

BROKER & MANAGER

QUARTERLY

INDEPENDENT CONTRACTOR AGREEMENTS

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LEGAL HOTLINE Q&A



Primary Election Day is Tuesday, August 26!

Welcome

TO THE ARIZONA BROKER/MANAGER QUARTERLY

2014 AAR PRESIDENT EVAN FUCHS

The summer 2014 edition of the Arizona REALTORS® Broker/Manager Quarterly brings you valuable updates on issues that impact your business. This edition includes articles concerning recent legal issues, forms revisions, and Legal Hotline Q&As. Since Primary Election Day is August 26th, we have also included voter and REALTOR® Party information. You will also find a matrix of transaction management options and upcoming programs developed specifically with brokers in mind. [↗](#)

You can view [archived editions](#) of the Arizona REALTOR® Broker/Manager Quarterly online.

<http://www.aaronline.com/stay-informed/arizona-broker-manager-quarterly>

If you have any topics that you would like to see covered in a future issue, please let us know.



Evan Fuchs, ABR, CRS, GRI,
AAR 2014 President

LEGAL ARTICLES

Independent Contractor Agreements

BY K. MICHELLE LIND, ESQ.
AAR CHIEF EXECUTIVE OFFICER

Real estate salespersons operating as independent contractors have been a settled area of law for years. However, in three lawsuits filed last year, two in California and one in Massachusetts, salespersons alleged that they were employees of their brokers, not independent contractors. In Massachusetts, the Superior Court ruled that the brokers properly classified the salespersons as independent contractors, but the case is now on appeal, and the California lawsuits are still pending.

[Read more information on these cases.](#)

<http://speakingofrealestate.blogs.realtor.org/2014/03/27/lawsuits-challenge-independent-contractor-status/>

So what is the law in Arizona?

See also: [Common Provisions in](#)

[Independent Contractor Agreements](#)

<http://www.aaronline.com/?p=19993>

SALESPERSONS ARE “STATUTORY NON-EMPLOYEES” FOR TAX PURPOSES

The Internal Revenue Code provides a statutory classification for real estate salespersons as “statutory non-employees” for federal income and employment tax purposes. If the employing broker satisfies all the statutory requirements, he or she is not required to withhold federal taxes for the salesperson’s compensation. To qualify for “statutory non-employee” status, the real estate salesperson must:

- Be licensed as a real estate agent;
- Receive substantially all compensation based on sales or other output, rather than the number of hours worked; and
- Have a written contract with the brokerage firm that provides that the salesperson will not be treated as an employee for federal tax purposes.

[I.R.C. §3508](#)

<http://www.law.cornell.edu/uscode/text/26/3508>



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Real estate brokers are, in effect, exempt from Arizona withholding tax requirements as well. State law provides that employers must withhold an amount from compensation paid to employees based on a percentage of the federal tax withheld under the federal tax code. A.R.S. §43 401(A). Since the federal tax code does not require withholding of income taxes, the Arizona withholding statute does not require withholding either.

Real estate salespersons are also exempt from Worker’s Compensation and Employment tax. The Workers’ Compensation Act exempts real estate salespersons from its provisions when: (1) substantially all income received for services is directly related to sales rather than the number of hours worked; (2) the services performed by the salesperson are performed pursuant to a written contract between the salesperson and broker; and (3) the contract specifically provides that the salesperson is not treated as an employee for federal tax purposes or for the purposes of the Workers’ Compensation chapter. A.R.S. §23 910. The Employment

Security Act exempts from its provisions licensed real estate and cemetery brokers and salespeople if all income is received solely by way of commission.

[A.R.S. §23 617\(14\)](http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=23)
<http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=23>

SALESPERSONS ARE “EMPLOYEES” FOR REGULATORY AND CIVIL LIABILITY PURPOSES

Salespersons are considered employees for other purposes. The Commissioner’s Rules require the broker to maintain close supervision and control over salespeople. R4 28 1103(A) provides: “An employing broker and a designated broker shall exercise reasonable supervision and control over the activities of brokers, salespersons, and others in the employ of the broker. Reasonable supervision and control include the establishment and enforcement of written policies, procedures, and systems...” Further [R4 28 1103 \(D\)](#)

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provides: “An employing broker is responsible for the acts of all associate brokers, salespersons, and other employees acting within the scope of their employment.”

http://www.azsos.gov/public_services/Title_04/4-28.htm

With regard to civil liability, the Arizona Supreme Court held that the contract language between two people does not determine the relationship of the parties, rather the “objective nature of the relationship, [is] determined upon analysis of the totality of the facts and circumstances of each case.” [*Santiago v. Phoenix Newspapers, Inc.*](#), 164 Ariz. 505, 794 P.2d 138 (1990).

http://www.leagle.com/decision/1990669164Ariz505_1565.xml/SAN-TIAGO%20v.%20PHOENIX%20NEWSPAPERS,%20INC

Therefore, an agreement stating that the salesperson is an independent contractor does not determine the relationship. The court uses a variety of factors to determine whether an employer/employee or independent contractor relationship exists. The courts look for indicia of the “right to control” in determining whether a person is acting as an independent contractor or employee. *Smith v. Goodman*, 6 Ariz. App. 168, 430 P.2d 922 (1967) (citing Restatement (Second) §2, 220). As a result of the right to control factor, the employing broker is generally held liable for the acts of salespersons under the doctrine of “*respondeat superior*,” which provides that an employer can be held liable for damages caused by the employee acting within the scope of employment.

CONCLUSION

Because of statutory exemptions, if there is a properly drafted independent contractor agreement, the broker/salesperson relationship is not treated as an employment relationship for the purposes of federal and state tax withholding, unemployment compensation contributions or workers’ compensation insurance. However, for regulatory and civil liability purposes the real estate broker/salesperson relationship is generally one of employer/employee. 📌

For additional information read NAR’s [FAQ’s on Independent Contractors](#).

http://www.realtor.org/law-and-ethics/independent-contractor-status-frequently-asked-questions?om_rid=AABVdP&om_mid=_BTyE5sB87RSdnD&om_ntype=NARWeekly

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

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BY K. MICHELLE LIND, ESQ., AAR CHIEF EXECUTIVE OFFICER

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Arizona Case Addresses Whether a Broker has a Right to Sue for a Commission When the Broker Violated an ADRE Consent Order

BY K. MICHELLE LIND, ESQ.
AAR CHIEF EXECUTIVE OFFICER

In the recent case of *Focus Point Properties, LLC/Kantor v. Johnson/Oak Acres Trust, No 1CA-CV 12-0766 (Ariz. Ct. App. June 6, 2014)* the Arizona Court of Appeals addressed whether a broker had the right to maintain a lawsuit for a real estate commission when the broker violated Arizona law by not timely disclosing to the ADRE that he violated a prior consent order. The Court determined that the violation did not preclude the commission claim.

THE CASE FACTS:

In 2009, a property owner (Oak Acres Trust-Johnson, as trustee) listed a commercial property in Apache Junction with the broker (Focus Point Properties-Kantor as salesperson) for sale or lease. In January 2010, after months of work coordinating the rehabilitation of the property, and during the term of the listing agreement, the broker procured a tenant. The owner subsequently signed a lease with the tenant without informing the broker.

In February 2010, the broker sent the owner an invoice for the lease commission of \$2,720 and in response the owner canceled the listing agreement. The broker then demanded the full commission of \$140,000 based on the liquidated damages

provision in the listing agreement and the owner refused to pay. As a result, the broker filed a law suit in the Maricopa County Superior Court for the commission and the owner filed a variety of counterclaims including breach of fiduciary duty.

Two days before trial, the owner filed a motion to dismiss and vacate the trial based on the salesperson's real estate license history. Specifically, a 2006 Arizona Department of Real Estate (ADRE) consent order placed the salesperson under a two-year provisional license due to failing to timely disclose two DUI convictions. Pursuant to the consent order, the salesperson was required to abstain from alcohol and submit to random testing. Within that provisional license timeframe, in 2008, the salesperson was convicted of another DUI offense but did not report it to the ADRE until 2011. In 2012, the salesperson voluntarily surrendered his real estate license.


The owner argued that if the salesperson had properly disclosed his DUI conviction, he would not have had a real estate license at the time he provided services to the owner. Therefore, the owner argued that the broker was not entitled to a commission. The Superior Court denied the owner's motion to dismiss because the salesperson was licensed at the time he provided the services and reasoned that the

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act that may have affected his license was not relevant. The case proceeded to trial and the jury found in favor of the broker, awarding the full commission, interest, court costs, and \$39,000 in attorney's fees. The owner appealed the trial court's decision.

THE COURT'S DECISION:

The issue for the Court was whether a broker has standing under A.R.S. §32-2152(A) to maintain a lawsuit for a real estate commission when there was evidence that the broker violated Arizona law by not timely disclosing to the ADRE that he violated a prior consent order. The Court held that the violation did not preclude the broker's claim because the determination whether to suspend or revoke a real estate license is to be left to the Real Estate Commissioner. The court's responsibility under A.R.S. §32-2152(A) is to determine whether the salesperson had a current license at the time the services were performed. The Court of Appeals stated that "[a]lthough § 32-2152(A) required the determination of whether the salesperson was a 'qualified' licensed salesperson at the time the claim for compensation arose, the more specific provision (§ 32-2153) detailing when and by whom a license should be suspended or revoked is controlling as to that issue."

However, the Court found also that the trustee of the trust (Johnson) was not personally liable to pay the commission to the broker. Despite some ambiguity as the trustee's signature, the listing agreement provided that the parties to the agreement were the "Owner and Broker" and it was undisputed that the owner was the trust. 

[Read the entire case online: 1 CA-CV 12-0766](#)

http://r20.rs6.net/tn.jsp?f=001thENF2KsHcex99F0sTRUIKe0-NwDLBiTcB4ukvJUCe9oP-Jdk86g33Hdpp8QPcxAusdJDq13i5qjD3gxnPb6yT7L2Ys34fQqecbxPaloYBVWSCLMff-N8DrLnJya-as8npJRXvMbY0V9rk_EBk0huBtmTet-lruEctVJsa-j_waCokBbR03uixgoaH8z-Kd2Aoo59FYs4FlspZq0--U-07Wh90yMsXcWIHpC5niYEvd2x6t9-oyAghKoySXYMreTG-Jrqj9Qn9pgHLc=&c=76ZknGT0X0l-fbLmzjWsBE837aQTHKJt3Gwvbybln8eYN-qfQE26G-nQ==&ch=qIDLcBMrkLUbyPv8OHT2sC2lJyCJl_9FZKQuGi8Yp38CzGyCCPgQ4g==

Focus Point Properties, LLC/Kantor v. Johnson/Oak Acres Trust

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Earning a Commission – Listing Agreements

BY K. MICHELLE LIND, ESQ.
AAR CHIEF EXECUTIVE OFFICER

The listing agreement is an employment agreement between the seller and the listing broker. This agreement establishes the duties of the broker and seller, including the terms under which the broker will earn a commission. Some of the common issues included in a listing agreement are:

- **The agency relationship between the broker and seller;**
- **The amount of compensation and when it is earned;**
- **Authorization for the listing broker to cooperate with and compensate cooperating brokers;**
- **Permission to disseminate information on the MLS, on the Internet, and in other advertising;**
- **Permission to use a lockbox and access the property;**
- **A seller cooperation agreement;**
- **A seller warranty of ability to convey title;**
- **Dispute resolution.**

The most common form of listing agreement in residential transactions is the exclusive right to sell listing. An exclusive right to sell listing agreement gives a single broker the exclusive right to sell the property for the specified period. However, there are currently 12 individual Multiple Listing Services in Arizona and each has its own listing agreement form. Thus, the terms in a listing agreement vary across the state.

REQUIREMENTS FOR AN ENFORCEABLE LISTING AGREEMENT

All listing agreements must be in writing to be enforceable and must:

- **be written in clear and unambiguous language;**
- **fully set forth all material terms, including the terms of broker compensation;**
- **have a definite duration or expiration date, showing dates of inception and expiration; and**
- **be signed by all parties to the agreement.**

These requirements are set forth in Arizona statute at A.R.S. §32-2151.02(A) and the Statute of Frauds at A.R.S. §44-101(7).

Further, a broker must provide a copy of the employment agreement to the client upon execution. This requirement is set forth in the Arizona Department of Real Estate Commissioner's Rules at R4-28-802(A) and the NAR Code of Ethics at Article 9.

A broker is prohibited from attempting to procure a listing agreement from a seller who is already subject to an existing exclusive real estate employment agreement, unless the broker has received written acknowledgment from the party that the execution of an additional real estate employment agreement could expose the party to liability for substantial additional commissions. A.R.S. §32-2151.02(C).

Finally, a broker may not assign a listing agreement to another broker without the express written consent of all parties to the agreement at the time of the assignment.

WHEN A COMMISSION IS EARNED UNDER A LISTING AGREEMENT

The Arizona Regional Multiple Listing Service (ARMLS) Exclusive Right to Sell/Rent (Listing Contract Legal Language) (2/14) (ARMLS Listing Agreement) states the seller agrees to compensate the broker:

If broker produces a ready, willing and able purchaser or tenant in accordance with this listing...

Thus, pursuant to the ARMLS listing agreement, and other similarly worded listing agreements, the seller is obligated to pay the broker a commission if the broker procures a buyer ready, willing and able to buy on the listed terms with no material contingencies, regardless of whether a contract is subsequently executed. See, *Trimmer v. Ludtke*, 105 Ariz. 260, 462 P.2d 809 (1969).

Although the seller's obligation to pay the real estate broker a commission pursuant to a listing agreement arises when the broker procures a ready, willing and able buyer to purchase the property in accordance with the listing, the actual payment of the commission generally does not occur until close of escrow. Further, if the purchase contract was entered into before the expiration of the listing, a commission is owed, even if the transaction closes after expiration of the listing.

If the broker procures a buyer during the term of the listing agreement, but the contract is not executed until after the listing expires, the language of the listing agreement determines

whether a broker is entitled to a commission. Most listing agreements contain a "tail" period clause providing for payment after expiration of the agreement. For example, the ARMLS Listing Agreement states:

After expiration of this listing, the same commissions, as appropriate, shall be payable if a sale, rental, exchange or option is made by owner to any person to whom the premises has been shown or with whom owner or any broker has negotiated concerning the premises during the term of this listing, (1) within _____ days after the expiration of this Listing, unless the premises has been listed on an exclusive basis with another broker, or (2) during the pendency, including the closing, of any purchase contract or escrow relating to the premises that was executed or opened during the term of this Listing...

See, ARMLS Listing Agreement at paragraph 6(f).

If the agreement is an exclusive listing and the property is transferred during the term of the listing, the broker is generally entitled to a commission. An exclusive listing also gives the broker the right to a commission if a sale is made by another broker during the term of the listing. In fact, an exclusive listing generally obligates the seller to pay the broker a commission if the property is transferred in any way during the term of the listing. Additionally, a commission will be due if the seller unilaterally withdraws the property from the market and sells it without the assistance of any broker.

A LISTING AGREEMENT IS NOT A BINDING AGREEMENT TO SELL

A listing agreement is not a binding agreement to sell. If the broker produces a "ready, willing and able" buyer (with no material contingencies), the seller will likely owe the broker a commission, but the seller is under no obligation to sell the property to the buyer. 📄

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City Codes Regulate Placement of Signs


BY SCOTT DRUCKER, ESQ. AAR GENERAL COUNSEL

Although the training and education of REALTORS® primarily focuses on state and federal laws, there exist applicable city ordinances that affect how REALTORS® conduct business. In Arizona, there are 65 different City Codes and virtually all of them prohibit the placement of signs on public sidewalks. For example, section 210-01 of the Yuma City Code states:

Except as otherwise provided, it shall be unlawful for any person to obstruct in any manner or by any material whatsoever, any street or sidewalk, curb, gutter, alley or other public place.

Section 3-8(a) of the Phoenix City Code states:

It shall be unlawful for any person without first obtaining a permit from the City to do so, to place or erect or cause to be placed or erected upon the streets, alleys or other property of the City any provisional sign, poster, placard, banner, shield, flag, sign, bill, card or any other device either decorative, pictorial or bearing advertisement.

While these are just two examples, the ordinances impact REALTORS® that utilize open house signs and directional signs. To avoid any claims of wrongdoing, REALTORS® should therefore take a moment to familiarize themselves with their local ordinances and avoid placing signs in locations that may pose a threat to public safety. 

[Originally posted on AAR's blog](http://blog.aaronline.com/2014/06/city-codes-regulate-placement-of-signs/)

<http://blog.aaronline.com/2014/06/city-codes-regulate-placement-of-signs/>

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www.aaronline.com/manage-risk/for-sale-sign-laws

Which of These "For Sale" Signs Can You Use?
ALL OF THEM!

**ARIZONA STATUTES
PROHIBIT HOA'S
FROM REGULATING
OR PROHIBITING**

FREQUENTLY ASKED QUESTIONS

Q: Can an HOA prohibit a property owner from placing a "For Sale," "For Rent," or temporary "Open House" sign in their yard?

A: No, as long as:
(1) the sign is commercially produced and

Avoid Counteroffer Confusion

BY SCOTT DRUCKER, ESQ. AAR GENERAL COUNSEL

Counteroffer One. Counteroffer Two. Counteroffer Three. The fact is that multiple counteroffers can create confusion because, with each counteroffer, it becomes increasingly difficult to determine which terms have been agreed to and which proposals have been rejected. To help avoid counteroffer confusion, REALTORS® should consider integrating one of the following three techniques into their practice.

1. REWRITE THE PURCHASE CONTRACT

Rather than submit yet another counteroffer, at some point the better practice is to simply draft and convey an entirely new purchase contract. From a legal perspective, the new purchase contract is akin to a counteroffer, which technically acts as the rejection of an offer and the submission of a new offer. But while the counteroffer and new purchase contract have the same legal effect, the use of a new contract enables the parties to efficiently view all terms in a stand-alone document.

2. ALL INCLUSIVE COUNTEROFFER

With multiple counteroffers, a prudent practice is for the final counteroffer to restate those terms from prior counteroffers by which the parties intend to be bound. For example, even if the parties have agreed via prior counteroffers that a specific appliance will convey, it may still prove beneficial for subsequent counteroffers to expressly address the disposition of that appliance. In the event that a subsequent counteroffer fails to mention the appliance, there may be uncertainty among the parties as to whether it transfers to the buyer. By expressly including all agreed upon terms in counteroffers three and higher, the parties are assured that they will obtain a stand-alone counteroffer that can be easily understood and implemented.

3. INCORPORATION BY REFERENCE

While not as favorable as either of the above suggestions, a third option is to incorporate by reference on the final counteroffer those portions of prior counteroffers that the

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Which of These "For Sale" Signs Can You Use?
ALL OF THEM!

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ARIZONA STATUTE
FROM REGULATING
THE USE OF INDIVIDUAL
"FOR SALE" OR "OPEN HOUSE" SIGNS

FREQUENTLY ASKED QUESTIONS

Q: Can an HOA prohibit placing a "For Sale" or "Open House" sign on a property?

A: No, as long as:

- (1) the sign is compliant with the HOA's rules
- (2) the sign is not attached to the property
- (3) the rider attached to the sign is not attached to the property

Q: Can an HOA require a sign to use a particular color or font?

A: No. Arizona law does not require the use of a particular color or font for an open house or "For Sale" sign.

Q: Do an HOA's CC&R's or Arizona's "For-Sale" laws prohibit the display of a "For Sale" sign by a property owner?


A: No. Arizona's "For-Sale" laws do not render void that a sign that is prohibited by a property owner's CC&R's.

For more information regarding the use of "For Sale" signs, visit www.aaronline.com/manage-risk/for-sale-sign-laws

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parties still wish to implement. For example, the parties' third counteroffer may state: "Expressly incorporated into this third counteroffer are lines seven through nine of Counteroffer One and lines 11 through 12 of Counteroffer Two." Although verbiage of this nature requires the parties to review three documents to ascertain the agreed upon terms, there is no confusion as to the terms by which the parties intend to be bound.

While none of the aforementioned suggestions are legally required, they serve to clarify the terms of the parties' agreement, which hopefully eliminates the sort of confusion that often leads to contract disputes. 

[Originally posted on AAR's blog](http://blog.aaronline.com/2014/05/avoid-counteroffer-confusion/comment-page-1/)

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Transaction Privilege Tax Changes

EFFECTIVE JANUARY 1, 2015

Effective January 1, 2015, the Arizona Department of Revenue (DOR) will become the single point of administration and collection of State, county and transaction privilege tax (TPT), commonly referred to as a Sales, Resale, Wholesale, Vendor or Tax License. For business owners where cities administered their own taxes, this means that the taxpayer no longer has to file and pay separate filings and returns with the state and then the city. Rather, there will now be one location to file and pay a return. Additionally, business owners will be able to file and pay on one form for all jurisdictions.

Real property rentals, commercial leasing, construction contracting, and owner/builders are types of business activities subject to TPT. Other business activities subject to TPT include, but are not limited to: retail sales, restaurants/bars, hotel/motel (transient lodging), advertising, amusements, personal property rentals, manufactured building, severance (mining, timbering), transportation, printing, publishing, utilities, communications, air/railroad, private cars/pipelines and use tax. See <http://www.azdor.gov/Business/TransactionPrivilegeTax.aspx>. 

WHAT TO EXPECT

- **Taxpayers who file for more than one location must e-file their tax return**
- **All taxpayers will receive an annual renewal notice this fall from DOR. If you conduct business in a city that has a renewal fee, you will pay DOR the renewal fee(s).**
- **TPT licenses will be valid for one calendar year. This means you will need to renew your license annually with DOR.**
- **If you do not renew your city TPT license timely, you may be penalized up to \$25.**
- **If your business has multiple locations or under multiple names and files a consolidated tax return, you will be required to pay only one municipal TPT renewal fee for each jurisdiction.**
- **If your business operates in multiple locations or under multiple names and does not file a consolidated tax return, you will be required to pay a license renewal for each location in each jurisdiction.**
- **There will no longer be the e-signature document required when registering on AZTaxes.gov. This means you will no longer need to mail in a signature card when you register for AZTaxes.gov.**

GET MORE INFORMATION

<https://www.azdor.gov/TPTSimplification.aspx>

<http://www.azdor.gov/About/FAQs/TPT.aspx>



What's the Buzz with Airport Noise

BY NIKKI J. SALGAT, ESQ., AAR ASSOCIATE COUNSEL

Airport noise can be a nuisance. More importantly, if a property is located within a high noise contour or accident potential zone, it may affect the owner's ability to utilize the property as intended.

DISCLOSURE OF AIRPORT NOISE

Arizona law mandates that sellers disclose if a property is located in territory in the vicinity of a military airport or ancillary military facility. To assist with this legally required disclosure, the Residential Seller's Property Disclosure Statement and Vacant Land/Lot Seller's Property Disclosure Statement ask whether the seller is aware if the property is located in the vicinity of an airport.

WHAT IS TERRITORY IN THE VICINITY OF AN AIRPORT?

Territory in the vicinity is defined by Arizona law at [A.R.S. §28-8481\(20\)](#). The definition provides that territory in the vicinity means any property located within certain zones. Those zones are described by way of dimensions that surround specific military airports in Arizona such as Luke Air Force Base. For visual learners, the Arizona Department of Real Estate compiles airport boundary maps and makes them available to the public. These maps illustrate the boundaries of areas in the immediate vicinity of military and public airports that are susceptible to a certain level of noise from aircraft. The boundaries are typically referred to as noise contours.

<http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/28/08461.htm&Title=28&DocType=ARS>

The maps are a useful guide to determine if a property falls within a noise contour. Maps for military airports can be accessed at www.re.state.az.us/AirportMaps/MilitaryAirports.aspx and maps for many of the public airports are found at www.re.state.az.us/AirportMaps/PublicAirports.aspx. Additionally, images for the boundaries to military and

public airports located in Maricopa County can be viewed at <http://mcassessor.maricopa.gov>. Notably, the maps are intended to show the areas subject to airport-related noise from a given airport. Periodic over-flights that may contribute to noise cannot usually be determined from these maps.

ZONING AND DEVELOPMENT REGULATIONS

Not only can airport noise affect an owner's enjoyment of their property, but it may affect their use of the property. More specifically, Arizona laws regulate the zoning and development of property located within areas of high noise contours or accident potential zones. The definition for noise or accident potential zones, along with the zoning and development regulations for those areas, can be found at A.R.S. §28-8481; <http://www.azleg.state.az.us/ars/28/08481.htm> and A.R.S. §28-8461; www.azleg.state.az.us/ars/28/08461.htm.

It is important to note that while a property may be zoned for a particular use, if that property is located in a high noise contour or accident potential zone, a buyer may not be able to develop and utilize the property as intended. In other words, a vacant land or lot may be zoned as residential but because that property is located within a high noise or accident potential zone, the buyer may not be authorized to construct a residential home on the lot. Therefore, because zoning and development may conflict with one another, a buyer should verify whether the buyer will be able to utilize the property as the buyer intends before purchasing a property near an airport. 📍

ABOUT THE AUTHOR

Nikki J. Salgat, Esq.

Nikki J. Salgat, Esq. is Associate Counsel at the Arizona Association of REALTORS®.

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.

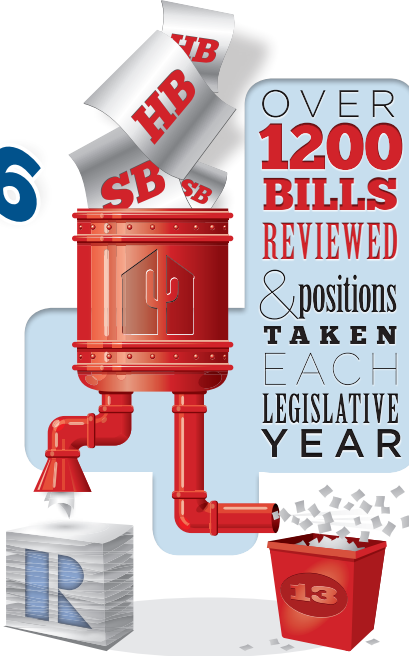


Investing in RAPAC MAKES PERFECT CENTS

RAPAC HAD **93 MAJOR INVESTORS** \$1,000 & Up in 2013. **17.72%** increase from last year.

80 Candidates were **VICTORIOUS** for the 2012 cycle. A SUCCESS RATE OF **95.2%**. **84** ARIZONA REALTOR® ENDORSED

RAPAC RAISED **\$327,483.26** in 2013. **1.43%** increase over 2012. *Woo Hoo! Now That's a lot of Benjamins!*



OVER **1200 BILLS** REVIEWED & positions TAKEN EACH LEGISLATIVE YEAR

145 Candidate Questionnaires were: **A. Distributed** for 2014 election cycle. **B. 104 Returned & Reviewed** by RAPAC Trustees. **C. All of the Above** *A+*

39,152 MEMBERS AS OF OCTOBER 31, 2013

4 { 2014 goals based on this number }


100% SUCCESS RATE

Defeated special legislation that would have provided a dramatic tax reduction for one business and substantially increased homeowners property tax as a result. **A WIN FOR HOMEOWNERS AND A WIN FOR RAPAC!**

24 REALTOR MEMBERS SERVE ON THE LEGISLATIVE COMMITTEE

19.55% OF REALTORS® PARTICIPATED IN RAPAC IN 2013. **100%** OF REALTORS® BENEFITTING

Transaction Management Options

Looking for an alternative to SureClose®? Where's the best place to start looking? AAR has compiled information on some of the leading transaction management companies in the market today in the [Transaction Management Comparison Matrix](#). The matrix was developed to give brokers a glimpse at the functionality available and how to contact them to get more information. 

<http://www.aaronline.com/wp-content/uploads/2012/11/TM-Matrix.pdf>

Learn More Online

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

If you have any questions, please call Business Services at 866-833-7357 or email support@aaronline.com.



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IREM | CCIM **2015** ECONOMIC FORECAST


Arizona REALTORS® to Sponsor Industry Forecast Event in January 2015.

MARK YOUR CALENDAR FOR THE JANUARY 15, 2015, IREM/CCIM COMMERCIAL FORECAST FACEOFF.

This premier commercial forecast event should be attended by all brokers and any of your commercial real estate agents. You'll find out exactly what's happening in commercial real estate and development and what is predicted for 2015. Jerry Colangelo will be the keynote speaker for this half-day event on Thursday morning, January 15, 2015. The Forecast website at <http://www.iremccimforecast.com/> will be updated soon for registration. 

ONLINE TRAINING JUST FOR YOU: **My Broker Coach** SERIES 200

Are you looking to create a winning culture or learn new tactics for recruiting and retaining talent?

AAR introduces Series 200 in the [My Broker Coach](#) program, a collection of 24 individual, self-paced modules that are focused on helping brokers and owners take their business to the next level. Each interactive module is less than 30-minutes long and will help you find new ways to nurture and grow your team, budget for good and bad times and create a culture of success. The full list of courses is available [here](#). Utilizing curriculum from the Council of Real Estate Brokerage Managers (CRB), these courses are geared toward both new and seasoned brokers. The cost is only \$199 for all 24 modules. 

<http://www.aaronline.com/increase-knowledge/new-broker-programs/my-broker-coach>

LEGAL HOTLINE

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

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

DISCLOSURE

Affidavit of Disclosure Is Not Required If Six or More Parcels Are Sold

Issue:

Is an Affidavit of Disclosure required where a seller owns more than six (6) parcels in an unincorporated area of the county?

Answer:

No. A.R.S. § 33-422 provides that:

A Seller of five or fewer parcels of land, other than subdivided land, in an unincorporated area of a county and any subsequent seller of such a parcel shall furnish a written affidavit of disclosure to the buyer, at least seven days before the transfer of the property, and the buyer shall acknowledge receipt of the affidavit.

In other words, a seller is required to furnish an Affidavit of Disclosure to the buyer seven days before the transfer of the parcel(s) if the seller is (1) selling five or fewer parcels of land, (2) these parcels are not subdivided land, and (3) these parcels are located in an unincorporated area of a county. *Id.* Subdivided land is defined by A.R.S. § 32-2101(56) as "improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into six or more lots, parcels or fractional interests."

Here, the seller is in fact selling parcels in an unincorporated area of the county. However, the parcels the seller seeks to sell are six or more, not five or less as the statute provides. Accordingly, an Affidavit of Disclosure is not required by statute. However, a Subdivision Public Report may be required. Independent legal counsel should therefore be consulted. [↗](#)

COMMISSIONS

There Is No Maximum or Standard Commission Rate

Issue:

Is there a maximum commission rate that an agent may charge?

Answer:

There is no maximum rate on a commission that can be charged. Each transaction and engagement is different. To that end, provided that the client agrees and the rate is reasonable for the services provided, the parties are free to agree to whatever commission they choose.

Note: Agreeing to a standard or fixed commission by two or more brokerage firms is likely an antitrust violation. Accordingly, brokerage firms cannot and should not work together to establish commission rates. [↗](#)

Purchase Price May Be Amended To Increase Compensation To Brokers

Issue:

Is it permissible for parties to a real estate contract to increase the sales price in order to accommodate a larger commission to the broker(s), assuming that both the buyer and seller agree in writing and the compensation is set forth on the HUD-1 Settlement Statement?

Answer:

Yes. If both the buyer and seller consent in writing, additional compensation may be earned by the broker(s) and it must be disclosed on the HUD-1 Settlement Statement. The AAR's Additional Compensation Consent Form, which operates as an addendum to the purchase contract between the buyer and seller, may be used for this purpose.

Note: Commission Agreements should not be addressed in the purchase contract. [↗](#)

Have you signed up for the Legal Hotline?

The Legal Hotline provides all AAR broker members (designated REALTORS®) 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

www.aaronline.com/wp-content/uploads/2013/08/3-Legal-Hotline-Access-Process-fillable.pdf

BROWSE MORE LEGAL HOTLINE TOPICS ONLINE

www.aaronline.com/manage-risk/legal-hotline

CONTRACTS (GENERAL)

Purchase Contract Should Address Solar Panels

Issue:

The property owner contracted for the installation of solar panels, which are owned by the solar company and subject to a 20-year lease. Subsequently, the owner accepted a purchase offer and the parties have executed a Residential Resale Real Estate Purchase Contract without reference to the solar panels or solar lease. Now, the buyer has agreed to assume the lease obligations, but has demanded a \$6,000.00 reduction to the purchase price as consideration.

Can a buyer demand a price reduction in exchange for assuming a solar lease? Also, if the buyer does not assume the lease, will the seller remain obligated to make the lease payments?

Answer:

Although the terms of solar leases vary, they generally provide the solar leasing company with discretion to accept or reject an assumption of the lease by a subsequent purchaser. If the solar leasing company agrees to an assumption, the seller will generally no longer be bound by the lease terms, and the buyer is certainly within his or her rights to request a price concession in exchange for the lease assumption. On the other hand, if the leasing company rejects an assumption or if the buyer refuses to assume the lease, the seller of the property may remain liable for the monthly payments for the duration of the lease term. Please note that the buyer's credit rating is a significant factor in the solar leasing company's determination of whether to accept a lease assumption. It is also important for the parties to carefully review the lease terms for transfer fees, pre-payment penalties, and other provisions which may affect their respective rights and obligations. 📄

Seller Concessions In The Residential Resale Real Estate Purchase Contract Likely Include Amount Paid To “Buy Down” Buyer’s Interest Rate

Issue:

The Residential Resale Real Estate Purchase Contract provides, “Seller Concessions (If Any); In addition to the other costs Seller has agreed to pay herein, Seller agrees to pay up to _____% of the Purchase Price or \$_____ for Buyer’s loan costs including pre-pays, impounds and Buyer’s title/escrow closing costs.”

Do Seller Concessions include the amount a buyer owes to buy down their loan rate?

Answer:

Probably. Seller concessions include fees that are attributable to the buyer's loan costs or the buyer's title/escrow closing costs. Because the amount to pay down their loan rate is attributable to the buyer's loan, it probably is considered part of the Seller Concessions. Examples of fees not attributable to the buyer's loan costs or the buyer's title/escrow closing costs include down payments, inspection fees, home warranty plan fees, and HOA transfer fees. 📄

CONTRACTS (BREACH/DAMAGES)

Typically, Only a Single Cure Notice Is Required

Issue:

The buyer and the seller enter into a Residential Resale Real Estate Purchase Contract (the “Contract”). The buyer's purchase of the property under Section 2b of the Contract is contingent upon the buyer obtaining loan approval no later than three days prior to close of escrow. The buyer was unable to obtain approval three days before close and failed to provide a notice of unfulfilled loan contingency to the seller. Under Section 7a of the Contract, the seller provided a Cure Period Notice specifying the buyer's noncompliance.

If the buyer fails to cure by not delivering the notice of unfulfilled loan contingency within the three day cure period, is the seller entitled to the buyer's earnest deposit?

Answer:

Yes. Section 2b of the Contract requires a buyer to deliver a notice of the inability to obtain loan approval to the seller or the escrow company no later than three days prior to the close of escrow date. Here, the buyer was in noncompliance with Section 2b of the Contract when he failed to deliver the notice of unfulfilled loan contingency to the seller three days prior to close of escrow. Pursuant to Section 7a of the Contract, the seller delivered a Cure Period Notice to the buyer giving him three days to cure the noncompliance. In this case, despite the notice to cure, the buyer did not send the notice of unfulfilled loan contingency within the three day period to cure. Therefore, the seller is entitled to the earnest deposit. 📄

CONTRACTS (INSPECTION/BUYER DISAPPROVAL)

Buyer May Cancel "As Is" Transaction During Inspection Period If Warranted Item Is Deemed Unsatisfactory

Issue:

Can the buyer cancel the Residential Resale Real Estate Purchase Contract ("Contract") during the inspection period based on non-working warranted items even if the parties executed an As-Is Addendum as part of the transaction?

Answer:

Yes. The buyer waives the seller's warranties section in Section 5(a) of the Contract by signing the As-Is Addendum. Therefore, the seller has no obligation to make any repairs to ensure that heating, cooling, mechanical, plumbing, and electrical systems (including swimming pool and/or spa, motors, filter systems, cleaning systems, and heaters, if any), free-standing range/oven, and built-in appliances are in working condition at the earlier of possession or close of escrow.

However, the As-Is Addendum does not alter the inspection rights in the Contract. Accordingly, the buyer may elect to cancel the Contract during the inspection period if a warranted item is determined to be unsatisfactory. 📄

[Find Even More Legal Hotline Topics and Q&As on AARonline!](http://www.aaronline.com/manage-risk/legal-hotline/)

<http://www.aaronline.com/manage-risk/legal-hotline/>

MISCELLANEOUS

Arizona Law Allows One Party to a Conversation to Record without the Other Party's Consent

Issue:

The property manager often calls the owners she manages properties for to seek verbal approval for repairs to the properties.

Can the property manager record the telephone conversation without getting the owners' consent?

Answer:

Arizona's wiretapping law is a "one-party consent" law. See A.R.S. § 13-3005. Therefore, if both parties to a conversation are located in Arizona, one party may record the conversation or phone call without the other party's consent. However, if you intend to record conversations involving people located in a state other than Arizona, you should abide by the recording law of the most restrictive state involved, or simply obtain the consent of all parties. 📄

LANDLORD/TENANT

Parties Are Free to Specify Occupants Allowed In the Premises by the Terms of the Lease

Issue:

The landlord and the tenant enter into a Residential Lease Agreement (the "Lease"). By its terms, the property shall only be occupied by the tenant. However, the landlord subsequently learned that an overnight guest of the tenant has now been staying in the property for a number of weeks. The Lease does not authorize this guest to occupy the property. Unfortunately, the Lease is silent as to when a guest or visitor becomes unauthorized. In other words, the Lease does not specify a time period or limitation for guests or visitors and when they become unauthorized occupants.

Is the guest an unauthorized occupant, and if so, can the landlord notify the tenant of the noncompliance with the Lease?

Answer:

Probably. Pursuant to Lines 11 – 13 of the Lease, "the Premises shall be used only for residential purposes and only by the following named persons:...". Here, the tenant is the only person identified. Section 33-1368(A)(1) of the Arizona Landlord Tenant Act (the "Act") provides that a landlord may issue a 10-Day Notice of Material Noncompliance if the tenant misrepresents the number of occupants on the tenant application or in the lease. The Lease identifies who may occupy the property and the tenant is the only person authorized. Therefore, the landlord, after learning that the tenant's guest has been living in the property for weeks, can issue a 10-Day Notice of Material Noncompliance to the tenant. The Act does not specify when a guest or visitor becomes an unauthorized occupant and neither does the Lease. 📄

FAIR HOUSING


Group Homes for People with Mental and Physical Disabilities Are Protected By the Fair Housing Act

Issue:

The broker recently represented the buyer in a residential transaction. Shortly after the close of escrow, the buyer discovered that a nearby property is being operated as a group home for disabled persons. The buyer claims that this is material information which should have been disclosed as part of the transaction.

Was disclosure of the group home required by the seller or the agents to the transaction?

Answer:

No. Persons with physical or mental disabilities are a protected class under the Fair Housing laws. Therefore, neither the seller nor the real estate agents were allowed to disclose the existence of a nearby group home for disabled persons. 

SUBDIVISIONS

A New Public Report Is Required If A Subdivided Lot Is Split Into Five or More Parcels

Issue:


The brokerage has a master listing for 16 contiguous parcels within a subdivision. The owner of the subdivision has obtained a subdivision public report through the Arizona Department of Real Estate. The broker believes that purchasers of individual lots within the subdivision may further subdivide those lots and subsequently retain an agent or agents within the brokerage to list those lots.

Can an agent or agents of the brokerage list subsequently subdivided lots without issuance of a new or updated public report?

Answer:

A "subdivider" is defined as any person who offers for sale or lease six or more lots in a subdivision. A.R.S. § 32-2101(55). Therefore, if a purchaser either acquires six or more lots within the subdivision, or splits lots such that he or she owns six or more total lots within the subdivision, a new public report will be required before the lots may be offered for sale or lease, unless the requirements for an exemption are satisfied pursuant to A.R.S. § 32-2181.02(B)(2). Additionally, it is unlawful for a person or group of persons to act in concert in an effort to avoid the public report requirements. See A.R.S. § 32-2181(D).

On the other hand, if the purchaser of a single lot within the subdivision splits the lot into five or fewer smaller parcels (and otherwise does not own six or more lots within the platted subdivision), a new or

updated public report will not be required before offering the lots for sale or lease, and the agent may take the listing. 

Public Report Is Required Before Subdivided Lot May Be Sold

Issue:


A condominium development is being developed in three stages. Phases One and Two already have public reports. A public report has not yet been issued for Phase Three. A buyer wants to purchase a condominium in Phase Two and another lot in Phase Three to build a garage for his condominium.

Can the buyer purchase the condominium in Phase Two and the garage lot in Phase Three in the same transaction before the public report is issued on Phase Three?

Answer:

No. Arizona Revised Statutes § 32-2184(A) provides:

It is unlawful for any subdivider, after submitting to the commissioner the plan under which a subdivision is to be offered for sale or lease, and securing his approval, to change the plan materially or to continue to offer lots or parcels within the subdivision for sale or lease after a change has occurred that materially affects the plan without first notifying the commissioner in writing of the intended change...Upon receipt of any notice of a material change, the commissioner may require the amendment of the public report and, if he determines such action to be necessary for the protection of purchasers, suspend his approval of sale or lease pending amendment of the public report...

As a result, the developer cannot sell, and the buyer cannot purchase, the garage lot in Phase Three until a report is issued. 

ABOUT THE AUTHOR

Richard V. Mack

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>

Residential SPDS Revisions

BY SCOTT DRUCKER, ESQ., AAR GENERAL COUNSEL

The Arizona REALTORS®, by way of a workgroup chaired by Trudy Moore GRI, CRS, CRB, has revised the Residential Seller's Property Disclosure Statement (SPDS). The following is an outline summary of the more critical revisions made to the 2014 SPDS.

RESIDENTIAL SELLER DISCLOSURE ADVISORY

The Advisory cover page now contains far less text as the workgroup removed previous language that described the six general sections contained within the SPDS. Although still recognizable by its "WHEN IN DOUBT – DISCLOSE" message that remains prominently displayed at the top of the page, the workgroup elected to use the Residential Seller Disclosure Advisory page solely as a vehicle to express to the seller the importance of fulfilling their disclosure obligations. The page now emphasizes that sellers are legally obligated to disclose important facts about the property and that these disclosure obligations remain even if the parties agree that no SPDS will be provided. As was previously the case, the Advisory page continues to warn sellers that a failure to make the legally required disclosures may subject them to civil liability.

PROPERTY AND OWNERSHIP

Lines 44-46 pose the question: "Are you aware if the Property is located within the boundaries of a Community Facilities District (CFD)?" Although a relatively new phenomenon in Arizona, CFDs are increasing in popularity since they serve as special taxing districts that developers and municipalities can use to finance the cost of infrastructure improvements, which are ultimately paid by homeowners within the district. If the property is subject to a CFD, the seller is asked to identify the name of the CFD so that the buyer can research their obligations, if any, via the repayment of bonds in the form of an addition to their annual property tax bill.

BUILDING AND SAFETY INFORMATION

Lines 97 and 99 have been added to ask the seller to disclose the approximate ages of the property's heating and cooling systems. While buyers obviously desire to ensure that the heating and cooling systems are functioning as intended, the

expected lifespan of the system based on its age at the time of sale may also be of importance.

Based on an increased number of pet stain and odor claims being reported across Arizona, questions have been posed on lines 137-138 asking "Are you aware of any animals/pets that have resided in the Property?" and "If yes, what kind?". With notice of the number and types of animals/pets that previously resided in the property, buyers will be better positioned to conduct whatever types of inspections they deem appropriate.

A box has been added on line 140 asking the seller if they have observed bed bugs on the Property.

UTILITIES

If the property receives internet service, the seller is now asked on line 166 to disclose that fact and identify the name of the internet provider. Similarly, if the property receives satellite service, the seller is now asked on line 165 to disclose that fact and identify the name of the satellite provider.

Line 180 now asks the seller to identify whether the United States Postal Service delivers mail to the property, a cluster mailbox, the post office or another location.

With an increase in the number of alternate power systems serving residential properties, lines 186-189 were added to ask whether any alternate power systems serving the property are leased. If so, the seller is asked to provide the name and phone number of the leasing company and attach a copy of the lease, if available.

ENVIRONMENTAL INFORMATION

In addition to Superfund/WQARF/CERCLA and Wetlands, line 220 now includes a box for "Natural Area Open Spaces" so that the seller can disclose whether the property is located within such an area or subject to applicable ordinances. Disclosure of this classification can prove important in areas that have been deemed environmentally sensitive as developers and homeowners will be required to leave certain portions of the land in a natural state.


On March 13, 2014, Congress amended the 2012 Biggert-Waters law with the “Homeowner Flood Insurance Affordability Act.” Nonetheless, flood insurance premiums are likely to increase and, in some instances, may be substantially higher than premiums paid for flood insurance prior to the time of sale. As a result, a flood insurance “Notice to Buyer” has been added to lines 225-238 advising buyers not to rely on the premiums previously paid for flood insurance as an indicator of the premiums that will apply after completion of the purchase.

SEWER/WASTEWATER TREATMENT

Previously, the SPDS asked if the “entire Property” is connected to a sewer. However, with an increase in the number of properties partially attached to a sewer, lines 246-247 now ask: “is a portion of the Property connected to a sewer? [and] Explain.”

SELLER CERTIFICATION

By way of the Seller Certification found on lines 280-283, the seller acknowledges receipt of the Residential Seller Disclosure Advisory titled “When in Doubt – Disclose.”

Agents should therefore ensure that the Residential Seller Disclosure Advisory is timely provided to the seller. 

[Read the FAQ's online](#)

<http://www.aaronline.com/2014/06/residential-spds-release/>

Valuable contributions to the workgroup were also made by REALTOR® members Martha Appel, Bill Ashker, Jan Green, Nicole Hamming, Pat Kelly, Michelle LaBlonde and Kerry Melcher. The workgroup was assisted by AAR staff members Scott Drucker, Jan Steward and Cynthia Frey.

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 and oversees AAR's Risk Management Committee, which includes development of standard real estate forms and professional standards administration for twenty of the state's local REALTOR® associations.

This post reflects only the opinion of the author, is not intended to be definitive legal advice and you should not act upon it without seeking independent legal counsel.

June 2014 Purchase Contract Revisions to Addenda Incorporated

Previously, AAR eliminated the Assumption/Carryback Addendum from its library of forms. It has since been replaced by three new seller financing addenda, along with a fourth form titled Loan Assumption Addendum. To reflect these changes, the Risk Management Committee and the Executive Committee have approved minor revisions to the “Addenda Incorporated” paragraphs of the Residential Resale Real Estate Purchase Contract and the Vacant Land/Lot Purchase Contract.

Specifically, lines 27-29 of the Residential Resale Real Estate Purchase Contract and lines 35-38 of the Vacant Land/Lot Purchase Contract have been revised to eliminate reference to “Assumption/Carryback” as a potentially incorporated addendum and add references to two new addenda: (1) “Loan Assumption”; and (2) “Seller Financing.” 



Watch the Latest #AskScott Video!

AAR General Counsel Scott Drucker, Esq. addresses member questions this month, including how to proceed with a buyer contingency.

[Watch the Latest Video & Browse Previous Episodes](#)

<http://www.aaronline.com/manage-risk/askscott/>

Primary Election Day is Tuesday, August 26!

The Arizona REALTORS® has endorsed a total of 77 candidates running for the Arizona State Legislature. These candidates have shown a strong commitment to a high quality of life in Arizona by supporting private property rights, homeownership, and a strong business environment.

[View the 2014 Primary Election Voter Guide](http://www.aaronline.com/voice-at-the-capitol/2014-voter-guide/)

<http://www.aaronline.com/voice-at-the-capitol/2014-voter-guide/>

The association's Government Affairs Department and volunteer leadership encourage you to vote, act and invest. As a member of the REALTOR® Party, you support private property rights and a strong, healthy business environment for the real estate industry. Without your grassroots support and collective voice, we would be unable to protect your livelihood and the rights of homeowners.

The REALTOR® Party supports candidates based on their positions on issues affecting the real estate industry and private property rights, not party affiliation.

Arizona REALTOR® members are involved in the political process at all levels, promoting policies and supporting candidates who advocate for private property rights and homeownership in Arizona. By helping to elect candidates who understand the issues important to REALTORS®, you help strengthen our collective voice.

**REMEMBER, REALTOR® TURNOUT IS ESSENTIAL –
GET OUT THE REALTOR®
VOTE ON ELECTION DAY!**

ARIZONA REALTORS® RELEASES 2014 ENDORSEMENTS FOR LEGISLATURE

The Arizona REALTORS®, which represents more than 40,000 real estate professionals released its 2014 primary election endorsements for the Arizona Senate and House of Representatives. The Arizona REALTORS®, the largest trade association in Arizona, is pleased to endorse 30 Senate and 47 House candidates.

"As active members of our communities, REALTORS® have a strong interest in our State's leadership," stated Lori Doerfler, Chair of the REALTORS® of Arizona Political Action Committee (RAPAC). "We have endorsed a slate of candidates that share the REALTOR® vision for the protection of private property rights, affordable homeownership and who maintain a deep understanding of the issues facing our members and the real estate industry."

[View the full slate of the Arizona REALTORS® legislative candidate endorsements online](http://www.aaronline.com/arizona-association-of-realtors-releases-2014-endorsements-for-legislature/)

<http://www.aaronline.com/arizona-association-of-realtors-releases-2014-endorsements-for-legislature/>

REALTORS® OF ARIZONA POLITICAL ACTION COMMITTEE CHALLENGE TO MEMBERS... Become a Champion

The 2014 REALTORS® of Arizona Political Action Committee (RAPAC) Champion wins a 2-Night stay in beautiful NAPA Valley Wine Country and \$1,500 in Visa Gift Cards. *Read on to learn how.*

RAPAC is a vital part of the Arizona REALTORS® Government Affairs program – a program that includes professional lobbying, legislative analysis, grassroots contacts, and long-term political relationships. RAPAC strives to educate city council members, legislators and members of congress about our industry and ensures that no decision is made that will affect our industry, good or bad, until our voice is heard.



5 Reasons to Invest in REALTOR® Interests through RAPAC

1. For every \$5,000 I make in commission, RAPAC saved me \$280 by defeating attempts to place a sales tax on my commission.
2. RAPAC saved your clients money by passing a Constitutional Amendment banning ANY real estate transfer tax. Sellers could have paid as much as 2.2% of the final sales price in taxes.
3. RAPAC defeated legislation that would have provided a dramatic tax reduction for one business industry which would have substantially increased homeowners property tax as a result.
4. In 2012, 80 out of the 84 RAPAC endorsed candidates were successful in their elections, a 95.2% success rate. This gave REALTORS® a seat at the table and resulted in a 100% success rate on passage of Arizona REALTORS® legislation in 2014.
5. Each year over 1200 bills are reviewed and positions taken on your behalf. Saves you time and money.

[Learn more about RAPAC:
The 5-W's of RAPAC](http://www.aaronline.com/2014/06/the-five-ws-of-rapac/)

<http://www.aaronline.com/2014/06/the-five-ws-of-rapac/>

Find out more of what RAPAC has done for you



WHAT AAR YOU WATCHING?



LEARN MORE ONLINE

www.realtoractioncenter.com/realtor-party/get-involved/mobile-app-1.html



WHERE WILL YOU BE WHEN YOU GET THE CALL FOR ACTION?

As a busy professional on the go your lifeline to clients and your office is your phone. Fewer and fewer of us are tied to a traditional desktop or laptop anymore to complete the functions of our work. Smartphones and tablets are how we increasingly manage our information and daily tasks.

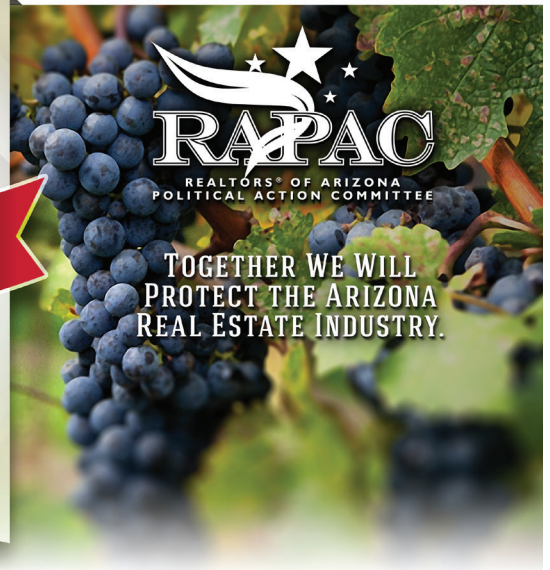
THE REALTOR® ACTION CENTER MOBILE APP – DON'T JUST GET IT – USE IT!
DOWNLOAD AND LOGIN TODAY

To download, text "App" to 30644 and remember to login!

WINE COUNTRY AWAITS YOU,
BUT ONLY IF YOU'VE GOT THE GRAPES!

ARE YOU READY TO
LEAD THE CHARGE?

RAPAC NEEDS
CHAMPIONS LIKE YOU
TO BRING IN
NEW RECRUITS!



TOGETHER WE WILL
PROTECT THE ARIZONA
REAL ESTATE INDUSTRY.

BECOME A RAPAC CHAMPION TODAY...

**FOR EVERY TEN (\$30) MEMBER
INVESTMENTS YOU RECEIVE,
YOUR NAME WILL BE ENTERED INTO
A DRAWING FOR A CHANCE TO WIN.**

**THE DRAWING WILL TAKE PLACE AT
THE OCTOBER LEADERSHIP CONFERENCE.** (YOU DO NOT NEED TO
BE PRESENT TO WIN)

THE PRIZES:

**A 2 NIGHT STAY IN BEAUTIFUL
NAPA VALLEY WINE COUNTRY**



**\$1,500 IN VISA GIFT CARDS
THAT YOU CAN USE TOWARDS
A FLIGHT AND SPENDING MONEY.**

TOTAL PRIZE VALUE: \$2,500!

RAPAC CHAMPION CONTENDER:

NRDS #:

The following information is required by law:

INVESTOR'S NAME _____ DATE _____ TELEPHONE _____

HOME STREET ADDRESS _____ CITY _____ STATE _____ ZIP _____

NRDS # _____ LOCAL ASSOCIATION _____

For RAPAC Investments Only:

\$30 { RAPAC Champion Fundraiser

Please Note:
Credit card investments must be made by a personal card and paid with
personal funds. Corporate checks and third-party checks cannot be accepted.

Important:
All funds must be mailed
within 30 days of collection to:

Arizona Association of REALTORS®
255 E. Osborn Rd., Ste. 200
Phoenix, Arizona 85012



Questions/Comments?
602-248-7787 or 800-426-7274

Form of Payment: Check American Express Visa MasterCard Discover/Novus

Total Enclosed:

SIGNATURE _____ DATE _____ CARD NUMBER _____ EXP. DATE _____

Required Notice: Contributions are not deductible for federal income tax purposes. Contributions to RAPAC are voluntary and are used for political purposes. You may refuse to contribute without reprisal. 70% of each contribution is used by RAPAC to support state and local candidates. The balance is sent to the National RPAC to support federal candidates and is charged against your limits under 2 U.S.C. 441a.



OFFICIAL FUNDRAISER GUIDELINES

- Each potential RAPAC Champion will need to fill out the form with their personal information with the exception of the payment section since he/she is only collecting funds.
- RAPAC investors must fill out the form in its entirety.
- Investments collected by each RAPAC Champion must total exactly \$30.00. No more, no less.
- Investments can only be made by active REALTOR® members. This also includes local association staff and affiliates.
- FEC law requires that RAPAC investments of \$50 and below reach the State Association (AAR) within 30 days. The time period begins when the member collects the investment. This is indicated by the date on a check and the date filled out on the form. If the funds are received after those 30 days, we must return the investment to the member. No exceptions.
- RAPAC investments must only be drawn from personal funds. Corporate dollars cannot be used towards RAPAC.
- Investments can be made by check, credit card or cash. If made by check please ensure it is written out to, "RAPAC" or "REALTORS of Arizona Political Action Committee".

Please note - We cannot receive any credit card information via email, for security purposes. If a member wishes to pay by credit card call Kate Ligouri directly at (602) 351-2448 to securely pay over the phone or you can mail information to:

**Arizona Association of REALTORS®
Attn: RAPAC Champion
255 East Osborn Road, Suite 200, Phoenix, AZ 85012**

- RAPAC Champions can choose to send in a RAPAC investment as soon as they receive it or they can hold it until they receive all 10 investments, but the 30 day time limit for each investment will still apply. If individual investments are sent in, we will keep track for each RAPAC Champion contender.
- RAPAC investments processed before September 30th will count towards the 2014 RAPAC year. Any investments processed after October 1st will count towards the 2015 RAPAC year. (If mailed to the State Association towards the end of September, be mindful of any potential mail delays. If you must ensure an investment counts in 2014, allow 3-4 days to be delivered and processed at the State).
- RAPAC investments will be collected throughout the course of the 2015 Leadership Conference, (October 6 - 8, 2014).

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**Broker
University**



Broker University is proudly brought to you by the
ARIZONA ASSOCIATION OF REALTORS®

August 18-19, 2014

INSTRUCTOR:

Evan Fuchs, Designated Broker for Bullhead Laughlin Realty, continuing education and prelicensing instructor in Arizona. Evan brings over 13 years of brokerage experience to the classroom offering practical applications and discussions to the classroom.

LOCATION:

**AAR classroom
255 E. Osborn, Phoenix**

Remote locations include:

- **Green Valley**
- **Lake Havasu**
- **Prescott**
- **Southeast Arizona**
- **Yuma**

Live feeds to remote locations: Students will be able to see and hear the instructor and will be able to ask questions.

Broker Management Clinics

August 18, 2014

**BMC #1: Statutes & Rules (9:00– 12:00)
3-Commissioners Standards**

This class provides a review of the Arizona Revised Statutes and Commissioner's Rules as they apply to the management of a brokerage and the oversight of licensees including disclosures, contracts, fiduciary duties, advertising, record keeping, trust account management, and employment agreements as well as compliance and risk management activities.

**BMC #2: Broker Policies (1:00—4:00)
3-Commissioners Standards**

Explore suggested policies addressing top issues in Arizona as well as examine ADRE regulations, including the management of transaction files and storing and managing confidential data. The class will also identify key components of well written office policies to minimize risk and clarify interpretation to better provide a clear understanding and expectations of licensees under the supervision of a broker.

August 19, 2014

**BMC #3: Supervision (9:00– Noon)
3-Commissioners Standards**

Review the duties of a broker as required by the ADRE Commissioner's Rules, and the general requirements of broker employment agreements, who is responsible for supervision and the consequences for failing to supervise. Discuss agency relationships and identify the risks association with different kinds of agency relationships, how they will be handled and what the standard of care will be.

Register Today!

www.regonline.com/2014BMCs

\$29 each or \$80 for all three



**ARIZONA
association of
REALTORS®**

REAL SOLUTIONS. REALTOR® SUCCESS.





NATIONAL
ASSOCIATION *of*
REALTORS®

Broker Involvement Program

***Are you a broker owner or managing broker?
Are you involved with NAR's Broker Involvement Program?***

This dynamic program provides you, the broker-owner, with a quick and effective tool to rally your agents on critical legislative issues affecting our industry.

What Does the Broker Involvement Program Offer?

VOICE ON CAPITOL HILL

The program is an opportunity to bring a strong and united REALTOR® voice to members of Congress. With over 10,000 broker owners and 380,000 agents in the program, the REALTOR® voice will be heard loud and clear.

EASY-TO-MANAGE SOLUTION

Nothing needs to be downloaded and there is no cost to the broker. NAR gives the broker-owner or managing broker access to the Broker Portal.

PROVEN RESULTS

Calls for Action response rates are significantly higher when agents receive their message from their broker. Nearly 42 percent of all responses on 2011 Calls for Action were from agents in the Broker Involvement Program.

***Learn more about the program on
the REALTOR® Action Center or join today.***

www.realtoractioncenter.com/realtors/brokers

