

# RECOMMENDATION TO THE EXECUTIVE COMMITTEE

## FROM:

Risk Management Committee

## RECOMMENDATION:

Approval of a revised Residential Seller Disclosure Advisory page (aka “When In Doubt - Disclose” page).

## BACKGROUND:

The Residential Seller’s Property Disclosure Statement contains a cover page titled Residential Seller Disclosure Advisory. That document instructs the seller as follows, “Attach copies of any available invoices, warranties, inspection reports, and leases, to insure that you are disclosing accurate information.”

The aforementioned instruction is causing confusion and leading some members to conclude that sellers are *required* to convey to the buyer prior inspection reports in the seller’s possession. No such contractual requirement exists and, on March 14, 2019, the Risk Management Committee voted to remove the term “inspection reports” from the subject sentence. As such, the Risk Management Committee proposes that the sentence be revised as follows:

Attach copies of any available invoices, warranties, ~~inspection reports,~~ and leases to ensure that you are disclosing accurate information.

## BUDGET IMPACT:

Arizona REALTORS® will be required to pay zipForm® \$50 to format the revised Residential Seller Disclosure Advisory page and upload it to the zipForm® software product for use by Arizona REALTOR® members. (Note - zipForm® has not consistently billed Arizona REALTORS® for expenses of this nature.)

## MOTION:

**TO APPROVE FOR RELEASE ON OR ABOUT JUNE 1, 2019 THE ATTACHED REVISED RESIDENTIAL SELLER DISCLOSURE ADVISORY PAGE.**

## FOR MORE INFORMATION CONTACT:

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# RESIDENTIAL SELLER DISCLOSURE ADVISORY

Document updated:  
October 2017



## **WHEN IN DOUBT – DISCLOSE!**



Arizona law requires the seller to disclose material (important) facts about the property, even if you are not asked by the buyer or a real estate agent. These disclosure obligations remain even if you and the buyer agree that no Seller's Property Disclosure Statement ("SPDS") will be provided.

**The SPDS is designed to assist you, the seller, in making these legally required disclosures and to avoid inadvertent nondisclosures of material facts.** To satisfy your disclosure obligations and protect yourself against alleged nondisclosure, you should complete the SPDS by answering all questions as truthfully and as thoroughly as possible. Attach copies of any available invoices, warranties, and leases to insure that you are disclosing accurate information. Use the blank lines to explain your answers. If you do not have the personal knowledge to answer a question, it is important not to guess – use the blank lines to explain the situation.



If the buyer asks you about an aspect of the property, you have a duty to disclose the information, even if you do not consider the information material.\* You also have a legal duty to disclose facts when disclosure is necessary to prevent a previous statement from being misleading or misrepresented: for example, if something changes.

**If you do not make the legally required disclosures, you may be subject to civil liability.** Under certain circumstances, nondisclosure of a fact is the same as saying that the fact does not exist. Therefore, nondisclosure may be given the same legal effect as fraud.

If you are using the Arizona Association of REALTORS® ("AAR") Residential Resale Real Estate Purchase Contract, the seller is required to deliver "a completed AAR Residential SPDS form to the Buyer within three (3) days after Contract acceptance." If the Seller does not provide the SPDS as the Contract requires, the Seller is potentially in breach of the Contract, thereby enabling the Buyer to cancel the transaction and receive the earnest money deposit.

\* By law, sellers are not obligated to disclose that the property is or has been: (1) a site of a natural death, suicide, homicide, or any other crime classified as a felony; (2) owned or occupied by a person exposed to HIV, or diagnosed as having AIDS or any other disease not known to be transmitted through common occupancy of real estate; or (3) located in the vicinity of a sex offender. However, the law does not protect a seller who makes an intentional misrepresentation. For example, if you are asked whether there has been a death on the property and you know that there was such a death, you should not answer "no" or "I don't know." Instead you should either answer truthfully or respond that you are not legally required to answer the question.