY FORM RELEASE – NOTICE OF ABANDONMENT

COMMERCIAL PURCHASE CONTRACT

FORMS AGREEMENT TO BENEFIT COMMERCIAL
MEMBERS

AVOIDING DISPUTES AND LIABILITY BY FOLLOWING
BASIC CONTRACT PRINCIPLES

FREE SPEAKER BENEFITS

ADRE COLLABORATES ON E-SOLUTION FOR
PROPERTY MANAGEMENT

ASAP REALTOR® SAFETY

THREE BROKER SSO OPTIONS

WINDOW TO THE LAW: HOW TO AVOID ILLEGAL
MARKETING

P. 13

LEGAL HOTLINE Q&A





BROKER & MANAGER

THIRD QUARTER 2018 | ARIZONA BROKER/MANAGER QUARTERLY

IN THIS ISSUE

- | | | | |
|---|--|----|---|
| 2 | Communicating with an Appraiser | 9 | ADRE Collaborates on e-Solution for Property Management |
| 4 | The Sale of Mobile and Manufactured Homes: A Summary | 10 | ASAP REALTOR® Safety |
| 6 | Early Form Release – Notice of Abandonment | 10 | Arizona REALTOR® Website – Hidden Gems |
| 6 | Commercial Purchase Contract | 11 | Three Broker SSO Options |
| 7 | Forms Agreement to Benefit Commercial Members | 12 | Legal Hotline |
| 8 | Avoiding Disputes and Liability by Following Basic Contract Principles | 13 | Legal Hotline Q&A |
| 9 | Free Speaker Benefits | 16 | Window to the Law: How to Avoid Illegal Marketing |

Communicating with an Appraiser

BY NIKKI SALGAT, ESQ.

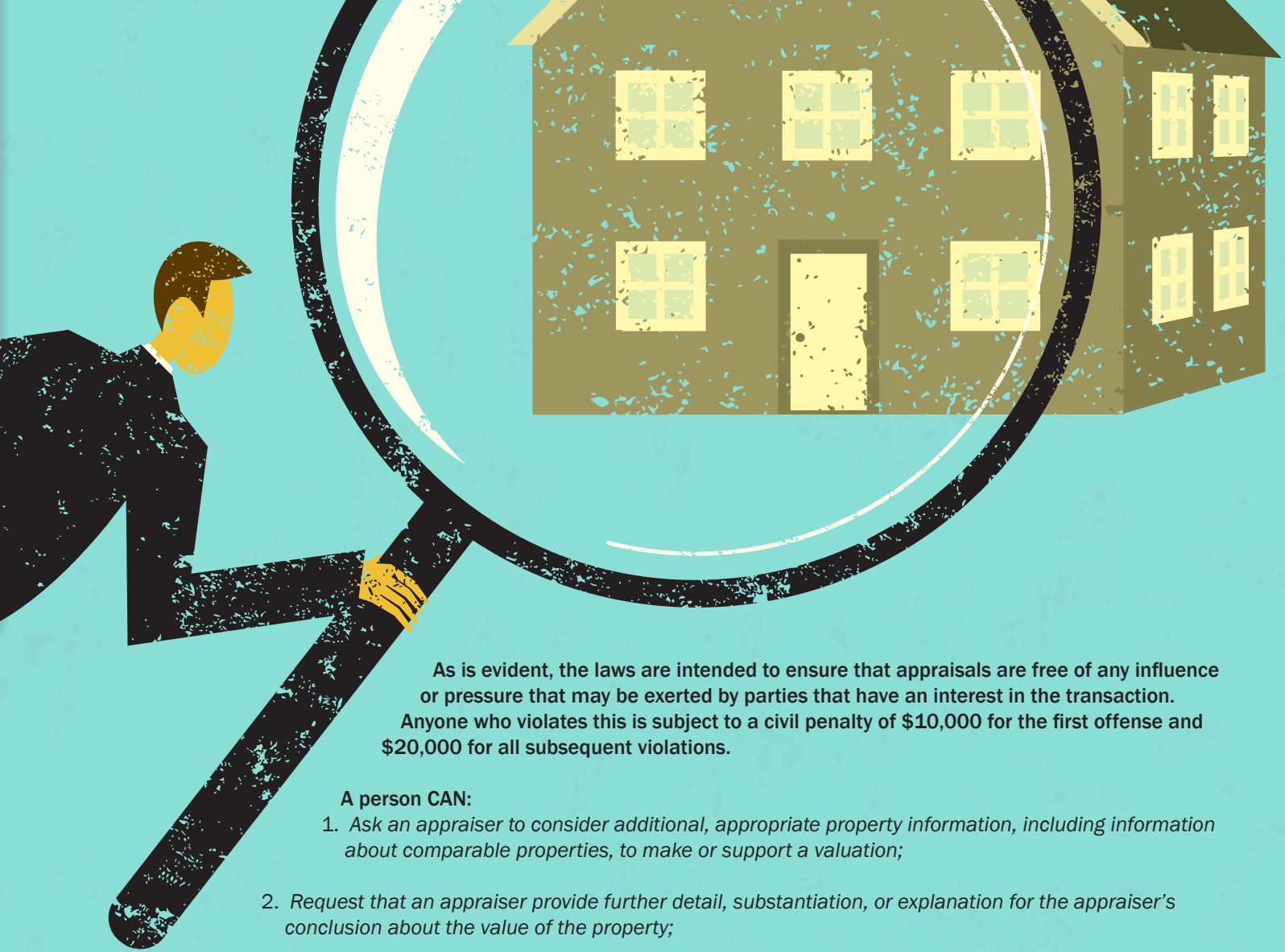
Appraisals can make or break a deal. There are many variables that can alter whether a property appraises for the contracted price. Is the appraiser qualified? Is the appraiser familiar with the area? Does the appraiser understand that this particular property is different from other properties because of X, Y, and Z?

These questions and the unknown answers may make real estate agents uneasy. While agents cannot interfere with the valuation of a property, they may communicate with the appraiser if done properly.

The Dodd-Frank Act ([12 U.S.C. §1639e](#)) and Regulation Z of the Truth in Lending Act ([12 CFR §226.42](#)) provide that an appraiser must prepare an independent and unbiased opinion of value of the real property. In doing so, the laws state specific ways in which a person cannot interfere. However, a person may perform some actions which do not violate the laws.

A person CANNOT:

1. *Directly or indirectly cause the value assigned to the property to be based on anything other than the appraiser's independent valuation. A person may therefore not coerce, extort, induce, bribe or intimidate, compensate or instruct, or collude with the appraiser.*
Examples that violate this are:
 - A. Seeking to influence an appraiser to report a minimum or maximum value for the property;
 - B. Withholding or threatening to withhold timely payment to an appraiser because the appraiser does not value the property at or above a certain amount;
 - C. Implying to an appraiser that current or future retention of the appraiser depends on the amount at which the appraiser estimates the value of the property;
 - D. Excluding an appraiser from consideration for future engagement because the appraiser reports a value for the property that does not meet or exceed a predetermined threshold; and
 - E. Conditioning the compensation paid to an appraiser on consummation of the covered transaction.
2. *Induce an appraiser to misrepresent, falsify or alter an appraisal.*
3. *Seek to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of a transaction; and*
4. *Withhold or threaten timely payment for an appraisal report or for appraisal services when the appraisal report or services are provided for in accordance with the contract between the parties. —>*



As is evident, the laws are intended to ensure that appraisals are free of any influence or pressure that may be exerted by parties that have an interest in the transaction. Anyone who violates this is subject to a civil penalty of \$10,000 for the first offense and \$20,000 for all subsequent violations.

A person CAN:

1. *Ask an appraiser to consider additional, appropriate property information, including information about comparable properties, to make or support a valuation;*
2. *Request that an appraiser provide further detail, substantiation, or explanation for the appraiser's conclusion about the value of the property;*
3. *Ask an appraiser to correct errors in the appraisal;*
4. *Obtain multiple valuations for the property to select the most reliable valuation;*
5. *Withhold compensation due to breach of contract or substandard performance of services; and*
6. *Take action permitted or required by applicable federal or state statute, regulation or agency guidance.*

What do the above items mean for an agent? The agent may provide a copy of the executed contract to the appraiser, discuss how the market is responding to the property, provide insight into the neighborhood and other market data, and address recent home improvements.

Agents should be aware that the Uniform Standards of Professional Appraisal Practice (USPAP), which governs appraisers, prevents the appraiser from discussing the results of the appraisal with anyone other than their client (which is usually the lender).

Accordingly, if the real estate agent would like the appraiser to correct any perceived errors in the valuation, the agent should send the additional information and/or comparables to the lender.

For more, see the [National Association of REALTORS® Dos and Don'ts of Appraiser Communication](#).

About the Author

Nikki J. Salgat, Esq. is associate counsel to the Arizona 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.

The Sale of Mobile and Manufactured Homes: A Summary

BY SCOTT DRUCKER, ARIZONA REALTORS® GENERAL COUNSEL

A license issued by the Arizona Department of Housing (ADOH) is generally required to act as a broker in the sale of mobile and manufactured homes. Pursuant to A.R.S. § 41-4047(3-4), it is unlawful to “engage in the business of a salesperson of manufactured homes, mobile homes or factory-built buildings...” or engage in the business of contracting to sell any new or used manufactured home, mobile home, factory-built building or subassembly (collectively referred to as “manufactured/mobile home”) without a license issued by the ADOH.

There is an increasing number of exemptions from the ADOH licensing requirements that permit real estate licensees to represent a party in the sale of a manufactured/mobile home.

Prior to 2017, an Arizona real estate licensee’s ability to sell manufactured/mobile homes as part of their real estate practice was governed by A.R.S. § 41-2178(B)(1). Pursuant to that statute, real estate brokers and salespersons were permitted to act in the sale of used mobile and manufactured homes only when the home was affixed to the real property and listed in a contract for transfer of an interest in real property executed by its owner.



Q: What are the statutory requirements of the original ADOH licensing exemption?

A: The requirements are the manufactured/mobile home:

- Must be “used”
- Must be “installed” on the property
- Must be “listed” in a contract for transfer of an interest in real property executed by its owner.

Q: When is a manufactured/mobile home considered “used?”

A: A.R.S. § 41-4001(37) defines “used unit” to mean “any unit that is regulated by this chapter and that has been sold, bargained, exchanged or given away from a purchaser who first acquired the unit that was titled in the name of such purchaser.”

Q: When is a manufactured/mobile home “installed” on the property?

A: Pursuant to A.R.S. § 41-4001(18), a manufactured/mobile home is installed on the property when it is:

- Connected to on-site utility terminals
- Placed on a foundation system
- Secured by anchoring.

“Installation” does not require the filing of an affidavit of affixture for purposes of this exemption.

Q: When is a manufactured/mobile home “listed” in a contract for transfer of an interest in real property executed by its owner?

A: This occurs when both the manufactured/mobile home and the real property interest are transferred in the same purchase contract. To transfer both the manufactured/mobile home and an interest in the real property in the same purchase contract, the seller must either own the real property or have the right to directly assign the lease for real property.

In 2017, the law was expanded pursuant to H.B. 2072, which amended A.R.S. § 41-4028. In addition to what was previously allowed, real estate licensees are permitted to act in the sale of mobile and manufactured homes under two new circumstances:

1. Real estate brokers and salespersons can act on behalf of a Department of Housing licensed dealer in the sale of new or used mobile and manufactured homes located in mobile home parks, provided that the licensed dealer submits the required fees and paperwork. See A.R.S. § 41-4028(B)(1)(b); and
2. Real estate brokers and salespersons can act in the sale of used mobile and manufactured homes located in mobile home parks, provided that the broker or salesperson is acting on behalf of a private party and is compliant with Arizona Department of Real Estate licensing requirements. See A.R.S. § 41-4028(B)(1)(c).

Q: How is a mobile home park defined?

A: A.R.S. 33-1409 defines mobile home park as “any parcel of land that contains four or more mobile home spaces.”

Q: How can you determine whether a manufactured housing dealer is licensed?

A: You can determine if a manufactured housing dealer is licensed by going to the ADOH Manufactured Housing Division's home page and performing an [online licensing search](#) or by [contacting the ADOH](#).

Q: What paperwork must the manufactured housing dealer file?

A: A.R.S. § 41-4040 provides the following:
Every dealer who acquires or sells a previously titled manufactured home or mobile home, as defined in section 42-19151, shall submit a written report of all such acquisitions and sales to the department of revenue and to the county assessor

of the county where such dealer is located. Such report shall be submitted by the fifteenth day of each month for the period of the previous calendar month and shall include:

1. The manufacturer, brand name or model, size, factory list price, total selling price and serial number of such manufactured home or mobile home
2. The name and address of the person from whom such manufactured home or mobile home was acquired and the last previous location of such manufactured home or mobile home
3. The name and address of the person to whom such manufactured home or mobile home was sold
4. The new location of such manufactured home or mobile home if such location is known to the dealer.

In 2018, via H.B. 2150, the law was again expanded. Effective August 3, 2018, real estate licensees are able to act in the sale of a manufactured/mobile home in two additional circumstances:

1. Real estate brokers and salespersons can act in the sale of new mobile and manufactured homes, outside of mobile home parks, provided that the real estate licensee is acting as an agent for a Department of Housing licensed dealer and the licensed dealer submits the required fees and paperwork. See A.R.S. § 41-4028(B)(1)(d); and

2. Real estate brokers and salespersons can act in the sale of new or used mobile and manufactured homes, outside mobile home parks, provided that they are affixed to real property and listed in a contract for transfer of an interest in real property executed by its owner. See A.R.S. § 41-4028(B)(1)(a).

Q: How is the 2018 licensing exemption set forth in A.R.S. § 41-4028(B)(1)(a) different than the original?

A: The only difference is that the most recent exemption also applies to new manufactured/mobile homes. While the original exemption required that the manufactured/mobile home must be “used,” the new exemption applies to both used and new manufactured/mobile homes.

Q: Does any exemption exist that allows real estate licensees without an ADOH license to represent a party in the sale of a used manufactured/mobile home that is not affixed to real property and sits outside of a mobile home park?

A: No. To sell a used manufactured/mobile home that sits outside of a mobile home park, the manufactured/mobile home must be affixed to real property and listed in a contract for transfer of an interest in real property executed by its owner.

Q: Where can I find forms necessary for the sale of a manufactured/mobile home?

A: The [Manufactured Housing Communities of Arizona](#) drafted a form titled “Mobile and Manufactured Home Purchase Agreement and Sales Contract,” as well as ancillary forms needed to effectuate the sale of a manufactured/mobile home.

In an effort to assist REALTORS® with these types of transactions, The Arizona REALTORS® has made these [forms available on its website](#). Salespersons should consult their brokers.

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.



Early Form Release – Notice of Abandonment

BY NIKKI SALGAT, ESQ.

NOTICE OF ABANDONMENT

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 pre-printed revision. No handwritten or typed changes are to be made to this form. If you are not an attorney, please consult your attorney, an attorney or professional consultant.

1. To: _____ and All Occupants

2. Premises: _____

3. Pursuant to A.R.S. §33-1370, you are hereby notified that the Landlord considers the above referenced Premises to be abandoned as of _____ and is taking action for one of the following reasons:

4. ☐ **Personal Property Present**

5. A. You have been absent from the Premises for at least seven (7) days without notice to the Landlord;

6. B. Rent is past due for at least ten (10) days; and

7. C. Your personal property is still on the Premises, however there is no reasonable evidence that you are still residing on the Premises.

8. ☐ **No Personal Property Present**

9. A. You have been absent from the Premises for at least five (5) days without notice to the Landlord;

10. B. Rent is past due for at least five (5) days; and

11. C. All of your personal property has been removed from the Premises.

12. If you have five (5) days after the posting and mailing of this Notice in which to notify the Landlord/Property Manager that you have in fact not abandoned the Premises. Unless you contact the Landlord/Property Manager, the Landlord/Property Manager shall enter and retain possession of the leased Premises for five (5) days after the above referenced date, at which time the Landlord/Property Manager will take any/all actions necessary to release the Premises, including changing door locks.

13. After relating possession of the leased Premises, the Landlord/Property Manager shall prepare an inventory of any personal belongings, including portable items, plants and animals. Perishable items may be disposed of and abandoned animals may be immediately removed and released to a shelter or boarding facility. The Landlord/Property Manager shall hold other personal property left in the Premises for a period of fourteen (14) days at which time the items may be donated to a qualifying charitable organization or sold. The Landlord/Property Manager may destroy or otherwise dispose of some or all of the property if the Landlord/Property Manager reasonably determines that the value of the property is so low that the cost of moving, storage and conducting a public sale exceeds the amount that would be realized from the sale. A.R.S. §33-1370(E).

24. To prevent loss of the leased Premises and/or for information on how to regain entry to the Premises and obtain possession of personal property, please contact: _____

26. *SIGNED AND DATED BY BROKER/PROPERTY MANAGER: _____

27. *SIGNED AND DATED BY BROKER/PROPERTY MANAGER: _____

28. ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____

29. TELEPHONE: _____

Notice Delivered this _____ day of _____, 20__

30. ☐ Certified or Registered mail

31. ☐ Receipt Number: _____

32. AND

33. ☐ Posted on the Premises

Pursuant to A.R.S. §33-1370, the landlord shall send the tenant a notice of abandonment by certified mail, return receipt requested addressed to the tenant's last known address and if any of the tenant's last known address is not correct, the landlord shall post a notice of abandonment on the door to the dwelling unit or in any other conspicuous place on the property for five days.

Notice of Abandonment * August 3, 2018 * Copyright © 2018 Arizona Association of REALTORS® All rights reserved.

The Arizona REALTORS® state association bylaws provide that new or revised forms shall be released on or about February 1, June 1, and October 1, *unless law or regulation mandates earlier release.*

On August 3, 2018, A.R.S. §33-1370 — pertaining to abandonment of leased property by a tenant, was revised.

Among the changes, landlords will have the right to:

- (i) dispose of the tenant's perishable items, including plants; and
- (ii) remove animals from the leased property and place them in a shelter or boarding facility.

The new law also changes the length of time a landlord must hold the tenant's abandoned personal property before selling it, expanding the timeframe from 10 to 14 days. After this holding period, the law will now allow the landlord to either donate the tenant's personal property to a charitable organization or sell the property.

To see a more detailed account of the law change, refer to this Arizona REALTORS® [blog article](#).

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.

Because of this change to the Arizona Residential Landlord and Tenant Act, lines 13 through 20 of the Arizona REALTORS® Notice of Abandonment have been revised and the updated Notice will be released [August 3, 2018](#).

Commercial Purchase Contract

COMMERCIAL REAL ESTATE PURCHASE CONTRACT

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 pre-printed revision. No handwritten or typed changes are to be made to this form. If you are not an attorney, please consult your attorney, an attorney or professional consultant.

1. Other Received From: (Buyer's)

2. Agency Confirmation: Broker earned on Line 18 is the agent of (check one):

3. ☐ The Buyer exclusively or ☐ The Seller exclusively or ☐ Both the Buyer and Seller

4. Amount of Earnest Money: _____ \$

5. All earnest money shall be deposited into a federally insured account acceptable to Buyer and Seller and any interest earned thereon shall also be included in earnest money ("Earnest Money"). Buyer agrees that, if Buyer breaches this Contract, Earnest Money is forfeited to Seller. If Seller breaches this Contract, Earnest Money shall be returned to Buyer. If Seller breaches this Contract, Seller shall be liable for the cost of the Buyer's legal fees and costs of the Buyer's attorney.

6. Earnest Money shall be (check one):

7. ☐ Delivered by Buyer to Escrow Company upon mutual execution of this Contract.

8. ☐ Held by Broker until mutual execution. Upon mutual execution, Broker shall promptly deposit the Earnest Money with the Escrow Company to which the check is payable. If the check is payable to Broker, Broker shall deposit the check in Broker's trust account or endorse the check without recourse and deposit it with a duly licensed Escrow Company.

9. Form of Earnest Money: ☐ Personal Check ☐ Other _____

10. Disposition with: ☐ Buyer's Trust Account ☐ Escrow Company

11. Offer Received By: _____ (collectively "Broker")

12. Property Description and Offer: Buyer agrees to purchase and Seller agrees to sell the following real property:

13. Property Address: _____ City: _____ County: _____ AZ, Zip Code: _____

14. Assessor's Parcel #: _____

15. Legal description: _____

16. which includes, at no additional cost to Buyer, all fixtures and improvements thereon, as well as the following items, if any, owned by Seller and presently located on or in the real property: structural distribution systems (power panels, wiring, conduits, disconnects), lighting fixtures, computer wiring, telephone distribution systems (lines, jacks and connections), heating, ventilation and air conditioning equipment, evaporative coolers, air lines, carpets, window coverings, wall coverings, security and fire detection systems, and _____

17. (collectively the "Property"). All fixtures and improvements shall be free of liens and encumbrances unless otherwise specified.

18. Personal Property NOT Included

19. Personal property shall be transferred in AS-IS CONDITION, FREE AND CLEAR OF ANY LIENS AND ENCUMBRANCES, and SELLER MAKES NO WARRANTY of any kind, expressed or implied (including, without limitation, ANY WARRANTY OF MERCHANTABILITY).

20. Addenda Incorporated: ☐ Schedule of personal property ☐ Lead-Based Paint Disclosure ☐ Other _____

21. Full Purchase Price, paid as outlined below. Buyer acknowledges that failure to have funds deposited as required to close escrow on the date specified herein shall constitute a material breach of Contract.

22. Earnest Money: _____

23. Additional Earnest Money: _____

24. _____

25. _____

26. _____

27. _____

28. _____

29. _____

30. _____

31. _____

32. _____

33. _____

34. _____

35. _____

36. _____

37. _____

38. _____

39. _____

40. _____

41. _____

42. _____

43. _____

44. _____

45. _____

46. _____

Signature of Buyer/Broker: _____

Signature of Seller/Broker: _____

Page 1 of 9

As a member benefit, Arizona REALTORS® entered into an agreement that allows members to purchase a full complement of commercial real estate forms from AIR at a discount. For those members who choose not to take advantage of these AIR forms, the state association maintains its own [Commercial Purchase Contract](#). This contract is

- The buyer's financing contingency, if any, ends with the due diligence period in the Arizona REALTORS® Commercial Contract
- The Arizona REALTORS® Commercial Contract instructs the escrow company to distribute a commitment for title insurance in sufficient detail for the issuance of an Extended Owner's Title Insurance Policy within 15 days after opening of escrow
- The Arizona REALTORS® Commercial Contract allows the parties to choose the remedy in the event of a buyer's breach
- The Arizona REALTORS® Commercial Short Sale Addenda are available for use in a short sale of commercial property.

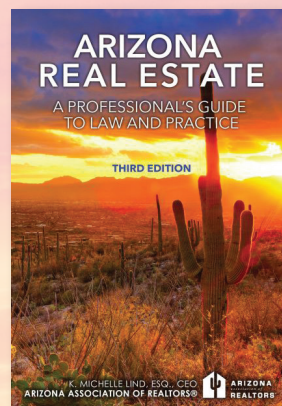
designed for commercial transactions and reflects the realities of the commercial market.

KEY POINTS TO REMEMBER when using the Arizona REALTORS® Commercial Purchase Contract include:

- All time periods in the Arizona REALTORS® Commercial Contract run from the opening of escrow

[Arizona Real Estate: A Professional's Guide to Law and Practice – Third Edition](#) by K. Michelle Lind. Xulon Press (pages 268-269). Kindle edition (location 5676).

K. Michelle Lind is CEO of Arizona REALTORS®, an attorney, and a State Bar of Arizona board certified real estate specialist.



Forms Agreement to Benefit Commercial Members

BY SCOTT DRUCKER, ARIZONA REALTORS® GENERAL COUNSEL

To continue serving the needs of its members that practice commercial real estate, the Arizona REALTORS® state association has renegotiated its agreement with [AIR CRE](#), an online platform dedicated to providing unsurpassed tools to commercial agents.

Pursuant to the contract that took effect on August 1, 2018, Arizona REALTOR® members seeking to purchase AIR CRE commercial real estate transaction forms will be able to do so at a significant discount.

As explained by AIR CRE, its contracts, which are “designed by experts and written to be completely party-neutral,” provide users with “totally customizable templates to cover all the necessary bases to close your deal, both legally and efficiently.”

AIR CRE maintains a library of more than 50 of the most-used forms in commercial real estate transactions, which are regularly reviewed to account for changes in the law.

Furthermore, pursuant to the new agreement, Arizona REALTOR® members utilizing AIR CRE forms will now have free access to AIR CRE’s attorney, Bryan Mashian, who can be reached at (310) 207-1464.

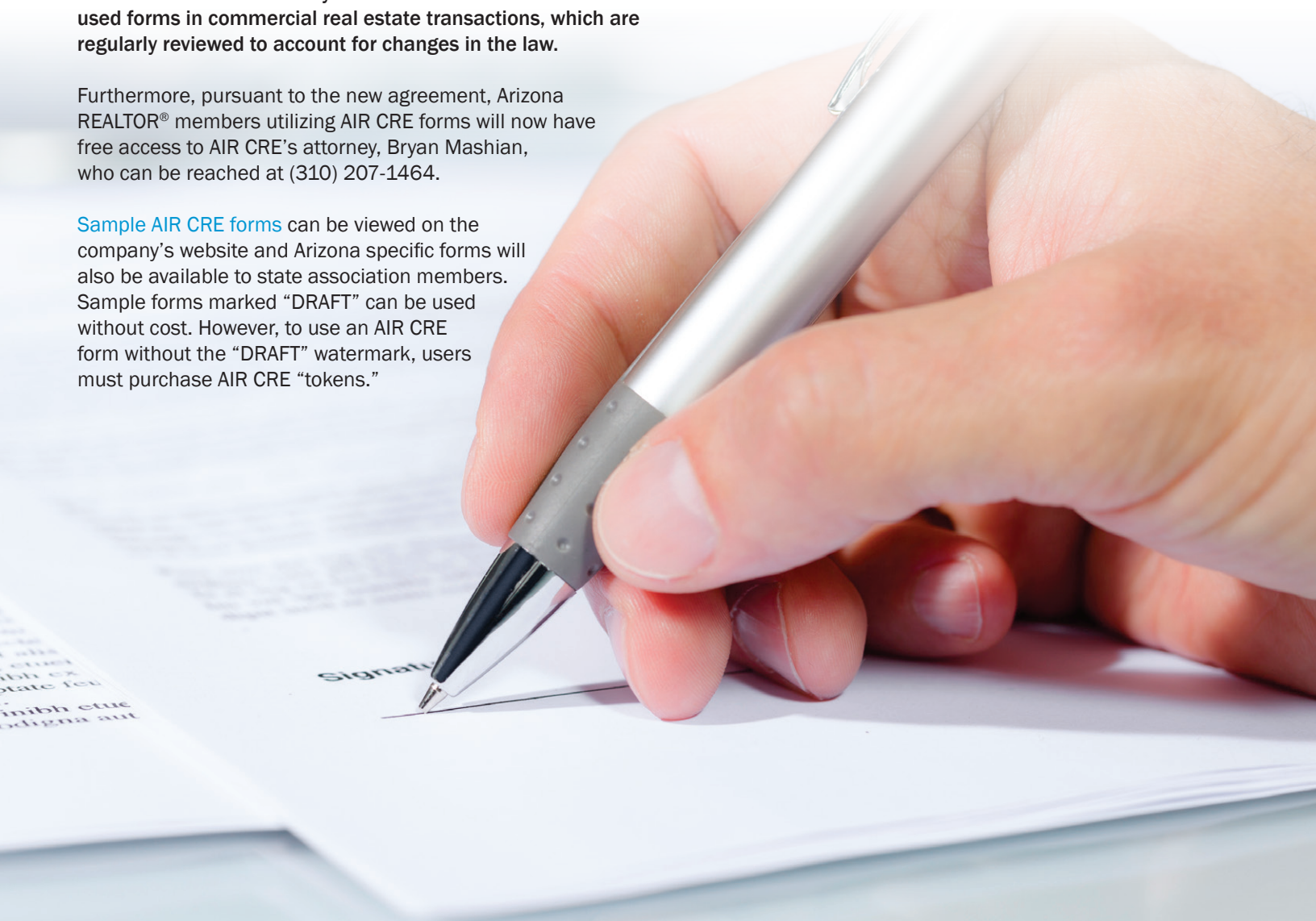
[Sample AIR CRE forms](#) can be viewed on the company’s website and Arizona specific forms will also be available to state association members. Sample forms marked “DRAFT” can be used without cost. However, to use an AIR CRE form without the “DRAFT” watermark, users must purchase AIR CRE “tokens.”

Depending on complexity, each form can be obtained in exchange for a specific number of tokens. Fortunately, Arizona REALTOR® members have the availability to purchase these tokens at a discounted rate.

Additional information about this important member benefit, including discounted pricing, can be found [here](#).

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.



Avoiding Disputes and Liability by Following Basic Contract Principles

BY K. MICHELLE LIND, CEO OF ARIZONA REALTORS®, ESQ.

A significant number of disputes could be avoided if those involved in a real estate transaction would consistently adhere to the basic principles of contract law. Obviously, reducing disputes between buyers and sellers also reduces broker liability.

The Basics: Every real estate broker and agent (“broker”) knows the basics of contract law. For example, every broker knows that a contract is simply an agreement between two people. In a contract for the sale of real property, the buyer agrees to buy the specified property for a certain price and the seller agrees to convey clear title to the property. However, most real property contracts, such as the Arizona Association of REALTORS® Residential Resale Purchase Contract (“AAR Contract”), contains numerous other important provisions relating to the transaction.

Get It in Writing: It is also common knowledge that pursuant to the Statute of Frauds, 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). However, the parties sometimes forget that any modification to the contract for the sale of real property must also be in writing and signed by the parties.

Many disputes between buyers and sellers could be avoided if all contract modifications were put in writing and signed. For example, in the AAR Contract, if the buyer elects to allow the seller an opportunity to correct a disapproved item and the seller agrees to do so, that agreement is a modification of the contract, which must be in writing and signed by the parties. Unfortunately, disputes arise when the broker obtains only the seller’s verbal agreement to correct a disapproved item and conveys that verbal agreement to the buyer by a letter signed only by the broker. If the seller subsequently refuses to correct the item, the buyer is understandably angry, but has no recourse against the seller because the seller’s verbal agreement to modify the contract is not legally enforceable. Therefore, the buyer may look to the broker for recompense.

Both Spouses Must Sign: Additionally, most brokers are aware that in any transaction for the acquisition, disposition or encumbrance of an interest in real property, both husband and wife must sign the contract for the community property to be obligated. A.R.S. §25-214(C)(1). Therefore, both husband and wife must sign all contracts and other agreements relating to the transfer of real property, including modifications of the contract. The signature of both parties is also imperative for non-married buyers and sellers.

Again, using the buyer disapproval and seller response procedure set forth in the AAR Contract as an example, both husband and wife buyer should sign the written notice of items disapproved and election. Disputes have arisen

when one buyer spouse signs the written disapproval notice electing to allow the seller an opportunity to correct the items disapproved and the notice is delivered to the seller without the other spouse’s signature. If the non-signing buyer spouse, upon seeing the list of items disapproved, wants to elect to cancel immediately, instead of allowing the seller an opportunity to correct the items, a dispute is inevitable. Obviously, this kind of dispute creates not only a strain on the buyers’ marriage, but a legal dilemma as well. Similarly, both sellers must sign any agreement to make requested repairs.

Be Specific: Finally, brokers are cognizant that the contract contains all of the parties’ legal rights and obligations regarding the transaction. Therefore, the contract must be clear and contain specific terms. The AAR Contract contains such specific terms. However, oftentimes the parties alter the standard terms in the AAR Contract or add additional terms and conditions. When drafting such terms, it is important to avoid ambiguity. Contract language is ambiguous when it can be reasonably interpreted in more than one way and the meaning of the contract language cannot be determined within the “four corners” of the contract. A court will interpret an ambiguous contract term by trying to determine the intent of the parties at the time of the contract. To avoid ambiguity, avoid “short-cut” phrases, such as “48 hour first right of refusal”; instead, write out exactly what the parties intend.

Contingency clauses are a common source of ambiguity. Contingency clauses must be drafted precisely because contingencies frequently become the subject of dispute. At a minimum, a contingency clause should specify the terms of the contingency, the exact time in which the contingency must be fulfilled, and the rights and obligations of the parties if the contingency is not met.

Fewer Disputes Mean Less Liability: In conclusion, contract law requires that all agreements for the sale of real property be written in clear and unambiguous terms and signed by all parties, whether those agreements are made at the time of contract formation or are contract modifications thereafter. If these basic contract law principles are applied, each transaction will proceed more smoothly, with fewer disputes, and less liability for the parties and brokers involved.

About the Author

K. Michelle Lind, CEO of Arizona REALTORS®, is also an attorney, State Bar of Arizona board certified real estate specialist, and the author of [Arizona Real Estate: A Professional's Guide to Law and Practice](#).

Please note that this article is of a general nature and may not be up-to-date 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.



FREE SPEAKER BENEFITS!

Having a speaker at your office or association meetings is a great way to grow your audience. Hearing a different voice and seeing a different face often generates enthusiasm and spontaneity at a meeting.

Arizona REALTORS® has a variety of staff that is available for office and association meetings. **Did I say free?** Yep, just another of Arizona REALTORS® member benefits.

Contact us:

Scott Drucker, Esq., General Counsel (scottdrucker@aaronline.com)

Nikki Salgat, Esq., Associate Counsel ([nikkisalgat@aaronline.com](mailto:nikkisalगत@aaronline.com))

Jan Steward, Risk Management Manager (jansteward@aaronline.com)

Carole Ridley, Professional Standards Administrator (caroleridley@aaronline.com)

ADRE Collaborates on E-Solution for Property Management

The Arizona Department of Real Estate (ADRE) and the Arizona Department of Revenue (ADOR) are working together to educate property management companies (PMCs) on the process and advantages of the new E-Solution Bulk Upload Procedure to submit transaction privilege tax (TPT) to the state.

Since January 2018, PMCs have been able to import their clients' TPT information in CSV, an Excel file format or enter the information manually.

The PMC is also able to maintain client lists as needed and may "engage" or "disengage" (simply add or remove) their status/obligations with their clients' TPT licenses, all within their [AZTaxes.gov](https://aztaxes.gov) account.

The E-Solution Bulk Upload Procedure is in compliance with Arizona Revised Statutes (A.R.S.) § 42-5005(M) and A.R.S. §§ 32-2101 through 32-2176.

Quick facts:

- PMCs must apply for a Property Management License with ADOR; this license is required for the PMC to act in a fiduciary capacity as the agent of the property owner
- At no cost, PMCs can enroll to file and pay on [AZTaxes.gov](https://aztaxes.gov)
- With this license, PMCs can file and pay on their clients' behalf using the Residential Rental Bulk Upload; taxpayers may find the [application](#) on azdor.gov
- Every residential rental property owner with taxable rental property is required to obtain an Arizona TPT license from ADOR for each location where residential rental income is taxable — this applies regardless if the owner personally rents out the property or employs a property management company; for more information, visit the [Residential Rental Guidelines](#) page
- An Arizona Real Estate License, and compliance with all Arizona real estate laws is required to conduct property management activity in this state. For more information, visit azre.gov.

Source: AAR blog <http://blog.aaronline.com/2018/07/30/adre-collaborates-e-solution-property-management/>

ASAP REALTOR® Safety



Arizona REALTOR® Safety Videos & Webinar

- [Arizona REALTOR® Safety Series Featuring Paula Monthofer](#)
- [Arizona REALTOR® ProActive Agent Safety Webinar featuring Paula Monthofer](#)
- [Agent Safety Alert Program \(ASAP\) Demo featuring Lori Kennedy](#)

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/>

CONTRACT CONVERSATIONS

Need an answer? Looking for office meeting content? Want fresh ideas for training?

Check out all the hidden gems on our website.

Contract Conversations (CLICK HERE)

- AAR Residential Resale Purchase Contract
- Buyer's Inspection Notice & Seller's Response
- The Cure Notice
- Vacant Land Purchase Contract

Mack in a Minute (CLICK HERE)

Podcasts (CLICK HERE)

Webinars (CLICK HERE)

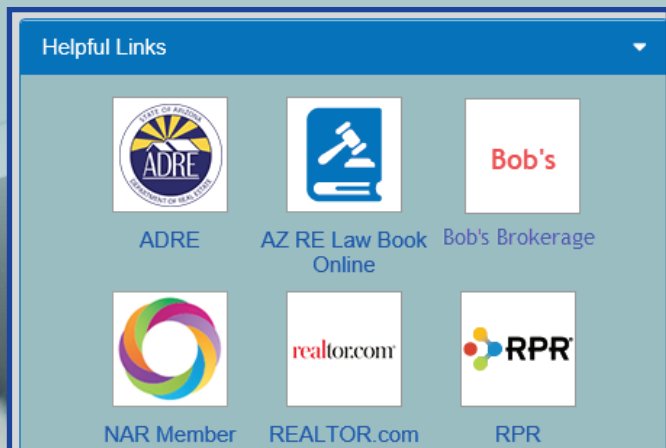


We provide you the quick bite sized nuggets ready to incorporate into your office meetings or newsletters.

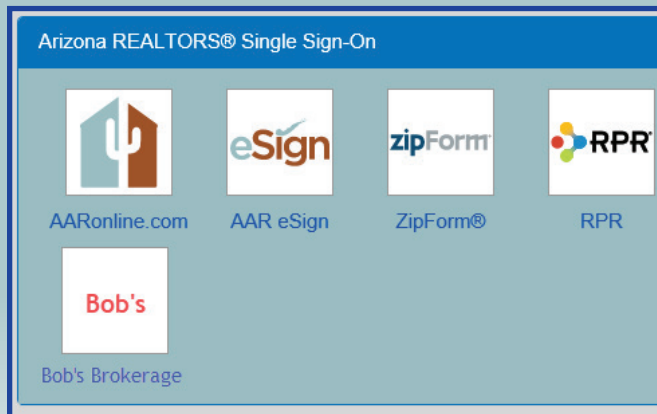
Three Broker SSO Options

Because the Arizona REALTORS® Single Sign-On (SSO) Dashboard interfaces with our membership database, the SSO “knows” what brokerage a member belongs to. This interface allows SSO to display custom links that only the members 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:

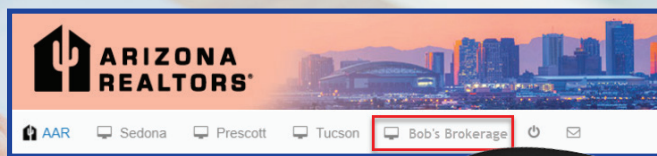
- **Arizona REALTORS® SSO quick-link** – This is simply a link taking the agent to the website for the broker; it is not a single sign-on. The agent would still have to login upon arriving at the broker’s website. There is no setup fee and no ongoing charge for this quick-link. The broker’s quicklink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



- **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 \$1,000 setup fee along with a monthly charge based on the number of users for your office. The broker’s deep-link button would appear in the Arizona REALTORS® Single Sign-On section:



- **Full SSO members** – A broker can contract with our SSO provider, Clareity, to have their very own SSO Dashboard page. The cost for this type of access is a one-time \$2,000 setup fee along with a monthly charge based on the number of users for your office. The advantages are that the broker can customize the look and content of their dashboard to the programs and websites they provide their agents. The broker’s dashboard would appear as a tab on the members’ Arizona REALTORS® SSO page:



WIN AN APPLE WATCH!

Any Arizona REALTOR® who enrolls in the SSO by September 1, 2018 will be entered for a chance to win a *Series 3 Apple Watch with GPS + Cellular*. If you've already enrolled, you're already entered in the random drawing.



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

For More Information
Please contact Jamilla Brandt,
AAR Risk Management Coordinator,
at 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.



Get Answers Today!

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.

Seller Prohibited from Disclosing to Potential Buyers a Drug Rehabilitation Group Home

ISSUE: One of the homes in the seller's neighborhood is a drug rehabilitation group home for recovering drug addicts. Is the seller required to disclose to potential buyers this drug rehabilitation group home?

ANSWER: No. Recovering drug addicts or recovering alcoholics (but not current drug or alcohol users) qualify as a member of the "disability" protected class under the Fair Housing laws. Therefore, not only is the seller of the home *not* required to make disclosure, the seller is *prohibited* from making any disclosure of a drug or alcohol rehabilitation group home in the neighborhood.

Assistance with Airbnb Rentals for Another May Be Real Estate Activity

FACTS: A licensee assists several property owners with renting out their properties through Airbnb. She is paid for her assistance. She does not run any of this activity through the brokerage.

ISSUE: Can a licensee assist with Airbnb rentals outside of the brokerage?

ANSWER: See discussion.

DISCUSSION: Pursuant to Arizona Revised Statutes (A.R.S.) § 32-2121(A)(15): Licensing rules do not apply to "A person who, on behalf of another, solicits, arranges or accepts reservations or money, or both, for occupancies of thirty-one or fewer days in a dwelling unit in a common interest development."

However, the Arizona Department of Real Estate ("ADRE") Property Management Audit Package states:

Is a real estate license required to manage vacation rentals?

Yes and No.

The exemption ((A.R.S.) § 32-2121(A)(15)) applies to Vacation Rentals in a single, common interest development, i.e., a condominium complex or subdivision with common areas, not

properties located in various locations throughout a city or adjacent cities.

Therefore, the licensee may be conducting real estate activity.

As a best business practice, the activity should be conducted through the brokerage. The broker may be subject to liability if the activity is deemed real estate activity and the licensee failed to notify the broker.

Seller May Not Unilaterally Cancel a Listing Agreement

FACTS: The seller and agent execute a one-year listing agreement. After three months, the seller wants to unilaterally cancel the listing agreement because she says she is unhappy with the agent and thinks that more should be done to market the property.

ISSUE: Can the seller unilaterally cancel the listing agreement?

ANSWER: No. A listing agreement is a binding bilateral contract between the listing brokerage and the seller. Any cancellation of the listing agreement requires the consent of both the seller and the listing broker, unless the listing agent has materially breached the agreement.

Buyer Has Five Days to Cancel After Receipt of the SPDS if Outside of the Inspection Period

FACTS: Buyer submitted an offer to seller. By way of the offer, buyer agreed to waive the inspection period. On May 1st, the Seller accepted the buyer's offer. The buyer sent over the Buyer Inspection Notice and Seller's Response ("BINSR") accepting the property on the same day. On May 1st, the seller also delivered the Seller's Property Disclosure Statement ("SPDS") to the buyer. On May 7th, the buyer attempted to cancel the contract based on disapproval of the SPDS.

ISSUE: Was the buyer's cancellation improper?

ANSWER: Yes, buyer's attempted cancellation was improper.

DISCUSSION: The buyer contractually waived her inspection →

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

BROWSE MORE LEGAL HOTLINE TOPICS ONLINE

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

period. Therefore, the buyer did not have ten days to inspect the property. Further, pursuant to section 4a of the contract, the buyer only had five days after receipt of the SPDS to provide notice of disapproval based on the SPDS.

Therefore, the buyer is obligated to proceed with the contract or she may lose her earnest deposit.

A Cure Notice is Effective on the Date of Delivery

FACTS: Prior to closing, buyer was in potential breach of the contract. The listing agent prepared a Cure Period Notice (Notice) and advised seller she should sign the Notice, which listing agent would then deliver to buyer.

Seller agreed to sign the Notice, which she dated May 31st. However, she directed the listing agent to hold off a few days to see if buyer could perform.

A few days later, buyer still did not perform and seller directed listing agent to deliver the Notice to Buyer on June 4th.

Three days passed and buyer still did not perform. Therefore, seller submitted a cancellation and request for earnest money to buyer's agent and the title company. Buyer's agent states the Notice is invalid because seller signed the Notice on May 31st, but didn't deliver it until June 4th.

ISSUE: Must a Notice be delivered the same day it is dated?

ANSWER: No.

DISCUSSION: The Notice became active upon delivery to the buyer's agent on June 4th. The fact that the seller signed the Notice on May 31st does not make the Notice invalid.

'On or Before' is a Bad Idea

FACTS: Buyer and seller entered into a contract with a close of escrow date of April 27. Language written in the Additional Terms and Conditions section states, "Close of escrow to be on or before April 27."

On April 24, the buyer notified the seller that his loan was ready so he wanted to close escrow on April 25.

The seller states he cannot close on April 25 because his moving company isn't taking his items until April 26.

ISSUE: Can the buyer demand the seller close escrow on April 25?

ANSWER: No.

DISCUSSION: The only agreed upon closing date is April 27. Unless there is a meeting of the minds to move the closing date to April 25, the agreed upon closing date remains April 27.

PRACTICE TIP: The better practice is to identify a specific date for closing. The language "on or before" can be perceived as ambiguous and often creates confusion and differing expectations.

The Unfulfilled Loan Contingency Notice When a Loan is Denied

FACTS: Buyer entered into a contract with seller. Buyer disclosed to seller via the Pre-Qualification Form that he needed to refinance a VA loan on another property in order to close on the subject property by July.

Buyer was subsequently notified by the lender that the VA refinance would not be completed by July, and therefore, the lender was denying the loan.

ISSUE: Should buyer deliver notice of cancellation because he now cannot qualify for the loan as described in the Pre-Qualification Form via the Buyer Inspection Notice Seller's Response ("BINSR"), or via the Unfulfilled Loan Contingency Notice?

ANSWER: The Unfulfilled Loan Contingency Notice.

DISCUSSION: The BINSR is a document utilized to give notice to a seller of disapproved items relating to the property.

Here, the buyer is not disapproving of the property. He is no longer going to qualify for the loan described in the Pre-Qualification Form. Therefore, the proper form for cancellation would be the Unfulfilled Loan Contingency Notice.

The Protecting Tenants at Foreclosure Act of 2009 (Updated June 2018)

FACTS: The tenant recently discovered that the property the tenant rents is in foreclosure. The tenant encountered this same problem in a prior tenancy and believes the lease has to be honored by the next owner.

ISSUE: If the property is foreclosed on, will the next owner be bound by the terms of the tenant's lease?

ANSWER: See Discussion. →

DISCUSSION: The Protecting Tenants at Foreclosure Act of 2009 (the “PTFA”) was recently restored by the Economic Growth Regulatory Relief, and Consumer Protection Act and provides that a tenant who enters into a bona fide lease prior to notice of foreclosure can remain in the property for the remainder of the lease term if the property was purchased at foreclosure by the lender or by an investor. However, if the property is purchased by an individual as a primary residence, then the new owner does not have to honor the remaining term of the lease, and could terminate the lease following 90-days’ notice.

Here, the next owner will have to honor the tenant’s lease if the new owner is the lender or investor. However, if the new owner intends for the property to be their primary residence, the new owner may terminate the lease following 90-days’ notice to the tenant.

Seller Cannot Reject Buyer’s Ability to Remove Contingency

FACTS: Buyer wanted to sell his house before obtaining financing to purchase a new home. Therefore, buyer executed a Buyer Contingency Addendum (“Contingency”) with his offer, which seller accepted and they went under contract.

Seller subsequently received a Back-up Contract and pursuant to the Contingency, notified buyer he had five (5) days to deliver notice to Seller that he removed the Contingency.

Buyer had cash funds to proceed and notified seller of his intention to proceed with the contract with no buyer contingency in place.

Seller does not want to proceed because the Back-up Contract is for more money.

ISSUE: Can seller reject buyer’s notice to remove the Contingency and cancel the contract?

ANSWER: No.

DISCUSSION: Here, buyer and seller entered into an executed contract. The Contingency does not have an additional clause allowing seller to reject buyer’s removal of the Contingency. In fact, the Contingency details the requirement buyer must perform: “Buyer shall have five (5) days to deliver to Seller a written notice to remove this Buyer Contingency.”

Therefore, the seller does not have an option to approve or reject the buyer’s ability to remove the Contingency and proceed with the transaction. As long as the buyer meets one of the additional requirements, 1) written documentation that buyer can close escrow without selling his house, or if an all cash sale, 2) evidence of financial ability to close escrow without selling his house, then seller must proceed.

Perc Test Should Be Performed Within Inspection Period

FACTS: A buyer purchasing vacant land decided to cancel the contract after viewing results of the percolation “perc” test. His thirty-day inspection period had already expired.

ISSUE: Can a buyer cancel after his inspection period based on the perc test and recover their earnest money?

ANSWER: No.

DISCUSSION: Pursuant to section 6f of the Vacant Land/Lot Purchase Contract, the suitability of the property for installation of an on-site wastewater treatment facility shall be completed within the due diligence period.

Therefore, if the buyer wishes to cancel because of a perc test after his inspection period has expired, he should be advised to consult an attorney and review section seven of the contract.

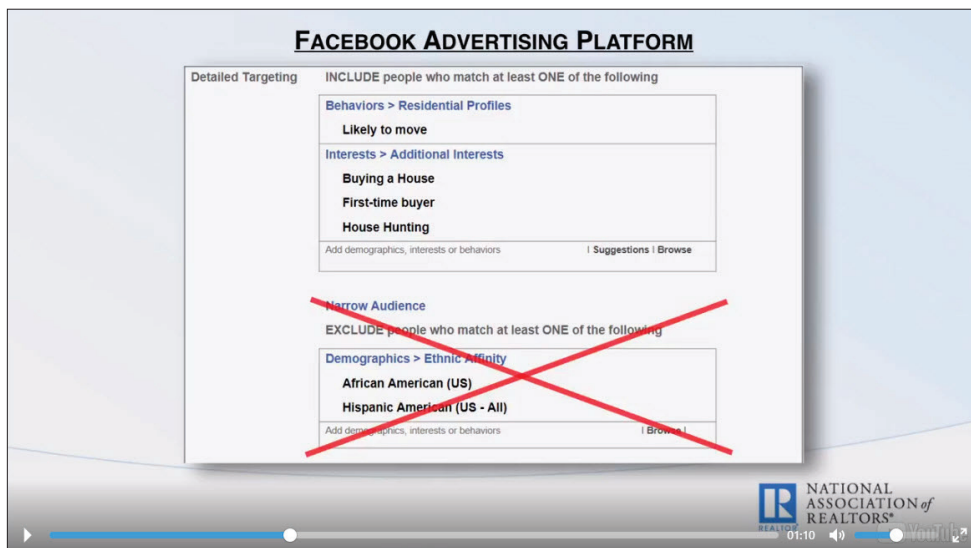
ABOUT THE AUTHOR

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.



Window to the Law: How to Avoid Illegal Marketing



Watch the video here: <https://www.nar.realtor/videos/window-to-the-law/how-to-avoid-illegal-marketing> with Lesley Walker, Vice President & Deputy General Counsel

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>



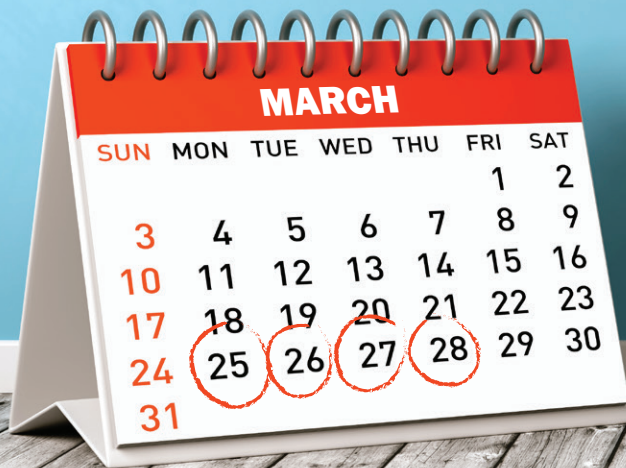
NATIONAL
ASSOCIATION *of*
REALTORS®



SAVE THE DATE

ARIZONA REALTOR® CONVENTION
MARCH 25-28, 2019

SCOTTSDALE PLAZA
SCOTTSDALE, AZ

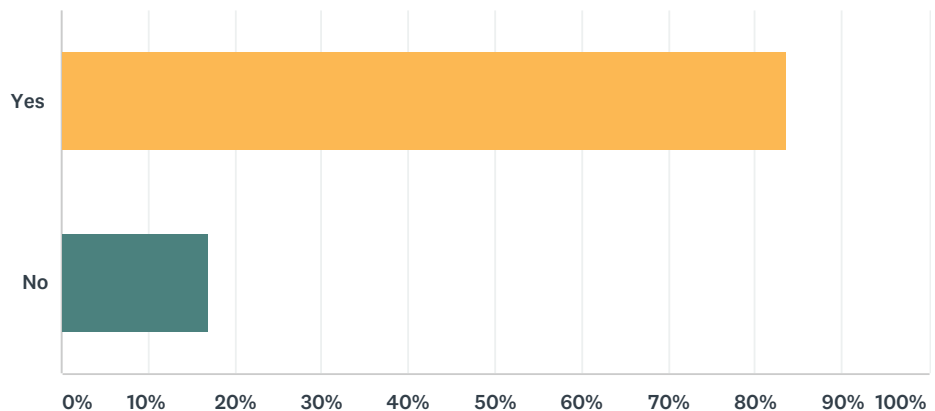


GRADUATE,
REALTOR®
INSTITUTE

DOES THE **GRI** REALLY HELP YOUR AGENTS?

**Do you feel your business
or income increased
because of the skills/
knowledge you gained
through the program?**

*Question from the 2018 GRI
Designee Survey*



ANSWER CHOICES		RESPONSES	
Yes		83.33%	45
No		16.67%	9
TOTAL			54

Learn more about GRI at www.azgri.com