

BROKER & MANAGER

QUARTERLY

REVISED SOLAR ADDENDUM (FEBRUARY 2022) LEARN WHAT'S NEW

THE ARIZONA REALTORS® OFFERS SPANISH
TRANSLATION FORMS & ADVISORIES

SOLAR ADDENDUM: WEBINAR & FAQs

MLS - VACANT LAND / LOT LISTING AGREEMENTS

BEWARE OF REMOTE ACCESS SCAMS

VIRTUAL HEARINGS & MEDIATIONS

DIVERSITY & INCLUSION

SCOTT'S LEGAL SCOOPS - VIDEO SERIES

LEGAL HOTLINE Q&A

WINDOW TO THE LAW: VACCINE POLICIES FOR
REAL ESTATE

P. 14

LEGAL HOTLINE Q&A



ARIZONA
REALTORS®



BROKER & MANAGER

FIRST QUARTER 2022 | ARIZONA REALTORS® BROKER/MANAGER QUARTERLY

IN THIS ISSUE

- | | | | |
|-----|---|-------|---|
| 2 | The Arizona REALTORS® Offers Spanish Translation Forms & Advisories | 10 | Diversity & Inclusion |
| 3-5 | Solar Addendum: Webinars & FAQs | 11 | Scott's Legal Scoops - Video Series |
| 6 | MLS - Vacant Land / Lot Listing Agreements | 14-16 | Legal Hotline Q&A |
| 7 | Beware of Remote Access Scams | 18 | Window to the Law: Vaccine Policies for Real Estate |
| 9 | Virtual Hearings & Mediations | | |

¿Habla Español?

**ARIZONA REALTORS®
OFFERS SPANISH
TRANSLATION FORMS
& ADVISORIES!**

Arizona REALTORS® most commonly used residential transaction forms and advisories, have been translated into Spanish to help you assist your Spanish-speaking clients.



www.aaronline.com/spanish

FORMS REVISION RELEASE

February 2022

REVISED SOLAR ADDENDUM: WEBINAR & FAQs

Webinar: Don't miss Jon Kichen and Tara Rutkowski discussing the Revised Solar Addendum in Contract Conversations here: [Contract Conversations | Arizona Association of REALTORS® \(aaronline.com\)](#)

Arizona REALTORS® has released its revised [Solar Addendum](#) for use by all members. While the October 2017 version of the form was titled Solar Lease / Solar Loan Assumption Addendum, the revised form is titled Solar Addendum to reflect the fact that the Addendum now also applies to those transactions in which the Solar System installed on the Premises is owned outright by the Seller or owned by a utility company. Ancillary forms that reference the prior title have also been changed to reflect the Addendum's new name.

To better understand the revised Addendum and the changes that were made effective February 1st, below is a list of Frequently Asked Questions with corresponding answers. Finally, the Arizona REALTORS® thanks Workgroup Chair Jon Kichen and all the members of the Workgroup for their time and dedication.¹

SOLAR ADDENDUM

Document updated:
February 2022



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. Seller: _____
2. Buyer: _____
3. Premises Address: _____
4. Date: _____
5. A solar photovoltaic ("PV") panel system ("Solar System") has been installed on the Premises. The Solar System shall convey with the Premises pursuant to the terms set forth below and the following additional terms and conditions are hereby included as a part of the Contract between Seller and Buyer for the above referenced Premises if marked by an "X" and initialed by Seller and Buyer. The terms and conditions of the Contract are included herein by reference.
9. **INSTRUCTIONS:**
10. If the Solar System installed on the Premises is owned outright by Seller or utility owned and is not subject to a lease or unpaid loan, mark the appropriate box on line 14 and complete only Sections 1 and 3.
12. If the Solar System installed on the Premises is subject to a lease or unpaid loan and Buyer's purchase of the Premises is contingent on Buyer's assumption of the Solar System lease/loan, mark the box on line 23 and complete only Sections 2 and 3.
14. **1. ☐ Seller Owned or ☐ Utility Owned Solar System**
15. **Seller Disclosure:** Within three (3) days after Contract acceptance, Seller shall deliver to Buyer all documents in Seller's possession pertaining to the Solar System installed on the Premises. The Solar System documents are collectively hereinafter referred to as the "Solar System Documents."
18. **Buyer Disapproval:** Buyer shall provide notice of any Solar System related items disapproved within the Inspection Period or five (5) days after receipt from Seller of the Solar System Documents, whichever is later. Buyer's failure to deliver a signed notice of cancellation within the specified time period shall conclusively be deemed Buyer's election to proceed with the transaction, subject to the contingencies set forth in the Contract.
22. If lines 14 - 21 apply: **BUYER'S AND SELLER'S INITIALS REQUIRED** _____

BUYER
BUYER
SELLER
SELLER
23. **2. ☐ Solar System Lease/Loan**
24. **Lessor/Lien Holder:** The term "Lessor," as used herein, shall refer to the company that leases the Solar System to Seller, or the servicer on the unpaid loan used by Seller to purchase the Solar System.
26. **Seller Disclosure:** Within three (3) days after Contract acceptance, Seller shall: (i) deliver to Buyer the most recent version of the Solar System lease/loan; (ii) deliver to Buyer all other Solar System documents in Seller's possession; (iii) provide to Buyer the name and phone number of Lessor; and (iv) notify Lessor of the sale, the name of Buyer, and the name of the Escrow Company as set forth in Section 3a of the Contract. The Solar System lease/loan and other documents in Seller's possession are collectively hereinafter referred to as the "Solar System Documents."
31. **Lease/Loan Assumption Contingency:** Buyer's obligation to complete this sale is contingent upon Buyer obtaining from Lessor approval to assume the Solar System lease/loan under the existing terms and conditions no later than three (3) days prior to the Close of Escrow date ("Assumption Approval").
34. **Buyer Disapproval:** Buyer shall provide notice of any Solar System related items disapproved within the Inspection Period or five (5) days after receipt from Seller of the Solar System Documents, whichever is later. Buyer's failure to deliver a signed notice of cancellation

>>

Solar Addendum • February 2022 • Copyright © 2022 Arizona Association of REALTORS®. All rights reserved.

Page 1 of 3

FREQUENTLY ASKED QUESTIONS

Q1 *Why was the name of the form changed from Solar Lease / Solar Loan Assumption Addendum to Solar Addendum?*

A1 The October 2017 version of the form exclusively applied to those transactions in which the Solar System installed on the Premises is subject to a lease or unpaid loan. The February 2022 version of the form now additionally applies to those transactions in which the Solar System installed on the Premises is owned outright by the Seller or owned by a utility company, meaning the Solar System is not subject to a lease or unpaid loan. The name of the form was revised to reflect this change.

Q2 *If a box on line 14 of the Solar Addendum is marked, do lines 24-59 of the Addendum apply?*

A2 No. If a box on line 14 of the Solar Addendum is marked, indicating that the Solar System is owned by the Seller or a utility, lines 15-22 apply, not lines 24-59. Similarly, if the box on line 23 is marked, lines 24-59 apply, not lines 15-22. Finally, lines 60 and beyond apply regardless of which box referenced above is marked.

Q3 *What is a Utility Owned Solar System as that term is used on line 14 of the Addendum?*

A3 A Utility Owned Solar System is one in which the Solar System installed on the homeowner's roof produces power for use by the utility company and the power constitutes the personal property of the utility company. Under this arrangement, the homeowner purchases all their power from the utility company at full retail price and, in exchange, the utility company provides the homeowner with a monthly credit on their bill. Some utilities, such as APS, refer to programs of this nature as a Solar Partner Program.

Q4 *A scenario arises in which the Seller provides to the Buyer all the required information identified on lines 26-30. After reviewing the information, the Buyer has no objections and desires to continue with the transaction. How should the Buyer proceed?*

A4 In this scenario, if the Buyer elects to continue with the transaction and not deliver a signed notice of cancellation, the Buyer shall "immediately" apply for lease/loan Assumption Approval in the manner required by Lessor. See lines 37-39. The term "immediately" means as soon as practical and should the Buyer delay, the Seller can deliver a notice to the Buyer specifying the non-compliance as set forth in Section 7a of the Contract.

Q5 *Pursuant to lines 40-42, the Buyer's obligation to complete the sale is contingent upon the Buyer receiving Assumption Approval "no later than three (3) days prior to the COE date." Why did the workgroup decide to keep the current three day timeline?*

A5 Unfortunately, in many instances it takes the Lessor a lengthy period of time to issue Assumption Approval. The workgroup therefore wanted to provide enough time for the Buyer to complete the Assumption Approval process. If a shorter timeframe were implemented, the Buyer may choose to cancel upon expiration of that shorter timeframe in the event that Assumption Approval has not yet been obtained. Additionally, the workgroup deemed it beneficial to have the Assumption Approval timeline mirror the loan approval timeline set forth in the Contract.

Q6 *How should the Buyer proceed if they believe that Assumption Approval is forthcoming, but will not be issued until after the deadline set forth on line 42, which is three days prior to COE?*

A6 The Buyer should seek to execute an addendum with the Seller to extend the deadline by which Assumption Approval must be obtained. If the Seller declines to do so, the Buyer has the right to deliver to the Seller a signed notice of inability to obtain assumption approval, provided that the Buyer does so no later than three days prior to COE.

Q7 *Why is there now a section in the Addendum addressing Transfer Fees?*

A7 Since 2017 when the Solar Lease / Solar Loan Assumption Addendum was first drafted, it has become increasingly common for Lessors to charge a Transfer Fee in conjunction with the Buyer's assumption of the Solar System lease/loan. The workgroup therefore wanted to provide the parties with the opportunity to negotiate and document who will pay any such Transfer Fee.

Q8 *What is a Credit Score Fee as that term is used on line 50?*

A8 Many Lessors require the Buyer to have a minimum credit score to obtain assumption approval. For those buyers who do not meet the required credit score, some Lessors will issue assumption approval if the Buyer agrees to pay an additional fee referred to as a Credit Score Fee. The Buyer is not obligated to pay this fee and may instead elect to cancel the Purchase Contract provided the Buyer does so within the Inspection Period or five (5) days after receipt of notice from Lessor of the Credit Score Fee, whichever is later. If the Buyer elects to proceed, the Buyer will be responsible for paying this fee.

Q9 *Why is it important for the Seller to keep the electric utilities on through Close of Escrow as contemplated in lines 62-71?*

A9 If the Seller turns off the electric utilities or changes the rate plan between the date of Contract Acceptance and Close of Escrow, the Buyer may be unable to remain on the same rate plan previously utilized by

the Seller. This change may result in increased rates and the loss of net metering billing status.

Q10 *What are the Buyer's rights should the Seller turn off the electric utilities or change the rate plan between the date of Contract Acceptance and Close of Escrow?*

A10 If this change results in increased rates or a billing plan that is less favorable than the rate plan previously utilized by the Seller, it shall be deemed a change in the Premises under Section 4f of the Contract. Under Section 4f, this change in the condition of the Premises may entitle the Buyer to provide notice of disapproval to the Seller and cancel the Contract.

Q11 *What steps should the Buyer take to protect their interests in the event the electric utilities are not on at the time of Contract Acceptance or anytime thereafter?*

A11 If the utilities are not on at the time of Contract Acceptance or anytime thereafter, the Buyer may be unable to remain on the same rate plan previously utilized by the Seller. In this event, the Buyer should investigate whether the Solar System rate plan will change as a result of the utilities being turned off.

Q12 *The Buyer has very little knowledge of solar systems, solar leases, or solar power in general. However, I as the Buyer's agent am very familiar with these subjects. Is it appropriate for me to conduct the due diligence identified on lines 73-80?*

A12 No. Due diligence should be performed by the Buyer, not their agent, although the agent can direct the Buyer to resources through which the Buyer can obtain information and answers to their questions.

Q13 *I requested that the new Solar Addendum act as a disclosure in which the Seller provides very specific information to the Buyer about the Solar System. Why did the workgroup decline this request?*

A13 Several members asked that the new Solar Addendum disclose to the Buyer specific information about the Solar System such as the System size in watts, the angle of orientation of the solar panels, the material from which the solar panels are constructed (i.e. – monocrystalline, polycrystalline, or thin film amorphous silicon), the type of inverter installed, the maximum allowable dead and live load ratings of the roof, etc. However, both the workgroup and the Risk Management Committee are opposed to asking questions for which the average Seller does not know the answer. In such instances, the Seller may guess and provide incorrect or incomplete information resulting in increased potential liability. Rather than ask such questions, the more prudent course of action is to have the Seller convey to the Buyer all documents in the Seller's possession pertaining to the Solar System. The Buyer can then review these materials or contact the solar company and/or Lessor to obtain answers to any questions they may have about the Solar System and/or terms of the lease/loan.

Q14 *In my transaction, the Seller has agreed to pay off the Solar Lease/Loan in full prior to Close of Escrow. Should that be documented on the Solar Addendum?*

A14 Any such agreement can be identified in detail in Section 8a of the Contract, but agents should discuss with their broker how best to document this term. 📄

[1] In addition to Chair Jon Kichen, the Workgroup was comprised of the following individuals: Ali Al-Asady, Paul Bruce, Melisa Camp, Bobbie Cooper, Sharon Ellsworth, Wednesday Enriquez, Holly Eslinger, Danielle Foley, Tara Rutkowski, Rob Madden, Jacki Tait, and Arizona REALTORS® staff members Jamilla Brandt, Scott Drucker, Nikki Salgat, and Jan Steward.



To help address the problem of homelessness in the Grand Canyon State, Arizona REALTORS® have joined with the Arizona Community Foundation to promote the Arizona Housing Fund.

The goal of Arizona REALTORS® is to give every buyer and seller the opportunity to voluntarily donate \$25 (or more) to the Arizona Housing Fund at close of escrow to combat homelessness.

All it takes is for you to ask your client to complete a simple one-page [Escrow Donation Form](#) and send it to the escrow company. The Escrow Company will distribute the donation to the Arizona Housing Fund at close of escrow.

[Learn More](#)



Last year, the Arizona REALTORS® released to the Multiple Listing Services (MLSs) in Arizona standardized Residential Listing Agreements for each of the MLSs to use if they so choose. Following the release of the Residential Listing Agreements, a request was submitted to the Arizona REALTORS® Risk Management Committee for the Arizona REALTORS® to additionally draft Vacant Land/Lot Listing Agreements for release to the MLSs for their consideration.

As a result of that request, by way of a Workgroup chaired by Beth Adams[1], the Arizona REALTORS® drafted the following NEW forms: (1) **Vacant Land/Lot Listing Contract Exclusive Right to Sell/Lease**; and (2) **Vacant Land/Lot Listing Contract Exclusive Agency** (collectively "Listing Agreements").

The Listing Agreements were provided to each MLS on February 1, 2022. Like the Residential Listing Agreements, the MLSs use of the forms is not mandatory, meaning each MLS can decide for itself if and when to adopt the forms. Please, therefore, contact your MLS to confirm whether it has elected to adopt the new forms. 📞

[1] Beth Adams would like to thank the valuable contributions made by the following members of the Workgroup: Jan Leighton, Lori Doerfler, Lisa Paffrath, Clark Jones, Bill Johnson, Rick Sack, Andrew Castillo, Paul Kriewall, Dan Arnold, Travis Bard, and Elise Harron. The Workgroup was assisted by Arizona REALTORS® staff members Nikki Salgat, Jan Steward, and Jamilla Brandt.

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



Nikki J. Salgat, Esq.

A licensed Arizona attorney, Nikki is Assistant General Counsel for Arizona REALTORS®

nikkisalगत@aaronline.com

VACANT LAND/LOT LISTING CONTRACT EXCLUSIVE AGENCY

Document: February 2022

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.

If subdivided land or unsubdivided land is being sold by a subdivider, i.e., a person who owns 6 or more lots in the same tract/subdivision, a public report will generally be required. Additionally, an Addendum must be executed by the Owner/Seller and buyer if Owner/Seller: (i) has divided the property into 6 or more lots, parcels or fractional interests; (ii) owns or will own 6 or more lots, parcels or fractional interests in a subdivision; or (iii) has caused the property to be divided into 6 or more lots, parcels or fractional interests for the subdivider or for others.

1. PARTIES

1. OWNER/SELLER: _____ ("Owner")
2. _____ acting through _____
3. BROKER: _____ FIRM NAME _____ ("Broker")
4. _____ AGENT'S NAME _____ AGENT'S NAME _____

2. PROPERTY

5. Owner agrees to sell the real property with all improvements, fixtures, and appurtenances thereon or incidental thereto, if any, plus the personal property described herein (collectively the "Property").
6. _____ Zoning: _____
7. Property Address: _____
8. Assessor's #(s): _____ AZ, Zip Code: _____
9. City: _____ County: _____
10. Legal Description: _____
11. _____
12. _____
13. ☐ Legal Description attached

3. LISTING PRICE AND TERMS

14. **Agreement:** This Vacant Land/Lot Listing Contract - Exclusive Agency ("Agreement") is between Owner and Broker. In consideration of Broker's agreement to find a ready, willing, and able purchaser or lessor, Owner gives Broker the exclusive and irrevocable right to: ☐ Sell ☐ Lease ☐ Sell and Lease the Property described above.
15. Owner acknowledges that signing more than one Exclusive Agency or other form of listing contract for the same Term could expose the Owner to liability for additional commissions.
16. **Price:** The listing price shall be: Sale \$ _____ and Lease \$ _____ per month, plus (in the case of a lease) all applicable lease or rental (transaction privilege) taxes or such other price and terms as are accepted by Owner.
17. **Term:** This Agreement shall commence on _____ and shall expire at 11:59 p.m. Mountain Standard Time on _____ ("Expiration Date"). Upon full execution of a contract for sale or lease of the Property, all rights and obligations of this Agreement will automatically extend through the date of the actual closing of the sale or lease.
18. **Capacity:** Owner or any party that Owner designates to act on their behalf warrants that they have the legal capacity, full power and authority to enter into this Agreement, deliver marketable title to the Property, and consummate the transaction contemplated hereby.
19. **Modification:** This Agreement may be modified only in writing signed by Owner and Broker.
20. **Equal Housing Opportunity:** Broker and Owner shall comply with all federal, state and local fair housing laws and regulations, including, but not limited to, non-discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.

Vacant Land/Lot Listing Contract - Exclusive Agency • February 2022
Copyright © 2022 Arizona Association of REALTORS®. All rights reserved.
Page 1 of 7

VACANT LAND/LOT LISTING CONTRACT EXCLUSIVE RIGHT TO SELL/LEASE

Document: February 2022

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.

If subdivided land or unsubdivided land is being sold by a subdivider, i.e., a person who owns 6 or more lots in the same tract/subdivision, a public report will generally be required. Additionally, an Addendum must be executed by the Owner/Seller and buyer if Owner/Seller: (i) has divided the property into 6 or more lots, parcels or fractional interests; (ii) owns or will own 6 or more lots, parcels or fractional interests in a subdivision; or (iii) has caused the property to be divided into 6 or more lots, parcels or fractional interests for the subdivider or for others.

1. PARTIES

1. OWNER/SELLER: _____ ("Owner")
2. _____ acting through _____
3. BROKER: _____ FIRM NAME _____ ("Broker")
4. _____ AGENT'S NAME _____ AGENT'S NAME _____

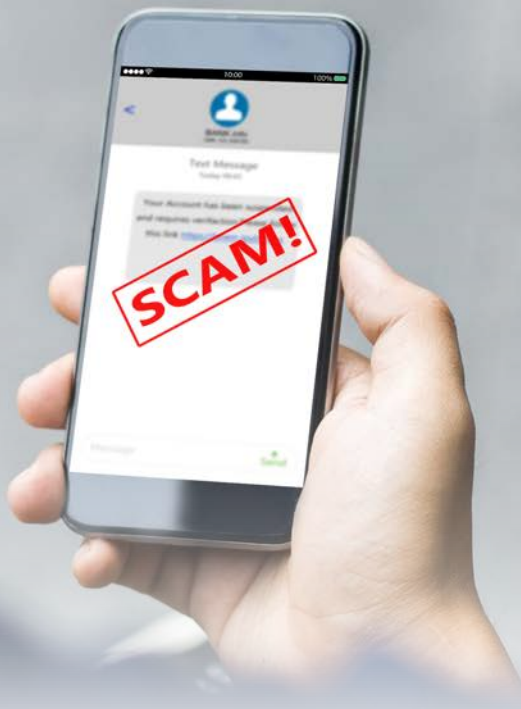
2. PROPERTY

5. Owner agrees to sell the real property with all improvements, fixtures, and appurtenances thereon or incidental thereto, if any, plus the personal property described herein (collectively the "Property").
6. _____ Zoning: _____
7. Property Address: _____
8. Assessor's #(s): _____ AZ, Zip Code: _____
9. City: _____ County: _____
10. Legal Description: _____
11. _____
12. _____
13. ☐ Legal Description attached

3. LISTING PRICE AND TERMS

14. **Agreement:** This Vacant Land/Lot Listing Contract - Exclusive Right to Sell/Lease ("Agreement") is between Owner and Broker. In consideration of Broker's agreement to find a ready, willing, and able purchaser or lessor, Owner gives Broker the exclusive and irrevocable right to: ☐ Sell ☐ Lease ☐ Sell and Lease the Property described above.
15. Owner acknowledges that signing more than one Exclusive Right to Sell/Lease or other form of listing contract for the same Term could expose the Owner to liability for additional commissions.
16. **Price:** The listing price shall be: Sale \$ _____ and Lease \$ _____ per month, plus (in the case of a lease) all applicable lease or rental (transaction privilege) taxes or such other price and terms as are accepted by Owner.
17. **Term:** This Agreement shall commence on _____ and shall expire at 11:59 p.m. Mountain Standard Time on _____ ("Expiration Date"). Upon full execution of a contract for sale or lease of the Property, all rights and obligations of this Agreement will automatically extend through the date of the actual closing of the sale or lease.
18. **Capacity:** Owner or any party that Owner designates to act on their behalf warrants that they have the legal capacity, full power and authority to enter into this Agreement, deliver marketable title to the Property, and consummate the transaction contemplated hereby.
19. **Modification:** This Agreement may be modified only in writing signed by Owner and Broker.
20. **Equal Housing Opportunity:** Broker and Owner shall comply with all federal, state and local fair housing laws and regulations, including, but not limited to, non-discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.

Vacant Land/Lot Listing Contract - Exclusive Right to Sell/Lease • February 2022
Copyright © 2022 Arizona Association of REALTORS®. All rights reserved.
Page 1 of 7



BEWARE OF REMOTE ACCESS SCAMS

To conduct business, real estate practitioners rely on computers, mobile devices, transaction management systems and web apps. Since just about anyone that uses technology faces cyber risk, real estate brokerages are not immune from on-line scams, privacy breaches, and cyber-attacks.

Recent scams using a software application by the name of AnyDesk target bank accounts, including business accounts such as broker trust accounts. Unfortunately, the scam is perpetrated in such a way that anyone can be easily fooled.

AnyDesk is a software application used to remotely connect two different workstations. Once installed, the application allows access to that device from anywhere in the world. Although the product is used legitimately by IT professionals to connect remotely to their clients in order to help resolve technical issues, scammers misuse AnyDesk in an effort to connect to the victim's device and steal data, access codes, and even money.

Scammers begin the process by contacting individuals by phone claiming to be from well-known companies such as Amazon, Apple, and Microsoft. They explain that fraud or an unauthorized purchase has been detected on the victim's account.

To resolve the issue, the fraudster asks the victim to download AnyDesk from the Google Play Store or Apple App Store. One or two permission requests will be sent to the victim as is generally the case when new applications are installed. However, once the victim grants permission to these requests, their device is fully accessible to the fraudster.

With complete access to the device, the fraudster will have access to the PIN and passwords of the victim's mobile banking apps, along with other Private Personal Information (PPI). Once in possession of that information, the fraudster can remotely perform banking transactions without the

victim's knowledge. And while fraudsters often target an individual's bank account, this scam is just as easily used to access business accounts, including broker trust accounts.

If someone you don't know asks you to install a third-party app, you should always refrain from doing so. Hackers frequently try to install remote control apps that enable a gateway to the victim's device. Hence, you should avoid installing any app based on the caller's recommendation.

Furthermore, no bank or company should ask you over the phone to download software.

If you think there may be a problem with one of your accounts, contact the company using a phone number or website that you have independently verified and know is accurate. Do not call the phone number provided to you by the scammer and do not give out your personal information.

If someone you don't know is asking to access any of your devices and wants you to download specific software, be careful! You're at risk of becoming a victim of a remote access scam.

For more information on the AnyDesk remote access scam, go to AnyDesk: [How to Avoid Remote Access Scams](#). 

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.

NEED? HELP?



LET'S CHAT

Visitors to the Arizona REALTORS® website may have noticed a new orange and white bubble in the lower right-hand corner of their screens, announcing our new chat function! The service is available throughout normal business hours and enables members to get immediate answers to most questions in real-time.

The next time you need help, connect with your member services team online! As always, you can get in touch with us via email at support@aaronline.com or by calling (480) 304-8930.



ARIZONA
REALTORS®

+



ARIZONA MORTGAGE
LENDERS ASSOCIATION



INDUSTRY PARTNERS CONFERENCE 2022

REALTORS®... LOAN OFFICERS... ESCROW OFFICERS... *ALL LEARNING TOGETHER!*

- Immerse yourself into the what if, what now, and what really happens in real estate scenarios.
- Learn together with REALTORS®, escrow, mortgage, and other key players in the real estate transaction.
- Hear and learn from practitioner panels about current transactional trends.

MARCH 10 2022



DESERT WILLOW CONFERENCE CENTER

4340 E COTTON CENTER BLVD. / PHOENIX, AZ 85040

CE: 3-CONTRACT LAW / 3-GENERAL

9:00 A.M. - 4:00 P.M.

CHECK-IN AND CONTINENTAL BREAKFAST AT 8:30

THIS CONFERENCE SELLS OUT EVERY YEAR!

COST: \$89.00

(Includes continental
breakfast & lunch)

REGISTER TODAY!

[https://aarevents.
cventevents.com/IPC](https://aarevents.cventevents.com/IPC)



Virtual Hearings & Mediations

The pandemic brought many changes to the way associations hold mediations and hearings. For that reason, NAR formed a Virtual Hearing Work Group to discuss and make recommendations to the Board of Directors to amend the Code of Ethics and Arbitration Manual to allow for virtual hearings.

Arizona REALTOR®, GRI Instructor, and REALTOR® Emeritus Marge Lindsay participated in the work group which led to the changes the Board approved in November of last year and became effective on January 1, 2022.

Additional 2022 changes effective January 1, 2022

Article 1, Standard of Practice 1-8 (Amended) – only the new verbiage is cited below.

Upon written request of the listing broker who submits a counter-offer to the buyer's/tenant's broker, the buyer's/tenant's broker shall provide, as soon as practical, a written formation to the listing broker stating that the counter-offer has been submitted to the buyers/tenants, or written notification that the buyers/tenants have waived the obligation to have the counter-offer presented.

Article 12 Standard of Practice 12-1 (Amended)

REALTORS® must not represent that their brokerage services to a client or customer are free or available at no cost to their clients unless the REALTOR® will receive no financial compensation from any source for those services.

After January 1, 2022, you can download, at no cost, a PDF file of the 2022 Code of Ethics and Arbitration Manual (COEAM). To do so, [CLICK HERE](#) and scroll down the page for the link to the manual. Additionally, as a reminder, case interpretations are no longer included with the COEAM. However, you may find them at the above link.

2021 Code of Ethics & Standards of Practice

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. [🔗](#)

Info, FAQs, and Online Filing Platform



& DIVERSITY INCLUSION

Arizona REALTORS®

The Arizona REALTORS® Diversity & Inclusion Committee created a newsletter to help educate Arizona REALTORS® on various topics as they relate to Diversity, Equity, and Inclusion. Each issue will focus on a different theme and will include articles, book recommendations, and videos.

Brokers please feel free to distribute the newsletter to your agents for their general information. In office meetings you can use the word of the month to help spark conversation: Have you ever experienced microaggressions? How did you handle it?; or start a book club using one of the recommended books. For more information on how you can incorporate DEI initiatives in your office please contact Christina Smalls, Arizona REALTORS® DIRECTOR of Operations, at christinasmalls@aaronline.com. 📧

February Newsletter



SCOTT'S LEGAL SCOOPS – VIDEO SERIES

FIRPTA



CLICK ARROW ABOVE TO WATCH THE VIDEO

What advice should you share with your clients about FIRPTA? Other than telling them what the acronym means, our General Counsel and Assistant CEO Scott Drucker would tell you not much.

In this edition of Scott's Legal Scoops, learn why you should resist the urge to discuss the requirements of the Foreign Investment in Real Property Tax Act.



REALTOR® DAY 2022

Arizona REALTORS® returned to the Arizona State Capitol last week for its time-honored tradition of personally connecting with state legislators and government officials.

Representative César Chávez served as this year's keynote speaker and his keen legislative insights provided members with a better understanding of the upcoming session. Check out his inspirational remarks and this year's photo gallery at the link below.

[Video & Gallery](#)





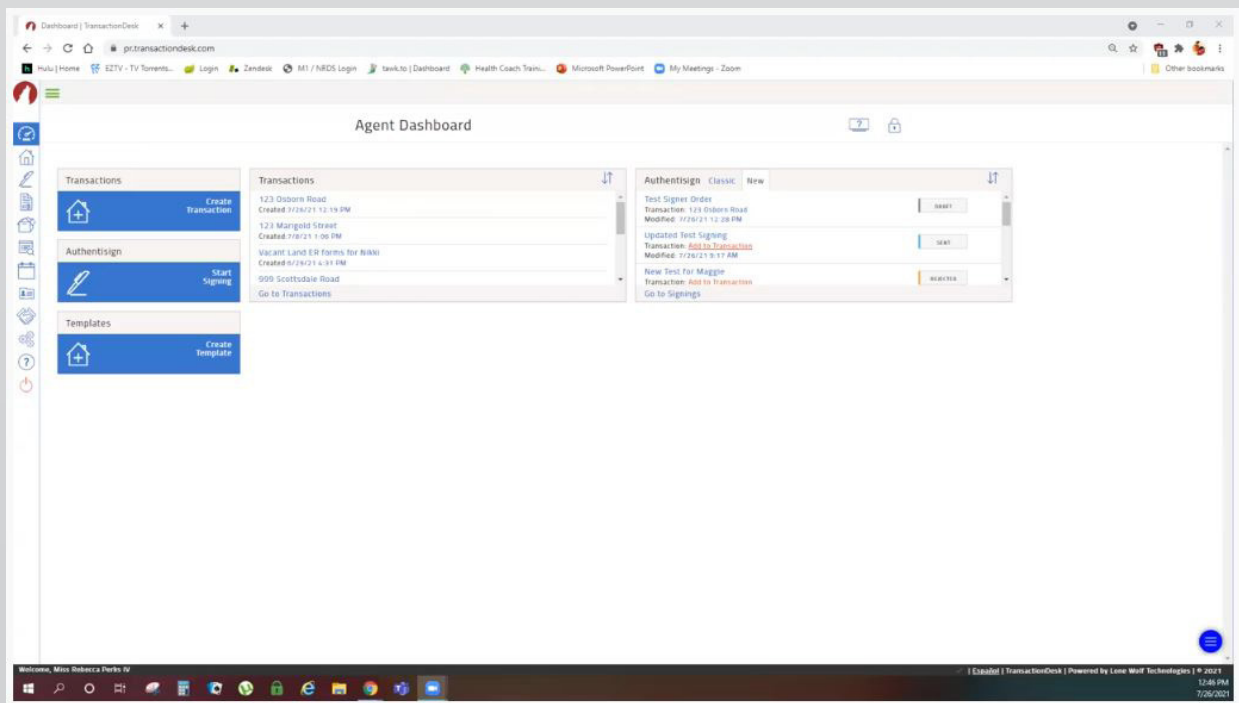
LONE WOLF
TECHNOLOGIES



The all new LoneWolf AUTHENTISIGN 2.0 is here!

Highlights you will love:

- Complete signings 60% faster with an all-new workflow
- Deliver a simple and intuitive signing experience to your clients
- Correct rejected signatures with new insights and signer feedback
- A simple, intuitive interface: all the tools you need in one place, easily drag, drop, delete and rotate pages, and more.
- Signing templates allow you to save default annotation properties and create automatic signature blocks. Plus, with an active sync with Transactions (TransactionDesk Edition) you only have to enter contact information once.
- Quickly correct rejected signatures.
- A quick training video is available at the following link <https://www.youtube.com/watch?v=uSxISvt264U>. 📺





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
or 602-248-7787

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



Get Answers Today!

www.aaronline.com/legal-hotline

REAL SOLUTIONS REALTOR® SUCCESS.

LEGAL HOTLINE

By Zelms, Erlich & Mack | Copyright© 2022, all rights reserved.

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

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

Licensee Has No Liability for Failing to Predict Increase in Material Costs and Builder's Ultimate Inability to Perform

FACTS: The agent represented the buyer and a reputable builder/developer as a fully disclosed dual agent in the transaction for a home to be constructed. The buyer and builder/developer executed a contract selecting the model to be constructed and the price. Six months after the contract was signed, the builder/developer advised the buyer that due to "supply chain" problems, the cost of construction materials had increased 300%. The builder/developer advised the buyer that he could not construct the house for the agreed upon price and gave the buyer the option of either cancelling the transaction and receiving the return of all monies paid to date, or amending the contract. The buyer refused both options. The builder/developer ultimately filed bankruptcy and is no longer in business and has no funds. The buyer has demanded that the agent and his brokerage firm "make arrangements to build the house originally planned" at their expense because they were dual agents and misrepresented/omitted the builder/developer's ability to perform.

ISSUE: Are the agent and brokerage firm required to build the house at their expense?

ANSWER: No.

DISCUSSION: Based on the facts presented, the buyer's real claim is against the builder/developer. Licensees are not guarantors of a builder's performance. Additionally, as to the alleged misrepresentation/omission, the standard of care for real estate licensees does not include predicting future events. See *Denbo v. Badger*, 18 Ariz. App. 426, 503 P.2d 384 (1972); *McAlister vs. Citibank*, 171 Ariz. 207, 215, 829 P.2d 1253, 1261 (App. 1992). The buyer's contention that agent and brokerage were obligated to predict a 300% increase in materials costs, that was to occur at some time after the contract was signed, resulting in a reputable builder refusing to perform, is not a viable legal claim. The agent and brokerage have no obligation to build the house at their expense as demanded by the buyer.

Listing Agent Must Disclose Deed of Trust Recorded Against the Property While Escrow is Pending

FACTS: The buyer and seller entered into the Arizona REALTORS® Residential Resale Real Estate Purchase Contract. While escrow was pending, the owner took out a HELOC secured by a deed of trust against the property. She intends to use the HELOC proceeds to fund a down payment on a different property. The listing agent discovered the HELOC and advised the seller that the new loan must be disclosed to the buyer immediately. The seller is resisting the advice, claiming the HELOC in no way affects the buyer.

ISSUE: If the seller remains steadfast in her refusal to disclose the HELOC, must the listing agent make the disclosure?

ANSWER: See discussion.

DISCUSSION: Although the seller may justifiably believe she need not disclose the HELOC because it does not affect the buyer, the obligation of the listing agent is different than the seller's in this instance. Specifically, A.A.C. R4-28-1101(B) (4) requires a licensee to disclose the existence of a "lien or encumbrance on the property being transferred." The listing agent should therefore disclose the new HELOC.

Note: The Deed of Trust securing the HELOC will appear in the title commitment as well, providing the buyer another source of information.

Licensee Must Disclose a Drunk Driving Charge to the Department of Real Estate Within 10 Days of the Judgment of Conviction

FACTS: After leaving a holiday party, an agent was arrested for driving under the influence. The agent was released from jail the following morning. The trial date is set for April.

ISSUE: Is the agent required to disclose the arrest and pending trial to the Arizona Department of Real Estate?

ANSWER: See discussion.

DISCUSSION: A licensee must report an adverse civil judgment and/or a conviction of a crime to the Department of Real Estate within 10 days of the judgment being entered by the court. A.A.C. R4-28-301 (F). Here, because there is not yet a judgment entered on the driving under the influence charge, there are not yet any reporting requirements to the Department of Real Estate.

Pursuant to the Buyer Contingency Addendum, if the Buyer's Existing Home Does Not Close by the Agreed Upon Date, the Contract is Cancelled

FACTS: The buyer and seller entered into the Arizona REALTORS® Residential Resale Real Estate Purchase Contract and a Buyer Contingency Addendum. At the time, the buyer's existing home was under contract and set to close escrow on November 15th. Accordingly, in the Buyer Contingency Addendum, the box on line 49 was checked, and on line 53 the parties inserted November 15th. Unfortunately, due to financing issues, the buyer's existing home did not close on November 15th; the expected closing date is now November 25th. The buyer wants to proceed with the purchase of the new home regardless of the cancellation. The seller by contrast has a backup offer for \$25,000 more and claims the transaction with the buyer is cancelled because the buyer did not close by November 15th.

ISSUE: Does the buyer have the contractual right to proceed with closing even though his existing home did not close escrow by the date agreed upon?

ANSWER: See discussion.

DISCUSSION: In this transaction, lines 53 and 54 of the Buyer Contingency Addendum provide: "if the pending sale of Buyer's property does not close by November 15th, this Contract shall be deemed cancelled and the Earnest Money shall be released to Buyer." Pursuant to the language of the documents, the contract is cancelled without any further action required by the seller.

Disclose Media Reports that House Has Been Inhabited by Aliens

FACTS: Seller is under contract with buyer for the sale of the seller's property. Seller is aware that a local newspaper reported in the 1970s that the seller's property was used by a clandestine government agency to house extraterrestrial beings recovered from Roswell, New Mexico. The seller is also aware that most of the residents of the town in which the property is located know about this newspaper story and that it would be difficult to sell the property to many of them.

ISSUE: Must the seller disclose this information to the buyer?

ANSWER: Yes.

DISCUSSION: The seller must disclose material information about the property, i.e., information that would cause a reasonable purchaser to reevaluate the value of the property. *Hill vs. Jones*, 151 Ariz.81, 725 P. 2d 1115 (App. 1986). Here, the seller is likely not obligated to disclose that the property was allegedly inhabited by extraterrestrials, but the seller is probably required to disclose the media attention that the property has received over the years especially since the seller is aware that the local residents would be unlikely to buy the house and, therefore, the value of the home is likely affected by the media attention.

An Unlicensed Assistant May Not Sit Open Houses, Attend Inspections or Negotiate and Draft BINSRS

FACTS: The team leader relies heavily on his assistant, who does not hold a real estate license. The assistant sets open houses, attends inspections and final walk throughs with buyers and sometimes drafts and negotiates BINSRS. The broker recently discovered this situation and insisted that the team leader immediately cease and desist using the unlicensed assistant in this manner. The team leader insists that the assistant's work is consistent with the Arizona real estate licensing requirements.

ISSUE: May the assistant perform the functions referenced without a real estate license?

ANSWER: No.

DISCUSSION: The tasks the assistant is performing – setting open houses, attending inspections and final walk-throughs, and drafting and negotiating BINSRS constitutes the practice of real estate for which a license is required. See A.R.S. § 32-2101 (49). In fact, all of the tasks the assistant is performing are identified in ADRE Substantive Policy Statement 2017.01 as tasks an unlicensed person cannot perform. Further, an unlicensed person who performs acts for which a license is required is guilty of a Class 5 felony pursuant to A.R.S. § 32-2165 (B).

Out of State Brokerage with Licensees Must Maintain an Office in Arizona

FACTS: A national broker intends to engage in real estate brokerage business in Arizona. The Arizona brokerage will be physically located in another state. The designated broker and the agents will be duly licensed in Arizona, but will not live or physically perform work in the state.

ISSUE: Must the broker maintain a physical office in Arizona?

ANSWER: Yes.

DISCUSSION: Generally, a non-resident broker may conduct real estate brokerage business in Arizona. However, there are several requirements for that business model to be consistent with Arizona licensing laws. See A.R.S. § 32-2125.02 and

A.A.C. R4=28-302(L). Among other things, the non-resident broker must:

1. Establish an office in Arizona;
2. Appoint a branch manager; and
3. Provide a statement to ADRE describing how the licensees will be supervised.

A.A.C. R4-28-302 (L)(2).

H.O.A. May Only Charge A \$400 Disclosure Fee Once

FACTS: The seller contracted to sell her home in a subdivision and the homeowner's association ("H.O.A.") prepared and delivered to the buyer the disclosure materials required by A.R.S. § 33-1806. The buyer then cancelled the contract and the seller contracted with another buyer for the purchase and sale of the property. Another set of disclosure materials was ordered and provided by the H.O.A. for the second transaction. The draft settlement statement for the second transaction reflects an \$800 fee for the transfer materials. The H.O.A. claims it has the authority to charge the \$400 for each transaction.

ISSUE: Is the H.O.A. legally authorized to charge for each transaction?

ANSWER: No.

DISCUSSION: A.R.S. § 33-1806 limits the fee an H.O.A. may charge for the mandated disclosure materials at \$400. Subsection D of the statute provides that the fee "shall be collected no earlier than at the close of escrow and may only be charged to a member for that transaction between the parties specified in the notice." In other words, the H.O.A. is not allowed to collect the fee unless escrow closes. Additionally, the notice provided to the association will identify the current buyer and seller, not the previous buyer. Here, because escrow did not close on the first transaction, the H.O.A. cannot charge a fee for the disclosure materials provided in connection with the cancelled contract.

A Community Enhancement Fee Must Be Paid as Required by the CC&RS

FACTS: The homeowners' association ("H.O.A.") has demanded a "community enhancement fee" of 0.25% of the sales price be paid by the buyer at the close of escrow pursuant to the covenants, conditions, and restrictions ("CC&Rs"). The seller disclosed the community enhancement fee on lines 20 and 21 of the Arizona REALTORS® H.O.A. Condominium/Planned Community Addendum. The buyer is contesting the fee, claiming the H.O.A. only has the authority to charge \$400 for the transaction by statute and that the community enhancement fee is "illegal."

ISSUE: Is the community enhancement fee illegal?

ANSWER: See discussion.

DISCUSSION: Assuming the CC&Rs are duly recorded and otherwise enforceable, and require that a buyer pay a community enhancement fee at closing, there is no prohibition against an H.O.A. charging the community enhancement fee of 0.25% of the sales price. The \$400 limitation only applies to an H.O.A. preparing the disclosure materials that must be provided pursuant to A.R.S. § 33-1806.

A Property Manager Must Disburse Funds as Directed by the Parties

FACTS: In light of significant credit problems, the tenants offered to pay a full year's rent in advance if the landlord would accept them as tenants. The landlord ultimately accepted and the parties entered into an AAR Residential Lease Agreement. The tenants took possession and paid the entire year's rent in advance

ISSUES: Is the property manager required to hold the rent in the brokerage trust account to pay the landlord on a monthly basis?

ANSWER: See discussion.

DISCUSSION: Based on the facts presented, the parties agreed in the lease that the full year's rent would be paid to the landlord. Accordingly, there is no obligation for the property manager to maintain the rent in the brokerage trust account. Rather, the rent should be forwarded to the landlord as the parties agreed.

Note: A lease owner is not permitted to demand or receive security, including prepaid rent, in an amount in excess of 1.5 month's rent. However, a tenant is not prohibited from voluntarily paying more than 1.5 month's rent in advance. 🙋

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: Vaccine Policies for Real Estate



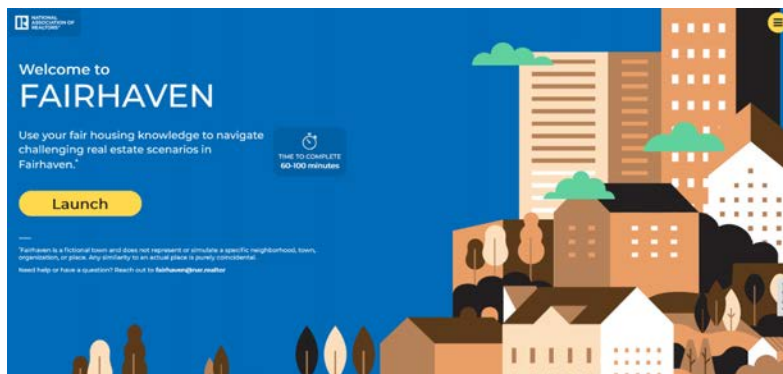
NATIONAL ASSOCIATION OF REALTORS®

WINDOW TO THE LAW



CLICK ARROW ABOVE TO WATCH THE VIDEO

Best practices for addressing vaccine mandates in brokerage offices and for the showing and leasing of properties. Presenter Deanne Rymarowicz Associate Counsel, National Association of Realtors®



Welcome to Fairhaven

Jump into Fairhaven, a fictional town where REALTORS® work against the clock to sell homes while confronting discrimination in the homebuying process.

<https://www.aaronline.com/2021/02/16/welcome-to-fairhaven/>

Window to the Law

Window to the Law is a monthly video series focusing on a legal topic of interest. Not just for legal professionals, Window to the Law covers topics applicable to legal compliance for real estate professionals, brokerages, and REALTOR® associations. To view videos visit: <https://www.nar.realtor/videos/window-to-the-law>

NAR YouTube Channel

In addition to the Window to the Law video series, View [Legal Updates on NAR's official YouTube channel](#)

More Legal Information View NAR's Legal topics <https://www.nar.realtor/legal>



NATIONAL ASSOCIATION of REALTORS®

