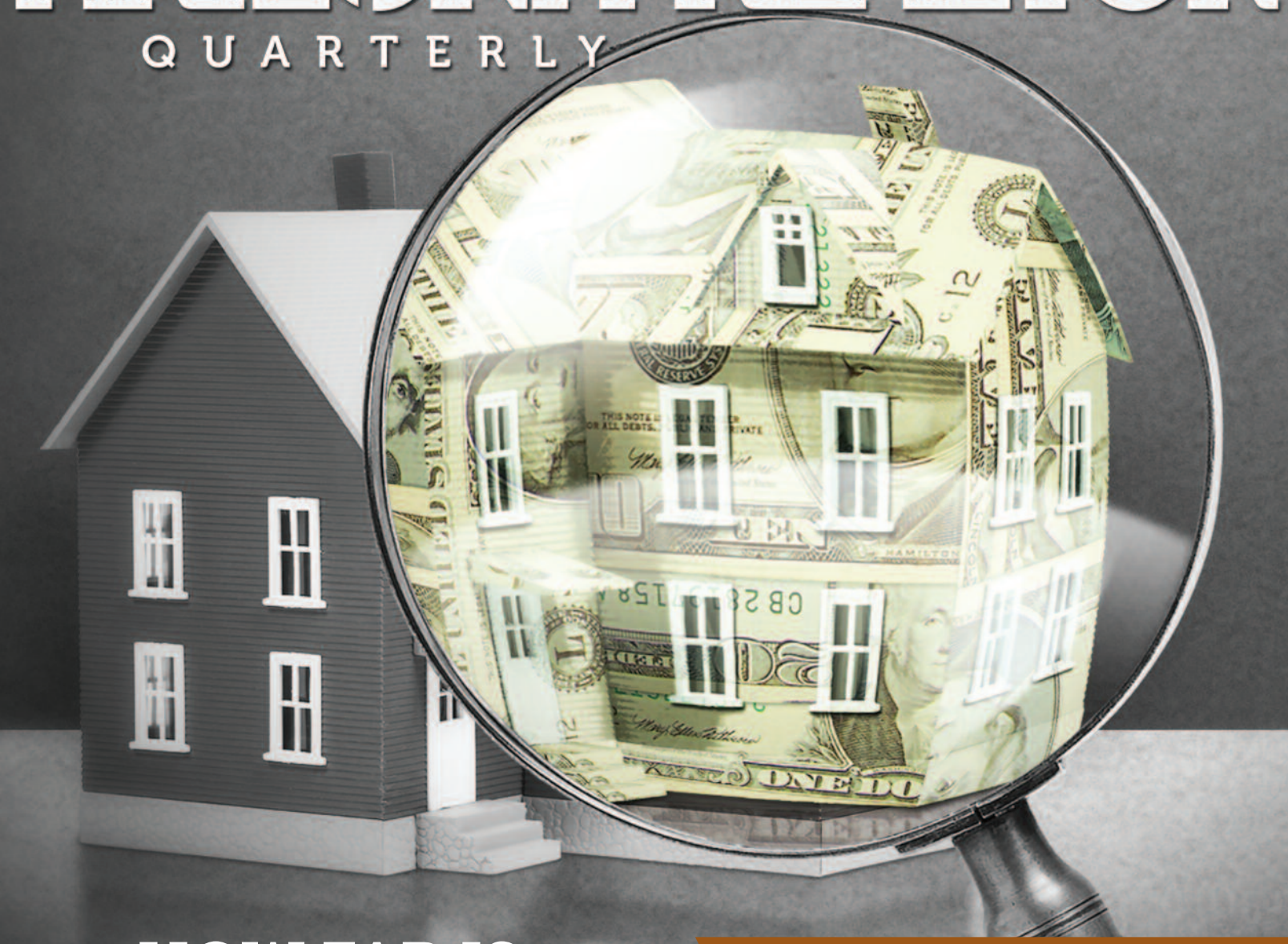
FALL 2013

ARIZONA REALTOR® QUARTERLY



HOW FAR IS TOO FAR?

Balancing Appraisal Independence Against a REALTOR®'s Obligation to Promote the Client's Interests.

Page 4

Arizona REALTOR® Quarterly is Going Digital in 2014!

Same great content & more environmentally friendly! — DETAILS ON PAGE 3

ARIZONA association of REALTORS®

REAL SOLUTIONS. REALTOR® SUCCESS.

NEW FEATURE FROM AAR:

AAR MAKES ENHANCEMENTS TO FIND A REALTOR® RESULTS

In June, more than 6,000 searches were performed on AAR's Find A REALTOR® Search. Now, AAR gives you more options for enhancing your profile and making you even more attractive to potential clients. In addition to your first and last name, email address, city and designation(s), you can now choose to have the following information displayed in your profile:

Your photo
(Not to exceed 2.5 MB)

Mobile Phone Number

Personal Website

Blog URL

Facebook Page

Twitter Handle

Google+ Page

LinkedIn Profile

YouTube Channel URL

Areas Served
(e.g. Scottsdale, West Valley, Sun City, etc.)

Specializations
(e.g. horse properties, senior housing, etc.)

And a 500 character bio.

To get started, simply login to the AAR website, www.aaronline.com and click on the My Account tab on the top, right-hand side of the screen. (If you've forgotten your password, you can get a new one here.)

http://www.aaronline.com/login/forgot-password/

Once you've entered all of the information, make sure to click the update profile button.

The My Account tab is also where you can go an update your password information. ❇

ARIZONA association of REALTORS®
REAL SOLUTIONS. REALTOR® SUCCESS.

REALTOR®

EQUAL HOUSING OPPORTUNITY

Arizona REALTOR® Quarterly
& Arizona REALTOR® Magazine

ARIZONA REALTOR® QUARTERLY IS GOING DIGITAL!

As a valued member of Arizona Association of REALTORS® (AAR), your livelihood depends on making sure you have accurate, credible information regarding real estate in Arizona. Beginning in 2014, AAR will be providing you with the Arizona REALTOR® Quarterly in a digital format, making it easier for you to access on-the-go (and we'll save a few trees along the way).

Starting in 2014, you'll receive the *Arizona REALTOR® Quarterly* in your email inbox four times a year. You can also browse archived issues on AAROnline.com. Rest assured that you'll still receive the same great content each quarter, including:

- **Updates from AAR CEO Michelle Lind and General Counsel Scott M. Drucker, Esq.**
- **A comprehensive compilation of Legal Hotline Q&As from the previous three months**
- **Our most-popular and thought-provoking articles from the previous monthly issues**

In this new electronic format, you can easily download and print materials for quick reference, or share the content electronically with your colleagues and staff.

We hope that this change makes it easier for you to reference, consume and archive the information we provide you each quarter.

If you have any questions, please contact AAR at editor@aaronline.com

Thank you for being a member of AAR!

IN THIS ISSUE

ARIZONA REALTOR® QUARTERLY

Arizona REALTOR® Magazine — July 2013

HOW FAR IS TOO FAR?

Balancing Appraisal Independence Against a REALTOR®'s Obligation to Promote the Client's Interests.

BY SCOTT M. DRUCKER, ESQ., AAR GENERAL COUNSEL

Signed into law on July 21, 2010, the Dodd–Frank Wall Street Reform and Consumer Protection Act is intended to restore responsibility and accountability to our financial system. Addressing such an extensive topic, the Act necessarily has broad and deep implications that touch virtually every corner of the financial services market. With the stated purpose of preventing inflated appraisals that are alleged to have contributed to the recent financial crisis, the Act includes appraiser independence provisions that REALTORS® must understand and abide by in order to lawfully and effectively represent their clients.

No one disputes that appraisers are charged with formulating an independent and unbiased opinion of the value of real property. For this reason the Dodd-Frank Act, Section 1472, makes it unlawful to engage in any act that violates appraisal independence. Nevertheless, REALTORS® pledge themselves to promote the interests of their client and consequently often advocate on their client's behalf. The question that therefore presents itself is to what lengths a REALTOR® can go to advocate for their client before they infringe upon an appraiser's right to autonomy.

The Dodd-Frank Act very clearly prohibits four acts or practices that violate appraisal independence. They are:

1. **seeking to compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate anyone or anything conducting or involved in an appraisal for the purpose of causing the appraised value assigned to be based on any factor other than the independent judgment of the appraiser;**
2. **mischaracterizing the appraised value of the property;**
3. **seeking to influence an appraiser to encourage a targeted value in order to facilitate the making or pricing of the transaction; and**
4. **withholding or threatening to withhold payment when the appraisal report or services are provided for in accordance with the contract between the parties.**

Notably, nothing in the Dodd-Frank Act prohibits appraisers from speaking with REALTORS® during the appraisal process. While real estate licensees can in no way intimidate or bribe an appraiser, agents may talk with appraisers and provide the appraiser with relevant property information, including a copy of the executed Residential Resale Real Estate Purchase Contract. Additional permissible actions are set forth in Regulation Z of the Truth in Lending Act, 12 CFR § 226.42(c)(3), and include:

1. **asking a person that prepares a valuation to consider additional, appropriate property information, including information about comparable properties, to make or support a valuation;**
2. **requesting that a person that prepares a valuation provide further detail, substantiation, or explanation for the person's conclusion about the value;**
3. **asking a person that prepares a valuation to correct errors in the valuation;**
4. **obtaining multiple valuations and selecting the most reliable;**
5. **withholding compensation due to breach of contract or substandard performance of services; and**
6. **taking action permitted or required by applicable federal or state statute, regulation, or agency guidance.**

It is important to remember that the ethics rules contained within the Uniform Standards of Professional Appraisal Practice (USPAP) require appraisers to protect the confidential nature of the appraiser-client relationship. Appraisers are therefore prohibited from disclosing confidential information and/or assignment results to anyone other than the client, persons authorized by the client, third parties authorized by law or a duly authorized peer review committee. In order to request the correction of errors following completion of an appraisal, REALTORS® may therefore need to pursue the matter through the lender (i.e. the client) as an intermediary.

While the Dodd-Frank Act mandates compliance with appraisal independence requirements, REALTORS® can, and should, still seek to promote the interests of their clients in regard to erroneous opinions of value. But in doing so, REALTORS® must not violate appraiser autonomy as compromising independence impacts the integrity and accuracy of the appraisal. ❊

ABOUT THE AUTHOR

Scott M. Drucker, Esq.

Scott M. Drucker, Esq. is General Counsel to the Arizona Association of REALTORS® (AAR). He serves as the primary legal advisor to the association. Scott oversees AAR's Risk Management Committee, which includes professional standards administration for 20 of the state's local REALTOR® associations, and the development of standard real estate forms. Please note that this post is of a general nature and may not be updated or revised for accuracy as statutes and case law change following the date of first publication. Further, this post reflects only the opinion of the author, is not intended as definitive legal advice and you should not act upon it without seeking independent legal counsel.

Advice from an Appraiser

The sultry combination of low inventory and low interest rates are causing bidding wars for homes at all prices in Arizona. While this could be an exciting time for REALTORS®, that excitement can be quickly subdued when an appraisal comes back significantly below the bid price. And who looks like the bad guy? The appraiser.

John Dingeman is an Arizona appraiser with Priority Appraisal, LLC who takes his job very seriously and states, "most all mortgage financial transactions are federally regulated, which means the appraisal associated with the loan is under extreme scrutiny; more so now than ever since the 2004-2006 real estate frenzy." He also wants to remind agents that at the end of the day "an appraiser's role is to act as a disinterested third-party in the transaction." Based on his years of experience, Dingeman offers some guidelines for agents to consider when choosing comparable sales.

http://www.priority-appraisal-llc.com/

UNDERSTAND WHAT A "TRUE" COMPARABLE IS

The problem with choosing a price based solely on price-per-square-foot is that "it doesn't take into account other amenities or improvements like pools, garages or other upgrades that might have been done to the home," says Dingeman. "You have to compare apples to apples, not apples to grapefruits; which occurs when all of the sales are lumped together."

"Another issue where agents seem to struggle is what is actually included in the gross living area or what constitutes a bedroom," said Dingeman. He gives the example of an attached casita with a separate entrance off of the home, "that's not considered a bedroom or extra square footage." Getting a better picture of what the listing is really like with regards to other similar homes will help tremendously when counseling your buyers and sellers on price, not to mention a more accurate appraisal.

>>

ADVICE FROM AN APPRAISER — CONTINUED

GET TO KNOW THE NEIGHBORHOOD

"A single sale does not make the market," said Dingeman. "Do some research to find out if there are a lot of flips taking place in this area." Consult with other agents for their insight; ones who may be more familiar with the area than you. "I will regularly drive through the neighborhoods, especially if I see an anomaly in the marketplace," said Dingeman.

PAY IT FORWARD

Dingeman also gives this suggestion to agents, "update your listing post-sale." Appraisers do not physically inspect the interior of the comparables, so appraisers rely, in part, on the photos and remarks provided by the agents in their MLS. "Making comments in a listing post-sale can really put a property in the right perspective, not only for appraisers but other agents as well."

"We're in a similar market now as we were in 2005," comments Dingeman. "This time, the lenders are taking a different approach and placing more restrictions on lending. If the house appraises for $100,000, lenders are no longer lending at 100 to 120 percent of the appraised value. But offering only equal to, or something less than." Take time to counsel your buyers and sellers on the market, and you'll find yourself in a better position to land the sale and make a homebuyer's dream come true. ❄

Arizona REALTOR® Magazine — August 2013

NEW PROPERTY MANAGEMENT/ LEASING FORMS

BY LISA SUAREZ, CRS

The Arizona Residential Landlord and Tenant Act (ARLTA) regulates the rights of tenants and obligations of landlords in the rental of dwelling units. Many protections are provided to tenants in the ARLTA. Especially critical are those statutes that ensure property managers are in compliance when it comes to delivering the proper notices to tenants. Continuing to provide essential tools in risk management, the Arizona Association of REALTORS® (AAR) introduces five new property management forms that better enable property managers to comply with their statutory obligations.

NOTICE OF ABANDONMENT

The Notice of Abandonment informs the tenant that the landlord considers the premises to be abandoned. This form outlines the differences between abandonment "with personal property" and abandonment "without personal property". In addition, the form provides a specific timeline and step-by-step instructions a landlord may follow to regain possession of the premises, including changing door locks, taking inventory and disposing of personal property. A.R.S. § 33-1370 requires the landlord to send this notice via certified mail, as well as post the notice on the door or other conspicuous place on the property for a period of five days.

http://www.aaronline.com/wp-content/uploads/2013/07/SAMPLE_Notice-of-Abandonment1.pdf

NOTICE OF NONRENEWAL OF LEASE AGREEMENT

The Notice of Nonrenewal of Lease Agreement provides the tenant proper notice that the lease will not renew and the tenant must vacate the premises. If the AAR

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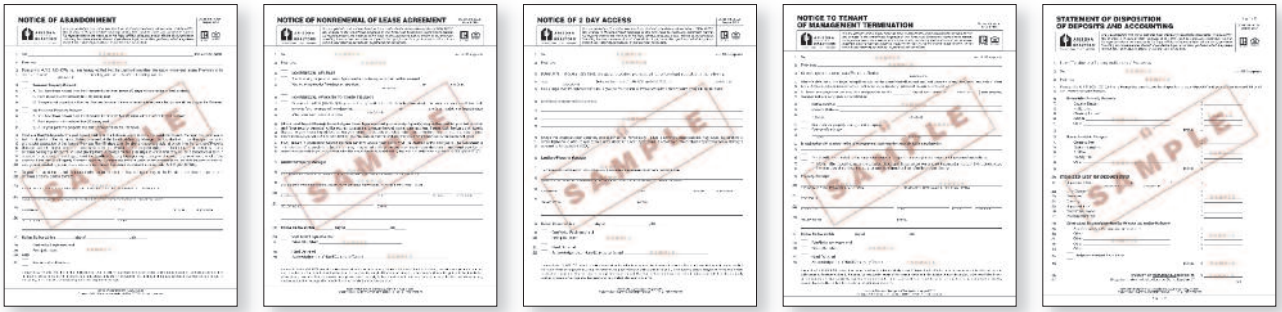


NEW PROPERTY MANAGEMENT / LEASING FORMS — CONTINUED

Residential Lease Agreement is used, it is essential for the landlord to provide notice of their desire not to renew on, or prior to, the last rental due date of the original lease term. The form may also be used to provide proper 30-day notice to terminate a month-to-month tenancy. In addition, this form includes a helpful provision explaining that the tenant may not use the security deposit as last month's rent, but must pay rent through the term of the lease agreement.

http://www.aaronline.com/wp-content/uploads/2013/07/SAMPLE_Notice-of-Nonrenewal-of-Lease-Agreement.pdf

NOTICE OF 2-DAY ACCESS

The Notice of 2-Day Access provides notice to the tenant of the landlord's intent to enter the rental unit for the purpose of inspecting the premises, making necessary or agreed repairs, improvements or services, or showing the property to prospective purchasers, mortgagees, tenants, workmen or contractors. In case of an emergency, the landlord may enter the property without the prior consent of the tenant.

http://www.aaronline.com/wp-content/uploads/2013/07/SAMPLE_Notice-of-2-Day-Access1.pdf

NOTICE TO TENANT OF MANAGEMENT TERMINATION

The Notice to Tenant of Management Termination is useful in providing the tenant with proper notice that the property management company will no longer manage the property the tenant is leasing. The form allows the management company to provide instructions on where to direct future rents, notices, payments of any kind, and repair requests. The transfer, or return, of the security deposit may also be noted in this form. This includes details on how the security deposit will be handled if the leased premises are subject to a foreclosure.

http://www.aaronline.com/wp-content/uploads/2013/07/SAMPLE_Notice-to-Tenant-of-Management-Termination1.pdf

STATEMENT OF DISPOSITION OF DEPOSITS AND ACCOUNTING

The Statement of Disposition of Deposits and Accounting allows the landlord the opportunity to provide to the tenant a detailed accounting of the charges or deductions attributable to the tenant's security deposit, whether refundable or non-refundable, and whether a judgment has been obtained. Line one stipulates the date of "termination of tenancy" and "delivery of possession," which are critical. Within 14 days of that date, excluding Saturdays, Sundays or other legal holidays, the landlord shall provide the tenant an itemized list of all deductions together with the amount due and payable to the tenant. In the event the tenant owes a balance to the landlord, the form contains a demand for payment and provides notice that this is an attempt to collect a debt. ❇

http://www.aaronline.com/wp-content/uploads/2013/07/SAMPLE_Statement-of-Disposition-of-Deposits-and-Accounting.pdf

The AAR Property Management Ancillary Forms committee did an excellent job in the creation of these forms. Each form is user-friendly and easy to read and implement. We hope you find the forms helpful in applying the applicable landlord tenant statutes set forth in the ARLTA.

Lisa Suarez

NOTE: Along with the author of this article, Lisa Suarez, who served as the chair of this forms workgroup, AAR would like to thank the other workgroup members: Sue Flucke, Jeff Hockett, Jacquie Kellogg, Mike Mumford, Alberta Shantz and Brad Snyder, along with AAR staff Scott Drucker, Christina Smalls and Jan Steward.

DO WE AGREE?

Examining the Short Sale Agreement Notice

Licensees familiar with short sales are acutely aware of lines 22-23 of the Short Sale Addendum to the Residential Resale Real Estate Purchase Contract (purchase contract) which state, "If Seller and Seller's creditors enter into a short sale agreement, the Seller shall immediately deliver notice to Buyer ('Agreement Notice')." While this language has resulted in the widespread use of the Arizona Association of REALTORS® standard agreement notice, the following questions are frequently posed by licensees using the form.

http://www.aaronline.com/wp-content/uploads/2013/01/sample-agreement-notice-to-short-sale-addendum.pdf

http://www.aaronline.com/wp-content/uploads/2012/11/sample-residential-purchase-contract1.pdf

QUESTION 1

When issuing the agreement notice, is the seller required to simultaneously convey to the buyer a copy of the actual short sale approval letter issued by the lender?

Answer

No. Neither the purchase contract, the short sale addendum, or the agreement notice require the seller to disclose to the buyer the lender's short sale approval letter.

http://www.aaronline.com/wp-content/uploads/2012/12/sample-agreement-notice-to-short-sale-addendum.pdf

QUESTION 2

Can the seller elect to provide the buyer with a copy of the actual short sale approval letter received from the lender?

Answer

Yes. Although not required, there is nothing that prohibits the seller from deciding to share the lender's short sale approval letter with the buyer.

QUESTION 3

If the seller instructs the listing agent to convey a copy of the lender's short sale approval letter to the buyer or the buyer's agent, what steps should the listing agent take to protect themselves and their seller?

Answer

Before conveying the lender's short sale approval letter to the buyer or buyer's agent, the listing agent should have written instructions from the seller in their transaction file authorizing them to disclose the lender's letter. The listing agent should also redact any account numbers and social security numbers that appear on the letter. Finally, the listing agent should ask the seller if there is any other information in the letter that the seller deems confidential and would like redacted.

QUESTION 4

Once issued, can the agreement notice be revoked by the seller?

Answer

No. Upon execution and conveyance of the agreement notice, the seller is bound to the transaction and unable to subsequently claim that they failed to reach a mutually acceptable agreement with their lender(s).

QUESTION 5

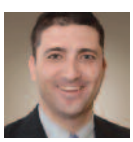
Why does the agreement notice not contain a signature block for the buyer?

Answer

The agreement notice is a unilaterally issued notice in which the seller informs the buyer that seller and seller's lender(s) have reached an agreement acceptable to each that will allow the short sale to proceed. The agreement notice is deemed delivered and received pursuant to Section 8m of the purchase contract when: "(i) hand-delivered; (ii) sent via facsimile transmission; (iii) sent via electronic mail, if email addresses are provided herein; or (iv) sent by recognized overnight courier service, and addressed to buyer as indicated in Section 8r." ❄

ABOUT THE AUTHOR

Scott M. Drucker, Esq.



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Arizona REALTOR® Magazine — June 2013

FLOOD HAZARD AREA INFORMATION AVAILABLE

Floods are the most common and widespread of all natural disasters. Heavy monsoon storms, which are common in Arizona, can produce flash flooding in rivers, washes and other areas where rainwater flows. They can occur with little or no warning and reach full peak in only a few minutes.

The City of Phoenix can help REALTORS® identify whether a property is located in a special flood hazard area and if elevation certificates are available. Contact the Floodplain Management Section at 602-262-4960. Floodplain Management, located in Phoenix City Hall, 200 W. Washington Street, 5th Floor, Phoenix, AZ 85003-1611, is open weekdays from 8am until 5pm. In Tucson, visit the Development Services Department website (under Engineering Forms) or come by the department in person at the Public Works Building, 201 N. Stone – First Floor, Tucson, AZ 85701. Flagstaff residents can visit www.flagstaffstormwater.com (click on Floodplain) or call 928-779-7650 x7213 for help.

http://www.phoenix.gov/devpro/floodpl.html

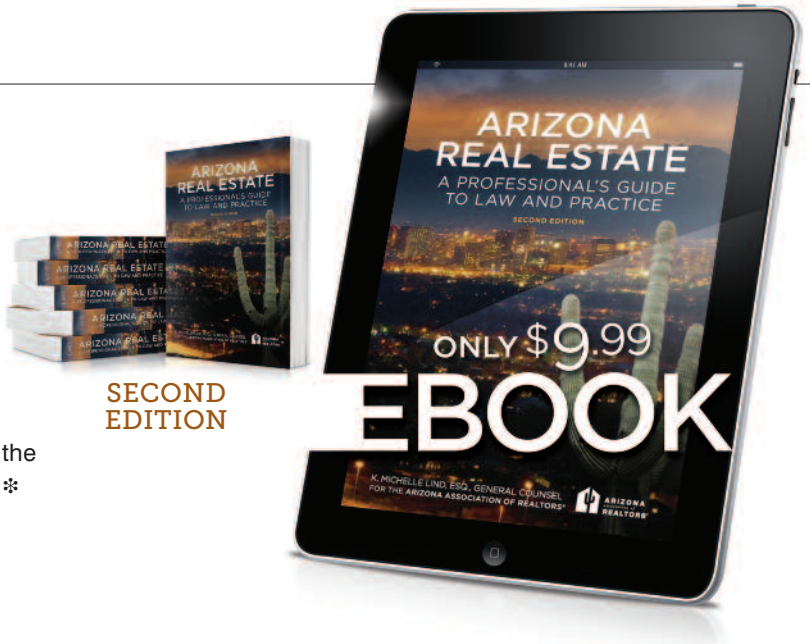
http://tucsonaz.gov/dsd/Forms_Fees___Maps/Applications/applications.html

Homeowners should be aware of the importance of flood-proofing and insuring a flood-prone home. To protect a home from flood losses, homeowners can purchase flood insurance through the National Flood Insurance Program. Homeowner's policies do not cover flood damage. Owners should contact an insurance agent for information on flood insurance. ❊

LEGAL ANSWERS AT YOUR FINGERTIPS

The second edition of Michelle Lind's book, *Arizona Real Estate: A Professional's Guide to Law & Practice,* is now available in a searchable electronic format. Just type in the term or phrase you are seeking in the search engine on your iPad, Kindle or other mobile device and find the answer. Download the electronic book for just $9.99! Get the details. ❊

http://www.aaronline.com/azre-book

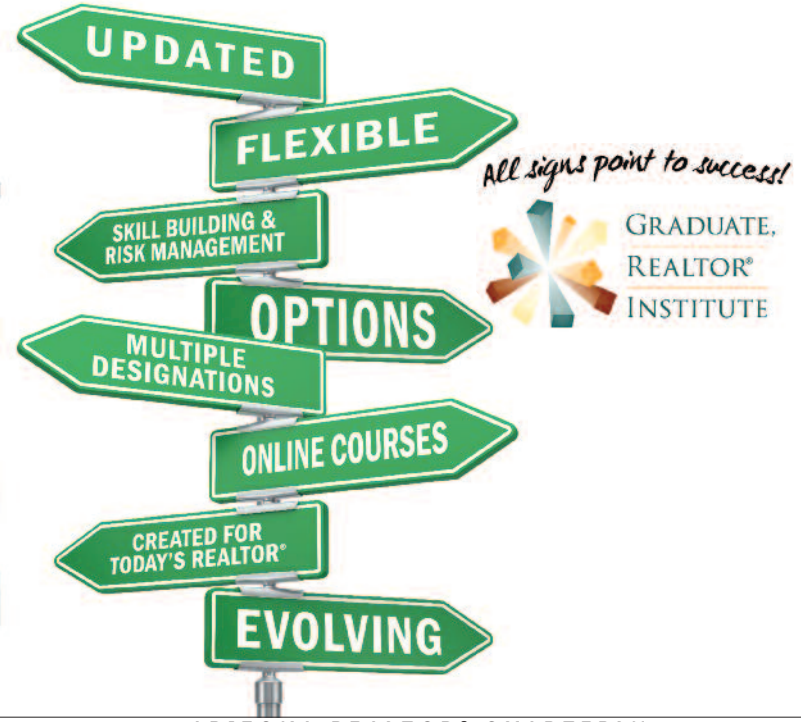


THE EVOLUTION OF GRI

To some real estate professionals, earning a designation is like earning a Bachelor's degree in real estate. It's an opportunity to expand your knowledge and skills and increase your earning potential. According to the 2012 Member Profile, REALTORS® who held the Graduate REALTOR® Institute (GRI) designation earned $21,000 more a year than their peers. To keep with the changing pace of technology, our evolving market and meet the needs of today's real estate professional, the curriculum of the GRI designation will undergo a complete overhaul in 2014, giving REALTORS® a more flexible way to earn a nationally recognized designation.

MEMBERS SOUND OFF, AAR LISTENS

The Arizona Association of REALTORS® (AAR) surveyed members and found that most wanted more flexibility when earning the GRI designation, especially when it comes to their time. Beginning on January 1, 2014, the GRI designation will offer REALTORS® expanded options to participate in classes online. The integration of REBAC classes, including Marketing Reboot and Generation Buy, to the GRI curriculum will allow for less time away from the office and clients. Many live classes will be condensed down to one day, providing REALTORS® with a succinct learning experience that can be implemented right away.



The flexibility of GRI will also be evident in the ability to earn multiple designations and/or certifications at once. Now, those who are earning a designation like the Accredited Buyer Representative® (ABR®), the Seniors Real Estate Specialist® (SRES®) or the Seller Representative Specialist (SRS) designation or ePRO or rCRMS certifications can transfer these credits and apply them to a GRI designation. This also allows REALTORS® to be in control of what they want to learn. "You can build your own direction. You really have a lot more choices based on what you want to learn," said Barb Freestone, senior vice president, Professional and Business Development, AAR.

CURRICULUM FOCUSED ON BUILDING SKILLS AND MANAGING RISK

The value of earning a designation is reflected in the knowledge you gain by earning it. The re-invented GRI will place more emphasis on building skills to manage even the toughest real estate transaction as well as ways to manage your risk. The curriculum will be split into two sections, Risk Management and Skill Building. The Skill Building courses focus on effective marketing strategies, business planning, transactional technology, financing options for your clients and customer service. The Risk Management courses focus on writing and understanding contracts, disclosure and due diligence, agency and ethical behavior. The new requirements are customizable and give REALTORS® the option to build a GRI that fits a specific niche.

SIMPLE TRANSITION FOR CURRENT CANDIDATES

For those members who are currently participating in the GRI program, the transition will be simple and straightforward come January 1. If you need a class that is no longer offered, a corresponding class will be made available. Current GRI candidates should be looking for more updates from AAR as we near the go-live date for the updated GRI. ❇

Stay tuned for updates about GRI!

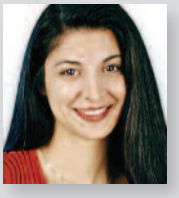
WHAT AAR MEMBERS ARE SAYING ABOUT GRI

KERRY MELCHER

"In the interest of full disclosure I do not have my GRI. But, I like the idea of it merging multiple designations within the GRI program. The big one for me is condensing the classes into one day."

Kerry Melcher, REALTOR®
The Melcher Agency

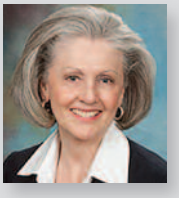
PAULA MONTHOFER



"As a GRI instructor, I am really looking forward to teaching our new tech class! It is so well tailored and thorough, yet fits almost all tech skill sets. The best part? We really focused on practical tips and tools you can take and use to better your business that day."

Paula Monthofer, GRI, e-PRO
West USA Flagstaff

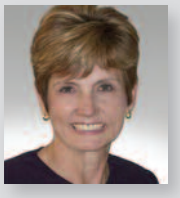
MICKI LANG



"The new GRI program provides the REALTOR® member with improved flexibility in acquiring not only the GRI designation, but the new program will also allow them to utilize other NAR designations and AAR certifications as credit towards the GRI program. Our new GRI program is a well rounded educational platform for REALTORS® who aspire to be real estate professionals."

Micki Lang, Assistant Association Executive
Scottsdale Association of REALTORS®

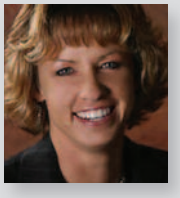
KAREN KAY



"As a member of the GRI Oversight Workgroup, I've seen first-hand the amount of time and care taken to give the GRI a fresh update. As our profession evolves, it's great to see a designation evolve as well. I hope that more REALTORS® will consider the GRI."

Karen Kay, REALTOR®,
DPR Realty

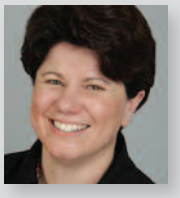
STACEY ONNEN



"AAR has really taken the time to take the GRI program beyond just earning C/E. It provides cutting-edge, real world, current solutions that agents can implement the next day."

Stacey Onnen, ABR, RSPS, GRI
Keller Williams Check Realty

HOLLY MABERY



"I know I'm excited for the changes and the updates GRI has undergone. [GRI] really gives the boots-on-the-ground agents real-world skills to improve their business."

Holly Mabery, GRI, ABR, CRMS
Keller Williams Check Realty

GRADUATE, REALTOR® INSTITUTE

LEGAL HOTLINE

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

Q&As are not "black and white,"

so experienced attorneys and brokers may disagree. Agents are advised to talk to their brokers/managers when they have questions.

AGENCY

A Real Estate Licensee May Only Provide Services For The Broker With Whom They Are Licensed

FACTS:

An agent switched from Broker A to Broker B. Although Broker A transferred several listings to Broker B, Broker A kept one particular listing. Broker A wants the agent to continue to work with the client on this particular listing and intends on paying the agent a commission.

ISSUE:

Is it proper for the agent to continue working on a listing with Broker A while employed by Broker B?

ANSWER:

No.

DISCUSSION:

Pursuant to A.R.S. § 32-2153, a licensee cannot represent a broker other than the broker to whom the licensee is licensed. In addition, under A.A.C. R4-28-306(A)(2), an agent can only perform real estate services on behalf of the agent's employing broker. Therefore, the agent employed by Broker B cannot work on the listing for Broker A. ❊

Arizona REALTOR® Magazine – August 2013 | Agency
http://www.aaronline.com/legal-hotline-q-a-agency

BROKERAGE

In Some Circumstances A Real Estate Agent May Assist In The Sale Of A Mobile Home

ISSUE:

Can a licensed real estate agent sell a mobile home located in a mobile home park on a leased lot?

ANSWER:

A license issued by the Department of Fire, Building and Life Safety ("DFBLS") is required in order for a broker to act in the sale of a manufactured, mobile and factory-built homes. A.R.S. § 41-2194(3-4). An exemption to this rule exists pursuant to A.R.S. § 41-2178(B)(1) wherein the mobile home is (1) used, (2) installed on the property, and (3) listed in a contract for transfer of an interest in real property executed by its owner.

A mobile home is deemed "installed" under A.R.S. § 41-2142(18) when it is connected to on-site utility terminals, placed on a foundation system and secured by ground anchoring. Installation does not require an "affidavit of affixture" for purposes of this exemption. Further, to "list" in a contract for transfer of an interest in real property means the owner of the mobile home must also either own the land or have the right to transfer the lease in the land upon which the mobile home is installed.

In this instance, if the mobile home meets the requirements set forth in A.R.S. § 41-2178(B)(1), i.e. used, installed and listed in a contract for real property executed by owner, then a license from the DFBLS is not required for the agent to act in the sale of the mobile home. If the mobile home does not meet these exemption requirements, the licensee cannot act in the sale of the mobile home without a license from the DFBLS. ❊

Arizona REALTOR® Magazine - June 2013 | Brokerage
http://www.aaronline.com/legal-hotline-q-a-brokerage

An Individual Who Does Not Hold A License May Hold An Ownership Interest In A Brokerage Firm

ISSUE:

Can a non-licensed individual be an owner of a real estate brokerage?

ANSWER:

Yes. A non-licensee may own a real estate brokerage through a corporation, limited liability company (LLC), or partnership provided that: (1) the entity itself is licensed with the Department of Real Estate as an employing broker; and (2) the entity designates a licensed broker who is an officer of the corporation, manager or member of the LLC (as applicable), or a partner of the partnership, to act as the designated broker. *See* A.R.S. § 32-2125. ❊

Arizona REALTOR® Magazine – July 2013 | Brokerage
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ABOUT THE AUTHOR

Richard V. Mack *is a shareholder at Mack, Watson & Stratman, which provides the AAR 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.*

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Licensees Must Be Paid Through Their Brokerage

FACTS:

A limited liability company (LLC) has been formed to purchase properties. The LLC is comprised of several family members. Two of the family members, a brother and sister, are licensed real estate agents. From time to time, the licensed brother acts as an assistant to the sister agent. In addition, a non-member certified public accountant (CPA) reviews various documents in the transactions, such as a HUD-1, and wants to be compensated for his services.

ISSUE:

Can the sister agent pay her agent brother directly for services he provides to her as an assistant? Can the brother and sister agents pay the CPA for his services directly as part of their expenses for the real estate transaction?

ANSWER:

Because the brother is a licensee, if he is performing duties that require a real estate license, then he can only accept compensation as a licensee from his legally licensed broker to whom he is licensed. *See* A.R.S. § 32-2155(A). Concerning the CPA, the CPA cannot perform any acts that require a real estate license or be compensated for such acts. *See* A.R.S. § 32-2165. However, the LLC can pay the CPA for his services as a CPA as part of the expenses incurred by the LLC in conjunction with its real estate transactions. ❊

Arizona REALTOR® Magazine – July 2013 | Brokerage

http://www.aaronline.com/legal-hotline-q-a-brokerage

ISSUE:

May a brokerage pay a referral fee to members of the public?

ANSWER:

Pursuant to A.R.S. § 32-2122(B), it is unlawful for any person, corporation or limited liability company to engage in the activity of a real estate salesperson or broker without first obtaining a real estate license. Pursuant to part D of that same section, "Any act, in consideration or expectation of compensation, which is included in the definition of a real estate,…broker, whether the act is an incidental part of a transaction or the entire transaction, constitutes the person offering or attempting to perform the act of a real estate broker or real estate salesperson,...within the meaning of this chapter." Notably, a real estate broker is defined in A.R.S. § 32-2101(48)(i) as one who "Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate, businesses and business opportunities or timeshare interests."

In this instance, the brokerage is offering to split its leasing commission with anyone who refers a new tenant, regardless of whether the referring individual has a real estate license. As a real estate license is required to assist in the procurement of a tenant for the lease of real estate, the referral fee to a non-licensee is not permissible. *See* A.R.S. § 32-2122(B). ❊

Arizona REALTOR® Magazine – July 2013 | Commissions

http://www.aaronline.com/legal-hotline-q-a-commissions

COMMISSIONS

Property Management Firm May Not Split Its Commission With A Non-Licensed Person

FACTS:

A property management firm wishes to offer the public 50 percent of the fee received by the firm for referring a friend or family member to the brokerage. The referral will only be paid upon the referred individual executing a new lease. Referral fees would only be paid on homes owned by the brokerage.

CONTRACTS

A Real Estate Agent May Not Record A Lien For The Collection Of A Residential Commission

FACTS:

A buyer is purchasing residential property from Fannie Mae. A title report revealed that there is a mechanics' lien on the property. The mechanics' lien was placed on the property by a real estate agent to recover her commission.

ISSUE:

Can a real estate agent put a mechanics' lien on residential property to recover a commission?

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ANSWER:

No. Mechanics' liens are liens for labor. Pursuant to A.R.S. § 33-981(A): "every person who labors or furnishes professional services, materials, machinery, fixtures or tools in the construction, alteration or repair of any building, or other structure or improvement, shall have a lien on such building, structure or improvement for the work or labor done or professional services, materials, machinery, fixtures or tools furnished, whether the work was done or the articles were furnished at the instance of the owner of the building, structure or improvement, or his agent." Although the real estate agent provided professional services, those services were not related to "construction, alteration or repair of any building, or other structure or improvement." Therefore, real estate agents are not entitled to place mechanics' liens on residential property to recover their commissions and can be pursued for recording a wrongful lien under A.R.S. § 33-420 if they record a lien for a commission. ❊

Arizona REALTOR® Magazine - June 2013 | Contracts
http://www.aaronline.com/legal-hotline-q-a-contracts

Once The Short Sale Agreement Notice Is Delivered, Seller's Options To Cancel Are Limited

FACTS:

In a short sale transaction, the bank has accepted the buyer's offer in writing, and the seller provided the buyer with an executed Short Sale Agreement Notice. However, the bank is now willing to complete a loan modification for the seller. As a result, the seller now wants to cancel the contract.

ISSUE:

Can the seller cancel the contract after the issuance of an Agreement Notice?

ANSWER:

Upon execution of the Residential Resale Purchase Contract, the buyer and seller have entered into a binding and enforcable agreement, albeit with contingencies. The notable contingency is that the seller is not obligated to proceed with the sale in the event that the seller and the seller's lender(s) fail to reach a short sale agreement acceptable to both. Upon delivery of the executed Short Sale Agreement Notice, the seller informs the buyer that an acceptable short sale agreement has been reached between the seller and the seller's lender(s), at which point the seller has conclusively waived this contingency. Unless the seller has a right to cancel under the other terms of the contract, any attempt to cancel the contract would place the seller in potential breach. The bank's willingness to consider a loan modification does not alter the enforceability of the contract between the buyer and seller. ❊

Arizona REALTOR® Magazine – July 2013 | Contract - Cancellation
http://www.aaronline.com/legal-hotline-q-a-contracts-cancellation/

The Parties May Agree In The Contract Documents As To The Disposition Of The Earnest Money

FACTS:

The buyer and the seller entered into a purchase and sale agreement through which the buyer made a $1,000 earnest money deposit. Subsequently, and in exchange for extending the close of escrow date, the buyer and the seller agreed to the following language in an addendum to their contract: "Buyer to deposit $5,000 additional earnest money into escrow to be applicable to the purchase price and released to the seller."

The buyer was unable to obtain a loan. Therefore, the title company released the initial $1,000 earnest money to the buyer and the $5,000 to the seller.

ISSUE:

Did the title company wrongfully release the additional $5,000 deposit to the seller?

ANSWER:

Probably not. The language contained in the addendum directed that the additional $5,000 earnest money be released to the seller. Based upon this language, the title company likely believed that the seller was entitled to this money as consideration for the extension of time to close escrow. Thus, as the escrow never closed, the additional earnest money deposit could not be applied to the purchase price and was properly "released to seller," as directed by the addendum. ❊

Arizona REALTOR® Magazine – July 2013 | Contract – Breach/Damages
http://www.aaronline.com/legal-hotline-q-a-contracts-breachdamages/

Generally Speaking, The BINSR Does Not Modify The Terms Of The Underlying Contract

FACTS:

The buyer made an offer to the seller by way of the Residential AAR Purchase Contract. Section 8 of the purchase contract, states that the seller must provide proof that the property was recently treated for rodents/pack-rats. The seller accepted the terms of the offer and the transaction proceeded to inspection. In the Buyers Inspection Notice and Sellers Response (BINSR) the buyer

requested several repairs. The seller agreed to complete some repairs and reduce the sale price. Nontheless, the buyer still considers proof of recent rodent/pack-rat treatment as a condition of the purchase contract. The seller alleges that the BINSR waived the seller's requirement to treat the property for rodents/pack-rats.

ISSUE:

Does the BISNR serve to modify the terms of the purchase contract?

ANSWER:

Probably not. The BISNR is used to notify the seller of disapproved items and is not the proper forum to amend the terms of the underlining purchase contract. Specifically, lines 360 – 362 of the purchase contract provide that the purchase contract and any addenda or attachments constitute the entire agreement between the buyer and the seller. Any modifications to the terms of the purchase contract should be made in the form of an addendum signed by both parties. ❊

Arizona REALTOR® Magazine – July 2013 | Contracts – Inspection/Buyer Disapproval
http://www.aaronline.com/legal-hotline-q-a-contracts-inspectionbuyer-disapproval/

A Buyer May Cancel Based On a Failed Loan Contingency After a Three-Day Cure Has Been Given By The Seller

FACTS:

The buyer did not close on the scheduled close of escrow date because he could not get loan approval. The day after the scheduled closing, the seller delivered a Cure Notice to the buyer for failure to close escrow. The buyer delivered an Unfulfilled Loan Contingency Notice to the seller within the three-day cure period. The seller contends that the only way that the buyer can cure his potential breach is by closing the transaction within the three-day cure period.

ISSUE:

Can the buyer cancel the contract and be entitled to the return of his earnest money deposit if he delivered his Unfulfilled Loan Contingency Notice after the close of escrow but during the cure period?

ANSWER:

Yes. The buyer's obligation to perform is contingent upon the buyer obtaining loan approval without prior to document (PTD) conditions no later than three-days prior to the close of escrow (COE) date. If the buyer is unable to obtain the loan despite good faith efforts, the loan contingency is unfulfilled. Under those circumstances, the buyer is obligated to deliver to the seller or the escrow company a notice of their inability to obtain loan approval. If the buyer fails to deliver the notice at least three days prior to the COE date, the seller must issue a Cure Period Notice, thereby providing the buyer with three days to deliver notice of the unfulfilled contingency. If the buyer delivers the notice the Unfulfilled Loan Contingency Notice within this three day window, the buyer is entitled to the earnest money. ❊

Arizona REALTOR® Magazine – August 2013 | Contracts-General
http://www.aaronline.com/legal-hotline-q-a-contracts-general/

FHA and VA Loans Must Have a Financing Contingency

ISSUE:

Can the appraisal contingency in the AAR Residential Resale Purchase Contract be waived if the buyer is financing the purchase with an FHA or VA loan?

ANSWER:

No. Buyers obtaining FHA and VA loans are required to have an FHA/VA Amendatory Clause signed by the parties. This clause states that if the property fails to appraise, "the buyer is not obligated to complete the purchase of the property and cannot incur any penalty by forfeiture of the earnest money deposit." As such, despite the purchase contract requiring a non-refundable earnest money deposit, the buyer can cancel for failure to appraise without risking his or her earnest deposit where the buyer is financing the purchase with an FHA or VA loan and the parties signed the FHA/VA Amendatory Clause. ❊

Arizona REALTOR® Magazine – August 2013 | Contract-Contingency
http://www.aaronline.com/legal-hotline-q-a-contracts

A Buyer's Agent Is Typically Not Responsible For Seller's Failure To Make Adequate Repairs Agreed To In The BINSR

FACTS:

The buyer had an inspection completed during the inspection period. The buyer requested that the seller complete several repairs through the Buyer's Inspection Notice and Seller's Response (BINSR). The seller agreed. No re-inspection of the home was completed before the close of escrow, after the repairs were completed. One of the repairs completed by the seller was a new breaker box installed at the home. Six months after the close of escrow, the buyer discovered that the new breaker box was not permitted and

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violates code. In addition, other electrical problems have been discovered at the home that were not previously discovered by the home inspector during the inspection period. The buyer is now upset with the buyer's agent and claims she was not given enough guidance during the purchase process.

ISSUE:

Is the buyer's agent liable for any damages sustained by the buyer as a result of the unpermitted breaker box and additional electrical problems?

ANSWER:

A licensee has a duty of full and frank disclosure, must exercise due care and diligence to effect a sale to their principal's best advantage, and must disclose to their clients information they possess pertaining to the transaction involved. If the agent was unaware of the additional electrical problems, and they were not discovered by the inspector during the inspection period, the agent has no duty to disclose something she has no knowledge about. Additionally, the agent is not required to conduct an independent investigation of the property in an effort to discover defects – as doing so is outside of the agent's area of expertise.

As for the breaker box, the seller was obligated to repair and/or replace the breaker box properly. If the installation of the new breaker box required a permit, the seller did not properly complete repairs. ❊

Arizona REALTOR® Magazine – July 2013 | Contract – Breach/Damages
http://www.aaronline.com/legal-hotline-q-a-contracts-breachdamages/

Buyer May Issue a Three-Day Cure If The Property Is Not In Substantially The Same Condition As The Time Of The Contract

FACTS:

One day prior to the date scheduled for close of escrow, the buyer conducts a pre-closing walkthrough and discovers that a window is broken and a shower door has been removed. At the time of contract, the window was in perfect condition and the shower door was in place.

ISSUE:

Can the buyer delay close of escrow until the disputed property condition is remedied?

ANSWER:

Yes. The buyer can mark box number two on the Buyer Pre-Closing Walkthrough form, thereby issuing a three-day cure notice, at which point the buyer can delay close of escrow for the length of the cure period to enable the seller to remedy the disputed property condition. ❊

Arizona REALTOR® Magazine – August 2013 | Contracts
http://www.aaronline.com/legal-hotline-q-a-contracts

DISCLOSURE

Buyer Has A Claim Against Seller For Misrepresentation Regarding Repairs

FACTS:

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

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

ISSUE:

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

ANSWER:

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

Arizona REALTOR® Magazine - June 2013 | Disclosure
http://www.aaronline.com/legal-hotline-q-a-disclosure

Spouse's Political Office Need Not Be Disclosed In A Transaction

FACTS:

A real estate agent's spouse has recently been elected to the position of County Assessor.

ISSUE:

Must the agent disclose this fact to parties to a transaction?

ANSWER:

Pursuant to A.A.C. R4-28-1101, "A real estate salesperson or broker shall not act directly or indirectly in a transaction without informing the other parties in the transaction, in writing and before the parties enter any binding agreement, of a present or prospective interest or conflict in the transaction…" In this instance, as the spouse's status as county assessor does not create an interest in any particular transaction, there is no requirement to disclose that fact. ❊

Arizona REALTOR® Magazine - June 2013 | Disclosure
http://www.aaronline.com/legal-hotline-q-a-disclosure

Multiple Short Sale Offers Should Be Disclosed

FACTS:

An out-of-state investor seeks to purchase a single investment property in Arizona. Not knowing which transaction will prove successful, the investor submits offers on four different short sale properties, three of which are accepted.

ISSUE:

Must the investor disclose to each seller the fact that he has entered into multiple contracts with the intent to buy only one?

ANSWER:

If the investor does not have the financial wherewithal to close on all four of the short sale offers, then his multiple offers should be disclosed. ***Note:*** *the buyer's agent has a parallel duty of disclosure. See* A.A.C. R4-28-1101. ❊

Arizona REALTOR® Magazine – August 2013 | Disclosure
http://www.aaronline.com/legal-hotline-q-a-disclosure

FORECLOSURES, REO, AND LIENS

A Borrower May Not Remove Fixtures From a Home Before a Trustee's Sale

FACTS:

A lender has scheduled a trustee's sale for next week. The borrower intends to tear out various fixtures, including, the sink, ceiling fans, wiring, cabinets, etc.

ISSUE:

Is the borrower permitted to retain any of the fixtures and, if not, what risk does the borrower face by removing and retaining the fixtures?

ANSWER:

According to most standard form deeds of trust, fixtures are a part of the lender's security for the underlying loan. By removing and retaining the fixtures, the borrower is destroying a portion of the lender's security and taking something that they are not entitled to. The borrower risks federal prosecution for mortgage fraud and state prosecution for theft and defrauding a secured creditor. *(See* A.R.S. § 13-2204(A) "A person commits defrauding secured creditors if the person knowingly destroys, removes, conceals, encumbers, converts, sells, obtains, transfers, controls or otherwise deals with property subject to a security interest with the intent to hinder or prevent the enforcement of that interest.") In addition, the borrower risks a conversion-based lawsuit from the lender(s). ❊

Arizona REALTOR® Magazine – August 2013 | Foreclosures, REO, and Liens
http://www.aaronline.com/legal-hotline-q-a-foreclosure

LANDLORD / TENANT ISSUES

A Residential Tenant Should Complete The Move-In Form As Quickly As Possible

ISSUE:

Does a residential tenant have five days to complete and return the move-in form to the landlord under the AAR Residential Lease Agreement.

ANSWER:

Pursuant to lines 272-74 of the AAR's Residential Lease Agreement, a tenant has five days beginning on the date of occupancy to complete and return the move-in form to the landlord. The tenant is therefore not required to complete the move-in form at the initial walkthrough. Please note, however, that this is a default term, and the time for completion of the move-in form could be altered by agreement of the parties. ❊

Arizona REALTOR® Magazine - June 2013 | Landlord/Tenant Issues
http://www.aaronline.com/legal-hotline-q-a-landlordtenant

A Residential Tenancy Remains Enforceable Even After The Owner Sells The Property

ISSUE:

What are the rights of a tenant when residential property is sold during the term of the lease?

ANSWER:

The new owner will take title subject to the rights of tenants in possession. The terms of the lease agreement will therefore control the new owner's rights and obligations to the existing tenant, provided the terms do not conflict with the Arizona Residential Landlord &

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Tenant Act. A.R.S. § 33-1314(A). Accordingly, the lease will pass with the land, and the new owner can only oust the tenant in accordance with the terms of the lease. ❊

Arizona REALTOR® Magazine – July 2013 | Landlord/Tenant Issues
http://www.aaronline.com/legal-hotline-q-a-landlordtenant

Isolated Bee Sting Is Not Cause To Terminate A Residential Lease

FACTS:

Property has a tree that is in bloom near the front door. The blooming tree has attracted several bees. The tenant was stung by one of the bees and ended up in the hospital because of the bee sting. The landlord sent an exterminator to kill the bees, but the exterminator stated the bees cannot be killed because there is no source to eliminate; rather, they are just bees from the area pollinating the tree and will disperse when the flowers stop blooming. The tenant now wants to terminate the lease.

ISSUE:

Can the tenant terminate a residential lease because they were stung once by a passing bee and sent to the hospital?

ANSWER:

Probably not. Under A.R.S. § 33-1324, the landlord is required to maintain a fit and habitable premises that cannot materially affect the health and safety of the tenant and must meet all requirements of A.R.S. § 9-1303. A.R.S. § 9-1303(1)(i) puts an obligation on the landlord to ensure that the premises is not infested with insects, vermin or rodents. If the property is infested, the tenant has the right to provide the landlord with a five-day notice to remedy or the tenant can legally terminate the lease.

Here, the tenant was stung by a bee that happened to be pollinating a tree on the property that was in bloom. The landlord hired an exterminator to kill the bees. The exterminator stated the property was not infested with bees, but was being visited by bees while the tree was blooming. The exterminator also stated the bees would leave when the tree stopped blooming. As there is no infestation, the tenant does not have a right to terminate the lease and must comply with its terms. The fact that the tenant was hospitalized due to the bee sting is unfortunate, but cannot be attributed to the landlord's failure to maintain a habitable premises. ❊

Arizona REALTOR® Magazine – July 2013 | Landlord/Tenant Issues
http://www.aaronline.com/legal-hotline-q-a-landlordtenant

Generally, After The Tenant's Death, The Lease Is Enforceable Against The Tenant's Estate

FACTS:

A tenant passes away with eight months left on his lease term.

ISSUE:

Does the lease terminate upon the death of the tenant?

ANSWER:

In general, contracts such as leases and purchase contracts are enforceable against a deceased party's estate. The landlord, however, has the affirmative obligation to make reasonable efforts to find another tenant for the remaining eight months of the lease. If the landlord is not able to find another tenant, the landlord has a claim for rent against the tenant's estate. ❊

Arizona REALTOR® Magazine – August 2013 | Landlord/Tenant Issues
http://www.aaronline.com/legal-hotline-q-a-landlordtenant

MISCELLANEOUS

The Seller Must Make Full Disclosure of All Water Damage

FACTS:

The broker represented the seller in sale of property nine months ago. The buyer's agent and the seller's agent work for the same brokerage. The seller disclosed in the Seller's Property Disclosure Statement (SPDS) that the seller fixed a water problem. Three months ago, the buyer allegedly found mold in the property and now wants the seller to pay $60,000 to correct the problem.

ISSUE:

Does the seller have to pay the buyer to correct the alleged mold issue?

ANSWER:

The seller must disclose all known material facts to the buyer. Here, remedying of the water problem was disclosed during escrow. Thus, provided the problem was fully disclosed and that the seller had no knowledge of mold growth at the property, the seller should have no liability. ❊

Arizona REALTOR® Magazine – August 2013 | Miscellaneous
http://www.aaronline.com/legal-hotline-q-a-miscellaneous

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REMEDIES

A Non-Military Job Relocation Typically Does Not Excuse A Parties' Performance Of A Real Estate Contract

FACTS:

The broker represents the buyer of a new-build home from a developer. The buyer executed the purchase contract and has deposited $10,000 of earnest money. Recently, the buyer was informed that he must relocate for work outside of the state; the buyer works in a highly-specialized medical field and job opportunities are limited.

At this point, the buyer will no longer be able to qualify for financing as the subject property would not be a primary residence. The purchase contract does contain a financing contingency. However, that provision has lapsed.

ISSUE:

Can the buyer cancel the contract and recover the earnest money deposit under the circumstances?

ANSWER:

Probably not. Ultimately, the buyer's right to cancel the purchase contract and recover the earnest money deposit based on a non-military job relocation must be derived from the language of the contract. In this case, the broker is unable to identify any provision of the contract that would afford the buyer a cancellation right based on relocation for work. Accordingly, the buyer's earnest money deposit will be forfeited upon cancellation of the contract, and there may be other remedies available to the developer including pursuit of a breach of contract claim.

Please note, however, that the buyer may attempt to negotiate the return of some, or all, of the earnest money deposit. If the value of the property has increased since the execution of the purchase contract, the developer may be amenable to a mutual cancellation of the contract in order to re-market the property for a higher price. ❊

Arizona REALTOR® Magazine - June 2013 | Remedies
http://www.aaronline.com/legal-hotline-q-a-remedies

SHORT SALES

An Agent Should Not Be Involved With "Lease-Back" Or "Sell-Back" Transactions On Short Sales

FACTS:

The broker was contacted to list properties on behalf of an entity. According to the entity, it purchases short sales with the intent to re-sell the properties to the prior owners and, further, it negotiates leases for those owners to remain in the properties during the interim.

ISSUE:

Should the broker decline the listings?

ANSWER:

Yes. The Federal Bureau of Investigations (FBI), among other entities, considers undisclosed "lease-back" and "sell-back" transactions as forms of mortgage fraud. Most short sale lenders require that the seller complete an affidavit of arm's length transaction. If the buyer and seller have an undisclosed agreement for the seller to remain in property following the short sale, or to later re-purchase the property, it would violate the affidavit and defraud the lender. A real estate broker who participates in an undisclosed lease or sale transaction to a previous owner could likewise face prosecution under state or federal law. ❊

Arizona REALTOR® Magazine - June 2013 | Short Sales
http://www.aaronline.com/legal-hotline-q-a-short-sales

HAVE YOU SIGNED UP FOR THE LEGAL HOTLINE?

The Legal Hotline provides all AAR broker members (designated REALTORS® — DRs) free access to a qualified attorney who can provide information on real estate law and related matters.

Find out how brokers can access the Legal Hotline.
http://www.aaronline.com/law-ethics/legal-hotline/hotline-access.pdf

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Recently, AAR introduced our #AskScott video series
featuring General Counsel Scott M. Drucker, Esq.
We received many questions and plan to get to all of them soon.

#AskScott

You #AskScott, He Answers

If you'd like to send in a question, visit www.aaronline.com/manage-risk/askscott to post a comment or use the hashtag #AskScott on Facebook or Twitter.

https://www.facebook.com/azrealtors
https://twitter.com/AARSuccess

In the first #AskScott video,
Scott answers two questions:

1. **What happens to a solar lease upon the purchase of a residential property?** (00:42)
2. **What rights do tenants have when a residential property is sold?** (02:20)

Note: Not all questions will be answered immediately when asked. If you need immediate legal assistance, talk to your broker or contact AAR's legal hotline.

Thank you to Kim, Darla & Kelly for your questions.

Keep sending them in and we'll try to get to them soon!

Watch Episode One Here:

www.aaronline.com/manage-risk/askscott