

WINTER 2013

ARIZONA REALTOR®

QUARTERLY



**THIS PUBLICATION
IS GOING DIGITAL!**

In 2014, the Arizona REALTOR®
Quarterly will be emailed to you.

MORE DETAILS PAGE 2

- 4 *Leadership Conference*
Evan Fuchs, 2014 President of the Arizona Association of REALTORS®
- 6 *Five Steps To Prevent iMugging Plus, Making Good Passwords & Take Your List of Passwords Down To One*
- 8 *The Value of REALTOR® Education*
- CODE TALK
- 10 *Avoid These Common Code of Ethics Violations*
- CODE TALK
- 12 *Prospecting? Avoid These Danger Zones*
- 13 *HUD Mortgagee Letter 2013-23*
- 13 *Business Services Update*
SureClose® phase-out; zipForm® and eSign see new enhancements
- 14 *Legal Hotline*

AAR HONORS MARTHA APPEL & ED PATTERMANN

Each year, the Arizona Association of REALTORS® honors two members with the Arthur G. Crozier Service Award and the Tyler Strout Vision Award. This year, the awards went to Martha Appel, vice president and designated broker, Coldwell Banker Residential and Ed Pattermann, broker and owner of Windemere Real Estate.



MARTHA APPEL



The Arthur G. Crozier Distinguished Service Award was created to recognize the Arizona REALTOR® who has provided praiseworthy service in one, or more, of the association's

strategic focus areas. This award is designed to acknowledge a member who has dedicated tireless and meaningful service, to the association, creating a distinctly positive impact on the members of the association. Martha is no exception.

An Arizona real estate agent since 1979, this individual earned her broker's license in 1998 and quickly sprinted up the ranks within her organization. Martha has served for many years on AAR's arbitration and ethics hearing panel. She's also served on the grievance committee, forms committee and professional standards committee.

Channeling her passion for our industry, Martha has been instrumental in helping to create many forms that have shaped our profession, the most recent being the Buyer Pre-closing Walkthrough Form.

ED PATTERMANN



Coming to real estate as a second career, Ed Pattermann's technical talents rival only his commitment to serving his community. Ed channeled his passion for technology by dutifully serving as this

year's chair of the Business Services and Technology Committee. He also spearheaded the FlexMLS integration for the Prescott Area Association of REALTORS®, and ensured a seamless transition.

Not only has Ed been vital in shaping the way Arizona real estate agents engage with technology for years to come, they have also raised the bar when it comes to serving the community at large. He is a Sterling R contributor of RAPAC, helping to further carry our voice to the capitol and enact change for homeowners and real estate agents alike. Ed also contributes to the Wounded Warrior Project and the Folds of Honor Foundation, benefitting the veterans and families of our veterans fighting both home and abroad. Most recently, Ed sprang to action to help those affected by the Yarnell Hill Fire. Collecting clothing and household items for the victims, assisting in the clean-up efforts and helping those affected find temporary and full-time housing.

LEADERSHIP CONFERENCE

Evan Fuchs, 2014 President of the Arizona Association of REALTORS®

In October, AAR installed Evan Fuchs, ABR, CRS, GRI, as the 2014 President of the Arizona Association of REALTORS®. Fuchs will follow outgoing President Sue Flucke, CRB, CRMS, GRI, as the association continues to pursue our ultimate goal to protect the rights of homeowners and ensure that Arizona REALTORS® are the best prepared.

Fuchs will tap into his extensive leadership experience and more than 17 years of real estate expertise to lead the association into the next phase of growth and innovation. Fuchs has served on the AAR Executive Committee since 2007 and currently serves on the National Association of REALTORS® Board of Directors.

“Evan brings an incredible amount of expertise into this role,” said AAR Chief Executive Officer K. Michelle Lind, Esq. “His passion for our industry and diverse qualifications will help guide our association to better equip REALTORS® with the tools to meet the needs of today’s real estate consumer.”

Fuchs’ experience includes committee participation at the Arizona Department of Real Estate, City of Bullhead City, and the Bullhead City/Mohave Valley Association of REALTORS®. Fuchs has been named REALTOR® of the Year three times in 2012, 2006 and 2002 by the Bullhead City/Mohave Valley Association of REALTORS®.





Congratulations, Evan!

To see photos from this event, visit
http://www.flickr.com/photos/aar_eventrewind/

FIVE STEPS TO PREVENT IMUGGING

BY RON LAMEE, SENIOR VICE PRESIDENT,
BUSINESS SERVICES AND TECHNOLOGY, AAR



The sting of having an online account hacked or your identity stolen may not be physical, but it can still prove to be painfully inconvenient and even financially harmful for years to come. Don't make it easy for bad people to hurt you! Here are five steps for protecting your business and personal life from iMugging.

1. SECURE YOUR EMAIL

The single most important thing you can do to protect yourself is create a very complex password for your main email account. Think about it. If you forget your Amazon.com or Chase or Facebook password, where do you have the reset sent? Your email account. If someone gains access to your email account because you have a lousy password, they can change passwords for every important online account you have in 15 minutes or less. Not only can they drain your accounts and rack up charges, but you'll have the pain of manually resetting all those accounts. Use a strong password and reset it once in awhile (See the "It's easy to be hard" password sidebar.)

2. SECURE YOUR PHONE & TABLET

Is this you: "I love using my tablet and phone for email, because it's fast and convenient—it's always there without logging in!" If so, that means that if bad people grab your mobile device, they can log right into your email (See #1 above). Every mobile device allows you to set a PIN number or password every time you light up the screen. It's a little less convenient, but using a device login screen can protect your email and all of your content from easy access. While you're at it, make sure your laptop is also protected.

3. REVIEW YOUR PRIVACY SETTINGS ON SOCIAL MEDIA

Facebook is great for connecting, but it isn't your friend. Your profile information and the information you share can

give would-be iMuggers useful information about your whereabouts. Think twice about checking-in or posting that you'll be out of town. Likewise about posting about a big purchase such as a new car or 100-inch TV. While this may be exciting to you, the bad guys see it as an opportunity to strike. If you must share this information, limit the amount of people who see it to just family and friends (real friends). You can do so by setting up different lists in Facebook and control who sees what information. A good tutorial is [here](http://lifelife.com/5813990/the-always-up+to+date-guide-to-managing-your-facebook-privacy). Do the same thing for Twitter, Foursquare, Yelp! and your other social accounts. Don't link anything to your personal Facebook account and (for heaven's sake!) don't use your Facebook login as a shortcut to other accounts. For useful information about Facebook privacy, go to <http://lifelife.com/5813990/the-always-up+to+date-guide-to-managing-your-facebook-privacy>

<http://www.facebook.com/help/459934584025324>

<http://lifelife.com/5813990/the-always-up+to+date-guide-to-managing-your-facebook-privacy>

4. GET A PASSWORD MANAGER

Password managers are programs that help you collect all your passwords and keep them secure. You choose one really good master password, then all your other passwords are immediately available. Good password managers work across all platforms (Windows, Mac, iPad, iPhone, Android, etc.). I recommend RoboForm—check it out at <http://www.aaronline.com/efficient-business-tools/roboform> and take advantage of our special [AAR-only member discount](#).

<http://blog.aaronline.com/2013/06/take-your-list-of-passwords-down-to-one/>

5. USE ANTI-VIRUS SOFTWARE AND PATCH EVERYTHING

Was that two? Anyway, find anti-virus software of some kind, regardless of what device you use. Macs, iOS, and

IN A RECENT POLL, AAR MEMBERS ANSWERED THE QUESTION:

"Do you password-protect your smartphone or tablet home screen?"

59% said Yes, while 41% said No

Android devices are vulnerable, too. There are good, free ones, but if you decide to pay for one, it's worth the peace of mind. While you're at it, make sure that every time MacOS, Windows, Firefox or another one of your programs offers you an update, do it. Read each step carefully and don't accept installation of special "free" toolbars like Bing, Yahoo!, Ask, Google, eBay. None are worthwhile and can ruin performance.

Following these basic steps will go a long way to making you safer from iMugging.

It's Easy To Be Hard: Making Good Passwords

If your password is strong, it's probably hard to remember, so I'm going to show you how to make it easy. Most passwords must be longer than five characters, but apply this same technique in creating a longer password:

Begin with a phase you can remember: "Mary had a little lamb". Take the first letters of each word: "Mhall". Switch out with numbers and characters that resemble the letters: "m#@1L".

Now, "Mary had a little lamb" is your reminder that your new password is "mh@1L". Use a longer phrase for a more complex password and you have a password that's hard to crack, but easy to remember. For more information, here is an interesting article:

<http://www.baekdal.com/insights/password-security-usability>

TAKE YOUR LIST OF PASSWORDS DOWN TO ONE

If you add up all the usernames and passwords the average Web user has, it could reach upwards of 20. Keeping your usernames and passwords secure is difficult and remembering each unique one, even harder.

Recently, AAR announced an improved member benefit for Arizona REALTORS®: RoboForm® Everywhere. RoboForm® Everywhere seamlessly keeps your passwords and other data in sync. You'll only need to remember one master password to unlock all the rest. AAR is offering members [RoboForm® Everywhere](#) for only \$19.99 for three years!

<http://www.aaronline.com/efficient-business-tools/roboform/>



We recommend that you first try RoboForm® for free. Go to www.roboform.com and click the Download RoboForm® FREE button to get RoboForm® on your computer. What you'll get is a fully functioning password manager on multiple computers and mobile devices.

<http://www.roboform.com/everywhere/how-it-works>

What you get in this free trial is RoboForm®:

- Up to 10 logins
- Free on mobile devices
- Free on desktops and laptops
- Free sync and backup
- Free form filling and bookmark sync
- Includes 24/7 email and live chat support
- No ads, no credit card required
- Works on Windows, Mac, iOS and Android

Once you've had a chance to try RoboForm®, we think you'll like it. So much so, we think you'll want to take advantage of a very special deal for AAR members; only \$19.99 for three years of RoboForm® Everywhere.

What you get in RoboForm® Everywhere is:

- Unlimited passwords and bookmarks
- Unlimited form filling and Safenotes
- Unlimited sync and backup
- Multiple computers, mobile devices and tablets
- Free upgrades
- Includes phone support and 24/7 email and live chat
- Works on Windows, Mac iOS and Android

After the three year period, RoboForm® Everywhere will only cost \$20 per year. We think that once you try RoboForm®, you'll never go back to your previous method of storing passwords and electronic data.

Arizona REALTOR® Magazine — September 2013

<http://blog.aaronline.com/2013/06/take-your-list-of-passwords-down-to-one/>

THE VALUE OF REALTOR® EDUCATION

REALTOR® Designation Awareness Month is recognized annually in the month of November. The National Association of REALTORS® encourages members to increase their professionalism, marketability, and proficiency through the pursuit of an officially-endorsed NAR designation or certification. If you're not swayed merely by the new knowledge you'll gain by earning a designation, you'll also be happy to know that, according to NAR, a REALTOR® who earns one or more designations also earns more money. Based on data from the 2013 NAR Member Profile, the median income of REALTORS® without a designation was \$33,500 and the median income of those with at least one designation was \$61,100: a difference of \$27,600.

The Arizona Association of REALTORS® supports your desire to gain more knowledge, more income and raise the level of professionalism throughout the real estate industry.

"The value of REALTOR® education is so much more than the letters you place behind your name," said Barb Freestone, senior vice president, Professional & Business Development at AAR. "It's about the skills you learn from true industry experts that will set you apart from others in your field. Earning a designation or certification helps REALTORS® reach their career goals much faster. With a comprehensive curriculum, you can expand your referral network, stand out from the crowd and raise your level of professionalism. We want you to come away from these courses with the skills you need to enact real change in your career and in our industry."

Currently, AAR offers nine NAR designations and will be adding more in the coming year. Below is a brief breakdown of a few of the designations offered by AAR. To find an upcoming class, [visit the AAR calendar](#).

<http://www.aaronline.com/calendar/>



ABR®

Accredited Buyer's Representative

This designation provides the expertise REALTORS® need to gain a competitive edge in serving today's home buyers. [Accredited Buyer's Representatives](#) (ABR®) stand for the benchmark of excellence in buyer representation. Not only do ABR® designees earn more, but member benefits such as publications, marketing tools, a referral network and other resources, help them maintain that edge. Note: This is a two-day course, plus a one-day elective.

http://rebac.net/abr_designation.cfm
<http://rebac.net/statistics.cfm>
http://rebac.net/sample_marketing_materials.cfm



**COUNCIL OF REAL ESTATE
BROKERAGE MANAGERS**
 Knowledge Delivered.®

CRB

Certified Real Estate Broker Manager

To stay ahead of the competition, brokers and managers must learn new trends and business strategies to improve individual and company performance. The Certified Real Estate Broker Manager designation is open to any real estate professional and delivers the knowledge and resources needed to create opportunities to excel. After taking CRB courses, managers and brokers will be better positioned to develop and streamline operating practices, market and position his or her company, and better understand how to keep brokerage costs in check. Read about who can participate in the CRB.

<http://www.crb.com/resources/docs/rulesandregulationsfinal1-1-2010.pdf>



GRI

Graduate, REALTOR® Institute

The GRI designation is the cornerstone of REALTOR® education. This professional development course provides REALTORS® with in-depth knowledge of legal and regulatory issues, technology, sales process and professional standards and is taught by professionals with proven track records of success.

In 2014, the GRI designation will undergo a major overhaul, evolving into a designation that can be tailored to fit each individual's needs. New classes and a more streamlined approach will give REALTORS® the opportunity to earn multiple designations at once and will be flexible in terms of time and learning preference. To see how the GRI has evolved to meet the needs of today's REALTOR® visit www.azgri.com.

SRES

Seniors Real Estate Specialist®

This designation educates REALTORS® on how to develop business building skills and the resources needed to serve the 50+ consumer. One student said recently, "I learned so much more than I expected to in this course that will help me be a better REALTOR®, no matter what age my clients are."



RSPS

Resort & Second-home Property Specialist

NAR's advanced education-based certification is designed for resort and second-home professionals. This core course focuses on the knowledge and skill base that real estate professionals need to specialize in buying, selling, or managing second homes in a resort, recreational, and/or vacation destination and properties for investment, development, or retirement. Find out more here.

<http://www.realtor.org/designations-and-certifications/rsps-certification/earn-the-rsps-certification>



SRS

Seller Representative Specialist

SRS is the premier seller agency designation recognizing real estate professionals who have completed special education in seller representation. The SRS covers a comprehensive look at seller representation, including marketing, but also discusses the full lineup of legal issues, Code of Ethics issues and practical issues of getting the listing from acquisition to closing.



According to one student "This class was a great investment in my business and me. I learned quite a bit about ramping up my listing presentation, how to make myself look more professional and help my customers and clients see that I have their best interests at heart..."



e-PRO®

The e-PRO® certification teaches you the latest social media technologies to create an online presence vital to reaching today's hyper-connected consumers. The National Association of REALTORS® has partnered with the Social Media Marketing Institute (SMMI) to develop a program to help you successfully compete in today's ever-evolving real estate market. The new e-PRO® curriculum shows you how to use the latest social media technologies, such as Facebook and Twitter, to create an online presence vital in reaching today's hyper-connected consumers. NAR's e-PRO® certification also teaches REALTORS® how to take advantage of rich media and e-office strategies to run his or her business more efficiently.

<http://www.smmi.institute.info/>
<https://www.facebook.com/azrealtors>
<https://twitter.com/aarsuccess>

TELL US:

What designations do you have and which ones deliver the most "bang for your buck"?

Visit [this article](#) on *AARonline.com* — comment with your thoughts & share to your social networks.

<http://www.aaronline.com/2013/11/the-value-of-realtor-education/>

Arizona REALTOR® Magazine — November 2013
<http://www.aaronline.com/2013/11/the-value-of-realtor-education/>

CODE TALK

Editor's Note: The Code of Ethics turns 100 in 2013. AAR will be celebrating the code with monthly articles published under the caption, Code Talk, in the Arizona REALTOR® Magazine, discussing the various ways the code governs professional conduct and interaction with the consumer in every day transactions.



AVOID THESE COMMON CODE OF ETHICS VIOLATIONS

To date, AAR has received 42 ethics violation complaints this year. That's a slight decrease from the 46 we had last year at this time, but we can do better. This month, AAR would like to share with you some common violations we're seeing this year, along with ways to avoid them.

1. VERBAL COUNTER OFFERS.

"We're seeing a rise in offers being verbally countered," said Jan Steward, manager, risk management, Arizona Association of REALTORS®. "Not putting contract terms in writing is a risky practice." And, it could end up becoming a Code of Ethics violation. Article 9 of the Code of Ethics, Standard of Practice 9-1 states: "For the protection of all parties, REALTORS® shall use reasonable care to ensure that documents pertaining to the purchase, sale, or lease of real estate are kept current through the use of written extensions or amendments."

Trudy Moore, designated broker with HomeSmart said, "The problem with verbal counteroffers is that they usually occur when there are multiple offers." The seller's agent may tell Agent A that their client will accept one price and then Agent B submits another offer at a higher price.

Marge Lindsay, director of training and associate broker with West USA Realty, Inc., adds that verbal counteroffers can catch clients off-guard especially when they think that because the offer has been accepted verbally it's official. "Clients are emotionally involved in the transaction and truly believe when a verbal counter offer is accepted, it's a done deal." When that turns out

not to be the case, the client may seek to blame their agent for inadequately protecting their interests. Lindsay therefore counsels her students to inform clients that "noting can be enforced until it's in writing."

2. PRE-POSSESSION WITHOUT WRITTEN CONSENT.

"We're seeing a rise in buyers' agents giving their buyers the keys prior to close of escrow and without a written contract," said Steward. This is not only a liability issue, since the seller is responsible for the home and all who occupy it prior to close of escrow, but also an ethics violation. Article 3, Standard of Practice 3-9 states: "REALTORS® shall not provide access to listed property on terms other than those established by the owner of the listing broker."

Marge Lindsay adds, "We added provisions for this into the contract because of the many legal issues that come up as a result. The comment I make to my students is: Don't let this recommendation [to get keys early] come out of your mouth." REALTORS® need to understand the liability they are exposing themselves to. "Ask you broker to share a few horror stories about this. You'll see how bad things can get."

3. AGENTS NOT PRESENTING ALL OFFERS.

Trudy Moore said, "Agents must present all offers. Recently, I've seen listing agents get 15 offers and only present the one that they think is the best deal for their client." And while agents might have their client's best interests in mind, not presenting all offers is grounds for

>>

Read previous Code Talk articles:

The C.O.E Bells Ring During the First Phone Call
www.aaronline.com/2013/02/code-talk-the-c-o-e-bells-ring-during-the-first-phone-call

The Case for Buyer-Broker Agreements
www.aaronline.com/2013/05/code-talk-the-case-for-buyer-broker-agreements

The Ethics of Property Management
www.aaronline.com/2013/08/code-talk-the-ethics-of-property-management

Five Tips for Adhering to Article 12
www.aaronline.com/2013/07/code-talk-five-tips-for-adhering-to-article-12

Disclose Early and Often
www.aaronline.com/2013/06/code-talk-disclose-early-and-often

Fair Housing
www.aaronline.com/2013/04/code-talk-fair-housing

Listing Agreements
www.aaronline.com/2013/03/code-talk-listing-agreements

violation. Furthermore, it is up to the seller, not their agent, to decide which offer is best. Article 1, Standard of Practice 1-6 states: “REALTORS® shall submit offers and counter-offers objectively and as quickly as possible.” Equally important is Article 1, Standard of Practice 1-7, which requires REALTORS® to “submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation writing.” You must therefore be certain to present all purchase offers up until close of escrow unless you have written instructions from your principal waiving this requirement.

Arizona REALTOR® Magazine — September 2013
<http://www.aaronline.com/2013/09/code-talk-avoid-these-common-code-of-ethics-violations/>

AAR is here to help you resolve disputes

If you're experiencing any of these issues, talk to your broker and get his advice.

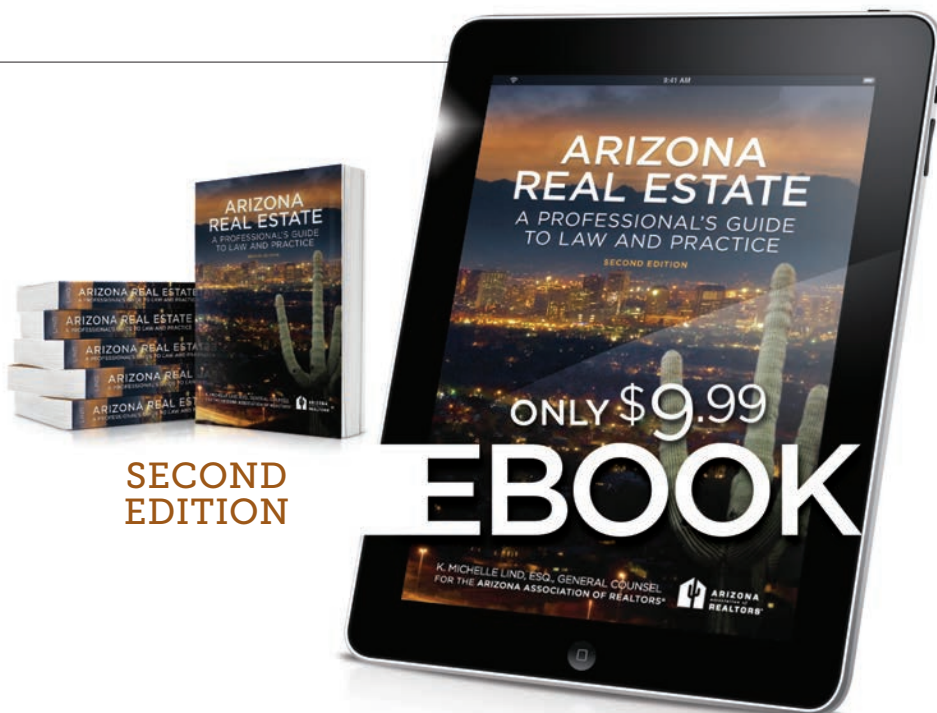
AAR offers its members many benefits, one of which is assistance with [dispute resolution](#). When dealing with money, things can get heated. Depending on the allegation or offense, AAR offers various processes to resolve disputes for members statewide, with the exception of the Southeast Valley Regional Association of REALTORS® (SEVRAR). If your dispute is with a SEVRAR member, contact their association at 480-833-7510 for assistance.

<http://www.aaronline.com/resolve-disputes/>

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>



CODE TALK

PROSPECTING? Avoid These Danger Zones

When it comes to obtaining new clients, real estate agents are at the top of their game. But, there are several commonly used prospecting tactics that can land agents in hot water. This month, we'll take a look at some danger zones to avoid when it comes to prospecting and advertising and give you tips on the right and wrong ways to do it.

ZONE 1: GIVING IT AWAY

While prospecting for new clients, some agents consider using a game of chance (like a drawing for an iPad). However, agents should make certain that they are not doing so in violation of Arizona law. A.R.S. § 13-3301(4) defines gambling, in part, as “the act of risking or giving something of value for the opportunity to obtain a benefit from a game or contest of chance or skill.” Giving business to an agent in exchange for entry into a drawing is likely considered “giving something of value for the opportunity to obtain a benefit.” Agents should therefore refrain from offering new clients entry into a game of chance in exchange for business.

In light of the above, the better practice is to offer the same benefit to all members of the public that attend the agent's open house or respond to the agent's advertisement. Jerome King, designated broker of Long Realty in Tucson, Ariz., offers this advice for erring on the side of caution, “If you'd like to offer a free Starbuck's card at an open house, you should give a Starbuck's card to everyone.” The giveaways must be without condition and universal across the board. Furthermore, keep in mind that Article 12, Standard of Practice 12-1 of the Code of Ethics states: “REALTORS® may use the term ‘free’ and similar terms in their advertising and in other representations provided that all terms governing availability of the offered product or service are clearly disclosed at the same time.”

ZONE 2: THE CLAIM GAME

“I've seen a lot of marketing attempts lately that focus on ‘the last five homes sold in this neighborhood’. And then it gives the addresses of five homes sold, but not necessarily the last five homes the agent himself sold,” said King. “It's a great marketing tactic, but it has one flaw: If you weren't involved in the transaction you can't give the

impression in your advertising that you sold these homes.” Article 12, Standard of Practice 12-7 states: “Only REALTORS® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have “sold” the property.” Armando Contla, GRI with Arizona Turquoise Realty in Lake Havasu City, Ariz. adds, “I've also seen people advertise a property that has already closed escrow” in an effort to gain prospective clients. This is also found when people ‘poach’ listings and post them to Craigslist or other internet sites.

<http://www.aaronline.com/2012/08/are-other-agents-posting-your-listings-on-craigslist/>

If you're looking to paint a picture of a specific neighborhood in your marketing collateral, you should leverage other data such as that on your MLS or from your local newspaper.

ZONE 3: SLIPPERY SIGNS

“Many REALTORS® are posting ‘For Sale’ or ‘For Lease’ signs in their own yards to gain the attention of potential buyers. The only problem is, the agent's home isn't really on the market. This is just a way to get prospects,” said King. Clever? Sure. Unethical? Definitely. Article 12 of the Code of Ethics strictly prohibits false advertising of any kind. King offers this solution, “If you want to post a sign in your yard attracting new clients, have it say something like ‘For information regarding real estate in this neighborhood, call ...’.”

Contla said that he's also seen For Sale By Owner (FSBO) signs popping up in agents' yards, when the property is not for sale. “Appealing to unrepresented buyers with a FSBO sign is just another bait and switch tactic.”

Along those same lines, Contla says that many agents are putting “For Sale” signs in front of homes where the owner may not want it advertised. “We're seeing this in rental properties where the owner may live out of state,” said Contla. “Agents think that a home won't sell unless it has a ‘For Sale’ sign in front. But, you must make sure that you have the express consent of your owner to do so.”

Arizona REALTOR® Magazine — October 2013

<http://www.aaronline.com/2013/10/prospecting-avoid-these-danger-zones/>

HUD MORTGAGEE LETTER 2013-23

Over the last few weeks, several brokers have contacted AAR to express concerns regarding [U.S. Department of Housing and Urban Development \(HUD\) Mortgagee Letter 2013-23](#). The concerns surround that portion of HUD's new pre-foreclosure sales policy that states, "no party that is a signatory on the sales contract, including addenda, can serve in more than one capacity. To meet the Pre-Foreclosure Sale (PFS) Addendum requirements, brokers and their agents may only represent the seller, but not both parties." In other words, HUD will no longer allow "dual agency" agreements in short sale transactions. This restriction includes those dual agency transactions in which two different agents are working for the same broker and one agent represents the seller and the other agent represents the buyer.

<http://portal.hud.gov/huddoc/13-23ml.pdf>

AAR has worked closely with NAR policy representatives to address this onerous restriction and, on September 18, 2013, NAR President Gary Thomas submitted a letter to The Honorable Carol Galante, Assistant Secretary for Housing, urging HUD to reconsider implementation of the policies set

forth in Mortgagee Letter 2013-23. AAR President Sue Flucke has also submitted a letter to HUD in which she explained why the subject restriction is harmful to Arizona REALTORS® and FHA borrowers throughout our state.

As a result of these efforts, on September 25, 2013 [HUD reported to NAR](#) that it will reissue Mortgagee Letter 2013-23 and remove all dual agency language. The result is that the dual agency restriction originally considered by HUD will not be implemented on October 1, 2013.

<http://www.realtor.org/articles/hud-removes-dual-agency-restrictions>

Although this was a team effort, AAR would like to extend its sincere gratitude to Ken Ryan and G-II Varatto for their assistance in contesting HUD's proposed dual agency restriction. Their commitment to the industry is greatly appreciated.

Thank you all.

Arizona REALTOR® Magazine — October 2013

<http://blog.aaronline.com/2013/09/update-hud-mortgagee-letter-2013-23/>

BUSINESS SERVICES UPDATE SureClose® phase-out; zipForm® and eSign see new enhancements

In 2008, AAR began offering transaction management (TM) through SureClose®. At the time, few choices existed in the marketplace and it was expected that SureClose® would become a statewide platform. Since then, numerous other TM systems have been developed. Some existing SureClose® brokers have even moved to other systems, and as a result, monthly SureClose® file counts have steadily declined. AAR has also been informed that the parent company of SureClose® has discontinued selling SureClose® to brokerage firms outside of its existing contracts to focus future SureClose® support and development solely on title and escrow business.

After nine months of research, discussion and consideration, AAR has decided to begin phasing out the SureClose® product as a member benefit starting in January of 2014.

Arizona REALTOR® Magazine — November 2013
<http://www.aaronline.com/2013/11/business-services-update>

Several important changes will occur, while other things will remain the same:

- **New signups will end on December 31, 2013.**
- **AAR will continue to subsidize the majority of the cost, but brokers will begin paying \$1 per file they create.**
- **Training and support for AAR brokers will be provided by AAR Business Services through 2014.**
- **All files will remain accessible for seven years from the date of creation, just as in the past.**

In 2015, additional changes will occur with SureClose®:

- **Brokers will begin paying \$4 per file they create.**
- **Training and support for AAR brokers will be provided by SureClose®.**
- **All files will remain accessible for seven years from the date of creation, just as in the past.**

Continue reading this article online:

<http://www.aaronline.com/2013/11/business-services-update/>

For more information on SureClose® changes, please visit:
<http://www.aaronline.com/2013/10/sureclose-broker-faq/>

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

<http://www.aaronline.com/legal-hotline-q-a-agency>

A Dual Agent Cannot Share Pricing Information

FACTS:

The broker represents the seller. An offer was submitted to the seller wherein the broker would become a dual agent (first offer). The broker has another offer coming in (second offer). The seller instructed the broker to disclose to the second buyer's agent the amount of the first offer.

ISSUE:

Can the broker disclose to the second buyer's agent the amount of the first offer when she is a dual agent in the first offer?

ANSWER:

No. With regard to dual agency, the Consent to Limited Representation (Consent) states that the broker cannot represent the interests of one party to the exclusion or detriment of the other party. (See consent at lines 9-10.) Here, if the broker advises the second buyer's agent of the amount of the first offer, it would be to the detriment of the potential buyer who submitted the first offer. Therefore, the broker should not disclose the amount of the first offer.

Category: *Agency*
Arizona REALTOR® Magazine — November 2013

<http://www.aaronline.com/legal-hotline-q-a-agency>

BROKERAGE

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

Departing Agent May Not Work With Old Clients Unless Both Brokers Agree

FACTS:

The agent leaves Brokerage A and begins working with Brokerage B. The agent was representing several buyers at Brokerage A who have properties under contract. The agent now wants to bring those buyers to Brokerage B to ensure he can continue to work on the contracts.

ISSUE:

May the buyer's agent represent the buyers now that he is licensed with Brokerage B?

ANSWER:

The buyer's agent cannot represent the buyer if there is a broker employment agreement between Brokerage A and the buyer since the agent is no longer licensed with Brokerage A. Thus, Brokerage A and the buyer must agree in writing to terminate the broker employment agreement and the buyer must sign a new buyer/broker agreement with Brokerage B.

Category: *Brokerage*
Arizona REALTOR® Magazine — October 2013

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

>>

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>

Browse more Legal Hotline topics.

<http://www.aaronline.com/law-ethics/legal-hotline/>

CONTINUED

CONTRACTS<http://www.aaronline.com/legal-hotline-q-a-contracts>

Seller Is Contractually Bound To Pay City Sewer Assessment

FACTS:

The buyer and the seller entered into an AAR Purchase Contract. On page 3, line 127, the buyer's agent checked that the seller shall pay all assessments. There is a sewer assessment by the city for more than \$9,000. The buyer is expecting the seller to pay this, however, the seller is refusing to pay and will not close escrow.

ISSUE:

Is the seller responsible for the sewer assessment even though it was not listed in the additional terms section of the purchase contract?

ANSWER:

Yes. Pursuant to the parties' contract, the amount of any assessment, other than a homeowners' association assessment, which is a lien at the close of escrow, will be paid as indicated. The purchase contract indicated that the seller is responsible for the assessment. The seller signed the contract and is required to pay the sewer assessment.

Category: *Contracts*
Arizona REALTOR® Magazine — November 2013

<http://www.aaronline.com/legal-hotline-q-a-contracts>

Buyer May Not Unilaterally Dictate When Escrow Will Close

FACTS:

The buyer and the seller agreed to an addendum whereby closing is to occur "on or before September 13, 2013."

The buyer believes the addendum requires that the seller close whenever the buyer would like to close escrow, as long as closing occurs prior to September 13, 2013.

ISSUE:

Is the buyer entitled to unilaterally dictate when closing is to occur?

ANSWER:

No. The language of the addendum permits the parties to close escrow prior to September 13, 2013 if they so

choose. There is no language that provides the buyer with the right to unilaterally dictate that close of escrow must occur prior to September 13, 2013.

NOTE: Parties should specify a date certain for closing to avoid confusion.

Category: *Contracts*
Arizona REALTOR® Magazine — November 2013

<http://www.aaronline.com/legal-hotline-q-a-contracts>

Buyer May Cancel Based On Failed Loan Contingency During The Cure Period

FACTS:

The buyer was unable to obtain loan approval and received notice of this fact on the date scheduled for the close of escrow. The seller delivered a Cure Notice and the buyer thereafter delivered a notice of the inability to obtain loan approval. The seller is now demanding the earnest money.

ISSUE:

Is the buyer still entitled to the return of their earnest money deposit?

ANSWER:

Yes. The Cure Period applies to every noncompliance with the terms of the contract. Here, the buyer delivered the notice of inability to obtain loan approval within the cure period. Thus, the buyer is entitled to the earnest money.

Category: *Contracts*
Arizona REALTOR® Magazine — October 2013

<http://www.aaronline.com/legal-hotline-q-a-contracts>

SPDS Not Required Until Short Sale Approval Is Obtained

FACTS:

The purchase contract for a short sale was executed by the buyer and seller. The buyer is purchasing the property "as is" and the seller has not completed a Seller's Property Disclosure Statement (SPDS) nor delivered it to the buyer. The buyer and buyer's agent

CONTINUED

have not demanded that the seller provide the SPDS to them, and the lender has not yet accepted the buyer's offer.

ISSUE:

Is the seller in potential breach of the contract by failing to complete and deliver the SPDS to the buyer?

ANSWER:

No. Pursuant to the Short Sale Addendum, the date of the seller's delivery of the Short Sale Agreement Notice to the buyer is deemed the date of contract acceptance for purposes of all applicable contract time periods. Since the seller has five (5) days after contract acceptance to deliver a completed SPDS to the buyer, and contract acceptance has not yet occurred, the seller is still in compliance with the contract.

Category: *Contracts*
Arizona REALTOR® Magazine — September 2013

<http://www.aaronline.com/legal-hotline-q-a-contracts>

A Seller Will Likely Be Relieved Of His Mistaken Acceptance Of An Offer

FACTS:

The buyer submitted an offer of \$450,000 to the seller. The seller submitted a counter offer of \$375,000 which the buyer immediately signed and returned to the seller. The seller stated that he made a mistake and the counter offer should have been \$475,000.

ISSUE:

Is there an enforceable contract between the buyer and seller at \$375,000?

ANSWER:

If one party is operating under a mistake of fact when it signs an agreement, the agreement is voidable if the other party knew or should have known that the first party was mistaken (*Parrish v. United Bank*, 164 Ariz. 18, 20, 790 P.2d 304, 306 (App. 1990)). In this instance, the buyer submitted an offer of \$450,000 and the seller countered with \$375,000. It is likely that the buyer knew

or should have known that the seller made a mistake. As such, the seller has the option of voiding the contract by providing the buyer notice that the contract is void.

Independent legal counsel should be consulted.

Category: *Contracts — Cancellation*
Arizona REALTOR® Magazine — October 2013

<http://www.aaronline.com/manage-risk/legal-hotline/legal-hotline-q-a-contracts-cancellation/>

Requesting Additional Time In The BINSR Does Not Change The Timeframes In The Contract

FACTS:

The buyer submitted a Buyer's Inspection Notice and Seller's Response (BINSR) requesting several repairs and asking for an extension of time to conduct additional inspections. The seller did not agree to the buyer's proposed extension date but instead proposed another date. The parties never agreed on a date, nor did they execute an addendum extending the inspection period. The buyer then submitted another BINSR requesting \$10,000 for repairs. The buyer failed to close on the scheduled close of escrow date. The seller issued a three-day cure notice, but the buyer still failed to close escrow, claiming the proposed BINSR altered the time limits in the contract.

ISSUE:

Does the seller have a right to cancel the contract?

ANSWER:

Yes. The parties never came to an agreement as to extending the timelines in the contract. Merely requesting additional time in the BINSR does not alter the contract. The seller was entitled to provide a cure notice when the buyer did not close as scheduled. Further, inasmuch as the buyer failed to close escrow during the cure period, the contract is subject to cancellation by the seller.

Note – Pursuant to the Residential Resale Real Estate Purchase Contract, Section 6i, "all Inspection Period items disapproved shall be provided in a single notice."

Category: *Contracts – Inspection/Buyer Disapproval*
Arizona REALTOR® Magazine — November 2013

<http://www.aaronline.com/legal-hotline-q-a-contracts-inspectionbuyer-disapproval/>

>>

CONTINUED

Pool Pump Is A Warranted Item That Must Be In Working Condition

FACTS:

The buyer's inspector has indicated that the pool pump is not functioning correctly. The buyer submitted a BINSR requesting that the pool pump be repaired by the seller and designated the pool pump as a non-working warranted item. The seller is refusing to repair the pool pump and has requested that the buyer submit another BINSR designating the pool pump as a non-warranted item.

ISSUE:

Is the seller required to repair the pool pump?

ANSWER:

Under the AAR Purchase Contract, section 5a, the seller is required to maintain and repair "all heating, cooling, mechanical, plumbing, and electrical systems (including swimming pool and/or spa, motors, filter systems, cleaning systems, and heaters, if any)..." Therefore, if the pool pump is not in working condition, the seller needs to repair it. In addition, as a warranted item, the buyer properly designated the pool pump as a non-working warranted item on the BINSR.

Category: *Contracts – Warranties*
Arizona REALTOR® Magazine – November 2013

<http://www.aaronline.com/legal-hotline-q-a-contracts-warranties/>

DISCLOSURE

<http://www.aaronline.com/legal-hotline-q-a-disclosure>

Known Material Facts Must Be Disclosed Even In An "As-Is" Transaction

FACTS:

The seller is selling a property on an "as-is" basis. The buyer understands that the property is being sold as-is and has agreed to waive the Seller's Property Disclosure Statement (SPDS). Both the seller and the listing broker are aware that the property has several major issues, including a broken air-conditioner.

ISSUE:

Must the seller and the broker disclose the major issues with the property, even though the property is being sold on an as-is basis and without a SPDS?

ANSWER:

Yes. Both the seller and the broker must disclose known latent material defects with the property. An As-Is addendum does not excuse this common law duty. See *e.g., S. Development Co. v. Pima Capital Mgmt. Co.*, 201 Ariz. 10, 31 P.3d 123 (App. 2001). Similarly, the As-Is Addendum does not relieve the seller or the listing broker of the legal obligation to disclose all known material latent defects.

Category: *Disclosure*
Arizona REALTOR® Magazine – November 2013

<http://www.aaronline.com/legal-hotline-q-a-disclosure>

Seller Is Obligated To Provide Insurance Claims History Even Though It May Reference A Death In The Home

FACTS:

The previous owner of the property passed away in the master bedroom. The son inherited the home shortly thereafter. Apparently, the deceased was not discovered until eight days after he passed away. Consequently, the son filed a claim with the property insurance policy for death remediation and cleanup. The damage and remediation is now identified in the C.L.U.E. Report (insurance claims history hereinafter CLUE Report). The remediation and cleanup was extensive and the subject of the damage was identified as "physical peril."

ISSUE:

In selling the property, is the son required to disclose that a death occurred in the property? If not, is the son required to disclose the damage and remediation? Finally, is the son also required to provide the CLUE Report?

ANSWER:

Pursuant to A.R.S. § 32-2156, a seller and broker are not required to disclose that the property was the site of a natural death, suicide or homicide. In other words, the seller or broker cannot be liable for failing to disclose that the property had been the site of a human death. *Id.* In this case, the father passed away naturally in the master bedroom of the property. As such, the son and/or the broker are not required to disclose this fact to a potential buyer.

With respect to the CLUE Report, Section 4b, Lines 137-141 of the purchase contract provides, in pertinent part,

>>

CONTINUED

the seller must provide to the buyer a five-year insurance claims history report. In this case, the son is contractually obligated to provide the CLUE Report. The CLUE Report identifies the subject of the remediation as “physical peril.” Despite the subject of the remediation being identified, the son is still contractually bound to provide the CLUE Report.

Category: *Disclosure*
Arizona REALTOR® Magazine – October 2013

<http://www.aaronline.com/legal-hotline-q-a-disclosure>

Buyer Who Fails to Timely Obtain an Appraisal, Waives the Appraisal Contingency

FACTS:

The seller and the buyer have contractually agreed to limit the buyer’s appraisal contingency rights. To this end, the seller and the buyer agreed that (a) the buyer must obtain an appraisal within the 10-day Inspection Period; and (b) the failure to obtain an appraisal within the 10-day Inspection Period results in a waiver of the appraisal contingency. The buyer did not obtain an appraisal within the Inspection Period.

ISSUE:

Does the fact that the buyer failed to obtain an appraisal within the inspection period constitute a potential breach of contract such that the seller should issue a three-day Cure Notice?

ANSWER:

No. The fact that the buyer failed to obtain an appraisal within the inspection period is not a breach of contract or a potential breach of contract. Rather, the failure to obtain an appraisal in this situation simply means that the buyer can no longer use the appraisal contingency as a basis to cancel the contract.

Category: *Disclosure*
Arizona REALTOR® Magazine – October 2013

<http://www.aaronline.com/legal-hotline-q-a-disclosure>

Seller Must Disclose That New Home Was Built On A Landfill

FACTS:

A designated broker represented the buyer in attempting to purchase a to-be-constructed home on a vacant lot. The parties utilized the standard-form purchase contract for new home (with lot). After executing the contract, the buyer learned from a “local” that the new home would be built on an old landfill. Thereafter, the buyer cancelled the contract and sought a return of the earnest money deposit. The seller claims that he was not obligated to inform the buyer of the landfill because the contract does not contain a specific obligation to disclose the existence of a former landfill.

ISSUE:

Is the seller obligated to disclose the existence of a former landfill, even though the standard-form contract does not address this precise environmental issue?

ANSWER:

Yes. A seller has a duty to disclose known facts materially affecting the value of the property that are not readily observable and are not known to the buyer. Thus, although the Purchase Contract for New Home (with lot) does not specifically address each and every conceivable issue with a property, Arizona law requires the disclosure of environmental conditions – particularly if the condition materially affects the value of the property.

Category: *Disclosure*
Arizona REALTOR® Magazine – September 2013

<http://www.aaronline.com/legal-hotline-q-a-disclosure>

LANDLORD/TENANT ISSUES

<http://www.aaronline.com/legal-hotline-q-a-landlordtenant>

Where a Tenant Commits a Felony in the Leased Premises, the Landlord May Immediately Terminate Lease

FACTS:

A murder has taken place at the rental property. The tenant has been arrested and charged with murder, and is now in jail. The police also found drugs in the rental property.

>>

CONTINUED

ISSUE:

What are the landlord's rights in such a situation?

ANSWER:

The AAR Residential Lease Agreement (the lease), lines 145-151, states "Tenant...shall not engage in or facilitate:... (ii) any criminal activity, including drug-related criminal activity, any act of violence or threats of violence, other illegal activity, including...assault..." The lease further provides that any "violation of this provision shall constitute a material and irreparable violation of this agreement and good cause for immediate termination of the tenancy."

In addition, pursuant to A.R.S. § 33-1368(A)(2), "If there is a breach that is both material and irreparable and that occurs on the premises, including but not limited to...homicide...the unlawful manufacturing, selling, transferring, possessing, using or storing of a controlled substance...the landlord may deliver a written notice for immediate termination of the rental agreement..." The landlord may therefore immediately terminate the Lease.

Category: *Landlord/Tenant Issues*
Arizona REALTOR® Magazine — October 2013

<http://www.aaronline.com/legal-hotline-q-a-landlordtenant>

MISCELLANEOUS

<http://www.aaronline.com/legal-hotline-q-a-miscellaneous>

Septic System Must Be Inspected Within Six Months of Close Of Escrow

FACTS:

The buyer and the seller have entered into a purchase and sale agreement for real property serviced by a septic system. Neither the buyer nor the seller wants to pay for the costs associated with repairing the septic system.

ISSUE:

Do the regulations pertaining to septic systems require that a seller repair a septic system prior to a property being conveyed by a seller to a buyer?

ANSWER:

No. The system must be inspected within six months before close of escrow. However, there is no legal requirement that the system be repaired prior to the close of escrow.

Category: *Miscellaneous*
Arizona REALTOR® Magazine — September 2013

<http://www.aaronline.com/legal-hotline-q-a-miscellaneous>

TITLE AND INTEREST IN PROPERTY

<http://www.aaronline.com/legal-hotline-q-a-title>

A Homeowner May Not Replace Upgraded Fixtures With The Original Fixtures Prior To A Trustee's Sale

FACTS:

After purchasing a home, the owner of the home replaced the "original" sink faucets and built-in microwave with upgraded fixtures. Prior to the trustee's sale, the owner removed these upgraded fixtures and replaced them with the "original" fixtures. After the foreclosure sale, the new owner, which is a bank, is demanding that the "original" fixtures be replaced with the upgraded fixtures.

ISSUE:

Must the former owner return the upgraded fixtures?

ANSWER:

Yes. Once the new fixtures were attached to the home they became part of the bank's security.

Category: *Title and Interest in Property*
Arizona REALTOR® Magazine — September 2013

<http://www.aaronline.com/legal-hotline-q-a-title>

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.

<http://www.mackwatsonstratman.com>



REAL SOLUTIONS. REALTOR® SUCCESS.



255 East Osborn Road, Suite 200
Phoenix, Arizona 85012
602.248.7787 | Toll-free in AZ 800.426.7274

www.aaronline.com



The Evolution of GRI

The Graduate, REALTOR® Institute (GRI) Designation is Evolving!

Responding to member requests, AAR will be updating the GRI designation curriculum. We'll introduce new courses as well as offer:

Arizona REALTORS® the flexibility to earn a nationally recognized designation that works with his/her schedule.

Arizona REALTORS® the ability to earn multiple designations at one time.

A designation that meets the needs of today's Arizona REALTOR®.

Less time in class and more time at the office.

To see all the changes taking place, and get a preview of the new classes rolling out in 2014, visit www.azgri.com.

All signs point to success!

