

# BROKER & MANAGER

QUARTERLY

## Revised Residential Purchase Contract (February 2020)

THE NEW COMMERCIAL PROPERTY OWNER'S ASSOCIATION (CPOA) ADDENDUM

ARIZONA HOUSING FUND

WHAT TO DO WHEN YOU CATCH A PHISHING SCAM

ZIPFORM TO TRANSACTIONDESK TRANSITION

ARIZONA REALTORS® CONVENTION

LOCAL ASSOCIATIONS 2019 RAPAC INVESTOR GOAL AWARDS

WINDOW TO THE LAW: REMOTE ONLINE NOTARIZATION LAWS

P. 13

LEGAL HOTLINE Q&A



**ARIZONA  
REALTORS®**



# BROKER & MANAGER

FIRST QUARTER 2020 | ARIZONA REALTORS® BROKER/MANAGER QUARTERLY

## IN THIS ISSUE

- |     |   |    |  |
|-----|---|----|--|
| 2   | Revised Residential Purchase Contract (February 2020)           | 10 | Arizona REALTORS® Convention                       |
| 3   | The New Commercial Property Owner's Association (CPOA) Addendum | 11 | Local Associations 2019 RAPAC Investor Goal Awards |
| 4-8 | Arizona Housing Fund  | 12 | Legal Hotline                                      |
| 9   | What to Do When You Catch a Phishing Scam                       | 13 | Legal Hotline Q&A                                  |
| 10  | zipForm to TransactionDesk Transition                           | 16 | Window to the Law: Remote Online Notarization Laws |

## Revised Residential Purchase Contract (February 2020)

For the first time since February 2017, the Arizona REALTORS® released a revised version of the updated [Residential Purchase Contract](#) (Contract), which was released for use on February 1, 2020. The following are the three revisions to the Contract:

### 1. Solar Lease / Solar Loan Assumption Addendum

Section 1f of the Residential Purchase Contract, titled Addenda Incorporated, contains a list of possible Addenda that the parties may choose to incorporate into the transaction. On October 1, 2017, the Arizona REALTORS® published a new form titled Solar Lease / Solar Loan Assumption Addendum. Because this Addendum was published after the release of the February 2017 Residential Purchase Contract, it was not listed in Section 1f. As of February 2020, the Solar Lease / Solar Loan Assumption Addendum will now be identified in Section 1f as an available option for the parties to select.

### 2. Smart Home Devices

Since February 2017, the use of smart products which allow homeowners the ability to remotely control and monitor devices and appliances within the home, has increased dramatically. However, the February 2017 Residential Purchase Contract does not directly address smart home devices, leading to occasional disagreements as to whether these devices convey. To clarify the issue, a change has been made to Section 1g, titled Fixtures and Personal Property.

Section 1g identifies existing fixtures and personal property that convey with the sale. Now included in that list are:

- smart home devices, access to which shall be transferred (i.e., video doorbell, automated thermostat)

Not only must these products now remain in the home to the extent that they are affixed to the Premises, the seller must provide the buyer with the means to operate the devices, which often necessitates access to an on-line app. Upon obtaining access, buyers are encouraged to change all associated usernames and passwords.

### 3. Seller Concessions

In February 2017, a workgroup charged with revising the Residential Purchase Contract more strictly defined the term "Seller Concessions" as used in Section 2j. Despite the change, buyers and sellers did not always agree as to whether an item constituted an appropriate seller concession, often leaving title companies to make the difficult decision.

Rather than continue to impose restrictions on seller concessions, the Risk Management Committee deemed it prudent to expand the scope of seller concessions to include all buyer costs allowed by the buyer's lender. Section 2j will now read as follows:

**SELLER CONCESSIONS** (if any): In addition to the other costs Seller has agreed to pay herein, Seller will credit Buyer \_\_\_\_\_% of the Purchase Price OR \$\_\_\_\_\_ (Seller Concessions). The Seller Concessions may be used for any Buyer fee, cost, charge, or expenditure to the extent allowed by Buyer's lender.

As a result of this change, it is more likely that buyers will utilize the entire amount of the seller concessions set forth in Section 2j, which is typically the seller's original expectation.

A redlined version of the Contract revisions may be seen [here](#).



# The New Commercial Property Owner's Association (CPOA) Addendum

BY JOAN WILSON

It is becoming increasingly common for commercial properties (e.g. condos, business parks, etc.) to be subject to a governing association. However, a form akin to the Arizona REALTORS® Homeowner's Association Addendum did not exist for commercial transactions in which the parties could disclose and negotiate those fees imposed by a CPOA. Accordingly, this past year, a workgroup was formed to create an addendum for those commercial properties governed by an association.

As the Chair of the workgroup<sup>[1]</sup>, I am excited to introduce to you a new form titled [Commercial Property Owner's Association \(CPOA\) Addendum](http://blog.aaronline.com/2020/01/17/new-commercial-property-owners-association-cpoa-addendum/) (the "CPOA Addendum"), that was released on February 1, 2020.

The CPOA Addendum should be utilized in commercial transactions, just like how the HOA Addendum is used in residential transactions. Specifically, the form is initiated by the seller who, when listing the property for sale, is asked to ascertain the association fees payable upon close of escrow and then disclose the fees on lines 9 through 33 of the form. Once this is done, the listing agent is instructed to upload all three pages of the CPOA Addendum into the MLS or commercial information exchange, if utilized, or deliver the form to prospective buyers upon request.

In completing the form, it is critical for sellers to provide information for all associations that may govern the property. In some cases, the property may be subject to a master association, as well as an association for the individual unit that lies within the master association.

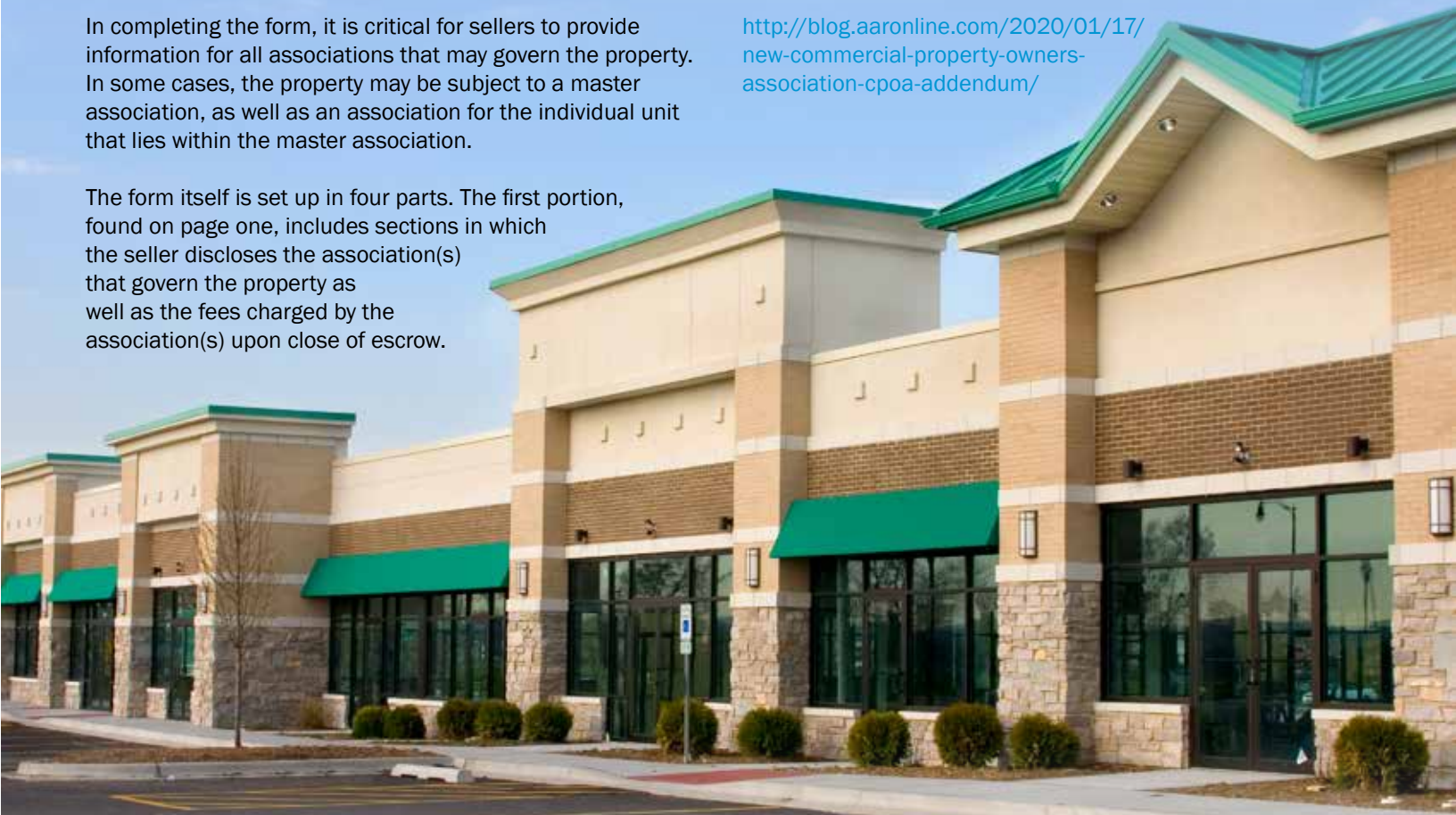
The form itself is set up in four parts. The first portion, found on page one, includes sections in which the seller discloses the association(s) that govern the property as well as the fees charged by the association(s) upon close of escrow.

The second portion, found on page two, identifies legal obligations imposed upon the parties including information that must be provided to the buyer. Third is that portion of the form from lines 72 to 98, completed by the buyer, in which they submit their proposal as to which party pays for the CPOA fees previously disclosed by the seller. Lastly, the

fourth section consists of line 108, in which the seller can accept the buyer's proposal. Hopefully, this new form will enable buyers and sellers of commercial properties to avoid last-minute surprises regarding undisclosed fees imposed by a governing association.

<sup>[1]</sup> I would like to extend a big thank you to those individuals that participated on the workgroup. Without their dedication and assistance, this form would not have been created.

<http://blog.aaronline.com/2020/01/17/new-commercial-property-owners-association-cpoa-addendum/>

The image shows a sample of the 'COMMERCIAL PROPERTY OWNER'S ASSOCIATION (CPOA) ADDENDUM' form. It is a multi-page document with a header section for 'ARIZONA REALTORS' and a 'SELLER'S NOTICE OF COMMERCIAL PROPERTY OWNER'S ASSOCIATION INFORMATION'. The form includes sections for 'NOTIFICATIONS', 'ASSOCIATION(S) GOVERNING THE PROPERTY', and 'FEES PAYABLE UPON CLOSE OF ESCROW'. It contains various fields for seller and buyer information, association details, and fee disclosures. The form is numbered 1 through 108.



A critical component to reducing homelessness in the state of Arizona is to build more Permanent Supportive Housing (“PSH”) and Low-Income housing. Today, there are over 10,000 Arizonans searching for permanent housing who are either currently living in emergency shelters, transitional shelters or worse, living unsheltered. The existing inventory of PSH around our state is always 100% full and often with waiting lists as long as six months. The biggest challenge for the non-profits who build and manage PSH properties is acquiring the funds necessary to bring new inventory to our communities. The creative and unique solution to this problem is the Arizona Housing Fund (“AZHF”). The AZHF is a private sector, philanthropic approach to battling homelessness which we believe could be the model for the other 49 states.

The AZHF, created in 2019, has no overhead costs so 100% of every dollar in the fund goes directly to the qualifying nonprofits. The fund and its grants proposal process are managed by the Arizona Community Foundation (“ACF”). The AZHF is a dedicated and sustainable revenue source that grants funding to those nonprofit agencies that successfully build and operate PSH, Low-Income and Working Poor Housing. Our Equity grants will enable more housing units to be constructed, meeting the growing needs of our communities in Arizona with the goal of reducing homelessness. Examples of nonprofits who might benefit from the AZHF include: UMOM, Catholic Charities, Salvation Army, Save the Family, St. Vincent De Paul, CPLC and U.S. Veterans Initiative.

The AZHF has an established Advisory Committee that will identify potential grant recipients, review grant proposals and recommend grant awards to the ACF. The AZHF Advisory Committee is comprised of the following seven community leaders: *Howard Epstein* – National Executive at Bank of America, *Elisa de le Vera* – Chief Community Officer at ACF, *Steven Hilton* – Chairman and CEO of Meritage Homes Corporation, *Tim Sprague* – Principal of Habitat Metro, *Kathy Rosenzweig* – community philanthropist, *Michael Traylor* – State of AZ Homeless Manager – Arizona Governor’s office and ***Michelle Lind*** – **CEO of the Arizona Association of Realtors.**

In addition to traditional directed donations from individuals, families, foundations and government, revenue is generated to the fund through the voluntary “Escrow Donation Program”. Our goal is to give every buyer and seller of a home in the state of Arizona, the opportunity to donate \$25 (or more) to the AZHF. A simple one-page sheet, the Escrow Donation Form (part of the sales and escrow package at closing), directs the Escrow Company to collect and distribute the donations to the AZHF. Our goal of raising \$10 million a year will result in AZHF’s equity grants delivering thousands of urgently needed new residential units. When the Escrow Donation Program is available to every buyer and seller in Arizona, along with potential matching donations from Realtors, lenders and title companies - we believe the caring citizens in

[www.arizonahousingfund.org](http://www.arizonahousingfund.org)



our state will donate to the AZHF and change the trajectory of homelessness in Arizona now and for decades to come. Builders like Meritage Homes, residential brokers like North & Co. and escrow companies like Pioneer Title are already participating in the program. We expect many others to join in 2020. Ultimately, we want this program to be a standard offering with every closing in our State.

The list of companies, organizations, law firms and elected officials who are publicly supporting the AZHF is extensive and growing every week. Organizations like the **Arizona Association of Realtors**, the Home Builders Association of Arizona and the Arizona Housing Coalition. Companies like DMB, Sunbelt Holdings and Meritage Homes. Law firms like Gammage & Burnham and Snell & Wilmer. Elected officials like Phoenix Mayor Kate Gallego.

Given the immediate success of the AZHF and the broad support being received from around the state, we now need the public endorsement and support of the Governor as well as a quote from the Governor for our website. In the future, we would like the Governor to participate in a PSA video.

Arizona is leading the way with this creative solution – the Arizona Housing Fund. This unique approach, bringing the entire state together to solve a very complex and urgent problem should make every citizen proud to live in Arizona.

Howard Epstein is the founder of the AZHF, and he would certainly make himself available for a presentation or discussion with the Governor and staff.

[www.arizonahousingfund.org](http://www.arizonahousingfund.org)





*Bringing the Homeless Home.*

## TALKING POINTS

### ONE:

On any given day there are more than **5,000** individuals without shelter in Arizona.

### TWO:

We have a critical shortage of safe, decent, affordable housing. For extremely low-income renters, there are 25 affordable rental homes per 100 rental households.

*Arizona is at a tipping point. Preventing our cities from experiencing the homeless crisis unfolding in California, will take the public, private and philanthropic sectors across the state working together to raise the millions required to build the housing inventory our communities need.*

### THREE:

The Government can't do it all. The Arizona Housing Fund is our state's public-private-philanthropic solution to provide funding to Arizona nonprofits to build more permanent supportive, low-income and working poor housing.

Arizona's Fundraising Goal  
**\$10 MILLION A YEAR**



### FOUR:

To donate or become an Arizona Housing Fund fundraising partner, visit [arizonahousingfund.org](http://arizonahousingfund.org).



Click on **JOIN US** and download the easy-to-use toolkit that works for your business. Start donating and making a difference today.



Together we can build the affordable housing our community's need and reduce homelessness.



***We Believe Everyone Deserves A Place To Call Home.***

Arizona Community Foundation | 2201 E. Camelback Rd, #405B | Phoenix, AZ 85016  
602.381.1400 | [info@azfoundation.org](mailto:info@azfoundation.org) | Tax ID: 86-0348306

## ARIZONA IS AT A TIPPING POINT

Now is the time for our community to deal with the problem.



### WHY DO WE HAVE A GROWING HOMELESS PROBLEM?

Housing costs are on the rise and we have a critical shortage of safe, decent affordable housing.

- ❑ **There is little to no low-income housing options for people who can only afford to pay \$400 to \$500 per month.** A minimum wage worker who takes home \$1100/month has \$20 a day for food and nothing else after paying \$500 in rent.
- ❑ **Existing supportive housing projects are completely full** with 6-month wait list to get a unit. (many on the list are from the shelters)
- ❑ **Temporary shelters, like CASS and UMOM are full** with months long waiting lists to get in.

### THE MOST RESPONSIBLE WAY TO SOLVE THIS PROBLEM.

Create additional supportive housing that is affordable statewide.

- ❑ **We cannot solely rely on the Government** to help people who want and need to access the continuum of housing care.
  - Elderly, Youth, Young Adults, Disabled, Veterans, Mentally Ill, Addicted, Chronically Homeless, Minimum/Low Income Workforce, Working Poor Families, People in a Health Crisis and People Escaping Violence/Abuse
- ❑ **Arizona Housing Fund is a public-private-philanthropic community solution** to raise revenue to help fund the building of additional Permanent Supportive, Low-Income and Working Poor Housing units with access to social and clinical services.

### WHAT ARE THE CONSEQUENCES OF GROWING HOMELESS POPULATION?

The costs to the community and neighborhood.

- ❑ **Frequent engagement** with police & fire departments, healthcare systems, prisons & jails and city services
- ❑ **Toll it takes is visible** where homeless congregate in neighborhoods, businesses, libraries, parks, and public transportation.
- ❑ **Increase in crime** includes break-ins, shoplifting, vandalism, trespassing, loitering, panhandling and murder. These crimes are often committed against the most vulnerable living on the streets.
- ❑ **Result** is neighbors feel less safe, businesses are ruined, drug use on streets increasing, along with increases in overdoses, harassment, assaults and sanitation problems.

The Arizona Housing Fund is a component fund of the Arizona Community Foundation (EIN: 86-0348306)



*Bringing the Homeless Home.*



## *Escrow Donation Form*

Agent's Name: \_\_\_\_\_ Office Name: \_\_\_\_\_

Address: \_\_\_\_\_

Title Company: \_\_\_\_\_

Address: \_\_\_\_\_

Escrow Officer: \_\_\_\_\_ Escrow Number: \_\_\_\_\_

***I hereby authorize and instruct you to pay a donation to the Arizona Housing Fund in the following amount:***

\$25.00 Residential Transaction Donation

\$100.00 Commercial Transaction Donation

Other Amount: \_\_\_\_\_

Made payable to Arizona Housing Fund at Arizona Community Foundation on behalf of:

Name: \_\_\_\_\_ Buyer Seller Agent

Address: \_\_\_\_\_

***All contributions and a copy of this form shall be disbursed to:***

Arizona Housing Fund at Arizona Community Foundation

2201 E. Camelback Road, #405B

Phoenix, AZ 85016

Tax ID# 86-0348306

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Thank you for helping our homeless neighbors find a home for good. 100% of your donation will go to building affordable housing.

A donation has been made to the Arizona Housing Fund. The Arizona Community Foundation has exclusive legal control over the contributed assets. For tax reporting purposes, no goods or services were provided in exchange for this contribution. Please retain this copy to serve as your tax receipt for the above referenced donation.

Arizona Community Foundation | 2201 E. Camelback Rd, #405B | Phoenix, AZ 85016  
602.381.1400 | info@azfoundation.org | Tax ID: 86-0348306

ARIZONA REALTORS®



# What to Do When You Catch a Phishing Scam

The Arizona REALTORS® routinely receives emails from agents and brokers across the state advising the Association of fraudulent emails they have received. Many of these emails instruct the licensee to click on a link or download a file. For example, the email message may state “Your Closing Disclosure Statement is attached, click below to download.” As many agents recognize, the email is part of an elaborate phishing scam whereby cybercriminals send out mass emails containing an attachment or hyperlink. The attachment is malware and the hyperlink is to a website masquerading as a legitimate webpage in an attempt to trick the recipient into exposing their computer to malware like ransomware or a keylogger (a “virus” that captures everything the email recipient types into their computer like passwords and credit card numbers).

While agents are savvy enough to avoid most phishing attempts, the question asked of the Association is, “How do I handle these emails and to whom should they be reported?”

First and foremost, agents who receive fraudulent emails of this nature should notify their Designated Broker so that other agents in the office can be warned if appropriate. The Designated Broker may then want to notify the Local REALTOR® Association Executive so that other brokers in the area can be made aware of the issue. In our experience, many of these scams tend to target a specific office or area so sharing the information with others can prove helpful. The Arizona REALTORS® can also be notified as the Association maintains a [Scams & Frauds webpage](#).

Finally, REALTORS® are encouraged to report dangerous phishing scams to the Federal Bureau of Investigation’s (FBI) [Internet Crime Complaint Center \(IC3\)](#). This website represents a collaborative effort between the FBI and the National White-Collar Crime Center (NWC3). The IC3 assists consumers by serving as a means to receive internet-related criminal complaints and to research, develop, and refer the criminal complaints to applicable federal, state, local, or international law enforcement and/or regulatory agencies. IC3 accepts online internet crime complaints from either the victim or from a knowledgeable third party. In an effort to assist agents with the appropriate use of technology to safeguard business transactions, the Association recommends the following:

## 1. Passwords

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

## 2. Email Security

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

## 3. Wireless Use Security

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

## 4. Use of Electronic Devices

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

## 5. Software

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

## 6. Record Keeping/Disposal

- Purge and/or shred any and all documents that contain personal information such as account numbers, driver’s license number, social security number, credit card, debit card numbers, etc.



# zipForm to TransactionDesk Transition

We'd like to provide some clarity around two of the forms platforms available in 2020 to all Arizona REALTORS® as a REALTOR® benefit: zipForm and TransactionDesk.

TransactionDesk Agent Edition is provided to our membership as a free member benefit. TransactionDesk includes:

- Authentisign®, real estate's leading eSignature tool
- InstantForms®, a cloud-based system for forms and contracts that is PC, Mac, and mobile compatible
- DocBox®, a digital document management and storage system
- InstantFax®, a system that allows for unlimited inbound and outbound facsimiles, including paper fax to email
- 24/7 customer support
- Mobile App

## TransactionDESK®

### Transitioning to TransactionDesk:

To make the transition process as easy as possible, all existing Arizona REALTORS® members and new members that join the Association automatically have a TransactionDesk account created. This means you do not have to register for TransactionDesk. We suggest you log in to your

TransactionDesk account from the Arizona REALTORS® Single Sign-On (SSO) website here: [dashboard.azrealtorssso.com](https://dashboard.azrealtorssso.com). (Using the following link, you can also access TransactionDesk from the Arizona REALTORS® TransactionDesk information webpage by pressing the "Launch TransactionDesk via Single Sign-On" button in the body of the page, <https://www.aaronline.com/efficient-business-tools/transactiondesk/>.)

Your username will be your NRDS # and if it is your first-time accessing SSO, your password will be your last name. Once you are logged into your SSO account, click the TransactionDesk tile. This will automatically log you into your personal account. If you experience any issues logging in, please contact our support department at 480-304-8930 or [support@aaronline.com](mailto:support@aaronline.com).

zipForm Plus will also be provided to all Arizona REALTORS® in 2020 as a National Association of REALTORS® member benefit. Although zipForm Mobile and MLS Connect are not offered as part of the NAR member benefit, you can continue to use these features by purchasing them from within your zipForm account (annual subscription pricing is \$24.95 for MLSConnect and \$12.95 for zipForm Mobile). Please note that Arizona REALTORS® have access to comparable programs via TransactionDesk at no additional charge.

## Arizona REALTOR® Convention

### REGISTER NOW!

<https://aarevents.cventevents.com/CONV>

MARCH 24<sup>TH</sup> - 26<sup>TH</sup> Renaissance Glendale Hotel & Spa - Glendale, AZ



Walter Bond



Leigh Brown



Marki Lemons-Ryhal



Amy Broghamer



Michael Kuehn



Colleen Stanley

**EMPOWER. ENGAGE. EXCELLERATE.**





# CONGRATULATIONS

## We Want to Thank Local Associations for Meeting Their 2019 RAPAC Investor Goals!

### Triple Crown Award

(Reached Fundraising Goal, Participation Rate Goal and Major Investor Goal)

**Bullhead City/Mohave County of REALTORS®**  
(200.59% of their 2019 Fundraising Goal,  
50.14% of Membership Participation Goal  
and 200% of Major Investor Goal)

**Central Arizona Board of REALTORS®**  
(555.24% of their 2019 Fundraising Goal,  
82.24% of Membership Participation Goal  
and 800% of Major Investor Goal)

**Kingman/Golden Valley Association of REALTORS®**  
(149.17% of their 2019 Fundraising Goal,  
80.37% of Membership Participation  
and 100% of Major Investor Goal)

**Lake Havasu Association of REALTORS®**  
(438.12% of their 2019 Fundraising Goal,  
57.65% of Membership Participation  
and 750% of Major Investor Goal)

**Sedona/Verde Valley Association of REALTORS®**  
(342.18% of their 2019 Fundraising Goal,  
54.80% of Membership Participation  
and 666.67% of Major Investor Goal)

**White Mountain Association of REALTORS®**  
(333.36% of their 2019 Fundraising Goal,  
52.57% of Membership Participation  
and 850% of Major Investor Goal)

**Yuma Association of REALTORS®**  
(214.60% of their 2019 Fundraising Goal,  
51.27% of Membership Participation  
and 366.67% of Major Investor Goal)

### Fundraising Award

(Reached 100% of More of Total Fundraising Goal)

**Green Valley/Sahuarita  
Association of REALTORS® 154%**

**Northern Arizona  
Association of REALTORS® 269.25%**

**Prescott Area  
Association of REALTORS® 164.24%**

**Santa Cruz County  
Board of REALTORS® 144.16%**

**Southeast Arizona  
Association of REALTORS® 104.25%**

**Tucson  
Association of REALTORS® 114.09%**

### Major Investor Award

(Reached 100% or More of Major Investor Goal)

**Tucson  
Association of REALTORS® 162.96%**

**Northern Arizona  
Association of REALTORS® 500%**

**Prescott Area  
Association of REALTORS® 314.28%**

### Participation Goal Award

(Reached 50% or More of Membership Participation)

**Green Valley/Sahuarita  
Association of REALTORS® 51.19%**

**Santa Cruz County Board of REALTORS® 62%**

### Local Association and Chapters Major Investor Award

**Arizona  
Association of REALTORS®**

**Central Arizona  
Board of REALTORS®**

**Central Arizona CCIM Chapter**

**Lake Havasu  
Association of REALTORS®**

**MLS of Southern Arizona**

**Northern Arizona  
Association of REALTORS®**

**Prescott Area  
Association of REALTORS®**

**Santa Cruz County  
Board of REALTORS®**

**Sedona Verde Valley  
Association of REALTORS®**

**Southeast Valley Regional  
Association of REALTORS®**

**Tucson Association of REALTORS®**

**White Mountain Association of REALTORS®**

**Yuma Association of REALTORS®**



ARIZONA  
REALTORS®

# LEGAL HOTLINE



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

The Arizona REALTORS® Legal Hotline is designed...

The Hotline is  
provided by  
the attorneys at  
Manning & Kass

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

\* 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.

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



ARIZONA  
REALTORS®

Get Answers Today!

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

REAL SOLUTIONS. REALTOR® SUCCESS.

# LEGAL HOTLINE

By Manning & Kass | Copyright © 2019, 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.*

## Listing Broker Cannot Disclose Halfway House for Recovering Alcoholics

**QUESTION:** The listing broker has a listing on a home. The listing broker learns that there is a halfway house for recovering alcoholics next door. Can the listing broker disclose the existence of this halfway house to prospective buyers?

**ANSWER:** No. The recovering alcoholics in the halfway house are "disabled," and therefore are members of a protected class under the fair housing laws. See A.R.S. § 41-1491(5). Therefore, the seller and the real estate brokers are prohibited from disclosing the existence of this halfway house, similar to the prohibition against disclosing individuals in the neighborhood of a certain race, religion, sex or any other protected class.

**Note:** Only recovering alcoholics are a protected class under fair housing laws. Although alcoholics that are not recovering may have a "disability," the protection of the fair housing laws specifically applies only to recovering alcoholics.

## Disclosure When the Property Is Not Subdivided in An Unincorporated Area

**FACTS:** The seller owns a 36-acre parcel of land located in an un-incorporated area of Maricopa County, Arizona.

**ISSUE:** Is the seller required to provide an Affidavit of Disclosure?

**ANSWER:** Yes. A.R.S. § 33-422(A) provides that a seller of five or fewer parcels of land, other than subdivided land, in an unincorporated area of a county must furnish a written affidavit of disclosure to the buyer, at least seven days before the transfer of the property, and the buyer shall acknowledge receipt. Simply put, a seller is required to provide an affidavit of disclosure in accordance with § 33-422 if: (i) the seller is selling five or fewer parcels, (ii) the parcels are not subdivided land, and (iii) the parcels are located in an unincorporated area of the county.

In this instance, the seller is selling a single 36-acre parcel located in an unincorporated area of Maricopa County, Arizona. That being said, the only issue left to resolve is whether the parcel is subdivided. Pursuant to A.R.S. § 32-2101(56)(a) subdivided land means "improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into six or more lots, parcels or fractional interests." In this case, the seller owns one 36-acre parcel that has not been divided into six or more lots or parcels. As such, the parcel is considered unsubdivided and therefore an Affidavit of Disclosure is required.

**Note:** Effective August 27, 2019, the Affidavit of Disclosure includes disclosure of additional items (water adjudication and solar panels) pursuant to HB 2443 and HB 2485.

## Buyer Cannot Waive Requirement of Affidavit of Disclosure

**ISSUE:** The seller has an addendum to the purchase contract requiring the buyer to waive any disclosures, which would include the waiver of the Affidavit of Disclosure under A.R.S. §33-422. Can a buyer agree to waive the requirement of the Affidavit of Disclosure under A.R.S. §33-422?

**ANSWER:** Probably not. Under A.R.S. §33-422 a seller shall provide to the buyer an Affidavit of Disclosure if the seller is selling five or fewer parcels of land in an unincorporated area of a county which is not subdivided land. This Affidavit of Disclosure applies to vacant, commercial, industrial and residential land.

In light of this mandatory language of A.R.S. §33-422, the buyer, for public policy reasons, probably cannot waive the right to receive from the seller an Affidavit of Disclosure. Otherwise, every seller subject to A.R.S. §33-422 would require a waiver of the Affidavit of Disclosure.



# Have you signed up for the Legal Hotline?

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

## FIND OUT HOW BROKERS CAN ACCESS THE LEGAL HOTLINE

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

## BROWSE MORE LEGAL HOTLINE TOPICS ONLINE

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

### Team Leader and Member May Agree Upon Dispute Resolution Methods

**FACTS:** Team leader continues to increase the size of her real estate team. As the team grows in size, so too does the number of disputes between the team leader and various team members. As such, the team leader wants to execute an agreement with all team members governing how such disputes will be addressed.

**ISSUE:** Can the team leader and team members execute an agreement governing how disputes will be resolved and, if so, what options are available?

**ANSWER:** See discussion.

**DISCUSSION:** Team leaders are encouraged to enter into agreements with each team member documenting the nature of their relationship. These agreements can and should include a dispute resolution provision.

To assist team leaders and team members in crafting such an agreement, Arizona REALTORS® has developed a Team Toolkit that includes a comprehensive list of provisions that the parties can use to draft a Team Leader/Member Agreement. Among the provisions provided is a dispute resolution provision that outlines various options (excerpt below).

In the event a dispute arises, TM (Team Member) and TL (Team Leader) agree that Broker will act as a mediator to resolve any and all disputes. In the event that mediation does not resolve all disputes or claims, the unresolved disputes or claims shall be:

- ☐ Submitted to Broker who will decide the matter in Broker's sole discretion
- ☐ Submitted for binding arbitration with an agreed upon third-party arbitrator
- ☐ Submitted for binding arbitration with the Arizona Association of REALTORS® if the dispute involves entitlement to a commission or compensation
- ☐ Other \_\_\_\_\_

### Landlord Can Limit Occupancy to Two Persons per Bedroom without Violating Fair Housing Laws

**FACTS:** A property is listed for rent with a property manager. The property is a two-bedroom townhome. A family submits an application noting there will be six (6) people living in the property. The landlord now expresses concern about the

number of people who would be living in the property and believes he can deny the application because only two (2) people can occupy a bedroom per state law.

**ISSUE:** Can the landlord deny an application based upon the number of people occupying a two-bedroom property?

**ANSWER:** See discussion.

**DISCUSSION:** The landlord must be aware of fair housing rules such as A.R.S. § 33-1317(A), which states:

A person who knowingly refuses to rent to any other person a place to be used for a dwelling for the reason that the other person has a child or children, or who advertises in connection with the rental a restriction against children, either by the display of a sign, placard or written or printed notice, or by publication thereof in a newspaper of general circulation, is guilty of a petty offense.

However, the landlord may be able to refuse the application based upon reasonable occupancy standards, under A.R.S. § 33-1317(F), which states:

Nothing in this section shall prohibit a person from refusing to rent a dwelling by reason of reasonable occupancy standards established by the owner or the owner's agent which apply to persons of all ages, and **which have been adopted and published before the event in issue.** An occupancy limitation of two persons per bedroom residing in a dwelling unit shall be presumed reasonable for this state and all political subdivisions of this state. (emphasis added)

Based on the above fact pattern, it appears as though the landlord had not established an occupancy standard prior to the family's application. In other words, the facts suggest the landlord is currently deciding an occupancy limit. Accordingly, the landlord would not be able to deny the family's application based on Arizona's reasonable occupancy standard statute. However, if the landlord had previously adopted and published an occupancy standard prior to the application, the landlord could deny the family's application.

### Buyer Should Receive the Return of Earnest Money when the Property does not Appraise for the Purchase Price

**FACTS:** The buyer and seller executed the Arizona REALTORS® Residential Resale Real Estate Purchase Contract. The buyer agreed to pay cash, with no bank financing. However, in Section 8 of the Contract the language provided:



"The appraisal contingency set forth in Lines 107 through 110 applies even though this is a cash transaction."  
The buyer commissioned an appraisal and it came in \$25,000 under the purchase price. The buyer therefore provided notice of cancellation and requested a return of the earnest money. The seller claims that because there was no "appraisal required by a lender" as set forth in Line 108 that the buyer is not entitled to cancel or receive the earnest money.

**ISSUE:** May the buyer cancel and receive the return of his earnest money?

**ANSWER:** See discussion.

**DISCUSSION:** Generally, in an all cash sale, the financing section of the contract does not apply. However, the buyer reinserted the appraisal contingency by way of the language in Section 8. Even though technically there was no "lender appraisal" required, the parties' intent as evidenced by the document establishes that the buyer would be entitled to cancel if the property did not appraise for the purchase price. Independent legal counsel should be consulted.

**Note:** Language is provided in the Additional Clause Addendum (ACA) to address an All Cash Sale Appraisal Contingency. Further, the ACA language provides time frames for acceptance or notice, and disposition of earnest monies.

### A Registered Sex Offender Is Not a Member of a Protected Class Protected by the Fair Housing Laws

**FACTS:** During her representation of a potential tenant, the licensee discovered that the prospective tenant was a registered sex offender. The agent is uncomfortable and wants to terminate the agency relationship.

**ISSUE:** May the agent terminate the agency relationship because the prospective tenant is a registered sex offender?

**ANSWER:** See discussion.

**DISCUSSION:** Assuming that the reason for the desired termination is that the prospective tenant is a sex offender, the agent may terminate the relationship. Registered sex offenders are not a protected class under Arizona state or federal Fair Housing Laws.

### The Arizona REALTOR® Form Library Does Not Contain an Agreement for Sale

**FACTS:** The broker has searched the Arizona REALTORS® library and has not been able to find an Agreement for Sale.

**ISSUE:** Is there an Agreement for Sale form in the Arizona REALTOR® form library?

**ANSWER:** No.

**DISCUSSION:** An Agreement for Sale (also known as a contract for deed) is a financing instrument much like a deed of trust. Accordingly, there is no form in the Arizona REALTORS® library. Parties are encouraged to consult with legal counsel to discuss and prepare any agreement for sale prior to it being signed.

### Listing Broker Can Show Offers to Competing Buyers

**ISSUE:** Buyer #1 offers \$100,000 for the home. Buyer #2 offers \$105,000. The listing broker contacts the broker for buyer #1 to see if buyer #1 wants to make a higher offer than the \$105,000 offer from buyer #2. The broker for buyer #1 wants a copy of the \$105,000 offer from buyer #2. Can the listing broker furnish a copy of the \$105,000 offer to the broker for buyer #1?

**ANSWER:** Yes. Under the fiduciary duty owed to the seller, unless the seller denies permission, the listing broker is required to "shop offers" to get the highest price for the seller. Neither the offer nor the terms of the offer are confidential, unless otherwise agreed. Therefore, the listing broker can furnish to the broker for buyer #1 a copy of the \$105,000 offer received from buyer #2.

### Out-of-State Broker Must Hold Active License to Receive Referral

**FACTS:** An Arizona broker was contacted by a licensee in Massachusetts with a referral. The licensee notified the Arizona broker that she does not hold an active license in Massachusetts, but that Massachusetts state law allows an inactive licensee to collect a referral fee.

**ISSUE:** Can an Arizona broker pay a referral fee to a licensee in Massachusetts who holds an inactive license?

**ANSWER:** No.

**DISCUSSION:** Pursuant to A.R.S. §32-2155(B) it is unlawful for a person, firm or corporation...to pay or deliver to anyone compensation...who is not licensed at the time the service is rendered. Therefore, although Massachusetts may allow an inactive licensee to collect a referral fee, Arizona law does not.

---

#### ABOUT THE AUTHOR

##### Richard V. Mack



Richard V. Mack is a partner at [Manning and Kass](#), which provides the Arizona REALTORS® 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: Remote Online Notarization Laws



**Window to the Law: Remote Online Notarization Laws with Finley Maxson, senior counsel National Association of REALTORS®.** Learn about new laws that are being enacted or considered by legislatures across the country, which will allow for individuals to have their transaction documents electronically notarized via an online platform.

Watch the video here: <https://www.nar.realtor/window-to-the-law/remote-online-notarization-laws>

## 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®

