

# BROKER & MANAGER

QUARTERLY

## LISTING AGENT DO'S AND DON'TS FOR UNREPRESENTED BUYERS

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JUNE 2021 REVISED FORMS

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LEGAL HOTLINE Q&amp;A

**ARIZONA  
REALTORS®**



# BROKER & MANAGER

SECOND QUARTER 2021 | ARIZONA REALTORS® BROKER/MANAGER QUARTERLY


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## STREAMLINED ETHICS COMPLAINT PROCESS

Arizona REALTORS® is responsible for enforcing the REALTORS® Code of Ethics. The code imposes duties above and beyond those imposed by law or regulation, which apply only to real estate professionals who choose to become REALTORS®.

While it is strongly recommended that real estate professionals seek a variety of alternatives to settle a dispute, the option of filing a formal ethics complaint exists as a last resort. To reduce the number of paper filings and speed up the process, we have created an [Online Ethics Complaint Form](#) that streamlines the submission and allows users to file the complaint electronically. 

**JUNE 1, 2021**

## ADDITIONAL CLAUSE ADDENDUM (revised)

On June 1, 2021, a revised [Additional Clause Addendum](#) will be released for use by all members. The sole change to the form can be found on lines 37-44 and consists of a new provision titled Appraisal Shortfall.

As Arizona REALTORS® are undoubtedly aware, buyers are increasingly electing to waive the Arizona REALTORS® Residential Resale Real Estate Purchase Contract's (the "Contract") appraisal contingency due in large part to the fact that appraisal values are being returned lower than the parties' agreed upon purchase price. In waiving the appraisal contingency, buyers are further agreeing to submit additional funds to address the gap between the purchase price and the appraised value. To reduce members' risk resulting from drafting their own appraisal waiver verbiage, the Risk Management Committee deemed it beneficial to draft a new provision addressing appraisal shortfalls to be included in the Additional Clause Addendum.

Below is a list of frequently asked questions to help members better understand the new provision.

### FREQUENTLY ASKED QUESTIONS

FOR ALL SCENARIOS LISTED BELOW, ASSUME THE PURCHASE PRICE IS **\$500,000** AND **"\$10,000"** IS INSERTED ON LINE 40 OF THE JUNE 2021 ADDITIONAL CLAUSE ADDENDUM.

**Q1** The appraisal comes in at \$510,000. How much will Buyer be obligated to pay?

**A1** Buyer will remain obligated to pay \$500,000 because the new Appraisal Shortfall provision is applicable only in the event that the Premises fail to appraise for at least the purchase price. In this scenario, the Premises appraised for an amount greater than the purchase price.

**Q2** The appraisal comes in at \$495,000. How much will Buyer be obligated to pay?

**A2** Buyer will be obligated to pay \$500,000. In this scenario, the Premises failed to appraise by \$5,000 and Buyer has agreed to pay the shortfall provided that the difference does not exceed \$10,000. Because \$5,000 is less than \$10,000, Buyer is required submit an additional \$5,000, thereby requiring Buyer to pay a total of \$500,000 to purchase the Premises.

**Q3** The appraisal comes in at \$475,000. How much will Buyer be obligated to pay?

**A3** In this scenario, the difference between the purchase price and the appraised value is \$25,000. However, Buyer has agreed to pay the shortfall only if the difference does not exceed \$10,000. Buyer therefore has the right to cancel the Contract and recover the Earnest Money. Furthermore, Seller is not obligated to sell the Premises for \$475,000, nor is Seller obligated to sell the Premises for \$485,000 because the parties have agreed that if the

difference between the appraised value and the purchase price exceeds \$10,000, which is does in this scenario, "Seller is not obligated to lower the purchase price."

**Q4** The appraisal comes in at \$475,000. Can Buyer make up the \$25,000 shortfall?

**A4** Yes, Buyer can voluntarily choose to make up the \$25,000 shortfall if they are financially able to do so. However, as set forth in question three, the new Appraisal Shortfall provision does not require Buyer to do so.

**Q5** If using the new Appraisal Shortfall provision, will Buyer ever be obligated to pay an amount greater than the purchase price set forth on line 10 of the Contract?

**A5** No. Pursuant to the new Appraisal Shortfall provision, Buyer is only agreeing to pay the difference between the appraised value and the purchase price set forth in the Contract. As a result, the Appraisal Shortfall provision will not automatically cause the final price to exceed the purchase price set forth on line 10 of the Contract.

**Q6** The final sentence of the new Appraisal Shortfall provision ends with the term "unless otherwise prohibited by federal law." Why?

**A6** This language mirrors the verbiage set forth on line 110 of the Contract addressing the appraisal contingency. When purchasing a home with an FHA or VA loan, the lender must ensure that the Premises serves as sufficient collateral for



# ADDITIONAL CLAUSE ADDENDUM (revised)

the amount it lends. FHA and VA therefore require an amendatory clause be made part of the sales contract.

The FHA/VA Amendatory Clause states in part:

*"It is expressly agreed that notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the purchaser has been given in accordance with HUD/ FHA or VA requirements a written statement by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement lender setting forth the appraised value of the property of not less than \$\_\_\_\_\_."*

The term "unless otherwise prohibited by federal law" reflects this language and highlights the fact that Buyer may cancel the transaction without penalty pursuant to the FHA/ VA Amendatory Clause regardless of language contained in the Contract.

**Q7** If the parties utilize the new Appraisal Shortfall provision and the appraisal notes conditions/repairs that need to be remedied before the loan will fund, can Buyer still cancel based on the appraisal?

**A7** Yes. If the lender requires conditions/repairs be remedied before approving the loan and the conditions/ repairs are not completed, Buyer can thereafter use the Unfulfilled Loan Contingency to cancel because the lender requirement would not be met. 🙋

## COUNTER OFFER (revised)

In June 2021, a revised **Counter Offer** will be published evidencing two substantive changes.

The first revision pertains to lines **22 and 23**, which currently state, "Except as otherwise provided in this Counter Offer, the Parties accept and agree to all terms and conditions of the above Offer / Counter Offer." These lines have been changed to state **"Except as modified by this Counter Offer, all other terms and conditions of the above referenced Offer / Counter Offer(s) shall remain unchanged and deemed accepted."**

Although the new verbiage achieves the same result, it emphasizes the fact that any previous terms and conditions not modified by this Counter Offer shall remain unaffected and considered to be accepted. In the event that agents currently insert verbiage into the Counter Offer stating that all other terms and conditions remain unchanged, that will no longer be warranted.

The second revision pertains to lines 23-24, which currently state, "Until this Counter Offer has been accepted in the manner described above, the Parties understand that the Premises can be sold or leased to someone else or either Party may withdraw the offer to buy, sell, or lease the Premises." These lines have been changed to state **"Until this Counter Offer has been accepted in the manner described above, the Parties**

**understand that the Party originating this Counter Offer may withdraw the offer to buy, sell, or lease the Premises."**

The reason for this change is to help ensure that a Counter Offer not yet accepted is revoked before a party originating the form enters into a contract with a different buyer, seller, tenant, or landlord.

Consider the following example. Seller receives a \$250,000 purchase offer from Buyer One. Desiring a higher sales price, Seller conveys a Counter Offer to Buyer One increasing the sales price to \$275,000. However, while the Counter Offer to Buyer One is outstanding, Seller receives a \$300,000 purchase offer from Buyer Two. By way of the revised June 2021 form, clarification has been added explaining that Seller has the right to withdraw their Counter Offer before it is accepted by Buyer One. Under this scenario, before Seller accepts Buyer Two's purchase offer, Seller should first

withdraw the yet to be accepted Counter Offer previously conveyed to Buyer One. Otherwise, Seller runs the risk of becoming contractually obligated to sell the Premises to both Buyer One and Buyer Two.

The revised Counter Offer will be available on all Arizona REALTORS® forms platforms for use by members on or about June 1, 2021. 🙋

# UNREPRESENTED BUYER? NO PROBLEM!

## DO'S AND DON'TS

### Unrepresented Buyer



Before spending hundreds of thousands of dollars in what may be the largest purchase of their lifetime, many buyers seeking to purchase real estate, whether it be residential or commercial, choose to be represented by a REALTOR®. However, hiring the services of a REALTOR® is optional and some buyers choose to either represent themselves or retain the services of a real estate licensee or attorney who is not a REALTOR®. While this is 100% permissible, it can raise procedural questions for the listing agent who must interact with the buyer and their non-REALTOR® representative, if any.

First and foremost, listing agents that find themselves in this situation should keep in mind that they owe a duty of good faith and fair dealing to all parties, irrespective of whether the party is represented by a real estate professional. Absent a limited representation scenario, a broker under a listing agreement with a seller acts as the broker for the seller only and owes fiduciary duties of loyalty, obedience, disclosure, confidentiality, and accounting in dealings with the seller. But regardless of who the broker represents in the transaction, they must exercise reasonable skill and care in the performance of their duties and shall be truthful and honest in their dealings with all parties. This remains the case when the buyer is unrepresented.

*One procedural challenge faced by listing agents when dealing with buyers not represented by a REALTOR® is the contractual documents to be utilized in the transaction. Arizona REALTORS® forms are original works protected by federal copyright laws. These copyrighted forms are made available as a member benefit meaning that association members are authorized to use the forms when representing clients in their real estate transactions.*

Since individuals that are not REALTORS® are prohibited from generating Arizona REALTORS® forms, purchase offers submitted by unrepresented buyers should not be made using an Arizona REALTORS® Residential Resale Real Estate Purchase Contract. Rather, the unrepresented buyer must procure their own purchase contract whether it be obtained from the internet, an attorney, or a title company. In these instances, listing agents must remember that Arizona law requires them to submit all offers to their seller unless they have written instructions to the contrary. A.A.C. R4-28-802(B) states in part:

“During the term of a listing agreement, a salesperson or broker shall promptly submit to the salesperson’s or broker’s client all offers to purchase or lease the listed property.”

So regardless of the purchase contract utilized by the prospective buyer, the listing agent is duty-bound to present the offer to their seller.

Arizona REALTORS® are accustomed to using the association’s forms in conjunction with their real estate transactions, including the Residential Resale Real Estate Purchase Contract. This is understandable considering that they have likely received education on the use of this specific contract which was drafted in an effort to be fair to both buyer and seller. However, use of the Arizona REALTORS® Purchase Contract is not legally required and the parties are free to contract using any form they deem best.

If a listing agent and their seller receive a purchase offer written on a form other than the Arizona REALTORS® Purchase Contract, it is recommended that the REALTOR® review the form with the seller and note the differences so that the seller can make an informed decision on how to proceed. It may also be appropriate for the seller to seek the advice of independent legal counsel and the listing agent can recommend that they do so.

If the seller prefers the Arizona REALTORS® Purchase Contract, the listing agent should submit a counteroffer using that form. Although a non-REALTOR® is prohibited from generating an offer on an Arizona REALTORS® form, it does not mean that such a form cannot be used in the transaction. Provided the form is generated by the listing agent who is a REALTOR®, the use of Arizona REALTORS® forms in a transaction involving a buyer not represented by a REALTOR® is perfectly acceptable.

Ultimately, it is the job of the listing agent to procure a purchase offer acceptable to the seller and represent the seller’s interests to the best of their ability. These obligations remain regardless of which transactional documents are utilized in the transaction and regardless of whether the buyer is represented by a REALTOR®. 📌

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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# PRE- AND POST-POSSESSION AGREEMENT SAMPLE PROVISIONS

## Post Possession Agreement Provisions

This document is for informational purposes only.  
This is not a contract and should not be used as a contract or as an addendum to a contract.

USE THE BELOW INFORMATION ONLY AFTER HAVING CONSULTED INSURANCE, LEGAL, TAX, AND ACCOUNTING PROFESSIONALS.

## Pre-Possession Agreement Provisions

This document is for informational purposes only.  
This is not a contract and should not be used as a contract or as an addendum to a contract.

USE THE BELOW INFORMATION ONLY AFTER HAVING CONSULTED INSURANCE, LEGAL, TAX, AND ACCOUNTING PROFESSIONALS.

**Introduction:** Keep in mind that pre-possession agreements are not recommended, carry inherent risks, and raise a variety of legal and practical issues. For that reason, Commissioner's Rule R4-28-1101(K) provides that "A salesperson or broker shall recommend to a client that the client seek appropriate counsel from insurance, legal, tax, and accounting professionals regarding the risks of pre-possession or post possession of a property." It may therefore be beneficial to include disclaimer language at the top of your pre-possession agreement, such as:

This form is provided as a courtesy to the parties only. It is not required to be used in this transaction and may not fit the needs, goal, and purposes of the parties. Broker(s) makes no statement or warranty as to the legal validity of this form, its contents or use, and the parties, by their use of this form, acknowledge and agree that Broker(s) shall not be liable to any party or person for its contents or use. Pre-Possession agreements are not recommended and the parties are aware there are many risks associated with allowing the Buyer to possess the Premises prior to close of escrow. The parties are advised to: (i) seek appropriate counsel from insurance, legal, tax and accounting professionals before entering into an agreement that provides Buyer with possession prior to close of escrow; and (ii) consider the use of a lease agreement rather than a pre-possession addendum.

Pre- and post-possession agreements are not recommended due to the legal complexities and inherent risks that accompany contracts of this nature. COVID-19 eviction related moratoriums have also made agreements of this nature more perilous than ever as it may prove extraordinarily difficult to remove an occupant who refuses to leave at the agreed-upon time. However, current market conditions have caused an increase in the demand for pre- and post- possession accommodations.

To assist Designated Brokers navigate these risky agreements, the Arizona Association of REALTORS® Risk Management Committee approved the attached pre- and post-possession provisions for release to all REALTOR® Designated Brokers.

Each recommended provision is preceded by an introductory paragraph that: (i) explains why such a provision may prove necessary; and (ii) identifies issues and areas of concern of which you, your agents, and the parties should be aware. Following each introductory paragraph is a "SAMPLE" provision recommended to address that particular topic. While you are welcome to use these sample provisions to craft your own pre- and post-possession agreements, we encourage you to have independent legal counsel review any agreement that you may prepare.

While it is our hope that the attached provisions will be of assistance to you, please note that they do not eliminate the risk associated with pre- and post-possession accommodations. For this reason, it is critical that you and any licensees under your supervision comply with A.A.C. R4-28-1101(K) and recommend

to all clients that they "seek appropriate counsel from insurance, legal, tax, and accounting professionals regarding the risks of pre-possession or post-possession of a property."

## Pre-Possession Agreement Provisions

## Post-Possession Agreement Provisions

CLICK ABOVE TO VIEW A FULL SAMPLE OF EACH FORM

A.A.C. R4-28-1101 (K): A salesperson or broker shall recommend to a client that the client seek appropriate counsel regarding the risks of pre-possession or post-possession of a property.

### Additional resources available–

#### Pre-Possession and Post-Possession Checklists:


<https://www.aaronline.com/2015/12/16/pre-possession-and-post-possession-checklists/>

#### Prepossession & Post Possession Risks:

<https://www.aaronline.com/2015/01/21/prepossession-and-post-possession-risks/>

If you have questions regarding the attached, please contact: Scott M. Drucker, Esq. | General Counsel & Assistant CEO; or Nikki J. Salgat, Esq. | Assistant General Counsel at the Arizona REALTORS® at 602 248-7787. 📞





# Notice of Foreclosure

## THE EVICTION MORATORIUM AND NON-PAYMENT OF RENT

On September 1, 2020, the Centers for Disease Control and Prevention (CDC) issued an eviction moratorium for nonpayment of rent for certain qualified residential renters. Since its implementation, the moratorium has been extended multiple times and is currently scheduled to expire on June 30, 2021.

On April 19, 2021, the Consumer Financial Protection Bureau (CFPB) issued an Interim Final Rule (Rule) which provides more support for the CDC's eviction moratorium by addressing concerns that some debt collector conduct taken while the eviction moratorium is in effect may violate the Fair Debt Collections Practices Act (FDCPA). More specifically, the Rule requires that debt collectors who evict tenants for non-payment of rent provide those renters with notice of what rights they may have under the CDC's eviction Moratorium. This Rule goes into effect May 3, 2021.

### **Based on the above, the question is: Are property managers considered a "debt collector"?**

U.S.C. 1629a(6) defines "debt collector" as:

any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any **debts**, or who regularly collects or attempts to collect, directly or indirectly, **debts** owed or due or asserted to be owed or due another.

The Code further provides exemptions to those persons considered "debt collectors" which includes the following:

any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained

by such person as a secured party in a commercial credit transaction involving the creditor. *Id.* In *De Dios v. International Realty & Investments*, 641 F.3d 1071 (9th Cir. 2011), the Court of Appeals held that "the residential property management company was not a debt collector because it acquired the debt before default, thus exempting the manager from the [Fair Debt Collection Practices Act]." Therefore, as long as the property management company was hired to collect rent **before** the rent was in default, the Fair Debt Collection Practices Act does not apply to the property management company.

Because there is a possibility that a property management company may be considered a "debt collector" under certain circumstances, property management companies should consider inserting the below verbiage by May 3, 2021 into any of their forms which notify a tenant that money is owed.

Because of the global COVID-19 pandemic, you may be eligible for temporary protection from eviction under Federal or Arizona law, including an Order issued by the Centers for Disease Control and Prevention. To understand your rights and obligations you may visit [www.cfpb.gov/eviction](http://www.cfpb.gov/eviction), [www.azcourts.gov](http://www.azcourts.gov), or call a housing counselor at 800-569-4287. The Arizona REALTORS® has inserted this same verbiage into its: (i) **Notice of Intention to Terminate Lease Agreement Due to Nonpayment of Rent**; and (ii) **Statement of Disposition of Deposits and Accounting**. Updates will be forthcoming. 📌

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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# AVOID PROBLEMS BY FOLLOWING CONTRACT LAW

Arizona law requires real estate licensees to have an understanding of the general purpose and legal effect of real estate contracts. However, every year, contract questions are by far the most common questions received by the Arizona REALTORS® Legal Hotline. Many of these questions can be answered by applying the basic contract law.

## **A Valid Contract Requires Certain Elements**

For a valid contract to exist there needs to be an offer, acceptance, consideration, and **sufficient specificity** so that the obligations involved can be ascertained. The Arizona REALTORS® contracts are designed to address these requirements in a uniform manner.

## **Real Property Contracts Must Satisfy the Statute of Frauds**

The Statute of Frauds requires a contract for the sale of real property to be in writing and signed by the party to be charged. The party to be charged is the party against whom enforcement of the contract is sought. A signature can be a mark, if a person cannot write, with the person's name written near it and witnessed by a person who writes the person's own name as witness. And, of course, electronic signatures are legal.

## **An Offer Must Indicate That Acceptance Will Form a Contract**

An offer is a willingness to enter into a contract expressed in such way that the other person understands that agreement to the offer is invited and will result in a binding contract.

## **An Offer (or Counteroffer) Generally Can Be Withdrawn Prior to Acceptance**

When an offer (or counteroffer) is not supported by independent consideration, it may be withdrawn at any time prior to acceptance. Although the Statute of Frauds requires

that an offer or counteroffer be in writing, a written offer (or counteroffer) can be verbally withdrawn. However, when withdrawing an offer, do so in writing if at all possible, to avoid disputes.

## **Acceptance Must Be Conveyed as Required by the Offer**

Acceptance is agreement to the terms of an offer in the manner required by offer. Acceptance of an offer must be conveyed to be effective; silence does not ordinarily establish acceptance.

## **A Counteroffer Rejects the Offer**

Acceptance of an offer must be on the exact terms as the offer. Any attempt to accept an offer on terms materially different from the offer constitutes a counteroffer, which rejects the offer. Once rejected, the offer can only be revived by the original offeror.

## **Consideration Need Not Be Money**

Consideration need not be money but may involve a promise for a promise. Consideration may be a benefit to a promisor or a detriment to a promisee. By Arizona statute, "[e]very contract in writing imports a consideration." A.R.S. §44-121.

## **Personal Property Can Become Real Property Fixtures**

A fixture is an item that was once personal property but is affixed to the real estate in such a manner as to become a part of the real property. Arizona employs a three-part test for determining when personal property has become a fixture: (1) it is attached to the real estate; (2) it has adaptability or application to the use of the real estate; and (3) the party intended to make it a permanent part of the real estate. To avoid ambiguity, the Arizona REALTORS® contracts contain a list of fixtures and personal property to be conveyed. Any additional personal property to be conveyed should be specifically written into to the contract.



Arizona law requires real estate licensees to have an understanding of the general purpose and legal effect of real estate contracts. However, every year, contract questions are by far the most common questions received by the Arizona REALTORS® Legal Hotline. Many of these questions can be answered by applying the basic contract law.

#### **The Parties to The Contract Should be Set Forth with Specificity**

The parties to be bound to the contract should be set forth with specificity. If either party is a corporation, limited liability company, or partnership, all pertinent information about the entity should be included, such as the entity's exact name, address, and state of formation. If either party is an entity, the signer's authority to bind the entity should also be ascertained.

#### **Both Spouses Must Sign The Contract**


In any real estate transaction both husband and wife must sign the contract for the community property to be obligated. A.R.S. §25-214 (C)(1); A.R.S. §33-452. Therefore, both husband and wife must sign all real estate contracts, including contract modifications. In the alternative, "either husband or wife may authorize the other by power of attorney to sign the contract on his or her behalf." A.R.S. §33-454.

#### **The Parties Must Be Competent to Contract**

The parties must also be competent. Generally, to invalidate a contract based on incompetency, the owner must have been

incompetent at the time of the execution of the contract. Further, be aware that the incompetency of an individual will invalidate a general or special power of attorney, (i.e., for specific property) unless the power of attorney is a durable power of attorney that specifically states that the power of attorney will not be affected by the incompetency of the principal. A.R.S. §14-5501.

#### **Written Provisions Prevail Over Boilerplate**

The Arizona REALTORS® contract contains pre-printed or "boilerplate" language. However, the form may be revised or supplemented to address issues unique to the particular transaction. Where written provisions of the contract are inconsistent with the printed or "boilerplate" provisions, the written provisions will prevail. 

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**



*Michelle Lind, Esq.*

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## SCOTT'S LEGAL SCOOPS – VIDEO SERIES

### Standards of Practice & Rejected Offer Violations



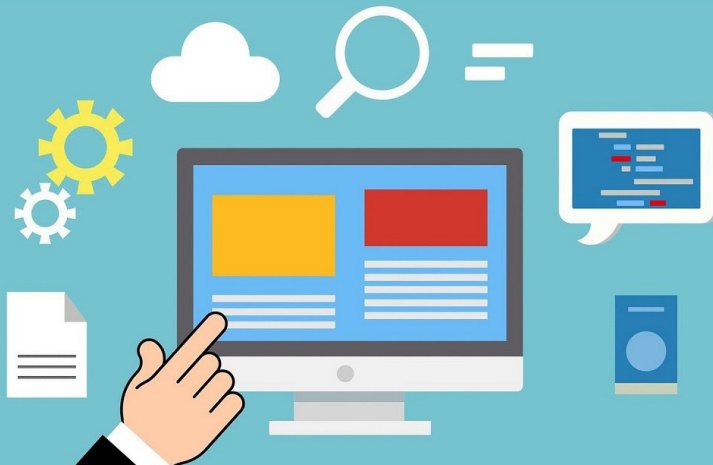
**CLICK ARROW ABOVE TO WATCH THE VIDEO**

Receiving multiple offers on a particular home is nothing new for Arizona REALTORS®.

With the increasing number of complaints about listing brokers not responding to submitted purchase offers, General Counsel and Assistant CEO Scott Drucker has posted a video about the changes NAR made to the Standards of Practice last year in this month's Legals Scoops.



# ADA DEMAND LETTERS: A VEXING REALITY FOR REAL ESTATE PROS



## KEY TAKEAWAYS:

- Until the Justice Department or Supreme Court makes the final ruling on digital accessibility rules, litigation over noncompliance remains a risk to businesses.
- ADA demand letters may claim noncompliance violates the Fair Housing Act, which isn't true.
- Recipients of such letters should immediately contact their insurance carrier and obtain legal counsel to assess next steps.

***A federal appeals court recently declared that websites are not public accommodations, but these best practices will help you avoid becoming the target of a shakedown.***

Enacted more than 30 years ago, the Americans with Disabilities Act has become synonymous with accessibility. While the act's accessibility requirements indisputably apply to physical spaces, its application in digital spaces has been debated for well over a decade. That's because the ADA is silent on how—or even if—its provisions apply to websites.

Despite calls for action, the Justice Department has failed to act to resolve the issue, leaving consumers and businesses to turn to the courts for answers, and law firms to exploit the confusion by sending waves of demand letters to businesses around the country. Just recently, however, businesses celebrated a major victory in an 11th U.S. Circuit Court of Appeals decision in which the court declared that websites are not places of public accommodation.

On April 7, the 11th Circuit issued its long-awaited decision in *Gil v. Winn-Dixie Stores, Inc.*, holding that websites are not places of public accommodation under Title III of the ADA. While this decision comes as a major victory for businesses that have long struggled with whether and how ADA obligations apply to websites, the issue of digital accessibility will remain a target of legal action until either the Justice Department acts or the U.S. Supreme Court settles the issue once and for all.

In the meantime, there are new waves of demand letters exploiting this perceived uncertainty by asserting baseless claims of noncompliance with not only Title III of the ADA but also the Fair Housing Act and similar state laws.

While the ADA claims may be up for debate, the fair housing claims are meritless and frivolous, lacking any regulatory or legal support. There are no provisions in the federal Fair Housing Act that require real estate brokers to code their website to be accessible to individuals with disabilities. And no court has ever concluded that the act requires a real estate broker to maintain an accessible website or that a real estate professional has a more general obligation to ensure effective communication with

individuals with disabilities. These unsupported claims are merely self-serving attempts to extract money in the form of attorney's fees and other costs from real estate professionals.


## Follow Best Practices

You can reduce your risk of being the target of one of these website accessibility shakedowns by following these best practices:

1. Assess your website's current accessibility and take preemptive steps to address and enhance any accessibility issues.
2. Speak to your website provider about what measures they are taking to address your website's accessibility and be sure to address these issues in your contract with the provider.
3. Consider hiring a website accessibility expert to develop a plan to boost your website's accessibility.
4. Include an accessibility statement on your website that provides contact information where a user can report difficulties navigating the website or can find help in accessing information or services.

If, despite your best efforts, you find yourself on the receiving end of one of these "ransom" demand letters, start by immediately contacting your insurance carrier and obtaining legal counsel to assess the best next steps.

In addition, be sure to check out NAR's [resources](#) for more information about the ADA and website accessibility. Use these tips and resources to help ensure you successfully manage and mitigate your exposure to ADA website accessibility claims now and in the future.

Resource: National Association of REALTORS® - Katie Garrity, associate counsel at the National Association of REALTORS®. 



THIS  
IS A  
TEST



MARCH 2021

## Arizona Department of Real Estate Bulletin

Volume 2021 - Issue 1

WITH PERMISSION OF ADRE

### Commissioner's Corner

### Professionalism..... Can You Pass The Test?



As I interact with real estate licensees, and consumers, across Arizona, I hear comments from those who believe that some real estate licensees do not meet minimum standards of professional and ethical practice, do not possess the real estate knowledge necessary to represent a consumer in the real estate transaction, and/or are “just unprofessional”. I am frequently

asked what can be done to make licensed real estate practitioners more professional.

As the Commissioner, I personally have a strong conviction that the real estate practitioner must be a professional, that professionalism is expected by the real estate consumers, and that it is foremost in protecting the public in real estate matters. However, professionalism is exceedingly difficult to define..... what makes a Real Estate Licensee a Professional, and what adds up to Professionalism?? I offer here my thoughts on real estate professionalism and what the term embodies.


- A combination of a professional appearance and attitude, always presenting oneself “professionally”.
- An understanding of, and consistently delivering on the required fiduciary duties imposed on all real estate licensees in the “Duties to the Client” rule (R4-28-1101), which includes placing the clients’ interests ahead of those of the licensees. Fiduciary duties impose the highest standard of care, and real estate licensees must be committed to scrupulously fulfilling those obligations.
- Being organized, disciplined, prepared, credible, trustworthy, honest and respectful, a person of good character.

- Being civil, kind, ethical and responsive, which includes timely communication with clients, and parties on the other side of the transaction, in all business dealings.
- Delivering only first-rate work and results on a consistent basis.
- Listening, and then following the lawful instructions of clients.
- Having the most comprehensive current education, knowledge, skills and experience necessary to protect the consumer, as well as, achieve the results for the consumer.
- Adhering to all Arizona laws, regulations and rules of conduct applicable to the practice of real estate in Arizona.
- Staying current on Arizona and local jurisdictions’ sources of information to refer consumers to.

So....Professionalism is a combination of a real estate licensee’s experience, skills, abilities, results, character and reputation demonstrated in terms of customer care, positive outcomes and qualitatively high customer services. These are the core values that the Professional Real Estate Licensee offers within their real estate service package.

#### **THE REAL ESTATE CONSUMER IS SEARCHING FOR THE PROFESSIONAL REAL ESTATE LICENSEE.**

Sincerely,

Judy Lowe  
Commissioner 





## SPECULATIVE BUILDER TAX

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The speculative builder tax is imposed by Arizona cities and towns on the sale of improved real property by a speculative builder. Tax returns and payments are due by the 20th day of the month following the close of escrow or transfer of title.

The speculative builder is the real property owner who improves real property himself, or contracts through others, to improve real property. A speculative builder sells, or contracts to sell improved real property:

1. Comprising of: (1) a custom (see family residence exception below), model, or inventory home, regardless of stage of completion; or (2) improved residential or commercial lots without a structure (e.g., utility stub outs, offsites, paving or landscaping have been completed); or (3) where water, power and streets have been constructed to the property line at any time (i.e., there is no time limit); or
2. **Any other property prior to completion or prior to the expiration of 24 months after substantial completion** (e.g., commercial). Substantial completion means that the property has passed final inspection, or has a certificate of occupancy, or is ready for immediate occupancy or use.

The sale of property which has been reconstructed is also subject to the speculative builder tax. Please refer to the MCTC Reg. § -416.2 for more information on reconstruction.

The sale of unimproved real property is not subject to the speculative builder tax.

### Family Residence Exception

The sale of a custom home will be treated as the seller's family residence and not subject to the speculative builder tax when:

1. the property was used by the immediate family of the seller as the family residence, or vacation residence, for 6 months prior to the offer for sale; and
2. where the seller has not sold more than two such residences within 36 months prior to the sale; and

the seller has not licensed, leased, or rented the residence for any period within 24 months prior to the offer for sale.

### Sale of Real Property

- A sale includes any transfer of title or equitable ownership in the improved real property. The signing of a capital lease (i.e., a lease with a bargain purchase) on improved real property for a term of 30 years or more (including the original term and all renewal options) is deemed a sale subject to speculative builder tax. **For reconstruction contracting**, the date of sale of the improved real property is the **execution** date of the sales contract to sell the improved reconstructed real property.
- The tax base for speculative builder tax is the gross income derived from the sale of improved property (described above) within a city or town's boundaries. Speculative builders may be entitled to exemptions, deductions, and a city tax credit. See [MCTC § 416\(c\)](#).
- The speculative builder tax accrues at the time of close of escrow, or transfer of title. It is calculated on the total selling price which will include realtor fees, title transfer fees, etc. This tax must be reported the month following the close of escrow or transfer of title.





## Deductions & City Credits

Common speculative builder deductions and their codes, include:

Fair market value of land (only allowed by those cities and towns which adopted Local Option # N)	734
State/County Tax Paid by Contractor	802
Cost of Architectural or Engineering Service	557
Development Fees	560
In Place Lease Values	801
Factored Tax Deduction (see example below on how to calculate)	551
After removing from gross all allowed deductions, the standard 35% deduction should be applied to the net amount.	
35% Deduction Allowed	502

After applying all deductions and calculating the speculative builder tax due, a city tax credit may be applied against the city tax due. The credit is equal to the amount paid in city privilege tax or use tax, or the equivalent excise tax paid directly to a taxing jurisdiction by the speculative builder. This would include city privilege tax paid to the contractors (or directly to the Department if the speculative builder provided a Form 5005) on the construction of the project, or city privilege tax paid to a vendor for materials purchased by a speculative builder which are incorporated into the real property. A credit may also be taken on any amount of city use tax paid on materials incorporated into the project.

**Please refer to the MCTC § -416 for speculative builder statute for the full list of deductions.**

Additional questions should be referred to [AskTaxPolicy@azdor.gov](mailto:AskTaxPolicy@azdor.gov).

## EXAMPLE

### Computing the Speculative Builder Tax

#### Owner-Builder

The owner-builder tax is imposed by Arizona cities and towns on an owner-builder who is not a speculative builder (i.e., the property has not sold after 24 months). Any TPT licensed person who provides a contractor with a Form 5005 and who purchased materials tax exempt by providing a Form 5000 to a vendor, is liable for city owner-builder privilege tax at the end of 24 months. State/county has no owner-builder class however, applicable taxes must be remitted when due to the state/county as required under the retail and prime contracting classifications. The city owner-builder privilege tax is imposed based on a percentage equal to:

1. The amount of tax that should have been paid for prime contracting TPT purposes (65% of the amount paid to the contractor at tax rate sourced to the job location); and
2. The amount of tax that should have been paid to the retailer for the materials purchased tax exempt by the owner-builder.

**Please refer to the MCTC § -417 for the owner-builder statute and the full list of deductions.** 📄



## EFFECTIVE REPRESENTATION AT THE STATE, LOCAL AND FEDERAL LEVEL

Hear what Arizona REALTORS® 2021 President Jan Leighton has to say about how the REALTOR® Party benefits members.



**CLICK ARROW ABOVE TO WATCH THE VIDEO**

The REALTOR® Party fights legislative battles on your behalf and provides its members with professional lobbying, legislative analysis, grassroots contacts, and long-term political relationships.

The REALTOR® Party also educates city council members, legislators, and members of Congress about our industry, and guarantees that no decision is made that will affect our industry, good or bad until our voice is heard. 📣



# IMPORTANT ANNOUNCEMENT REGARDING THE ARIZONA REALTORS® ELECTRONIC SIGNATURE MEMBER BENEFITS



BY SAM DEBORD

At the Arizona REALTORS®, we recognize the importance of our members' ability to utilize a reliable and efficient electronic signature program. It is for this reason that we provide Lone Wolf Transactions – Authentisign as a member benefit. This platform allows all Arizona REALTORS® and their clients the ability to create and legally sign an unlimited number of documents using a wide range of devices.

While Authentisign will remain a member benefit, **effective Saturday, May 1st, 2021**, the Arizona REALTORS® eSign member benefit program will undergo the following changes:

Unlimited use Arizona REALTORS® eSign member accounts, those currently used by our members, will be converted to Constellation1 (creators of the eSign program) **free limited use accounts, which will continue to allow members to access all of their files and current signing sessions**, but will limit future free signing sessions.

*The free plan offers 5 signing sessions per month but each session will only allow 1 document and 1 signer per session.*

Instructions on how to upgrade to the unlimited AAR eSign plan:

1. Login to your account at <https://aar.esignonline.net/>
2. Click preferences at the top right
3. Select 'Billing Preferences'
4. Select the "Gold" Plan and the \$120/year annual subscription (this is the discounted rate for AAR members). Select 'use a new credit card' and enter your billing details.
5. Select 'Update preferences' to submit your request.

**Team and Broker plans:** If you are looking to subscribe for your team or company, we have plans starting at \$99/month. Team plans have added benefits of company branding, shared templates and account management. Please reach out to [sales@constellationreg.com](mailto:sales@constellationreg.com) to learn more about team and broker plans.

For support related questions, please contact [esignsupport@constellation1.com](mailto:esignsupport@constellation1.com).

Phone support is only provided to upgraded customers at 866.599.8619

**Support Hours: Monday – Friday 9:00am – 7:00pm EST**

Why is Arizona REALTORS® making this change?

- As previously mentioned, the Arizona REALTORS® already offers a member benefit electronic signature program that is built into our forms user interface, Lone Wolf Transactions – Authentisign. With that in mind, our Business Services and Technology Committee determined that a redundant electronic signing program, eSign, was no longer money well spent.
- What is not changing...
- **Access to members' eSign accounts will remain unchanged.** Members can continue to login at [aar.esignonline.net](http://aar.esignonline.net) or utilize the Arizona REALTORS® Single Sign-On program to access eSign. Member login credentials will not be changed during the migration to the free limited use plan, and Agent Documents/Sessions will remain accessible for a period of **seven years at no additional cost**.
- Arizona REALTORS® will continue to provide Constellation1 with updates that will ensure proper templating of Arizona REALTORS® forms, in the same manner as is currently provided.

Arizona REALTORS® will continue to provide unlimited use of the Lone Wolf Transactions – Authentisign program as a member benefit. For more information or to start using Authentisign, please visit <https://www.aaronline.com/efficient-business-tools/transactiondesk/> or email our helpdesk at [support@aaronline.com](mailto:support@aaronline.com) 📧





# Arizona REALTORS® Legal Hotline



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

The Arizona REALTOR® Legal Hotline is designed...

- \* As a member benefit for Designated REALTORS® (Designated Brokers) to have direct access to a qualified attorney who can provide information on real estate law and related matters.
- \* To answer legally related questions about the many diversified areas of today's real estate industry.

The Hotline is provided  
by the attorneys at  
Zelms, Erlich & Mack

### For More Information

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

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# LEGAL HOTLINE

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*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.*

## Sometimes waiving the appraisal contingency also operates as a waiver of the financing contingency

**FACTS:** The buyer and seller entered into an Arizona REALTOR® Residential Resale Purchase Contract. The parties also executed the Additional Clause Addendum and waived the appraisal contingency. The appraisal came in \$20,000 less than the purchase price. Pursuant to the Additional Clause Addendum, the buyer deposited an additional \$20,000 down payment in escrow for closing. However, based on this additional deposit, the buyer’s lender refused to fund the loan for the transaction. The buyer therefore attempted to cancel the contract pursuant to the financing contingency. The seller contested, claiming that he was entitled to the earnest money.

**ISSUE:** Is the buyer entitled to a refund of the earnest money because of the failed financing contingency?

**ANSWER:** No.

**DISCUSSION:** Lines 319 through 321 of the Residential Purchase Contract provide that where the appraisal contingency is waived, and the buyer is subsequently denied financing due to a waiver of the appraisal contingency (in other words because of the additional deposit required) the earnest money is to be paid to the seller as liquidated damages.

## If the purchase price is going to be dependent on appraised value, concise language is necessary

**FACTS:** The buyer and seller executed an Arizona REALTORS® Residential Resale Purchase Contract with a purchase price of \$550,000. The appraisal contingency (lines 107-110) was not deleted from the Contract. In addition, Section 8 of the Contract stated:

“If the property does not appraise for the purchase price, the buyer is willing to pay \$15,000 above appraisal.”

The property appraised for \$480,000— \$70,000 less than the purchase price. The buyer claims that the purchase price is

now \$495,000. The seller claims that he did not agree to close escrow at that price and refuses to proceed.

**ISSUE:** Is the seller obligated to close escrow with a \$495,000 purchase price?

**ANSWER:** See discussion.

**DISCUSSION:** Generally, language inserted by the parties into a form contract will govern over the pre-printed language. See *Autonumerics, Inc. v. Bayer Industries, Inc.*, 144 Ariz. 181, 696 P.2d 1330 (App. 1984). Although not perfectly clear, it is likely that the language in Section 8 overrides the appraisal contingency. However, the language in Section 8 that says “buyer is willing to pay” does not address the seller’s acceptance of a revised purchase price. Because the parties never seemingly agreed to a purchase price, a court would likely find that there was no true meeting of the minds and no contract was created.

Independent legal counsel should be consulted.

In the interim, several practice tips:

If language addressing an appraisal is added in Section 8 or a counteroffer, the parties should clarify in the contract documents what is intended with respect to the buyer’s ability to cancel based on the appraisal contingency.

Rather than using language suggesting that the “buyer is willing to pay” or “buyer will pay,” a certain amount over the appraised price, the appropriate language to use is the “purchase price shall be \$ \_\_\_\_ above the appraised value.”

## Security deposit should be returned jointly to husband and wife

**FACTS:** A husband and wife signed a residential lease agreement and provided a \$2,500 security deposit to the property manager. During the term of the lease, the husband and wife separated and ultimately divorced. The wife continued

to reside in the property, but the tenancy has now ended. The property is in pristine condition and the property manager intends to refund the security deposit in full. Both the husband and wife have demanded the full security deposit.

**ISSUE:** Should the property manager issue the security deposit to the wife since she resided in the home the longest?

**ANSWER:** See discussion

**DISCUSSION:** Since both the husband and wife initially signed the lease as tenants, the security deposit should be refunded to both the husband and wife. In the absence of an order from the divorce court to the contrary, the check should be jointly payable to both the husband and the wife.

### **A late BINSR does not give the seller the legal right to cancel the contract**

**FACTS:** The buyer and seller executed an Arizona REALTOR® Residential Resale Purchase Contract with a standard 10-day inspection. On the 12th day after the Contract was entered into, the buyer provided a Buyers Inspection Notice and Sellers Response ("BINSR") requesting that several items be repaired. The seller claims that the late BINSR is a breach of the contract and issued a three-day cure. The three days have now passed and the seller is attempting to cancel the contract so he can sell to another buyer for significantly more money.

**ISSUE:** Is the seller allowed to cancel the contract because the BINSR was late?

**ANSWER:** See discussion.

**DISCUSSION:** The inspection contingency and the BINSR process afford the buyer an opportunity to inspect and either request repairs or cancel the transaction provided the repair requests are made within the agreed upon inspection timeframe. Here, the buyer provided the BINSR two (2) days after the inspection period expired. The result of the late BINSR is that the buyer has lost the inspection contingency; he no longer has the right to cancel the contract based on the property condition or request repairs. The buyer is contractually obligated to close escrow regardless of the items requested in the BINSR. The late BINSR, however, does not give the seller the legal right to cancel the contract.

### **Buyer has a claim against seller for misrepresentation regarding repairs**

**FACTS:** During inspection, the buyer discovered issues with the sprinkler system for a home and requested repairs on the BINSR. The seller provided an email detailing the repair and fix. The seller also provided a receipt for repair that the buyer now believes contained inaccurate information and was for a prior unrelated repair. The buyer did a walkthrough and signed off on the walkthrough and closed.

After closing, the buyer alleges that he discovered the repairs were not done as requested in the BINSR and as attested to by the seller.

**ISSUE:** Even though the buyer performed a walkthrough and signed off on the walkthrough, can the buyer still seek to recover damages for the non-repaired items?

**ANSWER:** Assuming the facts stated above are accurate, then the buyer may pursue claims and damages for the non-repaired item. The seller agreed to perform the repairs and stated that they had been completed. The buyer was relying on the seller's statements and assurances in that regard in closing on the home. If the seller made false statements regarding the repair, then the buyer can seek to recover the cost of the repairs even though the buyer completed the walkthrough.

### **Buyer may cancel within five days of receipt of H.O.A. information**

**FACTS:** The Buyer and Seller executed the HOA Condominium/Planned Community Addendum ("HOA Addendum"). Buyer was provided the required information with respect to the operation of the homeowners' association ("HOA"). The information was provided ten (10) days after the contract was accepted, which was also the last day of the inspection period.

**ISSUE:** May Buyer still cancel the transaction if he is unhappy with some of the information provided by the HOA?

**ANSWER:** Yes.

**DISCUSSION:** By way of the HOA Addendum, "BUYER IS ALLOWED FIVE (5) DAYS AFTER RECEIPT OF THE INFORMATION FROM . . . HOMEOWNER'S ASSOCIATION TO PROVIDE WRITTEN NOTICE TO SELLER OF ANY ITEMS DISAPPROVED." Accordingly, Buyer may cancel based on information provided from the HOA even after the inspection period expires provided the cancellation is within five (5) days of receipt of the information from the HOA.

### **Tenants in common do not have a right of survivorship**

**FACTS:** Two brothers owned the vacant residential lot as tenants in common. One of the brothers passed away several years ago. His estate was not subject to probate and the lot ownership was not addressed. In light of the hot market, the surviving brother wants to list and sell the property and has approached the listing agent for that purpose.

**ISSUE:** May the listing agent list the property for sale?

**ANSWER:** See discussion.

**DISCUSSION:** Holding title as tenants in common, does not have a survivorship feature. In other words, in the event that one owner passes away, the deceased owner's interest does



not automatically convert to the survivor's interest. Rather, the interest becomes a part of the deceased owner's estate and must be dealt with through probate. The listing agent should advise the surviving brother to clean up the ownership issue before he lists the property for sale.

**Note:** Had the brothers held title as joint tenants with right of survivorship, the deceased brother's interest in the property would have conveyed to the surviving brother such that probate may not have been necessary.

### Purchasing a property "subject to" an existing mortgage is ill-advised without legal representation

**FACTS:** The real estate licensee represents both the buyer and seller who entered into a purchase contract for a residential four-plex. The buyer has bad credit and cannot get financing for the transaction. The listing agent therefore proposed alternative financing, to which the parties agreed. The payment terms are that the buyer is going to pay \$250,000 in cash at the close of escrow and take the property "subject to" the existing \$800,000 promissory note secured by a deed of trust against the property.

**ISSUE:** Is it legal for a buyer to purchase the property and take it "subject to" an existing note and deed of trust?

**ANSWER:** See discussion.

**DISCUSSION:** Most loan documents contain language giving the lender the right to accelerate the full amount due under the note (due on sale clause) in the event that the property is transferred or conveyed. Thus, even though it is probably legal for the buyer to purchase the property, "subject to" the existing note and deed of trust, the transaction is fairly risky. The lender could demand the full amount due under the note upon learning of the conveyance. Because the buyer has bad credit, obtaining replacement financing will likely be difficult. If the buyer cannot pay the amount demanded, he could lose the property to foreclosure. Additionally, a default could harm the seller's credit score.

The listing agent should advise both the buyer and seller in writing that they should seek the advice of independent legal counsel before closing escrow on the transaction.

### Inactive licensee required to disclose status in advertising

**ISSUE:** The seller of the home has an inactive real estate license. The seller wants to advertise the home for sale as "for sale by owner" ("FSBO"). Does the seller have to disclose in the FSBO advertising that the seller is an inactive real estate licensee?

**ANSWER:** Yes. A.A.C. R4-28-502 (B) requires that a real estate licensee advertising a FSBO home has to disclose the real estate licensee's status. The only reason for this rule is to let the public know that the seller of the home has a sophisticated real estate background. Although the real estate licensee's status currently may be inactive, the real estate licensee has acquired a sophisticated real estate background. Therefore, an inactive real estate licensee must disclose in any advertising of the home the status of an inactive licensee.

### Nearby nudist colony is a material fact that should be disclosed

**FACTS:** The agent listed the property for sale. When visiting the property to meet the septic inspector, the agent noticed a "nudist colony" about 400 yards away. The agent asked the seller for details. The seller confirmed that there was in fact an active "nudist colony" down the street. The seller insisted, however, that because the "nudist colony" was not on the property itself, that no disclosure was required.

**ISSUE:** Is the listing agent obligated to disclose the nearby "nudist colony"?

**ANSWER:** Yes.

**DISCUSSION:** The listing agent has an obligation to disclose all known facts "which materially or adversely affects the consideration to be paid." A.A.C. R4-28-1101(B). Because the nearby "nudist colony" will likely affect the price a buyer is willing to pay, the listing agent is obligated to make the disclosure even though the nudist colony is not actually operated on the property. 🏡

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#### ABOUT THE AUTHOR



#### Richard V. Mack

Richard V. Mack is a partner at Zelms, Erlich & Mack, 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: Creating a Diversity, Equity and Inclusion Policy



NATIONAL ASSOCIATION OF REALTORS®

## WINDOW TO THE LAW

### 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>

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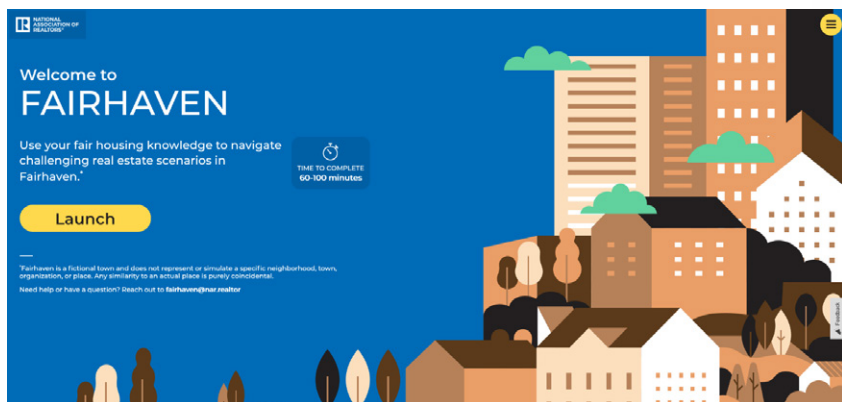
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