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BROKER | MANAGER QUARTERLY

FORM REVISIONS

SEPTEMBER/NOVEMBER 2025

TRENDING TOPICS

September Forms - New Owner's
Delayed Or Limited Marketing Election
Addendum and Revised Listing Contracts

November Forms - Revised Purchase
Contracts; Revised Solar Addendum;
Revised Additional Clause Addendum

Enhancing Member Value Through
Strategic Budget Changes - Elimination
Of Single Sign-On Platform

Window To The Law: Tips To Avoid
Liability When Making Referrals



— ARIZONA REALTORS® —
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REVISED FORMS

SEPTEMBER 2025

Aaron Green, Esq. GENERAL COUNSEL AT ARIZONA REALTORS®

On March 25, 2025, in conjunction with its Clear Cooperation Policy, the National Association of REALTORS® (NAR) announced a new MLS policy titled [“Multiple Listing Options for Sellers.”](#) The new policy provides sellers the option to market their home as a “delayed marketing exempt listing” defined as delaying the public marketing of their listing through IDX and syndication for a period of time determined by each local MLS. The policy also retains the option for sellers to avoid disseminating their listing through the MLS and not be publicly marketed (Office Exclusive). In either circumstance, the seller must sign a certification that: 1) acknowledges they are waiving or delaying the benefits of an MLS, such as broad and immediate exposure of their listing; and 2) confirms their decision. The policy required implementation by September 30, 2025.

Please note: MLSs have sole control over the forms available in their libraries. Some MLSs may choose not to offer the Arizona REALTORS® form(s) discussed in this article.

I. OWNER’S DELAYED OR LIMITED MARKETING ELECTION ADDENDUM

To help members comply with the new policy, the Arizona REALTORS® created a new form titled [“Owner’s Delayed or Limited Marketing Election Addendum”](#)¹ The new form is an addendum to the Arizona REALTORS® listing contracts and may be utilized to document a seller’s decision to delay or limit the marketing of their home.

Lines 1-4 of the new Owner’s Delayed or Limited Marketing Election Addendum identify the listing contract, parties, and property that the Addendum affects.

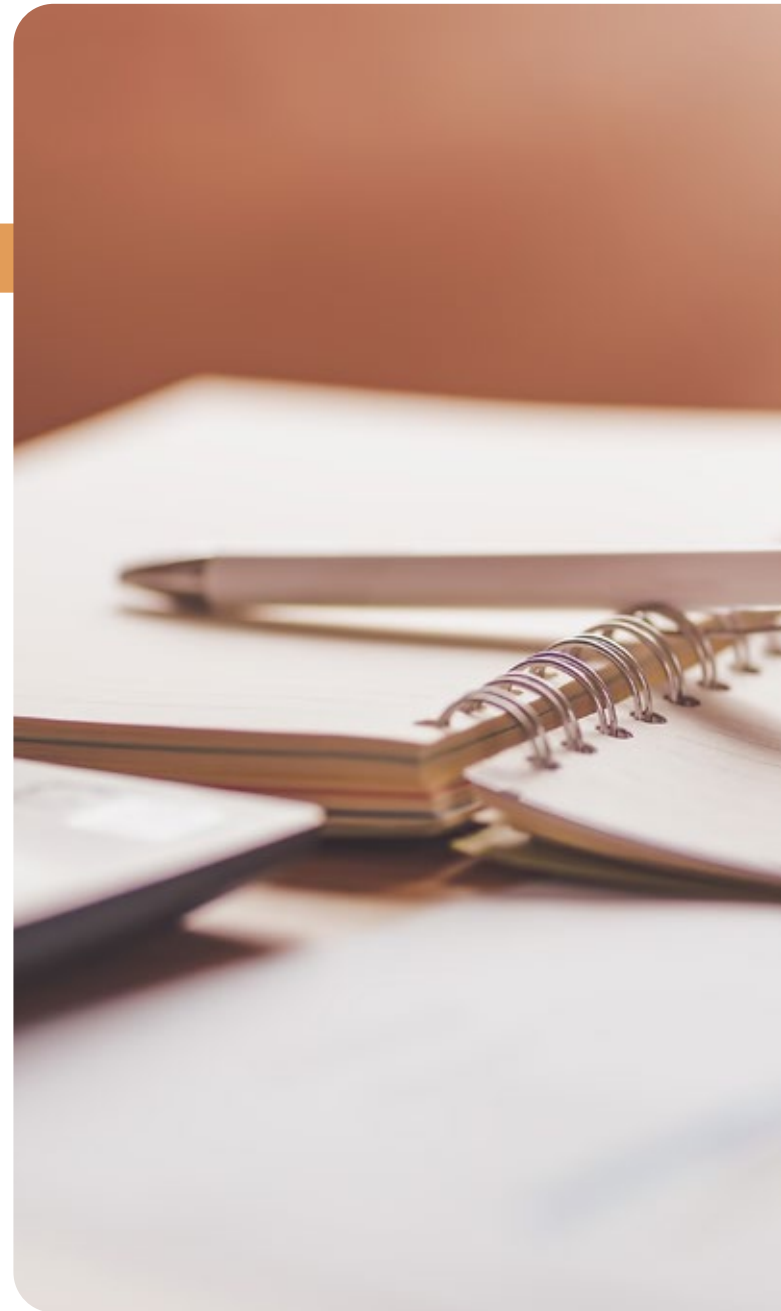
Lines 5-6 provide Instructions that the form is only to be used when an Owner **DECLINES** to immediately market

the Premises broadly to the general public.

Lines 7-10 provide the Owner’s acknowledgement and understanding that choosing to delay or limit the immediate marketing of the Premises broadly to the general public may have adverse consequences.

Lines 11-12 notify the Owner that they can change their mind and choose to broadly market the Premises to the general public at any time via written notice to their Listing Broker.

¹ Thank you to the 2025 ER workgroup for their efforts to create and revise forms. The workgroup was chaired by Mike Porter. Other workgroup members were John Barile, Laurie Beischel, David Dynes, Christie Ellis, Kim Everett, Serena Jones, Paul Kriewall, Mimi Lundy, and Suzanne Rothman.



Lines 13-22 provide the Owner's election of how they want their property marketed. The Owner can choose to delay the marketing of the Premises by utilizing a click box on line 17 or they can choose to limit the marketing of the property by utilizing a *click box* on line 21.

Lines 23-26 provide additional blank lines to write in additional terms and conditions, if applicable.

Line 27 reiterates that the Owner has chosen their election above and acknowledges a copy of the form was provided to them.

II. LISTING CONTRACTS (ER and EA)

The **Multiple Listing Service (MLS)** Section of the Arizona REALTORS® Listing Contracts, both the ER and EA, has been completely revised. Previously, this Section documented the Owner's authorization to provide the home's information to any MLS of which the Listing Broker is a participant and disseminate such information to MLS participants and the general public through Internet Data Exchanges (IDX) and Virtual Office Websites (VOWs).

Since an Owner can choose to delay or limit the marketing of their home, this Section's authorization to broadly disseminate the listing to IDX and VOWs was removed and replaced with generic information about MLSs and how board exposure of the home's marketing can be made. An authorization for the Listing Broker to provide the home's information to any MLS of which the Listing Broker is a participant remains, but this section does not identify whether, or how, that information will be broadcast.

In addition to the aforementioned change, a new **Owner Choice on Marketing** Section has been added to all Arizona REALTORS® Listing Contracts. This new Section provides a *click box* for an Owner to choose whether or not they authorize the Listing Broker to immediately market the home broadly to the general public. If the Owner chooses against broad and immediate marketing of the home, the Section instructs the parties to complete the Arizona REALTORS® new Owner's Delayed or Limited Marketing Election Addendum or similar authorization.

A redline version of the revised Residential Listing Contract Exclusive Right to Sell/Rent (ER) can be found [HERE](#). Please note that to ensure consistency, substantively identical revisions were made to the Residential Listing Contract Exclusive Agency, Vacant

Land/Lot Listing Contract Exclusive Right to Sell/Rent and Vacant Land/Lot Listing Contract Exclusive Agency forms.

III. FREQUENTLY ASKED QUESTIONS

Q1. Why do the revised Listing Contracts now refer to "MLS Brokers' platforms" instead of VOWs?

A1. The workgroup felt the change helped clarify that brokers may market the Premises through not only websites, but also through social media and other platforms.

Q2. Why do the revised Listing Contracts still authorize the Listing Broker to provide the Premises' information to an MLS if the Owner chooses not to market the Premises to the general public (an Office Exclusive)?

A2. NAR's new policy still requires an Office Exclusive listing to be filed with the MLS; it is just not disseminated to other MLS participants or the general public.

Q3. Why would an Owner decide against immediate marketing of their Premises to the general public?

A3. Owners have freedom to market their property as they see fit. NAR's new policy is meant to provide sellers and their agents with more options and choices when marketing the property.

Q4. Most Owners choose to immediately market their property broadly to the general public. Why do the revised Listing Contracts include a click box option to opt out?

A4. The workgroup felt it was important to document the Owner's decision in a manner consistent with the rest of the Listing Contract. Most Owners choose to place a "for sale" sign in their yard and includes photos in their listing, yet the Listing Contracts still provide the Owner a choice in a *click box* manner. Furthermore, the *click box* election will notify a Designated Broker that another authorization form exists if the Owner chooses not to immediately market the property broadly to the general public.

Q5. Why do the revised Listing Contracts specifically reference by name the Arizona REALTORS® Owner's Delayed or Limited Marketing Election Addendum (Addendum)?

A5. The workgroup wanted to inform Arizona REALTORS® members that the new Addendum exists and should be completed if the Owner chooses against the immediate marketing of their property broadly to the general

public. The revised Listing Contracts also state that the Listing Broker and Owner may complete a “similar authorization” in such circumstances. No REALTOR® is required to use Arizona REALTORS® forms, and some brokerages and MLSs have drafted their own seller certification as required by NAR’s new policy.

Q6. Why didn’t the workgroup include a seller certification in the revised Listing Contracts, instead of creating a new form?

A6. The workgroup wanted to ensure that the Owner made an informed decision. Some consumers fail to carefully read all pages of their contracts, so the workgroup decided a separate one-page, easy to understand Addendum would best clarify the Owner’s options and help them make an educated decision.

Q7. Why does the Addendum identify the Premises/Property Address on line 4?

A7. The workgroup wanted the Addendum to be used with not only residential listing contracts that identify the “Premises,” but also with vacant land listing contracts that identify a “Property.”

Q8. Why does the Addendum include instructions?

A8. The workgroup wanted to notify both REALTORS® and consumers that the form was only to be used when the Owner **DECLINES** to immediately market the Premises broadly to the general public.

Q9. Why does the Addendum include warnings on lines 8-10?

A9. The Owner’s acknowledgement that there may be negative consequences of their decision is necessary to ensure informed consent.

Q10. How can an Owner provide their Listing Broker with written notice of their decision to broadly market the Premises to the general public as referenced on lines 11 and 19?

A10. The Owner can provide written notice in any manner acceptable to the Listing Broker. Some brokers will want a written notice signed by the Owner. Other brokers may accept emails, texts, or other instructions made in any written format.

Q11. What is Delayed Marketing as referenced on lines 17-19? Is this “Coming Soon” status?

A11. Delayed Marketing is where an Owner chooses to delay marketing of their property listing through IDX feeds and syndication. Some MLSs already allow this option, labeling the election as “Coming Soon.” REALTORS® are encouraged to contact the MLSs they participate in to determine if the MLS includes a Delayed Marketing option, what they name it, and if the MLS policy will change in response to NAR’s new policy.

Q12. What is the “maximum period of time allowed by MLS policy” as referenced on line 19?

A12. Each MLS has decided for itself what time period, if any, is allowed to Delay Marketing. REALTORS® are encouraged to contact the MLSs they participate in to ask this question.

Q13. I thought I could market my Office Exclusive listing to my clients and other individual brokers. Why does line 22 of the Addendum state I “WILL NOT” market the Premises to the general public?

A13. Yes, you can market your Office Exclusive listing to your clients and other individual brokers. A broker’s clients and other brokers are not the general public. For more information on the new NAR policy, please visit [Multiple Listing Options for Sellers](#).

PRIOR FORM REVISIONS

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Form updates are made to minimize your risks and ensure legal compliance.

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REVISED FORMS, PART 1 OF 3: PURCHASE CONTRACTS

NOVEMBER 2025

Aaron Green, Esq. GENERAL COUNSEL AT ARIZONA REALTORS®

INTRODUCTION

On November 1, 2025, the Arizona REALTORS® released a revised version of the following five (5) forms:

- Residential Resale Real Estate Purchase Contract;
- Commercial Real Estate Purchase Contract;
- Vacant Land/Lot Purchase Contract;
- Solar Addendum; and
- Additional Clause Addendum

This three-part series will explain the revisions in detail.

OVERVIEW

The Residential Resale Real Estate Purchase Contract includes minor revisions to further disclose the possibility that seller concessions may be used by the buyer to pay broker compensation and emphasize consent to allow any broker to be paid by both parties. For consistency, the Arizona REALTORS® revised its two other real estate purchase contracts using similar, corresponding changes to ensure consistency.

The Solar Addendum has been heavily revised to address problems encountered by numerous solar companies filing bankruptcy. The changes move up the timeline for buyers to begin the process of qualifying for an assumption of a solar loan or lease.

The Additional Clause Addendum contains two new clauses: (i) Offer Initiated By Seller; and (ii) Unrepresented Buyer Notice.

PURCHASE CONTRACT REVISIONS¹

A redline version of the revised Residential Resale Real Estate Purchase Contract can be found [HERE](#).

The Arizona REALTORS® Residential Resale Real Estate Purchase Contract previously included a boilerplate term

¹Thank you to the 2025 Purchase Contract workgroup for their efforts to revise forms. The workgroup was chaired by Mary Ann Shryack. Other workgroup members were Martha Appel, Annie Barmore, Nicole Cumbie, Cathy Erchull, Michael Hofstetter, Michael Hunt, Monica Monson and Chey Tor.

whereby a buyer can request the seller to provide seller concessions as part of their offer. If the seller agreed, the buyer was allowed to use the seller concessions “for any Buyer fee, cost, charge, or expenditure to the extent allowed by Buyer’s lender.” Section 2j. Since almost all lenders allow the Buyer to use seller concessions to pay their broker, the workgroup felt it was best to highlight this possibility to sellers for full transparency. As a result, “broker compensation” was expressly added as a permissible use of seller concessions.

In a similar effort, the workgroup wanted to emphasize the parties’ consent should a broker be paid by both the buyer and the seller. Section 8f now includes a sentence that states the parties consent to any “Broker receiving compensation from more than one (1) party to the transaction” with the parties’ initials documenting their approval.

Despite these changes, the Arizona REALTORS® WILL NOT be removing the Seller Compensation Addendum (SCA). The SCA is still the preferred method for a buyer to request the seller to pay compensation to the buyer broker because it specifically identifies the buyer’s intention for the term and includes an amount. Full transparency is always best practice.

Small additional revisions were also made to the form. In Section 8f, broker agreements “may” be delivered to an escrow company but are no longer required by removal of the word “shall.” This change conforms to standard practice in the industry. The sections of the

purchase contract specifying delivery of notices (8m), and an accepted offer (8o), now match and can be delivered “in person” or by “electronic mail.”

The purchase contracts below were also revised to include similar changes. However, revisions to the Seller Concessions section were omitted because neither form includes such a section.

Vacant Land/Lot Purchase Contract- A redline version can be found [HERE](#).

Commercial Real Estate Purchase Contract- A redline version can be found [HERE](#).

PRIOR FORM REVISIONS

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The Key Contact program pairs a REALTOR® with every member of the state legislature so our elected officials can hear directly from our industry practitioners on what is happening in the real estate industry. You are your own best advocate, so whether you have an existing relationship with a state lawmaker or are willing to build a relationship with an elected official, the Arizona REALTORS® are here to help you succeed as a Key Contact or a Contact Team member.

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REVISED FORMS, PART 2 OF 3: SOLAR ADDENDUM

NOVEMBER 2025

SOLAR ADDENDUM REVISIONS¹

A redline version of the revised Solar Addendum can be found [HERE](#).

Unfortunately, many solar companies and solar leasing companies have filed for bankruptcy. This has made the process of assuming a solar lease or loan much more difficult. Discovering and communicating with the appropriate party to process an assumption request is challenging and it may take several weeks for the approval to be granted. Additionally, even if assumption approval is granted, it may be on terms that are less favorable than the existing lease/loan.

To assist REALTORS® and their clients in navigating this precarious process, a large notice box was inserted on the first page of the Solar Addendum warning all that the “process of transferring the Solar System to Buyer will likely take significant time” and both parties should facilitate the transfer without delay and set a realistic close of escrow date. Specifically, the “Seller should initiate the transfer process immediately upon contract acceptance” and the “Buyer should promptly apply for, provide documents, and otherwise facilitate the transfer without delay.” This is a significant departure from the previous language where the buyer did not even apply for an assumption of the solar lease/loan until after expiration of the Inspection Period. Now, the buyer “shall immediately apply” for the assumption. Other changes to the form include:

Instructions have been revised to clarify that the “Seller Owned” section should be completed if the seller will be paying off a solar loan at, and as a condition of, close of escrow.

A fifth **Seller Disclosure** has been added to identify whether the seller is current on their solar lease or loan. *Please note*, assumptions may be denied outright if



the seller is delinquent on their payment, even if the seller comes current after the assumption application is submitted.

The **Buyer Disapproval and Lease/Loan Assumption Contingency** paragraphs have been switched in order so that the disapproval paragraph now follows the disclosure paragraph and the contingency paragraphs follow one another.

The **Buyer Disapproval** paragraph deleted the verbiage “Should Buyer elect to proceed with the transaction,” which had appeared prior to that portion of the Addendum stating “the buyer shall immediately apply” for an assumption. The language now instructs the buyer to immediately apply for the assumption instead of waiting until after the inspection period. Because it may take a month or more before a third party even reviews the assumption application, the workgroup felt it was preferable to withdraw an assumption request if the buyer cancels as opposed to delaying submission of the application by up to fifteen (15) days should the buyer choose to proceed following the Inspection Period.

¹Thank you to the 2025 Solar Addendum workgroup for their efforts to revise the form. The workgroup was chaired by Cathy Swann. Other workgroup members were Paul Bruce, Wendy Shaw and Cynthia Shobe.

The **Lease/Loan Assumption Contingency** paragraph clarifies that the transaction is contingent upon the buyer obtaining an assumption on the same terms as the seller's *existing* lease or loan. Because some assumption approvals include less favorable terms than the seller's lease or loan terms, the revision emphasizes that the buyer is not required to accept less favorable terms and may elect to cancel the contract and have their earnest money returned in such circumstances. The buyer may also elect to waive the contingency and close escrow if the terms are different than the existing lease/loan, but still acceptable to the buyer. Finally, the revised paragraph now notifies the buyer that they are advised to carefully review the assumption documents to verify that the terms and conditions have remained the same.

Finally, the **Transfer Fees** paragraph has been moved from Section 2 to Section 3 of the Solar Addendum and expanded to include additional fees. Unfortunately, some utilities and/or other third parties charge for transferring title to solar systems owned outright or charge a fee for transferring warranties to the new owner. The revised

language includes all possible fees that may be charged but continues to allow the buyer to choose who will pay the fees in their offer.

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A REALTOR® CAN:

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The Arizona REALTORS® is pleased to announce phase two of its consumer advertising campaign highlighting the benefits of working with a REALTOR®. The theme, "A REALTOR® CAN" is designed to show consumers how using a REALTOR® can make the transaction significantly smoother than going it alone.



A REALTOR® is a member of the National Association of REALTORS®.



REVISED FORMS, PART 3 OF 3: ADDITIONAL CLAUSE ADDENDUM

NOVEMBER 2025

ADDITIONAL CLAUSE ADDENDUM REVISIONS¹

A. OFFER INITIATED BY SELLER

The new **OFFER INITIATED BY SELLER** clause can be found on page 3 of the Additional Clause Addendum by clicking [HERE](#).

The **OFFER INITIATED BY SELLER** clause can be used by a seller represented by a REALTOR® to make an offer to a buyer utilizing an Arizona REALTORS® purchase contract. Arizona REALTORS® forms are copyrighted and may not be used by non-REALTORS®. It is also a violation of the copyright to provide blank copies of Arizona REALTORS® forms to a non-REALTOR®. Therefore, if a buyer is not represented by a REALTOR® but would like to make an offer, they will either make the offer verbally, by electronic mail, text, or on a contract/paper that was not drafted by the Arizona REALTORS®.

For sellers that are represented by a REALTOR®, the above options may not meet with their approval. In such cases, the seller may instead choose to initiate an offer on an Arizona REALTORS® purchase contract, which is an approach that differs from typical transactions in which the buyer initiates the offer. Because Arizona REALTORS® purchase contracts are designed for use by the buyer when initiating an offer, a new clause has been created to accommodate situations where the seller wishes to present an offer to the buyer using the standard, trusted Arizona REALTORS® purchase contract.

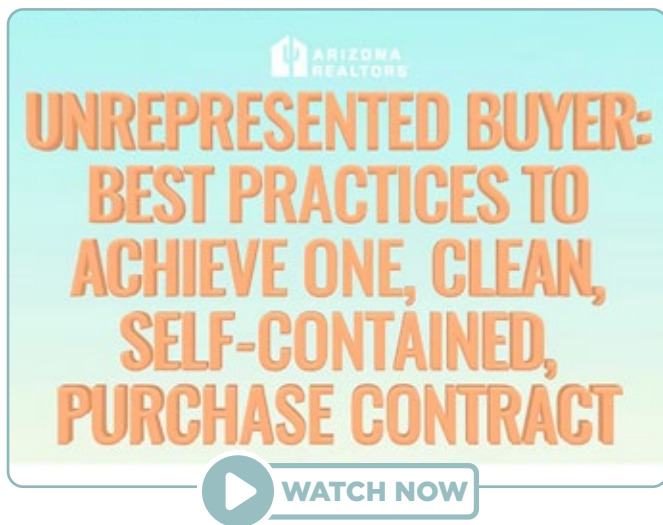
The purpose and goal of any contract is to clearly define the terms of the agreement and express the intent of the parties unambiguously. The workgroup felt it could prove problematic to combine Arizona REALTORS® forms with texts, emails, scratch paper writings, or foreign contracts. In other words, the danger of conflicting terms or the absence of important terms within an agreement that

¹Thank you to the 2025 Purchase Contract workgroup for their efforts to revise forms. The workgroup was chaired by Mary Ann Shryack. Other workgroup members were Martha Appel, Annie Barmore, Nicole Cumbie, Cathy Erchull, Michael Hofstetter, Michael Hunt, Monica Monson and Chey Tor.

combined differently sourced forms or outside writings was too risky and should be avoided.

To ensure one (1) clean agreement, the first sentence (lines 70-71) of the clause states that “All previous offers and counter offers made by either Seller or Buyer are hereby rejected.” This wipes the slate clean, so the seller’s offer can be accepted by the buyer and create one (1), definitive, self-contained contract. When the buyer accepts the seller’s offer, mission accomplished.

If the buyer does not accept the seller’s offer unconditionally (e.g. the buyer makes a counter offer), the seller’s offer is legally rejected. So, if the buyer presents a counter offer via email, text, or any non-Arizona REALTORS® form/writing, it is best practice for the seller to initiate a new seller offer in response, even if the material terms of the buyer’s counter offer are acceptable to the seller. Again, the goal is to end up with one (1) clean, self-contained agreement. Therefore, the recommended practice is that seller offers should be sent until the buyer accepts an offer unconditionally. Different seller offers are identified by the date of the offer (line 72).



Line 71 of the clause removes the Terms of Acceptance section of the purchase contract entirely and replaces it with a new Terms of Acceptance section that instructs the buyer on how to accept the seller’s offer. The listing broker will input the date of the seller’s offer [signed purchase contract] on line 72 and input the date and time for acceptance on line 75. The remainder of the clause educates the buyer on general contract law:

- a. Seller may withdraw the offer prior to buyer acceptance (line 76);

- b. Seller’s offer is withdrawn if not accepted by the date/time specified in the offer (lines 76-77);
- c. Buyer should initial and sign all pages and sections indicated but failure to initial any page or section does not affect the validity of the purchase contract (lines 78-80);
- d. Buyer can accept, reject, or counter seller’s offer (lines 81-82); and
- e. Buyer cannot accept the seller’s offer after the buyer makes a counter offer (lines 82-83).

B. UNREPRESENTED BUYER NOTICE

The new **UNREPRESENTED BUYER NOTICE** clause can be found on page 3 of the Additional Clause Addendum by clicking [HERE](#).

The **UNREPRESENTED BUYER NOTICE** clause should be utilized anytime the buyer is not represented. Notices in Arizona REALTORS® purchase contracts are delivered to the buyer’s broker (Section 8m). Since the buyer has no broker representation, there is no buyer broker to deliver notices to. This new additional clause removes the sections of the purchase contract that identify a buyer broker and provides the unrepresented buyer’s consent to receive notices to them in person, by email (if inserted), or by overnight courier service.

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ENHANCING MEMBER VALUE THROUGH STRATEGIC BUDGET CHANGES

As your state REALTOR® association, our priority is to ensure that your dues are invested in programs and services that provide the greatest value to your business and profession. To keep annual dues at \$175 per member, we must exercise prudent financial management and closely monitor expenses. This responsibility is particularly important during today's challenging real estate market, which has a direct effect on the Association's REALTOR® membership levels.

Based on a current review of unused and underutilized member benefits, and with a commitment to being responsible stewards of your resources, the 2026 Executive Committee has passed an Operating Budget for 2026 that discontinues both the Arizona REALTORS® app as well as its Single Sign-On platform.

While Single Sign-On has been a valued offering, current technology has reduced its usefulness to the point that it is now utilized by less than 6% of Arizona REALTORS®. The primary reason is that individual websites now offer users the option to save their username and password, eliminating the need to re-enter this information each time the website is accessed.

For those who wish to implement a new SSO solution, a practical step is to use a secure password manager, thereby avoiding the need to memorize multiple logins. One such option is RoboForm, a program that installs on your computer to securely manage all your passwords.

Conveniently, the Arizona REALTORS®, via its [Tech Marketplace](#), provides its members with a 33% discount when purchasing RoboForm. Members can therefore purchase a one-year subscription to RoboForm for the discounted price of only \$19.90.

As for the Arizona REALTORS® app, it was intended to be a scaled-down version of the association's website that members could easily access while in the field.



However, the app was not widely utilized, and the Arizona REALTORS® is already in the process of redesigning its website to make it more mobile-friendly.

We know these changes may be disappointing to some, and we want to thank you for the trust you place in us to make decisions that protect both the long-term health of our association and the affordability of membership. Please know that we remain committed to providing you with high-impact tools and services, and we will continue to explore new ways to bring value to your membership.





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**LEGAL
INFORMATION**

The Hotline is provided by the attorneys at
Zelms Erlich & Lenkov.



THE ARIZONA REALTORS® LEGAL HOTLINE IS DESIGNED:

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

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

For More Information
Please Contact

Jamilla Brandt, Arizona REALTORS®
Risk Management Coordinator at:

jamillabrandt@aaronline.com

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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.

TIME STAMP NOT REQUIRED FOR CONTRACT TO BE VALID

FACTS: Seller accepted buyer's offer. When the listing agent sent the acceptance over to the buyer's agent, the buyer's agent insisted the acceptance was not valid without a "time stamp."

ISSUE: Does the seller need to put the time on the contract?

ANSWER: No.

DISCUSSION: A contract consists of an offer, acceptance, consideration, and delivery of the document.

When the listing agent sent the accepted offer over to the buyer's agent within the acceptance timeframe, the electronic delivery provided a time stamp, and the buyer can rely on that electronic communication time stamp. However, if an offer is dropped off at an office or otherwise delivered without a time stamp, it would be prudent for the agent to establish a paper trail such as a text or email indicating that the offer was delivered in order to provide a time line.

Best business practice tip: *The listing agent can ask the seller to provide the time when the seller is signing the offer so there won't be any doubt the seller signed the document within the acceptance timeframe.*

BROKER / LICENSEE SECURITY DEPOSITS IN TRUST ACCOUNT LIKELY COMMINGLING

FACTS: A brokerage has a property management division and manages 300 properties. Licensees John, Jill and Joe have their license with the brokerage, and they personally own rentals that are managed by the brokerage.

The brokerage has one trust account to hold all of the security deposits and rent for the 300 rentals.

ISSUE: May the brokerage hold the security deposit or other funds on behalf of John, Jill and Joe in the brokerage's trust account?

ANSWER: No.

DISCUSSION: In Arizona, under the laws of Agency a licensee is viewed as the same person as the broker. Therefore, if the brokerage holds John, Jill and Joe's funds in the trust account, the brokerage has likely commingled funds.

Based on the above, the brokerage should open a second trust account to separately hold John, Jill and Joe's funds.

See, Arizona Department of Real Estate Model Broker's Policy and Procedures Manual, page 36.

LEASED SPACE MUST BE LICENSED AS A BRANCH OFFICE

FACTS: A licensee owns and manages several rental properties. The licensee leases space out of an office complex to meet potential tenants because he does not live close to the brokerage.

ISSUE: Does the broker need to license the office space as a branch office?

ANSWER: Yes.

DISCUSSION: A.R.S. § 32-2127(A): *If a broker maintains more than one place of business within the state, the broker shall procure an additional license for each branch office maintained.*

In this instance, the licensee is leasing space and meeting

with potential tenants there on a regular basis. Therefore, the office space must be licensed as a branch office.

TRANSFER OF OWNERSHIP INTO AN LLC MAY AFFECT YOUR TITLE INSURANCE

FACTS: John Smith, a single man, purchased a property as his sole and separate property. After close of escrow, John Smith formed an LLC for tax purposes. John Smith then transferred ownership of the property by executing a Quit Claim Deed from himself to his LLC.

ISSUE: Is the title insurance policy affected when an individual transfers his property into an LLC?

ANSWER: Probably.

DISCUSSION: An LLC is a legal person; therefore, the property is now owned by the LLC, not John Smith. Therefore, John Smith would no longer have title insurance on the property unless he paid for an additional insured endorsement.

Best business practice tip: If an individual is transferring ownership of a property into an LLC, or other entity, he/she should consult with a title company for information on obtaining an additional insured endorsement.

LEASE FOR SINGLE FAMILY RESIDENCE CAN ALLOCATE MAINTENANCE AND REPAIR OF THE SPRINKLER SYSTEM TO THE TENANT

FACTS: The residential lease agreement for the single-family residence requires the tenant to maintain the yard, including the low-voltage lights and the sprinkler system. The sprinkler system recently sprung a significant leak. The tenant turned off the sprinkler system to avoid flooding, but now the plants are dying. The tenant claims the Residential Landlord Tenant Act requires the landlord to repair the sprinkler system.

ISSUE: Is the landlord required to repair the sprinkler system?

ANSWER: No.

DISCUSSION: The Residential Landlord Tenant Act allows the parties to agree in a rental agreement that the tenant is required to repair and maintain certain items, including the yard and related systems. A.R.S. §. 33-1324(C).

Accordingly, the Residential Landlord Tenant Act does not require the landlord to repair the sprinkler system based on the language in the lease. Rather, the tenant is obligated to make the repairs based on the parties' agreement.

PURPOSE OF NONREFUNDABLE DEPOSIT MUST BE IN WRITING

FACTS: A potential tenant inquired on a rental. After submitting an application to the property manager, the property manager sent a text message to the potential tenant advising the tenant that his "application was accepted," and to send a \$500.00 deposit to the office. The property manager notified the potential tenant that the \$500.00 earnest money was nonrefundable.

No lease had yet been signed by the potential tenant.

ISSUE: Can the property manager ask for a nonrefundable deposit prior to a lease being signed?

ANSWER: See discussion.

DISCUSSION: A.R.S. § 33-1321(B) states: The purpose of all nonrefundable fees or deposits shall be stated in writing by the landlord. Any fee or deposit not designated as nonrefundable shall be refundable.

Because the property manager has not indicated in writing what the nonrefundable deposit is for, the property manager's request is improper.

A COUNTER OFFER IS A REJECTION OF THE OFFER

FACTS: Buyer presented an offer on a commercial property to a seller. Seller signed the offer, failed to mark "counter offer is attached," but subsequently sent the signed offer together with a counter offer to the buyer.

The next day, before buyer sent the signed, accepted counter offer, seller sent a written withdrawal stating he "withdrew the counter offer."

ISSUE: Is there a contract if the seller withdrew the counter offer prior to it being accepted?

ANSWER: No.

DISCUSSION: The seller's counter offer had the same legal effect as rejecting the buyer's offer. Therefore, because the buyer had not yet accepted and delivered the signed counter offer, once the seller withdrew the counter offer the negotiations ended.

SELLER NOT OBLIGATED TO SELL EVEN IF FULL PRICE OFFER RECEIVED

FACTS: Seller has subdivided three acres. Seller will retain two acres to live on but has offered one acre for sale.

Seller receives a full-price offer from a buyer who wants to live on the one acre and intends to open a trapeze school

at the property, as well. The County states the zoning of the property would allow the trapeze school.

The seller subsequently rejects the buyer's offer because he doesn't want to live next to a business (the trapeze school).

ISSUE: Can a seller reject an offer by a buyer based on the intended use of the property by the buyer?

ANSWER: Yes.

DISCUSSION: A listing agreement is not a binding agreement to sell. The seller is simply making an invitation to have a buyer make an offer.

In this instance, the seller has rejected the buyer's offer because the seller does not want to live next to a business and may therefore reject the buyer's offer, even if the offer is full price.

MULTIPLE-COUNTER OFFER FORM MAY BE USED AT ANY TIME DURING NEGOTIATIONS

FACTS: Buyer's agent submitted an offer on behalf of buyer to listing agent. Listing agent subsequently sent counter-offer 1 to buyer's agent. While buyer is reviewing counter-offer 1, listing agent receives another offer.

Listing agent thereafter withdraws counter-offer 1 and sends over a multiple counter-offer form to the buyer.

ISSUE: Can the listing agent use a multiple counter-offer form if negotiations were already underway with buyer?

ANSWER: Yes.

DISCUSSION: The Statute of Frauds holds that a contract for the sale of real property must be in writing and signed by the party to be charged to be enforceable. A.R.S. §44-101(6). Because the buyer did not sign and deliver acceptance of counter-offer 1, the seller is entitled to withdraw the counter-offer and negotiate with multiple parties until a contract is formed using the Multiple Counter-Offer form.

FINANCING TERMS (SECTION 2) DO NOT APPLY IN ALL CASH SALE

FACTS: Buyer makes a cash offer to seller. Seller accepts the offer and escrow is opened. Thereafter, the buyer decides he would like to get a loan. Buyer drafts an addendum stating that buyer will obtain a loan, but if financing fails for any reason, buyer will still pay cash and close on time.

Seller refuses to sign the addendum.

ISSUE: Can the seller refuse to sign the addendum allowing the buyer to get a loan?

ANSWER: Yes.

DISCUSSION: Pursuant to the contract, when a buyer makes a cash offer, section 2 (Financing) of the contract does not apply. Therefore, section 2k is not in effect and the buyer has no right to change the financing terms without seller agreement.



ABOUT THE AUTHOR

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Richard V. Mack, a partner in the Phoenix office of Zelms Erlich & Lenkov, has been a lawyer since 1990. He is a State Bar of Arizona certified real estate specialist and AV Preeminent® by Martindale Hubbell. He has also been designated as a 2008–2012 and 2014–2021 Super Lawyer and is a member of Arizona's Finest Lawyers. Mr. Mack also serves on the Arizona State Bar Real Estate Advisory Commission, which oversees the Real Estate Specialization Program, serving as vice chair in 2021. Mr. Mack 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 BBA with an emphasis in economics, and received his JD from the University of Arizona.

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