



**K. Michelle Lind, Esq.**  
General Counsel / Certified Real Estate Specialist

February 12, 2008

Ms. Sheryl Skillern, Section 1018 Lead Disclosure Rule Enforcement Coordinator  
Environmental Protection Agency  
75 Hawthorne Street (CMD-4-2)  
San Francisco, California 94105-3901

Re: Arizona Association of REALTORS® ("AAR") Lead Based Paint Disclosure issues

Dear Ms. Skillern:

I am General Counsel to AAR and I have corresponded with your office in the past regarding various lead based paint disclosure issues. As I have indicated, AAR and its members are committed to compliance with the lead based paint disclosure requirements. I am writing to obtain confirmation that a lead based paint disclosure signed and stored electronically is compliant with the law, rules and regulations.

We understand that 42 USCS § 4852d and associated rules and regulations requires that before a buyer (or tenant) is obligated under any contract to purchase (or lease) a home constructed prior to 1978 ("target housing"), the seller (or landlord) must disclose information about lead-based paint and its hazards. Several Arizona Multiple Listing Services ("MLS") have the seller prepare and sign all of the appropriate lead-based paint disclosure forms, which are input into the MLS with the notation that the seller's and listing agent's original signatures are on file. The electronic lead-based paint disclosure is therefore available to any MLS participant who searches that particular listing. Thus, before any buyer submits an offer on the target housing, the buyer can receive and sign this MLS lead-based paint disclosure form. In 2001, it was confirmed that such an MLS electronic disclosure is acceptable as long as the buyer receives and signs the disclosure form before the point of obligation and the buyer's agent obtains a copy of the original disclosure form signed by the seller (and listing agent) and attaches it to the form signed by the buyer (and cooperating agent), so that the disclosures "add up" to a single completed form for the file.

As a result of technology advances, AAR is developing a state-wide electronic transaction management system that can virtually replace a broker's transaction file. The transaction management system allows for electronic signatures on electronic documents, which are stored in a secure manner via the Internet. These electronic transactions are legal due to the Arizona Electronic Transactions Act, which provides that a contract formed by an electronic record cannot be denied legal effect and enforceability solely because it was formed electronically and a signature in electronic form cannot be denied legal effect and enforceability solely because it is in electronic form. A.R.S. §44-7007(A-B). An electronic

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record and electronic signature satisfies any law that requires a signed writing. A.R.S. §44-7007(D).

Thus, the lead based paint disclosures can be delivered, signed and stored electronically. I would like to confirm that lead based paint disclosures that are signed and stored electronically will be deemed compliant with the law, rules and regulations.

If you would like further information regarding this issue, or would like to discuss this matter further, please do not hesitate to contact me. Thank you for your assistance.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'K. Lind', with a long horizontal flourish extending to the right.

K. Michelle Lind  
General Counsel

Cc: Ty Strout, CEO, AAR  
Ron LaMee, VP Information Management, AAR  
Craig Sanford, AAR Transaction Management Committee



U.S. DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT  
WASHINGTON, DC 20410

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
WASHINGTON, DC 20460



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Ms. K. Michelle Lind  
General Counsel  
Arizona Association of Realtors  
255 East Osborne Road, Suite 200  
Phoenix, Arizona 85012-2358

RE: The Lead-Based Paint Disclosure Rule; Electronic Disclosure and Signature

Dear Ms. Lind:

This letter is in response to your letters of February 12, 2008, and June 9, 2008, to the U.S. Environmental Protection Agency's (EPA's) Region 9, regarding the Lead-Based Paint Disclosure Rule ("Disclosure Rule"),<sup>1</sup> which implements Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("Section 1018"). 42 U.S.C. § 4852d. You requested a clarification of the status of electronic disclosure and electronic signatures under the Disclosure Rule.

In 2000, Congress enacted the Electronic Signatures in Global and National Commerce Act ("E-SIGN"). 15 U.S.C. § 7001. E-SIGN prohibits denying legal effect or validity to electronic signatures or records solely because of their electronic form. It is important to note that E-SIGN provides special consumer protections where a pre-existing statute requires information be provided to a consumer in writing. 15 U.S.C. § 7001(c)(1). Section 1018 is such a statute. 42 U.S.C. § 4852d(a)(1)-(4).

As a result, the consumer protection requirements of E-SIGN must be met when lead disclosure is performed electronically. For example, these protections include, but are not limited to, the requirement that the purchaser or lessee, prior to consenting to receive disclosure electronically, receive a clear and conspicuous statement of the:

- Right to receive paper documents;
- Procedures to withdraw consent and any consequences of such a withdrawal; and
- Hardware and software requirements for accessing and retaining electronic records.

The purchaser or lessee must then provide affirmative consent to using electronic disclosure; this consent must be made electronically in a manner that reasonably demonstrates that they can access the electronic disclosure records. Please refer to E-SIGN, especially to 15 U.S.C. § 7001(c)(1), for more information on these requirements. In addition, please note

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<sup>1</sup> The Disclosure Rule is codified by the U.S. Environmental Protection Agency at 40 CFR part 745, subpart F, and by the U.S. Department of Housing and Urban Development at 24 CFR part 35, subpart A; it is posted at <http://www.epa.gov/lead/pubs/leadbase.htm> and <http://www.hud.gov/offices/lead/enforcement/disclosure.cfm>, by the two agencies, respectively.

that the Disclosure Rule requires that disclosure certification and acknowledgment information be retained. 24 CFR 35.92(c); 40 CFR 745.113(c).


EPA and HUD are concerned about technology access, accuracy, and record integrity issues for purchasers and lessees. Sellers, lessors and their agents should ensure that the use of electronic technology does not inadvertently deny full and complete access to disclosure materials to any purchasers or lessees. In order to ensure successful electronic disclosure, we suggest that your members consult the requirements of E-SIGN as well as those of the Disclosure Rule and any other applicable state or federal requirements. They should consider, for example, how they will:


- Ensure that purchasers and lessees affirmatively consent to the use of electronic records and are informed of their associated rights.
- Obtain the electronic signature of the purchaser, lessee, agent(s), seller and/or lessor, and confirm each person's identity.
- Ensure that the disclosure forms are not altered after transmission and/or signature, and remain accessible to the purchaser, lessee, EPA and HUD.
- Safeguard sensitive personal information that may be present in records or reports pertaining to lead-based paint or lead-based paint hazards.

You should be aware that our agencies' Lead Disclosure Rule compliance assistance programs do not include prospectively reviewing or endorsing particular electronic disclosure procedures.

We thank you for your interest in clarifying the status of electronic disclosure and signature under the Lead-Based Paint Disclosure Rule in order to accurately advise your members about this issue. If you have any additional questions on this issue, or on the Disclosure Rule in general, please do not hesitate to contact either Mr. John Wilkins of EPA, at (202) 566-0477, or Ms. Zuleika Morales-Romero of HUD, at (202) 402-7683.

Sincerely,

  
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Jon L. Gant, Director  
Office of Healthy Homes and Lead Hazard  
Control  
U.S. Department of Housing and Urban  
Development

  
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Maria J. Doa, Ph.D., Director  
National Program Chemicals Division  
Office of Pollution Prevention and Toxics  
U.S. Environmental Protection Agency