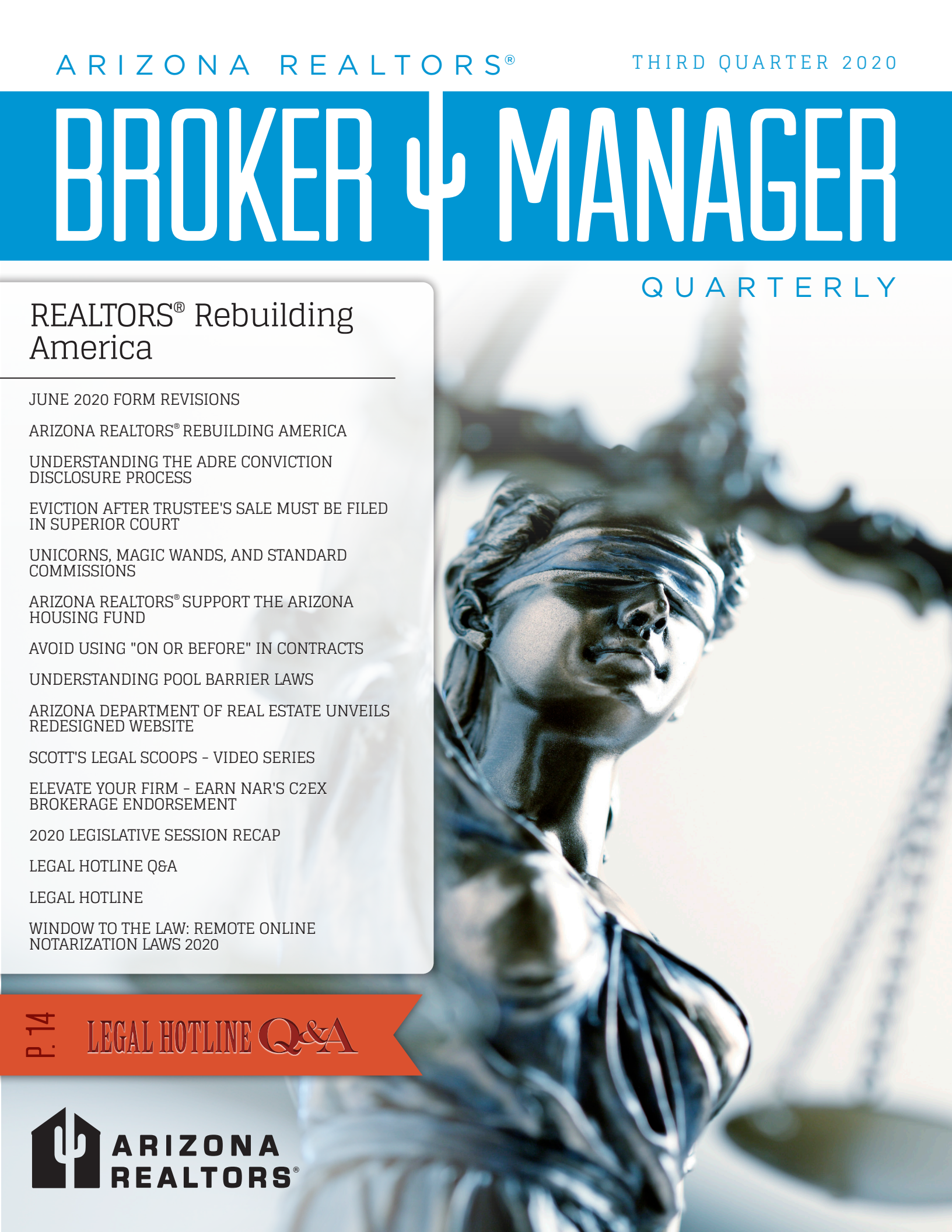
ARIZONA REALTORS®

THIRD QUARTER 2020

BROKER & MANAGER

QUARTERLY

REALTORS® Rebuilding America



P. 14 LEGAL HOTLINE Q&A

ARIZONA REALTORS®

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THIRD QUARTER 2020 | ARIZONA REALTORS® BROKER/MANAGER QUARTERLY

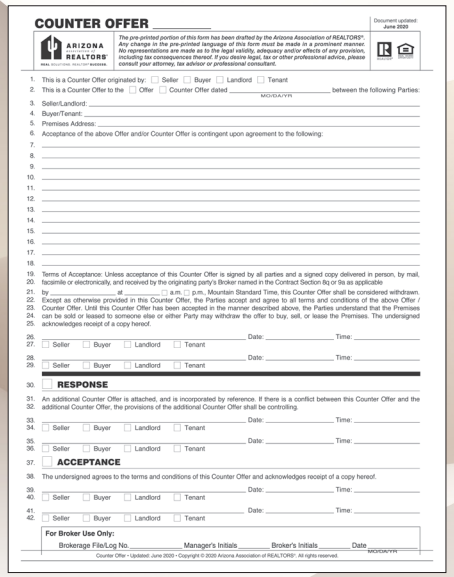
IN THIS ISSUE

June 2020 Form Revisions

Counter Offer – (Revised): This form has been revised at lines 19-20. The header on line 19 has been changed from "Time of acceptance" to "Terms of Acceptance" so that it mirrors the verbiage used in Section 8o of the Residential Resale Real Estate Purchase Contract. Instead of referencing Section 8m, the verbiage on line 19 clarifies that the Counter Offer should be "delivered in person, by mail, facsimile or electronically."

HOA Condominium / Planned Community Addendum - (Revised): The intended use of this form is for: (i) sellers to disclose on page one those costs associated with the H.O.A. that are payable at close of escrow; and (ii) buyers to identify on page three their offer as to which party pays which fees. To assist the parties with properly filling out the form, the following revisions have been made: (i) line four now instructs the seller to complete the information on "page 1"; and (ii) line 70 now states: **"NOTE: Lines 73-80 TO *ONLY* BE COMPLETED BY BUYER AND *NOT* SELLER!"**

Residential Buyer's Inspection Notice and Seller's Response (BINSR) - (Revised): This revision consists of adding additional blank lines under the "Items disapproved" heading and the "Seller's Response" heading. The additional lines were added to the BINSR to allow buyers and sellers additional room to address items disapproved and to help resolve an on-going issue with how the BINSR is populated when using TransactionDesk. With this change, the Arizona REALTORS® has authorized TransactionDesk to wrap the text in the BINSR's multi-line fields without worrying that the text may become so small that it is unreadable.


COUNTER OFFER

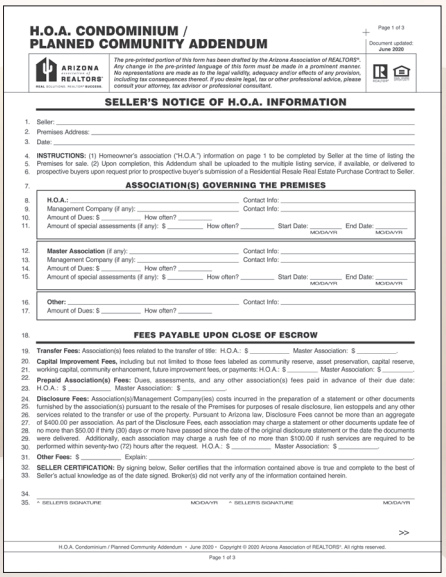
ARIZONA REALTORS

Document updated: June 2020

The pre-printed portion of this form has been drafted by the Arizona Association of REALTORS®. Any change in the pre-printed language of this form must be made in a prominent manner. No representations are made as to the legal validity, adequacy and/or effects of any provision, including tax consequences thereof. If you desire legal, tax or other professional advice, please consult your attorney, tax advisor or professional consultant.

1. This is a Counter Offer originated by: ☐ Seller ☐ Buyer ☐ Landlord ☐ Tenant
2. This is a Counter Offer to the ☐ Offer ☐ Counter Offer dated _____ between the following Parties:
3. Seller/Landlord: _____
4. Buyer/Tenant: _____
5. Premises Address: _____
6. Acceptance of the above Offer and/or Counter Offer is contingent upon agreement to the following:
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____
18. _____
19. Terms of Acceptance: Unless acceptance of this Counter Offer is signed by all parties and a signed copy delivered in person, by mail,
20. facsimile or electronically, and received by the originating party's Broker named in the Contract Section 8q or 9a as applicable
21. by _____ at _____ ☐ a.m. ☐ p.m., Mountain Standard Time, this Counter Offer shall be considered withdrawn.
22. Except as otherwise provided in this Counter Offer, the Parties accept and agree to all terms and conditions of the above Offer /
23. Counter Offer. Until this Counter Offer has been accepted in the manner described above, the Parties understand that the Premises
24. can be sold or leased to someone else or either Party may withdraw the offer to buy, sell, or lease the Premises. The undersigned
25. acknowledges receipt of a copy hereof.
26. _____ Date: _____ Time: _____
27. ☐ Seller ☐ Buyer ☐ Landlord ☐ Tenant
28. _____ Date: _____ Time: _____
29. ☐ Seller ☐ Buyer ☐ Landlord ☐ Tenant
30. ☐ **RESPONSE**
31. An additional Counter Offer is attached, and is incorporated by reference. If there is a conflict between this Counter Offer and the
32. additional Counter Offer, the provisions of the additional Counter Offer shall be controlling.
33. _____ Date: _____ Time: _____
34. ☐ Seller ☐ Buyer ☐ Landlord ☐ Tenant
35. _____ Date: _____ Time: _____
36. ☐ Seller ☐ Buyer ☐ Landlord ☐ Tenant
37. ☐ **ACCEPTANCE**
38. The undersigned agrees to the terms and conditions of this Counter Offer and acknowledges receipt of a copy hereof.
39. _____ Date: _____ Time: _____
40. ☐ Seller ☐ Buyer ☐ Landlord ☐ Tenant
41. _____ Date: _____ Time: _____
42. ☐ Seller ☐ Buyer ☐ Landlord ☐ Tenant

For Broker Use Only:
Brokerage File/Log No._____ Manager's Initials_____ Broker's Initials_____ Date_____


H.O.A. CONDOMINIUM / PLANNED COMMUNITY ADDENDUM

Page 1 of 3

ARIZONA REALTORS

Document updated: June 2020

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SELLER'S NOTICE OF H.O.A. INFORMATION

1. Seller: _____
2. Premises Address: _____
3. Date: _____
4. **INSTRUCTIONS:** (1) Homeowner's association ("H.O.A.") information on page 1 to be completed by Seller at the time of listing the
5. Premises for sale. (2) Upon completion, this Addendum shall be uploaded to the multiple listing service, if available, or delivered to
6. prospective buyers upon request prior to prospective buyer's submission of a Residential Resale Real Estate Purchase Contract to Seller.
7. **ASSOCIATION(S) GOVERNING THE PREMISES**
8. **H.O.A.:** _____ Contact Info: _____
9. Management Company (if any): _____ Contact Info: _____
10. Amount of Dues: $ _____ How often? _____
11. Amount of special assessments (if any): $ _____ How often? _____ Start Date: _____ (MO/DA/YR) End Date: _____ (MO/DA/YR)
12. **Master Association** (if any): _____ Contact Info: _____
13. Management Company (if any): _____ Contact Info: _____
14. Amount of Dues: $ _____ How often? _____
15. Amount of special assessments (if any): $ _____ How often? _____ Start Date: _____ (MO/DA/YR) End Date: _____ (MO/DA/YR)
16. **Other:** _____ Contact Info: _____
17. Amount of Dues: $ _____ How often? _____
18. **FEES PAYABLE UPON CLOSE OF ESCROW**
19. **Transfer Fees:** Association(s) fees related to the transfer of title: H.O.A.: $ _____ Master Association: $ _____
20. **Capital Improvement Fees,** including but not limited to those fees labeled as community reserve, asset preservation, capital reserve,
21. working capital, community enhancement, future improvement fees, or payments: H.O.A.: $ _____ Master Association: $ _____
22. **Prepaid Association(s) Fees:** Dues, assessments, and any other association(s) fees paid in advance of their due date:
23. H.O.A.: $ _____ Master Association: $ _____
24. **Disclosure Fees:** Association(s)/Management Company(ies) costs incurred in the preparation of a statement or other documents
25. furnished by the association(s) pursuant to the resale of the Premises for purposes of resale disclosure, lien estoppels and any other
26. services related to the transfer or use of the property. Pursuant to Arizona law, Disclosure Fees cannot be more than an aggregate
27. of $400.00 per association. As part of the Disclosure Fees, each association may charge a statement or other documents update fee of
28. no more than $50.00 if thirty (30) days or more have passed since the date of the original disclosure statement or the date the documents
29. were delivered. Additionally, each association may charge a rush fee of no more than $100.00 if rush services are required to be
30. performed within seventy-two (72) hours after the request. H.O.A.: $ _____ Master Association: $ _____
31. **Other Fees:** $ _____ Explain: _____
32. **SELLER CERTIFICATION:** By signing below, Seller certifies that the information contained above is true and complete to the best of
33. Seller's actual knowledge as of the date signed. Broker(s) did not verify any of the information contained herein.
34. _____
35. * SELLER'S SIGNATURE MO/DA/YR * SELLER'S SIGNATURE MO/DA/YR

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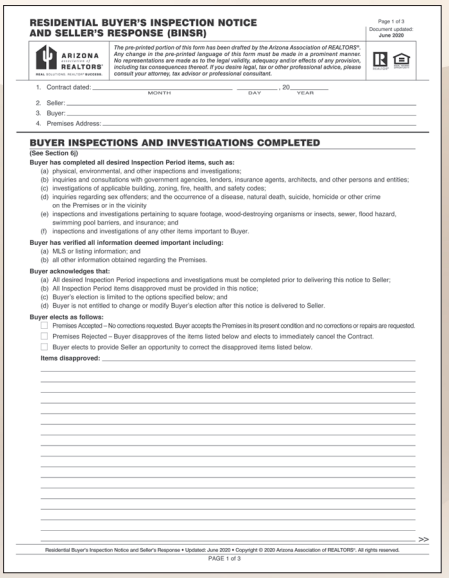
RESIDENTIAL BUYER'S INSPECTION NOTICE AND SELLER'S RESPONSE (BINSR)

Page 1 of 3

Document updated: June 2020

ARIZONA REALTORS

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1. Contract dated: _____ (MONTH) _____ (DAY), 20__ (YEAR)
2. Seller: _____
3. Buyer: _____
4. Premises Address: _____

BUYER INSPECTIONS AND INVESTIGATIONS COMPLETED

(See Section 6)

Buyer has completed all desired Inspection Period items, such as:
(a) physical, environmental, and other inspections and investigations;
(b) inquiries and consultations with government agencies, lenders, insurance agents, architects, and other persons and entities;
(c) investigations of applicable building, zoning, fire, health, and safety codes;
(d) inquiries regarding sex offenders; and the occurrence of a disease, natural death, suicide, homicide or other crime on the Premises or in the vicinity
(e) inspections and investigations pertaining to square footage, wood-destroying organisms or insects, sewer, flood hazard, swimming pool barriers, and insurance; and
(f) inspections and investigations of any other items important to Buyer.

Buyer has verified all information deemed important including:
(a) MLS or listing information; and
(b) all other information obtained regarding the Premises.

Buyer acknowledges that:
(a) All desired Inspection Period inspections and investigations must be completed prior to delivering this notice to Seller;
(b) All Inspection Period items disapproved must be provided in this notice;
(c) Buyer's election is limited to the options specified below; and
(d) Buyer is not entitled to change or modify Buyer's election after this notice is delivered to Seller.

Buyer elects as follows:
☐ Premises Accepted – No corrections requested. Buyer accepts the Premises in its present condition and no corrections or repairs are requested.
☐ Premises Rejected – Buyer disapproves of the items listed below and elects to immediately cancel the Contract.
☐ Buyer elects to provide Seller an opportunity to correct the disapproved items listed below.

Items disapproved: _____

>>


The real estate industry is vital to Arizona.
Real estate brought more than $75 billion into our economy last year.
The economic impact of a single home sale is more than $88,000.
And home has never been more important.
Arizona's REALTORS® continue to:
ADVOCATE for your real estate interests at the federal, state and local government
HELP you negotiate the best deal, while avoiding delays or costly mistakes
TRANSLATE complex real estate contracts, terms, rules and laws
PROMOTE HEALTH and SAFETY while completing your real estate transaction efficiently
IMPROVE our communities for all Arizonans
Arizona REALTORS®...the best prepared real estate practitioners with the highest standards
THAT'S WHO WE
ARIZONA REALTORS®
255 E. Osborn Rd., Suite 200 • Phoenix, AZ 85012 • Telephone: 602.248.7787 • www.aaronline.com
facebook.com/azrealtors
twitter.com/AARSuccess
instagram.com/arizona_realtors/
youtube.com/azrealtors

Understanding the ADRE Conviction Disclosure Process

The Arizona Department of Real Estate (ADRE) maintains a library of forms for use by licensees, developers, educators and consumers. Included in its library is a form titled Disclosure Document Checklist, better known as form **LI-400**.

Generally speaking, form LI-400 is used when a real estate licensee is required to disclose a change in status. This includes: (i) a civil action resulting in an order, judgment or adverse decision involving fraud, dishonesty or conduct exhibited in conjunction with a real estate business/transaction; and (ii) a disciplinary action resulting in a restriction, suspension, revocation or denial of a professional or occupational license. The form is also used in those unfortunate instances in which a licensee is convicted of a felony or misdemeanor.

Arizona Administrative Code (AAC) R4-28-303(D) requires all licensees to notify the ADRE in writing within ten days of any change in the individual's personal information or qualifications. This includes information pertaining to a criminal conviction, such as Driving Under the Influence (DUI).

Notably, disclosure does not need to be made at the time of arrest. Rather, written disclosure is required within ten days of the conviction. Even if a licensee were to notify the ADRE at the time of arrest, this will not be considered proper disclosure as it was not made within ten days of the time of conviction.

When notifying the ADRE of a criminal conviction, the licensee must provide a written statement containing the details surrounding the events leading to the conviction such as the arresting agency, date of the incident, which court adjudicated the offense, the date of sentencing, as well as the ultimate outcome whether it be a plea or sentence. This should be submitted in conjunction with form **LI-214/244**, titled Disciplinary Actions Disclosure.

Upon receipt of the licensee's statement, the ADRE will send the licensee a package via certified mail. The package will include a letter identifying which documents the licensee must convey to the ADRE, and the date by which they must be received. The package will also include a copy of the LI-400, which identifies with specificity the court documents that must be submitted.

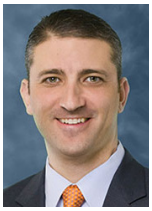
All court documents submitted must be certified, meaning that they contain an endorsement or certificate verifying that it is the primary document. Typically, such documents will contain a raised seal or stamp. When certified copies are stapled together, the staples cannot be removed as doing so nullifies the certification at which point a new set of documents will be required.

In addition to the aforementioned statement and certified court documents, the licensee may be required to provide three additional documents: (i) a ten year work history including the employer's name, address, supervisor's name and phone number, dates of employment and position held; (ii) a valid fingerprint clearance card from the Department of Public Safety if applying for license renewal when disclosing a criminal conviction that has not been previously disclosed; and (iii) three written, signed and dated character reference letters from individuals not related by blood or marriage and who have known the licensee for more than one year.

Because precise compliance is required, licensees are encouraged to contact the ADRE via its **Message Center** with any questions they may have about this process. Designated Brokers and their designees can also reach out to the Arizona REALTORS® **Legal Hotline** for guidance.

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

ABOUT THE AUTHOR



Scott M. Drucker, Esq.
A licensed Arizona attorney, Scott is General Counsel & Assistant CEO for the Arizona REALTORS® serving as the primary legal advisor to the association.

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Eviction after Trustee's Sale Must be filed in Superior Court

Typically, forcible detainer actions are filed in justice courts. However, in May, the Arizona Court of Appeals held that justice courts lack jurisdiction to enforce a forcible detainer action when a property is purchased at a trustee's sale. In other words, if the property is purchased at a trustee's sale and the owner thereafter wants to evict the occupants from the property, the owner must file a forcible detainer action in superior court.

In February 2019, Secure Ventures, LLC ("Owner") purchased a property at a trustee's sale. Thereafter, Owner served the occupants with a notice to vacate ten days later. When the occupants did not vacate the premises, Owner filed a forcible detainer action in the McDowell Mountain Justice Court. The justice court granted the eviction and the superior court affirmed the eviction action on appeal.

Following an appeal to the court of appeals, the Arizona Supreme Court ultimately granted a stay of enforcement of the eviction judgment and remanded the case to the superior court to consider the justice court's jurisdiction under A.R.S. § 12-1173.01.

On remand, the superior court held that the justice court lacked jurisdiction to hear the forcible detainer action. Consequently, Owner filed a special action with the court of appeals which led to this published decision.

In coming to its decision, the court of appeals looked to the plain language of A.R.S. § 12-1173.01 which states:

A. In addition to other persons enumerated in this article, a person in any of the following cases who retains possession of any land, tenements or other real property after he receives written demand of possession **may be removed through an action for forcible detainer filed with the clerk of the superior court** in accordance with this article:

   1. If the property has been sold through the foreclosure of a mortgage, deed of trust or contract for conveyance of real property pursuant to title 33, chapter 6, article 2.
   2. If the **property has been sold through a trustee's sale** under a deed of trust pursuant to title 33, chapter 6.1.
   3. If the property has been forfeited through a contract for conveyance of real property pursuant to title 33, chapter 6, article 3.
   4. If the property has been sold by virtue of an execution and the title has been duly transferred.
   5. If the property has been sold by the owner and the title has been duly transferred.

B. The remedies provided by this section do not affect the rights of persons in possession under a lease or other possessory right which is superior to the interest sold, forfeited or executed upon.

C. The remedies provided by this section are in addition to and do not preclude any other remedy granted by law.

Emphasis added.

When reading this statute with other forcible detainer statutes, the court reasoned that "the legislature expressly addressed post-conveyance forcible detainers – including forcible detainers brought after trustee's sales – separately from those forcible detainers set forth in already-existing A.R.S. § 12-1173."

Because of this distinct separation between the statutes, the court determined that A.R.S. § 12-1173.01 was enacted to make clear the procedure, "that an occupant in those scenarios specifically listed may only 'be removed through an action for forcible detainer filed with t*he clerk of the superior court*."

Finally, the Court of Appeals recognized that its holding may conflict with common practice in Arizona, however, it could not disregard the statute's plain language. As such, in the event you find yourself in one of the above scenarios cited in A.R.S. § 12-1173.01, you may only file a forcible detainer action in superior court.

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

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Unicorns, Magic Wands, and Standard Commissions

POP QUIZ – What do unicorns, magic wands, and standard real estate agent commissions have in common? The answer is simple, none of them exist.

A common misconception when it comes to real estate commissions is that there is a standard percentage within the industry. In truth, there is no standard fee and real estate commissions are negotiable.

No national, state or local real estate board, or any other association of real estate licensees, has the authority to set a commission rate or create any standardized fees for services. Doing so would constitute price fixing, which is the illegal practice of competitors conspiring to set prices for products or services, rather than letting competition in the open market establish those prices.

If all real estate commissions were the same, real estate brokers would be in violation of state and federal antitrust laws created to protect consumers from monopolistic practices. The United States Supreme Court in the case of the United States v. National Association of Real Estate Boards et al. held that services provided by a real estate agent are within the definition of "trade," and, as a result, the price-fixing of real estate commissions would constitute a per se violation of the Sherman Antitrust Act.

Based on the above, real estate brokerages must independently determine commission rates or fees only for their own firms.[1] Furthermore, these commission rates are subject to negotiation. As explained by the National Association of REALTORS®:

> The commissions established in a listing agreement are the result of negotiations between the seller and the listing broker. Because consumers have a multitude of choices in service and fee models, they also have great choice regarding payment for real estate services. Importantly, sellers have the ability to discuss and negotiate with their broker what fee they are willing to pay for their broker's services and what fee they are willing to pay a cooperating broker for bringing a willing and able buyer to close the transaction

But as with any negotiation, the listing agent may remain firm and not budge from their desired compensation. In that case, the seller can accept the agent's rate or choose not to use that particular agent. Due to the fact that Arizona has more than 50,000 REALTORS® all practicing within an everchanging industry, sellers can expect to see a variety of options in the marketplace, including alternative business models such as flat fee brokerages.

However, sellers should understand that there are instances in which the services they receive are commensurate to the amount of money they pay. Some flat fee brokers may not provide the same level of "full service" offered by brokers that operate under a different model. Similarly, because marketing dollars for a property are typically paid by the real estate licensee, a lower fee could mean less advertising for the property.

Much like sellers, buyers also have the opportunity to negotiate commission rates. Buyers are entitled to know in advance how much their agent stands to make, and be able to negotiate that amount lower than what is offered in the listing contract.

Based on market conditions and the level of service their client requires, agents may be flexible in their desired compensation, whether that means lowering their commission or adding extra services like professional staging or virtual tours. Several recent studies have found that, statistically, the average commission has decreased over the last several years. This is likely due to more real estate agents competing for fewer and fewer listings, as well as the advent of "discount" brokerages that operate under non-traditional business models.

Finally, REALTORS® should remember that Standard of Practice 1-12 of the Code of Ethics requires that when entering into listing contracts, the REALTOR® must advise the seller of their company policies regarding cooperation and the amount(s) of any compensation that will be offered to others. When having this conversation, REALTORS® should never state, or even imply, that a particular commission is industry standard. Because just like unicorns and magic wands, there is no such thing.

[1] A broker may require salespersons working as independent contractors to abide by the company's set commission rate. Doing so does not constitute an antitrust violation as these agents all work under the same brokerage.

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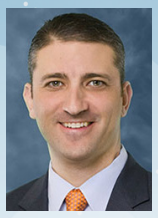
ABOUT THE AUTHOR



Scott M. Drucker, Esq.

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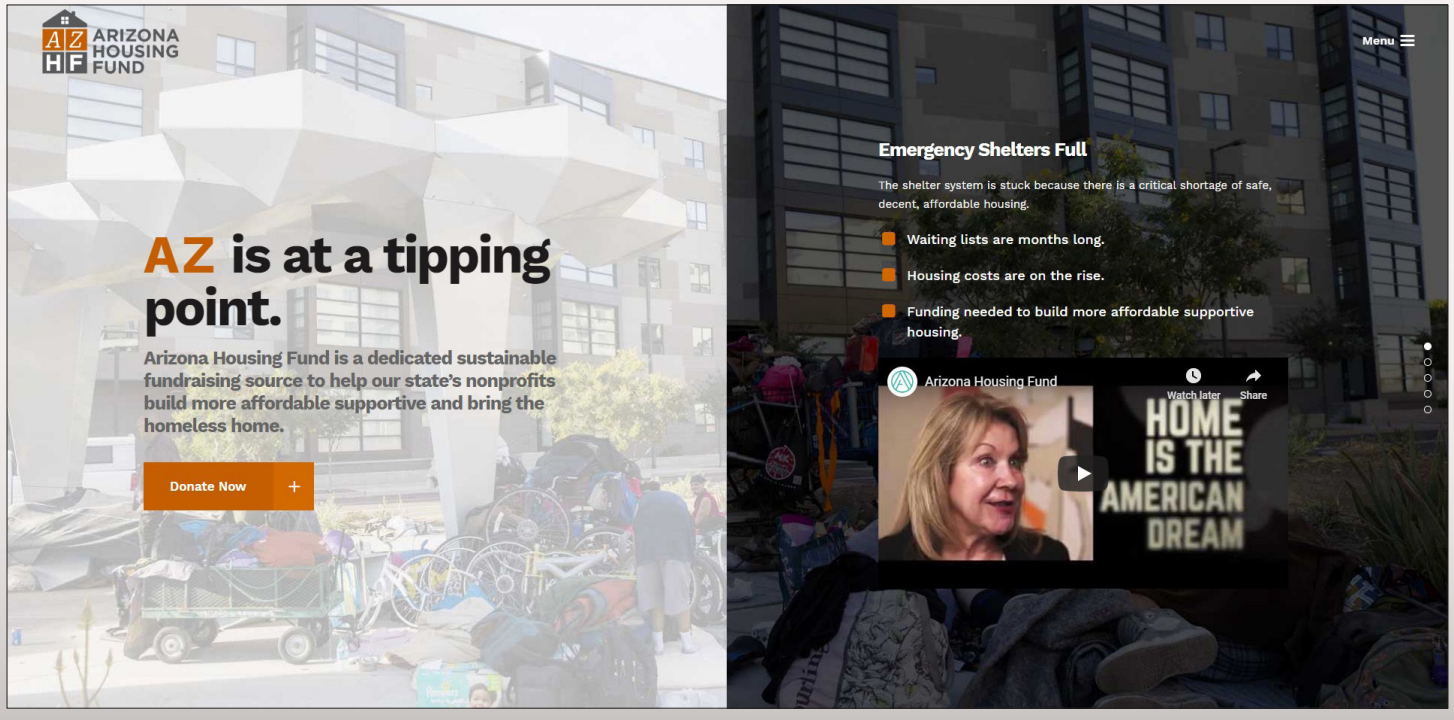
Arizona REALTORS® Support the Arizona Housing Fund

BY MICHELLE LIND, ESQ., EXECUTIVE OFFICER FOR THE ARIZONA REALTORS®

"The Arizona Association of REALTORS® is excited to support the Arizona Housing Fund. We believe our membership of over 50,000 REALTORS® can directly impact homelessness in our state by promoting the Fund's Escrow Donation Program. We are proud to be associated with the Arizona Housing Fund."

Watch the video here: https://arizonahousingfund.org/



ARIZONA HOUSING FUND

Bringing the Homeless Home.

ARIZONA REALTORS®

EQUAL HOUSING OPPORTUNITY

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

Avoid Using "On or Before" In Contracts

"On or before" is often included in contracts to show that performance may be completed prior to the deadline date. When submitting or accepting an offer, there are many scenarios in which it might seem prudent to insert this verbiage before the close of escrow date.

For example, a home has to sell before a new home can be purchased. Or, the parties are hoping for a quicker close of escrow than the designated close of escrow date. Regardless of the reason, DO NOT DO IT! Inserting additional language into the contract such as "on or before" may have unintended consequences.

Consider the following scenario: In order to purchase a new home, the buyers must sell their current home. The sale is scheduled to close escrow on August 1, 2016. Subsequently, the buyers submit an offer on a new home requesting to close escrow on or before August 4, 2016. The buyers' offer is accepted. As luck would have it, the buyers are able to close escrow on the sale of their home one week early. The buyers are now demanding the seller close the transaction before August 4. Unfortunately, the seller cannot possibly be out of the house by then. The buyers are upset and both parties have decided to consult legal counsel.

The best outcome for the above scenario is that the parties are able to close escrow early. However, the worst case scenario could involve a lawsuit with claims for breach of fiduciary duty against each parties' agent. The outcome? It depends.

In spite of the uncertainty of a lawsuit's outcome, you can be certain a lawsuit will cause anguish, take time away from your business, and cost money. Therefore, the best practice is to have a definitive close of escrow date so that the parties' expectations are managed accordingly. If the parties thereafter mutually agree to a different date, the parties can amend the contract.

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ABOUT THE AUTHOR

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Understanding Pool Barrier Laws

Because of the number of drownings and near-drownings in Arizona, most of which involve small children, the State of Arizona and most counties and cities within the state have enacted swimming pool barrier laws. Generally, these laws require that all affected swimming pools (or certain other contained bodies of water) be protected by an enclosure surrounding the pool area, or by another barrier, that meets specific requirements.

Pool barrier laws require that a swimming pool be completely enclosed by a fence to restrict access to the swimming pool from adjoining property. These laws also require that certain barriers be installed to restrict easy access from the home to the swimming pool. Pool barrier laws contain specific requirements regarding the height and type of fences, gates and doors from the home leading directly to the swimming pool and regarding windows that face the swimming pool. Arizona REALTORS® encourages home buyers to be aware of pool barrier laws prior to purchasing a home with an existing pool, erecting pool barriers, altering, repairing or replacing pool barriers and building a pool. Here are a few commonly asked questions regarding swimming pool barrier laws.

I'm ready to make an offer on a house with a pool. What information should I receive?

Arizona REALTORS® Residential Resale Real Estate Purchase Contract, used in most resale home transactions, includes a "Notice to Buyer of Swimming Pool Barrier Regulations," in which the buyer and seller acknowledge the existence of state laws as well as possible county and municipal laws, and the buyer agrees to investigate and comply with these laws. The seller is required by law to give the buyer a copy of the pool safety notice from the Arizona Department of Health Services. The contract also requires the buyer be given a Seller's Property Disclosure Statement, which discloses any known code violations on the property.

The house I want to buy has a fence around the pool, but it doesn't meet code. Who is responsible for bringing it up to code and how long do we have?

The Arizona REALTORS® Purchase Contract states: "During the Inspection Period, Buyer agrees to investigate all applicable state, county, and municipal swimming pool barrier regulations and agrees to comply with and pay all costs of compliance with said regulations prior to occupying the Premises, unless otherwise agreed in writing." Check city and county ordinances for their specific requirements.

We have an above-ground pool in our backyard, so we don't have to worry about pool barrier laws, do we?

Above-ground pools are covered by the same state legal requirements for an enclosure around the pool. The pool must be at least four feet high with a wall that is not climbable and steps or ladders that are locking or removable. Again, check city or county ordinances for different requirements **https://www.aaronline.com/2010/10/27/pool-barrier-law-contact-information/**.

Pool Barrier Flyer (July 2020)

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

ABOUT THE AUTHOR

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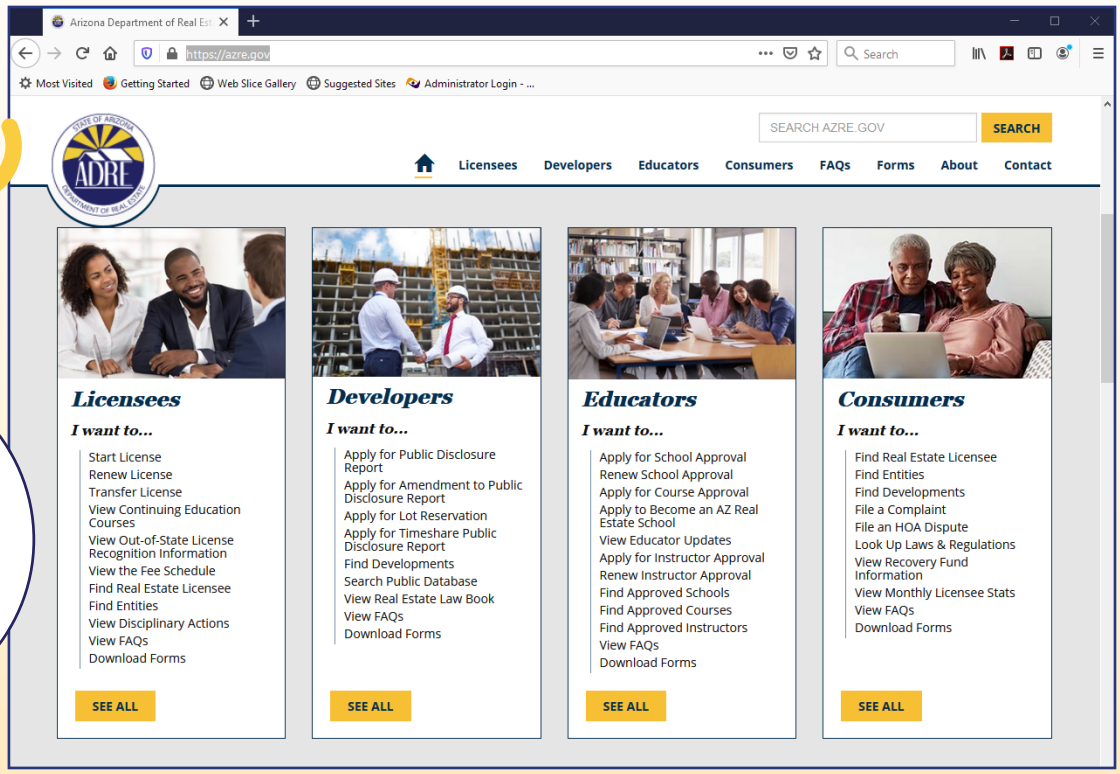
Chief Executive Officer for the Arizona REALTORS®

ARIZONA DEPARTMENT OF REAL ESTATE Unveils Redesigned Website

The Arizona Department of Real Estate remains open for business. The building is open by appointment only at this time. Please submit your questions, applications, or complaints online through the ADRE Message Center located on azre.gov.



Legal Scoops – **Video Series**

In addition to the Arizona REALTORS® Legal Hotline. Mack in a Minute and Scott's Legal Scoops address legal hotline topics through short videos. Each month, we post one short video. These are another great resource for your office meetings.

Watch the video here: **Buyer's Inspection Notice and Selller's Response make REALTORS (BINSR)**

Elevate Your Firm – Earn NAR's C2EX Brokerage Endorsement

Be an advocate for the future of our industry. Be committed to excellence and obtain the C2EX Brokerage Endorsement. Go to www.C2EX.realtor to get started with this award-winning program!

The C2EX Brokerage Endorsement is awarded by the National Association of REALTORS® to brokerage offices in which at least 80% of the agents and the managing Broker have earned their C2EX Endorsement. Endorsed offices who earn this prestigious honor will receive an endorsement kit, complete with marketing materials. The status will be reviewed annually in November, marking the anniversary of the C2EX program launch. To qualify, the Brokerage office must meet the following qualifications:

1. The Managing Broker of the office must have their C2EX Endorsement.

2. At least 80% of the agents within an office must have their C2EX Endorsement.

3. Managing brokers have administrative capabilities on the C2EX platform to help you enhance and track your agents' C2EX progress, including:

    - Uploading your brokerage's logo
    - Adding materials to the C2EX Library specifically for your agents
    - Creating tasks for your agents
    - Pulling progress reports
    - Managing user admin access in your office.

The Commitment to Excellence (C2EX) is a program that empowers REALTORS® to demonstrate their professionalism and commitment to conducting business at the highest standards.

Visit the C2EX website today for more information: https://www.nar.realtor/commitment-to-excellence-c2ex/c2ex-broker-resources

C2EX
COMMITMENT TO EXCELLENCE

2020 Legislative Session Recap

Like all things in 2020, the Arizona REALTORS® legislative agenda and government affairs efforts have been more unpredictable than some years – yet we remain a constant voice at the table as leaders from across the state shape decisions.

As Governor Ducey begins to communicate what "reopening" Arizona will look like and the legislature navigates the steps, I'd like to recap the efforts the Arizona REALTORS® have led.

Efforts at the State Legislature:

- Advocating for non-licensed individuals' ability to collect rent payments if employed by a licensed REALTOR®.
- Lobbying against abusive HOA practices.
- Protecting the integrity of REALTORS® license by advocating for out of state licensees to pass an exam specific to Arizona Real Estate Law.
- Remaining engaged in policies specific to short-term rental properties.
- Remaining the steadfast champion for private property rights.

Efforts specific to the COVID-19 Pandemic and Executive Orders issued by Governor Ducey

- "Essential Service" designation for Real Estate professions, including consumer lenders, title and appraisal offices.
- Providing Governor's and Department of Real Estate staff with continuity of work solutions to allow for remote and streamed CE solutions.
- Leading the early implementation and authorized use of Remote On-line Notary (RON).
- Fighting for the rights of property owners and landlords.
- Advocating for accountability and fairness in response to rent forbearance and postponed eviction policies.
- Commissioned an economic impact study to better educate elected officials and stakeholders on how the COVID-19 Pandemic has impacted the residential rental market.
- Working with business leaders to understand liability concerns and protect business owners as policy is drafted.

Legislative Victories

S1021 Electronic Signatures
An "electronic signature" is permitted to be used to sign a document that is submitted to the Department of Revenue and has the same force and effect as a written signature.

S1096 Property Mgmt. & Residential Records
Arizona REALTORS® led sweeping amendments to benefit property owners and managers by reducing tenant records retainment requirements.

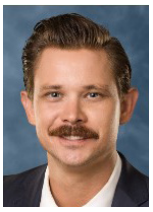
For the purpose of statute requiring property management firms to keep residential rental agreements and related documents for one year from the expiration of the rental agreement or until the rental agreement and related documents are given to the owner at the termination of any property management agreement, "related documents" is defined to include copies of rental applications with tenant-identifying information, move-in forms, and default notices.

If a broker keeps records at an "off-site storage location", the broker is required to provide to the State Real Estate Department prior written notification and the street address of the off-site storage location.

The Arizona REALTORS® are grateful for the opportunity to work with Governor Ducey, Senate President Fann, Speaker Bowers, and all our elected officials as recovery efforts are drafted and Arizona enters a post COVID-19 world. We will continue to be your voice at the table.

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

ABOUT THE AUTHOR



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LEGAL HOTLINE

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

Q&As are not "black and white," so experienced attorneys and brokers may disagree. Agents are advised to talk to their brokers/managers when they have questions.

Handwritten Language Trumps Boilerplate Language

FACTS: Buyer and Seller executed a Residential Resale Real Estate Purchase Contract (Contract). In the Additional Terms and Conditions section of the Contract, the parties agreed to terms different than the boilerplate language contained in Section 2 of the Contract.

After execution of the Contract, Seller indicates that he will not comply with the provisions hand-written into the Additional Terms and Conditions section of the Contract. The basis for Seller's position is that the contract contains conflicting terms. Specifically, the provisions contained in the Additional Terms and Conditions section of the Contract are different than the provisions contained in Section 2 of the Contract.

ISSUE: Is the seller required to perform as set forth in the Additional Terms and Conditions section of the Contract?

ANSWER: Yes.

DISCUSSION: The Arizona REALTORS® provides forms with what is known as "boilerplate" language. This means that the documents are pre-printed forms with standard language.

Under contract law, handwritten terms usually prevail over boilerplate language. As such, Seller is obligated to comply with the provisions hand-written into the Additional Terms and Conditions section of the Contract.

Late BINSR Does not Necessitate a Cure Notice

FACTS: Buyer submits a Residential Buyer's Inspection Notice and Seller's Response (BINSR) requesting a credit in lieu of repairs. Seller's agent explains to buyer's agent that the BINSR is improper and should not serve as a tool to negotiate price. Seller's agent then encourages buyer to submit a revised BINSR identifying items disapproved and, if desired, submit an addendum asking to lower the purchase price. Buyer agrees, but does not submit the corrected BINSR until 12 days after contract acceptance, which is two days after the end of the inspection period.

ISSUE: Is buyer's late BINSR valid and if not, must seller submit a Cure Period Notice in order to recover the earnest money deposit?

ANSWER: See discussion.

DISCUSSION: Since buyer's corrected BINSR was submitted late, it was not valid. In fact, the situation is akin to buyer having entirely failed to submit a BINSR. Under such circumstances, the buyer is obligated to proceed with the transaction and the cure notice discussed on lines 268-272 of AAR's Residential Resale Real Estate Purchase Contract does not come into play.

Why '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.

Listing Agent Must Disclose Letter from Neighbor's Counsel as to Potential Infringement to the Buyer

FACTS: Ten days before escrow was scheduled to close, the seller received a letter from a lawyer representing the neighbor. The lawyer's letter claims that several trees that straddle the property line are a nuisance and that the neighbor is going to remove them at his expense.

ISSUE: Should the listing agent disclose to the potential buyer the letter from the neighbor's attorney?

ANSWER: Yes

DISCUSSION: Real estate licensees are obligated to disclose all known material facts affecting the property. Here, the attorney's letter and the alleged nuisance would constitute material facts which should be disclosed.

When is Contract Delivery?

FACTS: A buyer sent a seller a counter-offer to the Residential Resale Real Estate Purchase Contract (Contract). The seller signed the counter-offer and provided it to his listing agent with instructions to deliver the acceptance to the buyer.

Before the listing agent could deliver the accepted Contract to the buyer, the seller called the listing agent and directed him not to deliver the acceptance.

ISSUE: Was Contract acceptance already delivered?

ANSWER: No.

DISCUSSION: Section 8o of the Contract states "This offer will become a binding Contract when acceptance is signed by Seller and a signed copy delivered in person, by mail, facsimile or electronically, and received by Broker named in Section 8q."

In this case, the accepted offer never left the seller's possession. Therefore, acceptance was neither delivered nor received.

Unlicensed Assistant Must be Identified as Unlicensed in All Advertising

FACTS: A real estate team held an open house. An unlicensed assistant attending the open house posted video to a social media site. The video featured the unlicensed assistant who stated, "Come down to our open house and join us!"

ISSUE: Must the unlicensed assistant disclose that she is not licensed in the video?

ANSWER: Yes.

DISCUSSION: Arizona Department of Real Estate Substantive Policy Statement 2017.01 states: All inclusions of the unlicensed assistant in advertising or marketing must indicate the individual as being "unlicensed" (A.R.S. § 32-2165(A)).

Therefore, the unlicensed assistant should identify herself as unlicensed in any advertisement or marketing.

If All Repairs Agreed to, Buyer Cannot Cancel via BINSR

FACTS: A buyer and seller entered into a residential purchase contract. During the Inspection Period, the Buyer completed page one of the Buyer's Inspection Notice and Seller's Response ("BINSR") requesting repairs from the seller. The seller responded on page two of the BINSR indicating the seller would repair all of the items the buyer had requested. The seller returned the BINSR to the buyer.

Several days prior to closing, the buyer delivered the BINSR to the seller, indicating at the bottom of page two that the buyer was electing to cancel.

ISSUE: Can the Buyer use the BINSR to cancel the contract after the seller agreed to all repairs on the BINSR?

ANSWER: No.

DISCUSSION: Because the Seller agreed to make all repairs requested in the BINSR, the Buyer has no basis to cancel. The BINSR should only be used for cancellation pursuant to section 6j of the contract. That is not the circumstance here.

Advocating for the Removal of an Apparent Prescriptive Easement is Beyond an Agent's Licensure

FACTS: The agent is listing a property on a hillside which a driveway runs through to access the house above the subject property. There is no written or recorded easement noted in the title commitment. Because there is no recorded easement, the buyer insists that the driveway is "illegal" and has urged the agent to eliminate it.

ISSUE: Is the agent licensed to address the prescriptive easement and seek its removal?

ANSWER: No.

DISCUSSION: Article 26 of the Arizona Constitution allows licensees to represent a party in a real estate transaction. A real estate licensee may not, without further licensure, practice law. Based on the facts presented, the driveway may constitute a prescriptive easement through the subject property. Attempting to eliminate the easement would constitute the practice of law. The agent is therefore not properly licensed to address the situation. Rather, the agent should refer the buyer to independent legal counsel.

>

Time Period Does Not Include the Day of Act or Event

FACTS: Contract acceptance occurred on Monday.
ISSUE: When does five days after contract acceptance expire?

ANSWER: See discussion.

DISCUSSION: The day of the act or event from which the time period begins to run is not included, so day one is Tuesday. The last day to perform any acts required to be accomplished within five days after acceptance should be completed by Saturday at 11:59 p.m.

Note: *All references to days are calendar days. A day begins at 12:00 a.m. and ends at 11:59 p.m.*

Unsolicited Text Message Marketing Is Illegal

FACTS: An agent wants to send unsolicited text messages to consumers as part of a marketing campaign.

ISSUE: Can an agent send text messages as part of an unsolicited marketing campaign?

ANSWER: No.

DISCUSSION: The Federal Trade Commission (FTC) provides information regarding unsolicited text message marketing:

Text Message Spam is Illegal
It's illegal to send unsolicited commercial email messages to wireless devices, including cell phones and pagers, unless the sender gets your permission first...If you receive unwanted commercial text messages, file a complaint with the FTC.

Therefore, agents should not participate in text-message marketing.

Note: *The FTC lists an exception;*
Transactional or relationship types of messages.
If a company has a relationship with (a consumer), it can send (the consumer) things like statements or warranty information.

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: Fair Housing Update

NATIONAL ASSOCIATION OF REALTORS®

WINDOW TO THE LAW

Window the Law: Remote Online Notarization Laws 2020

Learn about remote online notarization, & encourage your counterparts in the real estate settlement services to embrace fully-electronic closings from Katie Johnson General Counsel & Chief Member Experience Officer at NAR

Watch the video here: **https://www.nar.realtor/window-to-the-law/remote-online-notarization-laws-2020**

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