

ARIZONA REALTORS®

BMOQ

BROKER | MANAGER QUARTERLY

REVISED FORMS FEBRUARY 2025

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Revised Residential Lease Agreement
January 2025

Buyer Representation Agreement Flyer

Legislative Update

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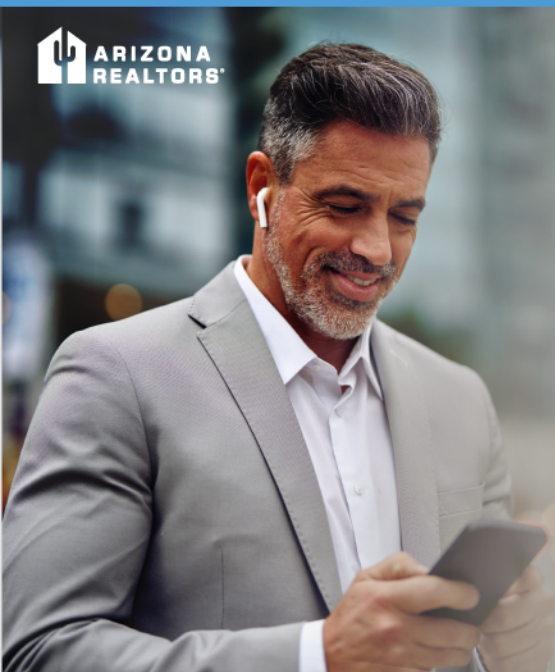
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A podcast by the Arizona
REALTORS® dedicated to
equipping REALTORS® and
real estate professionals with
the news, tools, and stories
they need to better serve
their clients and communities.

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ON YOUR **FAVORITE**
PLATFORMS



REVISED FORMS

FEBRUARY 2025

The Arizona REALTORS® Risk Management and Executive Committees have each voted to remove the Compensation Agreement Between Brokers (CABB) form from the Arizona REALTORS® library of forms on or about February 1, 2025. For consistency, the Arizona REALTORS® revised five (5) forms to either remove or edit language that referred to, and coincided with, the CABB. Finally, both buyer broker employment agreements were revised. The changes are as follows:

I. REMOVAL OF THE COMPENSATION AGREEMENT BETWEEN BROKERS (CABB)

The Compensation Agreement Between Brokers form was removed from the Arizona REALTORS® library of forms. The CABB was created last year to help implement the practice changes agreed to by the National Association of REALTORS® (NAR) as part of a class action lawsuit settlement. One major practice change required the removal of offers of compensation to a potential buyer broker on Multiple Listing Services (MLS). Offers of compensation made off the MLSs were still allowed, but there was no mechanism for such offers to be accepted or enforced. The CABB form was therefore created to document compensation that may flow from the seller's broker to the buyer's broker.

As REALTORS® became more accustomed to the practice changes, the CABB was being used less frequently. The Seller's Compensation Addendum (SCA) is instead used in a majority of transactions in which the seller chooses to compensate the buyer's broker. There are several reasons for this, including the fact that some brokerages expressed concern about the legal risks associated with compensation flowing from the seller's broker to the buyer's broker. These brokerages were more comfortable with the SCA, which they believe better documents the fact that decisions about buyer broker compensation are in fact being made by the seller. Additionally, getting a CABB fully signed before touring a home or making an offer to purchase often proved inconvenient and difficult.

II. REVISION OF FORMS REFERENCING THE CABB

With the removal of the CABB, five (5) other forms that refer to the CABB needed revision.

The Seller Compensation Addendum currently included a section to disclose if compensation between brokers has already been agreed to and documented in a CABB (lines 15-18). That section has been stricken since the CABB is no longer available.

The four (4) Arizona REALTORS® listing contracts all included verbiage that allowed a seller to authorize their broker's communication of an offer to compensate to a prospective buyer broker. With the removal of the CABB, the section of the listing contracts that provided the seller's consent for their broker to enter into a CABB and reimburse them the amount of the offer is unnecessary and was stricken.

The section related to communicating an offer of compensation to a potential buyer broker was also



revised to remove specific monetary amounts since that dollar figure is now being negotiated directly between the buyer and seller as part of the purchase offer. This change simplifies the subject matter and reinforces the concept that sellers should focus on the amount of money they will ultimately net.

Identical changes were made to the tenant broker sections of the listing contracts.

The below five (5) forms were thus revised:

- Seller Compensation Addendum - A redline version can be found [HERE](#).
- Residential Listing Contract Exclusive Right To Sell/ Rent - A redline version can be found [HERE](#).
- Residential Listing Contract Exclusive Agency - The revisions mirror those of the Residential ER.
- Vacant Land/Lot Listing Contract Exclusive Right To Sell/ Lease - The revisions mirror those of the Residential ER.
- Vacant Land/Lot Listing Contract Exclusive Agency - The revisions mirror those of the Residential ER.

III. REVISIONS TO THE BUYER BROKER EMPLOYMENT AGREEMENTS

The Arizona REALTORS® has revised both of their buyer broker employment agreements. Both the Buyer-Broker Agreement to Show Property form and the Buyer-Broker Exclusive Employment Agreement form now includes language to emphasize that any compensation agreed to must be a fixed amount or rate. The practice changes agreed to in the NAR class action lawsuit settlement

require that compensation the buyer agrees to pay their broker must be an ascertainable amount and not open ended (such as what a potential seller may be willing to pay). The forms have been revised to make clear that any rate or amount of compensation agreed upon must be fixed.

- Buyer-Broker Agreement to Show Property- A redline version can be found [HERE](#).
- Buyer-Broker Exclusive Employment Agreement - A redline version can be found [HERE](#).

PRIOR FORM REVISIONS

The Arizona REALTORS® strives to keep its forms up to date as laws change or industry practice evolves. Once released, the forms library contained on all Arizona REALTORS® forms licensing platforms is updated.

Form updates are made to minimize your risk and ensure legal compliance. Don't take a chance with outdated forms. Prior Arizona REALTORS® form revisions (2014 – 2024) can be found at: <https://www.aaronline.com/2019/05/20/form-revision-updates/>



ABOUT THE AUTHOR

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Aaron M. Green, Esq., a licensed Arizona attorney, is the General Counsel for the Arizona Association of REALTORS®.

This article is of a general nature and reflects only the opinion of the author at the time it was drafted. It is not intended as definitive legal advice, and you should not act upon it without seeking independent legal counsel.



The Key Contact program pairs a REALTOR® with every member of the state legislature so our elected officials can hear directly from our industry practitioners on what is happening in the real estate industry. You are your own best advocate, so whether you have an existing relationship with a state lawmaker or are willing to build a relationship with an elected official, the Arizona REALTORS® are here to help you succeed as a Key Contact or a Contact Team member.

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Key Contact Program**



REVISED: RESIDENTIAL LEASE AGREEMENT

FOR JANUARY 2025

The revisions to the Residential Lease Agreement were made in direct response to the repeal of the rental tax and the Agreement's release date matched the repeal's effective date of January 1, 2025.

Repealing the rental tax has been a legislative priority for the Arizona REALTORS® which successfully passed Senate Bill 1131 last legislative session. Arizona was one of only two states that allowed a rental tax on residential rental properties that averaged \$600 annually based on a \$2,000/month lease. It was a regressive tax on our state's poorest citizens that inhibited their ability to save for a down payment towards purchasing a home and otherwise negatively impacted housing affordability. Furthermore, the tax system used to report and collect the rental tax was inconsistent, error-prone, and confusing. Arizona REALTOR® members who managed properties are ecstatic that they will no longer have

to account for, or be blamed for, problematic tax payments.

In short, all mention of rental tax amounts, prorations and collections have been removed from the Agreement to comply with Arizona law. Furthermore, the Risk Management Committee felt it important to notify landlords, tenants, and REALTORS® that 1) the rental tax had been repealed; 2) rental tax is still owed on short-term rentals; and 3) landlords are prohibited from charging or collecting any amounts attributable or traceable to the repealed rental tax. Therefore, a new information box was inserted into the Residential Lease Agreement to prominently display the changes in Arizona law.

A redlined version of the revised Residential Lease Agreement can be found [HERE](#).



For information
or to register:

[SCAN THE CODE]

We are
STRONGER
Together

Keeping up with changes in the dynamic real estate industry while serving your clients to the highest degree requires knowledge, poise, and confidence. During this year's Conference, you will gain knowledge, tools, and connections that will propel your success.

There's something for everyone at this annual event that will leave you feeling informed and motivated!

**GROW
YOUR
BUSINESS**

**DEVELOP
INNOVATIVE
STRATEGIES**

**MANAGE
YOUR
RISK**

**BUILD
YOUR
NETWORK**

**EXPAND
YOUR
SERVICE LEVELS**

Q1
2025

ARIZONA REALTORS® BROKER | MANAGER QUARTERLY

THE BUYER REPRESENTATION AGREEMENT FLYER IS NOW AVAILABLE IN THE FORMS LIBRARY

alongside the
Buyer-Broker Agreement to Show Property and
the **Buyer-Broker Exclusive Employment Agreement** forms

WHAT IS A BUYER REPRESENTATION AGREEMENT?

WHY AM I

*being asked
to sign one?*

Buying a home is often the largest purchase of your life. But don't worry - your REALTOR® is here to help you navigate the home buying process and is **ethically obligated to work in your best interest, abiding by the REALTOR® Code of Ethics.**

Equally important is that you know what your REALTOR® is going to do for you and the cost associated with their services.

For that reason, as of August 17, 2024, all REALTORS® nationwide will require their buyers to enter into a written representation agreement prior to touring a home.

Remember, **broker compensation is not set by law and is fully negotiable** between you and your REALTOR®. Carefully read the document, make sure you understand and agree to all the terms, and ask your REALTOR® or legal advisor any questions you might have. As REALTORS®, we want to ensure the terms of your representation are clear and transparent.

YOU CAN NOW
PERSONALIZE
THE FORM!

PLACE YOUR LOGO
IN THIS AREA

**CLICK HERE FOR
MORE INFORMATION**



OUR PROMISE *to you*

WHEN USING A REALTOR® REPRESENTATION FORM, YOU ARE GUARANTEED THAT THE AGREEMENT WILL INCLUDE:

- An identifiable and specific amount or rate of compensation your REALTOR® will receive for their services; and
- A term that prohibits your REALTOR® from receiving compensation for brokerage services that exceeds the rate or amount agreed to.



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Q4 LEGISLATIVE UPDATE

This past week the legislature heard the final list of bills in its chamber of origin. We have now officially entered Crossover Week when bills need to receive majority approval on the House or the Senate floor to move along to the next chamber and start the whole process over. This week's update will focus on a bill opposed by the Arizona REALTORS® Legislative Committee. At first, the bill was not scheduled to be heard at a committee hearing and would have died as discussed in last week's legislative update. Unfortunately, hours before the committee agenda deadline, the bill was reassigned at the sponsor's request from the Commerce Committee to a completely unrelated committee - the Federalism, Military Affairs, and Elections Committee.

- HB 2003 (real estate; membership requirement; prohibition)

Unless otherwise required by law, a broker may not require from any licensee as a condition of employment any agreement, membership or obligation involving a labor union or external organization, including:

- *The Multiple Listing Service.*
- *a real estate trade association.*
- *a REALTOR organization.*

This act applies to all real estate employment agreements between licensed employment brokers and licensees that are established or renewed on or after the effective date of this act.

The Legislative Committee felt the above bill language would be detrimental to the real estate industry by requiring brokers to be responsible for licensees who do not have access to Arizona REALTOR® forms or other membership services. The bill is a massive infringement by the government, interfering with our members' ability to conduct their business how they see fit.

Roughly twenty REALTORS® from all over the state and your lobbying team attended the hearing of this bill last Wednesday evening to speak out against it. The legislator who introduced the bill moved it from first on the agenda to last and only allowed four opposition speakers. But our voice was powerful and educated the committee members on the harm this bill would inflict. While the bill did advanced out of the Committee on a 4-3 party line vote, two legislators who voted in favor of the bill said they would vote against it on the House Floor unless amended. We have heard consistent feedback since Wednesday evening from legislators and their staff about how well the REALTORS® testified.

This bill still has a long journey ahead for it to be signed into law by the Governor. Should this bill advance to be heard on the floor by the entire House of Representatives, we will need all our members to be ready. Should it prove necessary, the Arizona REALTORS® will pursue a Call to Action to encourage legislators to oppose this bill that would hurt the real estate industry, small businesses, and consumers.

If you would like to watch your fellow REALTORS® and our lobbying team testify against this bill, click [HERE](#) and forward ahead to the 2:19:52 mark.

To view all Legislative Updates click [HERE](#).

2024 ADVOCACY WINS

NAR WRAP-UP

**\$45.8
MILLION**

**raised for RPAC at
all three levels of the
association in 2024.**



5,000+

**Congressional meetings
with NAR Advocacy Team
and Federal Political Coordinators
held in 2024, leading to key wins:**



- The introduction of more bipartisan real estate legislation than ever before, like the More Homes on the Market Act, Neighborhood Homes Investment Act, Choice in Affordable Housing Act, and Revitalizing Downtowns and Main Streets Act.
- Creation of the Bipartisan Real Estate Caucus.
- Committee passage of Yes in My Backyard (YIMBY) Act.
- Successfully protecting the 1031 Like-Kind Exchange.
- Reauthorizing the National Flood Insurance Program to avoid any lapse in coverage.

438

**RPAC-supported
candidates were
successful in the
2024 election.**

**97%
win rate**

50/50 breakdown of support for
Republican and Democrat candidates



2024 ADVOCACY WINS

**NAR wrote the White House
and federal agencies**

OVER 20 TIMES

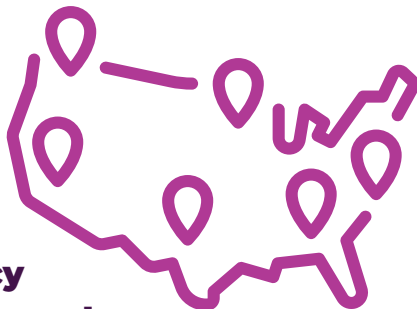
**to go on the record and weigh
in on proposed regulations and
other administration actions
and met with officials more than**

FOUR DOZEN TIMES.

- Ensured the Department of Veterans Affairs temporarily lifted its ban on buyers directly paying for professional real estate representation until the agency deems it necessary to engage in a formal rulemaking process.
- Secured FHFA and FHA protection of limited interested party contributions (IPCs) that a seller can provide a buyer on a mortgage.
- Obtained improvements to the FHA rehabilitation mortgage insurance program.
- Fought costly & onerous bank rules.
- Advocated for practical anti-money-laundering regulations.
- Fought back against federal rent control.
- Collaborated with industry partners on appraisal issues.

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**Calls for
Action through
the NAR Advocacy
Everywhere program to
mobilize REALTORS® and
consumers on public policy issues.**



5 TOP LEGAL ADVOCACY WINS IN 2024:

1

Sheetz v. County of El Dorado:

NAR spearheaded a coalition amicus brief in support of a California man who was hit with an excessive traffic impact study fee when attempting to build a home on his land. The Supreme Court sided with NAR 9-0.

2

Devellier v. TX: In another unanimous ruling of the Supreme Court, NAR was victorious in its support of a Texas man who may now seek compensation after a state highway project caused his land to repeatedly flood.

3

Darby Development Company v. United States:

A federal appeals court ruled that by putting the eviction moratorium into place, the federal government had enacted a taking on rental housing providers, and they can thus seek just compensation from the government.

4

Kennedy v. Weichert:

The New Jersey Supreme Court held that agreements classifying real estate professionals as independent contractors is a key factor in assessing a salesperson's classification under New Jersey state law.

5

Waters of the U.S.:

NAR helped secure a preliminary injunction successfully stopping the Waters of the US (WOTUS) rule in Texas and Idaho, another win for property rights. The Supreme Court has already ruled the original WOTUS law was too broad.

HOW SHOULD LISTING BROKERS HANDLE NON-REALTOR® CONTRACTS?

Aaron Green, Esq. GENERAL COUNSEL AT ARIZONA REALTORS®

The Phoenix Association of REALTORS® has chosen to produce a small number of substantive real estate transaction forms for use by non-REALTOR® licensees under the copyright of MLS Choice[1]. While the use of Arizona REALTORS® forms is in no way required or mandated by law or REALTOR® policy, the introduction of new, unfamiliar purchase contract(s) and other forms into the Arizona real estate market may cause some chaos and confusion. What are the risks to REALTORS® and the public when presented with unfamiliar transaction forms? How should REALTORS® best represent their clients if these situations occur? This article attempts to answer these questions from the perspective of a listing broker REALTOR®.

LISITNG BROKER REALTOR®

A. Do Not Provide Blank Arizona REALTORS® Contracts to non-REALTORS®

SCENARIO: The buyer is either unrepresented or represented by a non-REALTOR® licensee and wishes to make an offer on an Arizona REALTORS® Residential Resale Real Estate Purchase Contract (RPC). This is not possible because only REALTORS® are authorized to generate Arizona REALTORS® standard real estate forms which are federally registered with the United States Copyright Office and protected under federal copyright laws. As such, providing blank copies of Arizona REALTORS® forms to non-REALTORS® is also a violation of its copyright and prohibited. Please understand that the Arizona REALTORS® is not being petty or malicious, but it must enforce its legal rights or it will lose them. Significant time, effort, and labor has been committed to producing these quality forms for the benefit of its REALTOR® members which is why the Arizona REALTORS® copyrights and restricts access to its forms. For more information on the Arizona REALTORS® copyright, click [HERE](#).



If you have a cross-transaction with a non-REALTOR® who is utilizing a standard transaction form generated by the Arizona REALTORS®, please immediately notify Arizona REALTORS® General Counsel Aaron Green at aarongreen@aaronline.com.

B. Do Not Refuse to Submit Offers delivered on non-Arizona REALTOR® Forms

SCENARIO: The buyer makes an offer on an MLS Choice Residential Resale Purchase Contract or other non-REALTOR® purchase contract. The REALTOR® listing broker may be hesitant to present the offer because they are unfamiliar with its terms. However, Arizona law and the Code of Ethics requires the listing agent to “promptly submit” all offers to the seller. A.A.C. R4-28-802(B); Code of Ethics, Article 1, Standard of Practice 1-6 “REALTORS® shall submit offers and counter-offers objectively and as quickly as possible.”

C. Do Not Interpret Contract Terms that Are Unfamiliar

SCENARIO: The buyer makes an offer on an MLS Choice Residential Resale Purchase Contract. To adequately present an offer, a listing broker should be competent to counsel the seller on their legal obligations if they accept. “The services that a salesperson or broker provides to a client . . . shall conform to the standards of practice and competence recognized in the professional community.” For more information on the Standard of Care, click [HERE](#). This may not be possible if the listing

broker is unfamiliar with the purchase contract or is unclear whether the seller can use MLS Choice ancillary forms.^[1]

Best practice would be for the listing broker to contact their designated broker for guidance. Perhaps the brokerage's attorney has reviewed the contract and can assist the listing broker to adequately counsel the seller about their legal obligation. Otherwise, both ethically and legally, the listing broker should probably advise the seller to have an attorney review the unfamiliar purchase contract to provide the seller with legal advice when presenting the offer. Code of Ethics, Article 13 "REALTORS® . . . shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it; A.A.C. R4-28-1101(H). If the seller chooses to accept an offer submitted on an unfamiliar form but refuses to seek legal counsel, it would be best practice for the listing broker to confirm their recommendation, and the seller's refusal, in writing. The written notice should include specific warnings that the purchase contract is new, unfamiliar, or lacks legal interpretation by courts, and as a result, the listing broker is unable to advise the seller on their contractual obligations. Best practice would also include the seller's acknowledgement that they received the written notice.

D. Do Not Insist the Seller Make a Counteroffer on an Arizona REALTOR® RPC

In the scenario outlined above, the seller may not want to incur attorney's fees or be obligated to terms contained in an unfamiliar purchase contract. The seller may therefore wish to make a counteroffer on an Arizona REALTORS® RPC. The listing broker REALTOR® is authorized to respond to the original offer by submitting an Arizona REALTORS® RPC that serves as a counteroffer. However, it is best practice for the listing broker to remind the seller that any counteroffer is legally a rejection of the original offer. Restatement (Second) of Contracts § 38 (1981). So even if the most important terms relating to the purchase price or close of escrow date remain the same, the seller's counteroffer on the Arizona REALTORS® RPC legally rejected the buyer's original offer, the seller's counteroffer may not be accepted, and the seller could not later accept the buyer's original offer. It should therefore be the seller's decision, fully informed, of

how to respond to the original offer.

E. Do Not Provide Arizona REALTOR® Ancillary Forms to non-REALTORS®

The Arizona REALTOR® copyright applies to all its forms. This means that even if the buyer accepts an offer/counteroffer that was presented on an Arizona REALTORS® RPC, that does not give the buyer the right to use other ancillary Arizona REALTORS® forms. This is problematic since the Arizona REALTORS® RPC requires certain AAR forms to be used in the transaction. Specifically, the buyer may not use (and the listing broker REALTOR® cannot provide a blank copy of) the Arizona REALTORS® Counter Offer, Buyer's Inspection Notice and Seller's Response form, Buyer Pre-closing Walkthrough, Additional Clause Addendum, Appraisal Contingency Notice, Notice/ Disclosure Form, Cure Period Notice, or any other Arizona REALTORS® form. Presumably, the buyer must provide the full information required by the incorporated forms without using them and in violation of their contractual obligations.

Again, if a non-REALTOR® is utilizing forms generated by the Arizona REALTORS®, please email aaron@green.com.

CONCLUSION

To protect the Arizona REALTORS® copyright, it must enforce its rights and pursue those who use its forms without permission. The Phoenix Association of REALTORS® implies their MLS Choice forms can substitute or be used interchangeably with Arizona REALTORS® forms. They cannot. Arizona REALTORS® forms have been used/revised for decades and have been interpreted/upheld by numerous Arizona courts. Many of the Arizona REALTORS® contracts incorporate and require ancillary Arizona REALTORS® forms to be used and, combined, they protect both REALTORS® and their clients.

This leaves sellers, buyers, REALTORS®, and non-REALTOR® licensees in a precarious position. Consumers must potentially hire lawyers to review and advise on new, unfamiliar contracts or risk being bound to legal terms they do not fully understand. REALTORS® and non-REALTOR® licensees must honor their fiduciary duties to their clients both ethically and competently, while honoring federal copyright laws.



¹ Phoenix REALTORS® has abandoned the name MLS Choice but continues to offer forms to non-REALTORS®. "Copyright © MLS Choice All Rights Reserved" previously appeared on the bottom of each form but they now show the copyright held by "Phoenix REALTORS®". A public catalog search of the United States Copyright Office does not include any copyrights from Phoenix REALTORS® as of the publication date of this article.



A resource for
BROKERS

needing

**LEGAL
INFORMATION**

The Hotline is provided by the attorneys at
Zelms Erlich Lenkov & Mack.



THE ARIZONA REALTORS® LEGAL HOTLINE IS DESIGNED:

- As a free member benefit for Designated REALTORS® (Designated Brokers) to have direct access to a qualified attorney who can provide information on real estate law and related matters.
- To answer legally related questions about the many diversified areas of today's real estate industry.

Primary access to the Hotline is for Designated Brokers, who may also give access to one REALTOR® or REALTOR-ASSOCIATE® member per office and/or branch.

For More Information
Please Contact

Jamilla Brandt, Arizona REALTORS®
Risk Management Coordinator at:

jamillabrandt@aaronline.com

GET ANSWERS TODAY

www.aaronline.com/manage-risk/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.

UNFULFILLED LOAN CONTINGENCY NOTICE

FACTS: Buyer and seller entered into an Arizona REALTORS® Residential Resale Real Estate Purchase Contract ("Contract"). Three days prior to close of escrow, the buyer's agent verbally informed the listing agent that the buyer was unable to obtain loan approval but the buyer failed to deliver notice to the seller or escrow company of the inability to obtain loan approval as required by Section 2b of the Contract.

ISSUE: Should the seller issue a cure notice to the buyer?

ANSWER: Yes.

DISCUSSION: Pursuant to Section 2c of the Contract, if the buyer fails to deliver notice of inability to obtain loan approval: "Seller may issue a cure notice to Buyer as required by Section 7a and, in the event of Buyer's breach, Seller shall be entitled to the Earnest Money pursuant to Section 7b. If, prior to expiration of any Cure Period, Buyer delivers notice of inability to obtain loan approval, Buyer shall be entitled to a return of the Earnest Money." Therefore, the seller should issue a cure notice to the buyer for the failure to deliver notice of inability to obtain loan approval. Note: AAR has a standard Unfulfilled Loan Contingency Notice form that buyers may utilize for delivering the required notice.

EXTENDING BUYER CONTINGENCY TIME PERIODS

FACTS: The buyer and seller entered into an Arizona REALTORS® Residential Resale Real Estate Purchase Contract ("Contract"), incorporating a Buyer Contingency Addendum that provided that the Contract was contingent upon the buyer accepting an offer for buyer's property by a specified date. The specified date has arrived, and the buyer has not accepted an offer. The buyer does not want

to waive the contingency or cancel. The parties have agreed to extend the buyer's contingency date.

ISSUE: Must the buyer and seller enter into a new Buyer Contingency Addendum?

ANSWER: See Discussion.

DISCUSSION: Although a new Buyer Contingency Addendum could be executed, the buyer contingency could also be extended by an Addendum addressing the date by which the buyer must accept an offer (line 21) and contingency closing date (line 34). Note: If the Contract Time Periods (Buyer Contingency Addendum lines 61-67) began on the date that the Contract was signed, this issue should also be addressed in any addendum extending the buyer's contingency.

CONTRACT DOES NOT ALLOW SELLER TO CANCEL

FACTS: The buyer and seller entered into an Arizona REALTORS® Residential Resale Real Estate Purchase Contract ("Contract"). The buyer failed to deliver a Loan Status Update ("LSU") to the seller within ten days as required by Section 2e of the Contract. The seller now wants to cancel the Contract with the buyer due to the delay in delivering the LSU.

ISSUE: Is the seller entitled to immediately cancel the Contract due to the buyer's failure to deliver the LSU within ten days as required?

ANSWER: No.

DISCUSSION: The buyer's failure to timely deliver the LSU is a potential breach of the Contract. Pursuant to Section 7a of the Contract, the buyer has an opportunity to cure this potential breach. Therefore, the seller must send a cure period notice to the buyer. If the buyer cures the breach by

delivering the LSU within three (3) days after delivery of the cure notice, the seller is not entitled to cancel the Contract for this delay. If the buyer fails to deliver the LSU within the three (3) days, the buyer is in breach of Contract and the seller may cancel pursuant the Section 7b.

BUYER'S FINANCING CHANGES REQUIRE NOTICE TO SELLER

FACTS: Buyer and seller entered into an Arizona REALTORS® Residential Resale Real Estate Purchase Contract ("Contract"). Two weeks prior to the close of escrow date, the buyer changed loan programs.

ISSUE: Does the buyer's change in loan programs require seller's consent?

ANSWER: See Discussion.

DISCUSSION: Pursuant to the Contract at Section 2k, the buyer is obligated to immediately notify the seller of any changes in the loan program, financing terms, or lender described in the Pre-Qualification Form attached with the offer or the LSU provided, within ten days after Contract acceptance. The buyer is permitted to make any such changes without the prior written consent of the seller if the changes do not:

1. adversely affect the buyer's ability to obtain loan approval without conditions,
2. increase the seller's closing costs, or
3. delay the close of escrow.

AGENT MOVING BROKERAGES AND WANTS TO CANCEL LISTINGS

FACTS: The agent is moving to a new brokerage and wants to cancel her current listings and transfer them to the agent's new brokerage.

ISSUE: Is the agent entitled to cancel the listings?

ANSWER: No.

DISCUSSION: The listing agreement is a bilateral employment agreement between the seller and the broker, not the seller and the agent. Any cancellation of a listing agreement requires the consent of both the seller and the broker. Therefore, the agent may not unilaterally cancel these listing agreements. Note: The agent and current broker should review any existing Independent Contractor Agreement regarding applicable provisions pertaining to the agent changing employing brokers.

NON-REFUNDABLE EARNEST MONEY AFTER INSPECTION PERIOD

FACTS: Buyer and seller entered into an Arizona REALTORS® Residential Resale Real Estate Purchase Contract ("Contract"). In Section 8, the parties agreed that "buyer's earnest money shall be non-refundable after the Inspection Period."

ISSUE: Does the Inspection Period include the buyer disapproval and seller response times set forth in Section 6j of the Contract?

ANSWER: Probably not.

DISCUSSION: The Contract provides at line 213 that "Buyer's Inspection shall be ten (10) days or ____ days after Contract acceptance." Therefore, the Inspection Period probably would not be interpreted to include the buyer disapproval and seller response times set forth in Section 6j of the Contract. This issue can be avoided by use of the "Non-Refundable Earnest Money" provision in the Additional Clause Addendum that provides "earnest money shall be non-refundable unless Buyer elects to cancel pursuant to Section 6 of the Contract. . ."

SELLING A PROPERTY HELD IN TRUST

FACTS: The home is titled in the name of a revocable living family trust. The husband and wife are the grantors/trustees of the trust, and the children are the beneficiaries.

ISSUE: Who should sign the purchase contract?

ANSWER: See Discussion.

DISCUSSION: Since the trust is revocable, the grantor(s) have the power to sell the home. Since both husband and wife are grantors of the trust, both husband and wife should sign the purchase contract as trust grantors. The beneficiaries of a revocable living family trust can sell a home held in the trust only after the grantor(s) pass away.

FAMILY SCAMMED INTO OCCUPYING RENTAL HOME

FACTS: The property manager was notified that a family had moved into a vacant rental property that he was managing. Upon investigation, the property manager discovered that the family apparently rented the property via an internet scam. The family does not qualify to enter into a lease agreement with the landlord but is refusing to vacate the property.

ISSUE: What is the procedure to regain possession of the property?

ANSWER: See Discussion.

DISCUSSION: Despite the unfortunate circumstances, the family's occupancy of the property constitutes a "forcible entry/detainer" under A.R.S. §12-1171 et seq. Therefore, the landlord will need to file a forcible entry and detainer action (eviction) pursuant to these statutes to regain possession of the property.

PREMATURE CURE NOTICE

FACTS: Buyers and sellers entered into an Arizona REALTORS® Residential Resale Real Estate Purchase Contract ("Contract") with a close of escrow date of November 1st. The buyers have not indicated that they will not close escrow as agreed. However, the sellers do not believe that the buyers will timely close escrow. As a result, on October 31st at 5:00 p.m. the sellers issued a Cure Period Notice to the buyers for the failure to close escrow.

ISSUE: Is the Cure Period Notice valid?

ANSWER: See Discussion.

DISCUSSION: Pursuant to Section 7a of the Contract "[i]f a party fails to comply with any provision of this Contract, the other party shall deliver a notice to the non-complying party specifying the non-compliance." The buyers were not obligated to close escrow until November 1st and therefore have not failed to comply with a provision of the Contract. The sellers' Cure Period Notice was premature and should be reissued on November 2nd if the buyers failed to close.

UNFULFILLED LOAN CONTINGENCY NOTICE

FACTS: Buyer and seller entered into an Arizona REALTORS® Residential Resale Real Estate Purchase Contract ("Contract"). Three days prior to close of escrow, the buyer's agent verbally informed the listing agent that the buyer was unable to obtain loan approval but the buyer failed to deliver notice to the seller or escrow company of the inability to obtain loan approval as required by Section 2b of the Contract.

ISSUE: Should the seller issue a cure notice to the buyer?

ANSWER: Yes.

DISCUSSION: Pursuant to Section 2c of the Contract, if the buyer fails to deliver notice of inability to obtain loan approval: "Seller may issue a cure notice to Buyer as required by Section 7a and, in the event of Buyer's breach, Seller shall be entitled to the Earnest Money pursuant to Section 7b. If, prior to expiration of any Cure Period, Buyer delivers notice of inability to obtain loan approval, Buyer shall be entitled to a return of the Earnest Money." Therefore, the seller should issue a cure notice to the buyer for the failure to deliver notice of inability to obtain loan approval. Note: AAR has a standard Unfulfilled Loan Contingency Notice form that buyers may utilize for delivering the required notice.



ABOUT THE AUTHOR

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Richard V. Mack, a partner in the Phoenix office of Zelms Erlich Lenkov, has been a lawyer since 1990. He is a State Bar of Arizona certified real estate specialist and AV Preeminent® by Martindale Hubbell. He has also been designated as a 2008–2012 and 2014–2021 Super Lawyer and is a member of Arizona's Finest Lawyers. Mr. Mack also serves on the Arizona State Bar Real Estate Advisory Commission, which oversees the Real Estate Specialization Program, serving as vice chair in 2021. Mr. Mack 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 BBA with an emphasis in economics, and received his JD from the University of Arizona.

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