

**A Contract Series – Part 6**  
**The Arizona REALTORS® Residential Resale Purchase Contract**  
**Warranties**

This is **Part 6** of a series of articles discussing the major provisions in each of the sections of the Arizona Association of REALTORS® (“AAR”) Residential Resale Real Estate Purchase Contract (10/22) (“Contract”). The previous articles in this series can be located at [Arizona Real Estate – A Professional’s Guide to Law & Practice. \(arizonarealestateprofessionalguide.blogspot.com\)](http://arizonarealestateprofessionalguide.blogspot.com)

A warranty is a contractual assurance given by one party to the other. A warranty is a term of the contract but not a condition of the contract - it is a promise. A warranty entitles the non-breaching party to damages if the warranty is breached.

**WARRANTIES SECTION**

***Condition of Premises***

Buyer and Seller agree the premises are being sold in its **present physical condition as of the date of contract acceptance.**

- In other words, the Contract states that the premises is being sold “as is.” (However, this does not preclude the buyer from asking the seller to repair disapproved items during the Inspection Period or as provided in the Contract.)
- Explain to the seller that “as is” does not mean that the seller can conceal defects in the property – the seller is still obligated to disclose all known material defects.

The seller does not warrant the condition, zoning or fitness for any particular use or purpose of the premises.

- The seller does not warrant the condition of the premises (there may be items not working), zoning (that restricts how a property can be used, what can be built upon it and where structures can be built), or fitness for a particular use or purpose (that the buyer is not relying on the seller about how the property can be utilized).

However, the **seller is obligated to maintain and repair the premises** so that the premises is in the following condition at the earlier of possession or close of escrow (“COE”).

- **All personal property not included in the sale and all debris will be removed from the premises.**
  - Prepare the seller to remove all their personal property and trash from the premises by the time that the deed is recorded on the COE date.
- The premises, including all additional existing personal property included in the sale, will be in **substantially the same condition as on the date of contract acceptance.**

- Since the seller is selling the premises (which includes the fixtures and personal property included in the Contract) in its present condition as of the date of contract, the parties should document its present condition. Documentation of the condition of the premises at time of Contract acceptance can prevent COE disputes and can be done by:
  - the seller documenting the condition in the SPDS, for example if the refrigerator or ice maker doesn't work, note that in the SPDS;
  - either party documenting the condition in photos or other written descriptions at the time of Contract acceptance.
- **All agreed upon repairs/improvements** will be addressed pursuant to the Buyer Disapproval provisions in Section 6j.
  - Ensure that the seller understands that all agreed upon repairs/improvements must be in a workmanlike manner (of good and acceptable quality) and must be done by a licensed contractor if the repairs cost \$1,000+, are not of a casual or minor nature, or require a building permit pursuant to [A.R.S. §32-1121](#).

The buyer is again advised to conduct independent inspections and investigations regarding the premises within the inspection period. The buyer and seller also acknowledge they may, but are not obligated to, negotiate for repairs/improvements to the premises.

### ***Warranties that Survive Closing***

Warranties that survive close of escrow are promises that the seller makes that can be enforced by the buyer after COE. The seller warranties that survive COE are the following.

- That the **seller has disclosed all material defects** and any information, excluding opinions of value, which **materially and adversely** affect the consideration to be paid by the buyer.
  - This is the law – with or without the express warranty that survives COE.
- That the **seller has made payment in full for all labor, professional services, materials, machinery, fixtures, or tools furnished within the 150 days** immediately preceding the COE in connection with the construction, alteration, or repair of any structure on or improvement to the premises.
  - This warranty is to avoid any subsequent mechanics liens being recorded against the property.
  - If contractors or suppliers do not get paid on a construction project, they can file a mechanics lien to secure payment. Generally, a mechanics lien must be filed

within 120 days of completion of a project, after a preliminary 20-day notice.  
[A.R.S. 33-981 et. seq.](#)

- That the information provided by the seller regarding **connection to a sewer system or on-site wastewater treatment facility is correct** to the best of seller's knowledge.
  - Since a sewer system or on-site wastewater treatment facility connection is a seller warranty that survives COE (to the best of seller's knowledge), if there is any doubt the seller should verify the connection by employing a plumber, home inspector or other professional.
  - If the home is not connected to a public sewer, it is generally served by an on-site wastewater treatment facility (conventional septic or alternative system).
    - If the property is served by a conventional septic or alternative system, use the [On-Site Wastewater Treatment Facility Addendum](#).
    - A qualified inspector must inspect a conventional septic or alternative system within six months prior to transfer of ownership.

### ***Buyer Warranties***

The buyer warrants that the buyer **has disclosed any information that may materially and adversely affect the buyer's ability to close escrow** and that the buyer has conducted all desired independent inspections and investigations and accepts the premises at the earlier of possession of the premises or COE.

- The buyer's obligation to disclose any known information that the buyer is or may be unable to perform is the law - with or without this express warranty.

The buyer also warrants that the **buyer is not relying on any verbal representations** concerning the premises except as disclosed on the line in this subsection.

- The buyer should never be relying on any verbal representations. Allegations of verbal representations are common in many disputes and lawsuits.
- The fact that the buyer is not relying on any verbal representations is confirmed by writing "none" on lines 211-212 under the buyer's warranties provisions. If the buyer indicates that they are relying on a verbal representation when writing an offer – stop – and assist the buyer in confirming the representation in writing before completing the offer if at all possible. If not, consult your broker or manager and make sure that the representation is confirmed in writing during the inspection period.

### ***Conclusion***

The warranties in the Contract are basic promises, but important ones. If either the buyer or seller breaks one of these warranted promises, they could be liable to the other party for damages.

## **Next Article – Due Diligence Section**

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*For more real estate related articles, visit Michelle's Blog at [Arizona Real Estate – A Professional's Guide to Law & Practice. \(arizonarealestateprofessionalguide.blogspot.com\)](#)*

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