

A.A.C. R4=28-302(L). Among other things, the non-resident broker must:

1. Establish an office in Arizona;
2. Appoint a branch manager; and
3. Provide a statement to ADRE describing how the licensees will be supervised.

A.A.C. R4-28-302 (L)(2).

H.O.A. May Only Charge A \$400 Disclosure Fee Once

FACTS: The seller contracted to sell her home in a subdivision and the homeowner's association ("H.O.A.") prepared and delivered to the buyer the disclosure materials required by A.R.S. § 33-1806. The buyer then cancelled the contract and the seller contracted with another buyer for the purchase and sale of the property. Another set of disclosure materials was ordered and provided by the H.O.A. for the second transaction. The draft settlement statement for the second transaction reflects an \$800 fee for the transfer materials. The H.O.A. claims it has the authority to charge the \$400 for each transaction.

ISSUE: Is the H.O.A. legally authorized to charge for each transaction?

ANSWER: No.

DISCUSSION: A.R.S. § 33-1806 limits the fee an H.O.A. may charge for the mandated disclosure materials at \$400. Subsection D of the statute provides that the fee "shall be collected no earlier than at the close of escrow and may only be charged to a member for that transaction between the parties specified in the notice." In other words, the H.O.A. is not allowed to collect the fee unless escrow closes. Additionally, the notice provided to the association will identify the current buyer and seller, not the previous buyer. Here, because escrow did not close on the first transaction, the H.O.A. cannot charge a fee for the disclosure materials provided in connection with the cancelled contract.

A Community Enhancement Fee Must Be Paid as Required by the CC&RS

FACTS: The homeowners' association ("H.O.A.") has demanded a "community enhancement fee" of 0.25% of the sales price be paid by the buyer at the close of escrow pursuant to the covenants, conditions, and restrictions ("CC&Rs"). The seller disclosed the community enhancement fee on lines 20 and 21 of the Arizona REALTORS® H.O.A. Condominium/Planned Community Addendum. The buyer is contesting the fee, claiming the H.O.A. only has the authority to charge \$400 for the transaction by statute and that the community enhancement fee is "illegal."

ISSUE: Is the community enhancement fee illegal?

ANSWER: See discussion.

DISCUSSION: Assuming the CC&Rs are duly recorded and otherwise enforceable, and require that a buyer pay a community enhancement fee at closing, there is no prohibition against an H.O.A. charging the community enhancement fee of 0.25% of the sales price. The \$400 limitation only applies to an H.O.A. preparing the disclosure materials that must be provided pursuant to A.R.S. § 33-1806.

A Property Manager Must Disburse Funds as Directed by the Parties

FACTS: In light of significant credit problems, the tenants offered to pay a full year's rent in advance if the landlord would accept them as tenants. The landlord ultimately accepted and the parties entered into an AAR Residential Lease Agreement. The tenants took possession and paid the entire year's rent in advance.

ISSUES: Is the property manager required to hold the rent in the brokerage trust account to pay the landlord on a monthly basis?

ANSWER: See discussion.

DISCUSSION: Based on the facts presented, the parties agreed in the lease that the full year's rent would be paid to the landlord. Accordingly, there is no obligation for the property manager to maintain the rent in the brokerage trust account. Rather, the rent should be forwarded to the landlord as the parties agreed.

Note: A lease owner is not permitted to demand or receive security, including prepaid rent, in an amount in excess of 1.5 month's rent. However, a tenant is not prohibited from voluntarily paying more than 1.5 month's rent in advance. 📌

ABOUT THE AUTHOR



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