

**What You**

**Need to Know**

**About Buying**

**Your New Home**

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**West!**



# Contract and Counter Offer Check List

Wednesday, March 07, 2007 5:29 AM

Client Name / Address

Sales Packet Check List Metro Office	Mold Disclosure
Listing/Sales Info Sheet	Expansive Soil Disclosure
Escrow Information Sheet	Pool Disclosure –Understanding the Pool Statute
Purchase Contract	<b>Fill in Agent Info on Line 367 through 383</b>
Buyer Acknowledgment Disclosure	Property Inspection Notice / Waiver
<b>Is the Purchase Contract Correct?</b>	Buyers Advisory
<b>Is “Counter Offer Attached” Checked?</b>	Buyers Inspection Notice Seller’s Response Form
Is any Personal Property Conveying	Surprise Map of Residential Fly Over Areas
Add Personal Property to Lines 28 and/or 32	USAA Mortgage Acknowledgment Form
Does MLS say any Personal Property Conveys?	SPDS
Is there an Above Ground Spa & does it Convey?	Realtor Registration
Agency Disclosure & Election	Public Report Receipt
Consent to Dual Agency	Earnest Money Deposit Receipt <b>No sigs required</b>
Affiliate Disclosure	Termite Report <b>No sigs required</b>
Military Clause Addendum	HUD 1
Market Condition Advisory	Agent Info Sheet
Investment Disclosure	MLS Printout
Lead Paint Addendum	TAX Printout
HUD Form HUD-92564-CN	Wire Instructions <b>No sigs required</b>
LSR or CBMortgage CLA or USAA CLA	Agency, What’s all the Fuss? <b>No sigs required</b>
Loan Status Update form <b>Lender Sigs ONLY</b>	Insurance Article <b>No sigs required</b>
HOA Addendum	SPDS Explained
Buyers/Sellers Estimated Costs a.k.a. Net Sheet	Arizona Electronic Transaction Act <b>No sigs required</b>
Property Viewing & Compensation Agreement	Buyer Contingency Addendum
Buyer Broker Agreement	
BACI or SACI	
<b>Contract Clauses</b>	
Buyer to deliver lender completed LSR <b>CLAUSE</b>	First Right Of Refusal <b>Clause</b>
Gramm-Leach-Bliley <b>CLAUSE</b>	HOA Transfer Fee Cost <b>Clause</b> (D HOA Addendum)
Electronic Sigs Re: DocUSign <b>CLAUSE</b>	Earnest Money <b>CLAUSE</b>
Agent To Sign BACI <b>CLAUSE</b>	Termite <b>CLAUSE</b>
Lender to complete LSU/LSR <b>CLAUSE</b>	Buyers Repair <b>CLAUSE</b> (Very Special in BIN&SR)
Working Condition <b>CLAUSE</b>	Seller Contribution to Buyer Cost <b>CLAUSE</b>
Calendar Day to Business Day <b>CLAUSE</b>	
<b>Counter Offer Clauses and/or Special Addenda</b>	
Multiple Counter Offer Form	Buyer WAVES Inspection Rights <b>CLAUSE</b>
Electronic Sigs Re: DocUSign <b>CLAUSE</b>	Non Refundable Earnest Money <b>CLAUSE</b>
Buyer Agent Contact Info (BACI) form & <b>CLAUSE</b>	Wire Transfer Funds Clause in CLA <b>CLAUSE</b>
Loan Status Update <b>CLAUSE</b>	Insurance Addendum <b>CLAUSE</b>
Gramm-Leach-Bliely <b>CLAUSE</b>	Need CLA/LSR for Buyer of Buyer’s house
ONLY AAR LSR is Acceptable LSR-05/05 <b>CLAUSE</b>	Contract on home Buyer is selling
Change Title Company <b>CLAUSE</b>	Termite Clause (modified for Seller response) <b>CLAUSE</b>
Increase Earnest Money <b>CLAUSE</b>	All Cash Addendum
	Lender Addendum to AAR LSR <b>SPECIAL FORM</b>



**REAL ESTATE  
AGENCY DISCLOSURE AND ELECTION**  
(This is NOT an employment agreement)



**DISCLOSURE**

1. Before a Seller/Landlord ("Seller") or a Buyer/Tenant ("Buyer") enters into a discussion with a real estate broker or broker's salesperson ("Broker"),
2. the Seller and the Buyer should understand what type of agency relationship or representation they will have with the Broker in the transaction.
3. However, regardless of who the Broker represents in the transaction, the Broker shall exercise reasonable skill and care in the performance of
4. the Broker's duties and shall be truthful and honest to both the Buyer and Seller and shall disclose all known facts which materially and
5. adversely affect the consideration to be paid by any party. Pursuant to A.R.S. §32-2156, Sellers, Lessors and Brokers are not obligated to
6. disclose that the property is or has been: (1) the site of a natural death, suicide, homicide, or any crime classified as a felony; (2) owned or
7. occupied by a person exposed to HIV, or diagnosed as having AIDS or any other disease not known to be transmitted through common
8. occupancy of real estate; or (3) located in the vicinity of a sex offender.
9. **THE DUTIES OF THE BROKER IN A REAL ESTATE TRANSACTION DO NOT RELIEVE THE SELLER OR THE BUYER FROM THE**
10. **RESPONSIBILITY TO PROTECT THEIR OWN INTERESTS. THE SELLER AND THE BUYER SHOULD CAREFULLY READ ALL**
11. **AGREEMENTS TO INSURE THAT THE DOCUMENTS ADEQUATELY EXPRESS THEIR UNDERSTANDING OF THE TRANSACTION.**
12. **I. Buyer's Broker:** A Broker other than the Seller's Broker can agree with the Buyer to act as the Broker for the Buyer. In these
13. situations, the Buyer's Broker is not representing the Seller, even if the Buyer's Broker is receiving compensation for services
14. rendered, either in full or in part, from the Seller or through the Seller's Broker:
15. a) A Buyer's Broker has the fiduciary duties of loyalty, obedience, disclosure, confidentiality, and accounting in dealings with the Buyer.
16. b) Other potential Buyers represented by Broker may consider, make offers on, or acquire an interest in the same or similar properties
17. as Buyer is seeking.
18. **II. Seller's Broker:** A Broker under a listing agreement with the Seller acts as the Broker for the Seller only:
19. a) A Seller's Broker has the fiduciary duties of loyalty, obedience, disclosure, confidentiality, and accounting in dealings with the Seller.
20. b) Other potential Sellers represented by Broker may list properties that are similar to the property that Seller
21. is selling.
22. **III. Broker Representing both Seller and Buyer (Limited Dual Representation):** A Broker, either acting directly or through one or
23. more licensees within the same brokerage firm, can legally represent both the Seller and the Buyer in a transaction, but only with
24. the knowledge and informed consent of both the Seller and the Buyer. In these situations, the Broker represents both the Buyer and
25. the Seller, with limitations of the duties owed to the Buyer and the Seller:
26. a) The Broker will not, without written authorization, disclose to the other party that the Seller will accept a price or terms other
27. than stated in the listing or that the Buyer will accept a price or terms other than offered.
28. b) There will be conflicts in the duties of loyalty, obedience, disclosure and confidentiality. Disclosure of confidential information
29. may be made only with written authorization.

**ELECTION**

30. **Buyer Election** (Complete this section only if you are the Buyer.)
31. The undersigned elects to have the Broker: (Check any that apply)
32. ☐ represent the Buyer as Buyer's Broker.
33. ☐ represent the Seller as Seller's Broker.
34. ☐ show Buyer properties listed with Broker's firm and Buyer agrees that Broker shall act as agent for both Buyer and Seller
35. provided that the Seller consents to limited dual representation. In the event of a purchase, Buyer's and Seller's informed consent should
36. be acknowledged in a separate writing other than the purchase contract.
37. **Seller Election** (Complete this section only if you are the Seller.)
38. The undersigned elects to have the Broker: (Check any that apply)
39. ☐ represent the Buyer as Buyer's Broker.
40. ☐ represent the Seller as Seller's Broker.
41. ☐ show Seller's property to Buyers represented by Broker's firm and Seller agrees that Broker shall act as agent for both Seller and
42. Buyer provided that Buyer consents to the limited dual representation. In the event of a purchase, Buyer's and Seller's informed consent
43. should be acknowledged in a separate writing other than the purchase contract.
44. The undersigned ☐ Buyer(s) or ☐ Seller(s) acknowledge that this document is a disclosure of duties. This document is not an
45. employment agreement.
46. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE.

47. \_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
PRINT NAME

48. \_\_\_\_\_  
SIGNED MO/DA/YR

\_\_\_\_\_  
SIGNED MO/DA/YR

49. **Coldwell Banker Success Realty**  
FIRM NAME (BROKER)

\_\_\_\_\_  
LICENSEE'S SIGNATURE MO/DA/YR

# AFFILIATED BUSINESS ARRANGEMENT DISCLOSURE STATEMENT

To: Consumer  
From: Coldwell Banker Residential Brokerage



Thank you for contacting us, your local Coldwell Banker Residential Brokerage office (hereinafter Broker), in connection with the purchase or sale of a home or other property. This is to give you notice that Broker has a business relationship with the companies listed in this Statement, in that each of the companies is wholly or partially owned either directly or indirectly by Broker or by Realogy Corporation. Realogy Corporation indirectly wholly owns NRT Incorporated, a parent company of your local Broker and other brokerage offices throughout the nation. Realogy Corporation also owns the franchisor of the COLDWELL BANKER®, COLDWELL BANKER COMMERCIAL®, CENTURY 21®, ERA® and SOTHEBY'S INTERNATIONAL REALTY® systems. Because of these relationships, the referral of business to these companies may provide us, our employees or other related parties noted herein a financial or other benefit.

In connection with providing real estate brokerage services, Broker may receive a commission or a cooperative brokerage referral fee for a referral to another real estate brokerage company (which is typical in the real estate brokerage industry); however, this will not affect the amount you pay to purchase or sell a property.

We have set forth below the full range of services that these companies provide, along with an estimate of the range of charges generally made for these services. You are NOT required to use the listed companies as a condition of the purchase or sale of your property. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

COMPANIES	HUD-1 DESCRIPTION / LINE DESIGNATION	ESTIMATE OF RANGE OF CHARGES GENERALLY MADE BY PROVIDER <sup>1</sup>
<b>PHH Home Loans, LLC d/b/a Coldwell Banker Home Loans</b> Provides a full range of residential first mortgage loan products and services.	Loan origination fee (801) Loan discount fee/points (802) <sup>2</sup> Application fee (800 Series) <sup>3</sup>	0 – 2% of Loan Amount 0 – 5% of Loan Amount \$0 – \$450
<b>Mid-Exchange, Inc.</b> Acts as a qualified intermediary for IRC 1031 Tax Deferred Exchanges	Additional settlement charges (1300 Series)	\$500.00– \$3,000.00
<b>Equity Title Agency Inc.</b> <u>Escrow</u> Provides expert handling of all details in transferring the property in accordance with the real estate contract  <u>Title</u> Provides searches of public records that bring to your attention any known problems with the property's title before closing, and insures against loss due to certain title defects	Settlement/escrow (1101):  Document preparation/processing fees (1105)  Purchase of title policies (1108 - 1110):	<b>Settlement/Escrow Fees:</b> \$100,000 home \$654 – 720 \$250,000 home \$1051 – 1157 \$500,000 home \$1624 – 1787  \$75.00 Per Hour  <b>Owners Policy</b> \$100,000 home \$654 – 720 \$250,000 home \$1051 – 1157 \$500,000 home \$1624 – 1787 <b>Lenders Policy</b> \$100,000 home \$337 – 393 \$250,000 home \$631 – 657 \$500,000 home \$842 – 975
<b>Catalina II Title Agency, LLC</b> <u>Escrow</u> Provides expert handling of all details in transferring the property in accordance with the real estate contract  <u>Title</u> Provides searches of public records that bring to your attention any known problems with the property's title before closing, and insures against loss due to certain title defects	Settlement/escrow (1101):  Document preparation/processing fees (1105)  Purchase of title policies (1108 - 1110):	<b>Settlement/Escrow Fees:</b> \$100,000 home \$405 – 500 \$250,000 home \$560 – 600 \$500,000 home \$800 – 860  \$75.00 Per Hour  <b>Owners Policy</b> \$100,000 home \$650 – 750 \$250,000 home \$1122 – 1200 \$500,000 home \$1720 – 1830 <b>Lenders Policy</b> \$100,000 home \$360 – 420 \$250,000 home \$612 – 650 \$500,000 home \$940 – 1000
<b>NRT Insurance Agency, Inc.</b> Provides insurance agency services for homeowners and other types of insurance	Hazard Insurance Premium (903)	\$2.50 - \$4 per thousand dollars of replacement cost of dwelling.

1. Actual charges may vary according to the particular circumstances underlying the transaction, including the home value, coverage and limits, other requested terms and services, unusual market conditions, government regulations, property location and features, and other similar factors. Rates may not be the lowest available and are subject to change. For a free, no obligation quote, please contact the company directly. Where required by state law, current rates for insurance are filed with the applicable state agency, and depending upon the circumstances, may vary from the rates shown above.
2. The loan discount fee/points are affected by the note rate. Depending upon market conditions, the loan discount fee/points may be higher to adjust for below-market rates.
3. There are other charges imposed in connection with mortgage loans. In addition, a lender may require the use of other service providers, including but not limited to an attorney, credit reporting agency or real estate appraiser chosen to represent the lender's interest. If you apply to any of these companies for a loan, you will receive additional information regarding anticipated charges.

Although not affiliated business arrangements, please also note the following: certain Brokers market the Coldwell Banker Home Protection Plan provided by American Home Shield of Arizona, Inc., as well as other products and services. Broker, its employees or its affiliate(s) may receive a financial or other benefit in connection with the products or services described herein.

## Acknowledgement of Receipt of Disclosure

I/We have received the Affiliated Business Arrangement Disclosure Statement from Broker and understand that Broker may refer me/us to the settlement service providers listed in this Statement. Broker, its employees or its affiliate(s) may receive a financial or other benefit as the result of that referral.

Name \_\_\_\_\_ Date \_\_\_\_\_ Name \_\_\_\_\_ Date \_\_\_\_\_

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# CONSENT TO LIMITED REPRESENTATION ("CONSENT")



## BROKER REPRESENTS BOTH SELLER AND BUYER OR BOTH LANDLORD AND TENANT

THE PRINTED PORTION OF THIS DOCUMENT HAS BEEN APPROVED BY THE ARIZONA ASSOCIATION OF REALTORS®. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION THEREOF. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

1. BUYER/TENANT ("BUYER") \_\_\_\_\_
2. SELLER/LANDLORD ("SELLER") \_\_\_\_\_
3. SUBJECT PROPERTY \_\_\_\_\_
4. FIRM NAME ("BROKER") \_\_\_\_\_
5. **Consent:** Buyer and Seller consent that Broker, acting through the Licensee(s) named below, will represent both parties in the transaction.
6. ☐ One Licensee: \_\_\_\_\_  
(NAME)
7. ☐ Two Licensees: \_\_\_\_\_, who, through the Broker, has been representing the Buyer;  
(NAME)
8. \_\_\_\_\_ and \_\_\_\_\_, who, through the Broker, has been representing the Seller.  
(NAME)
9. **Duties and Limitations:** The Broker now represents both Buyer and Seller and both parties understand that neither Broker nor Broker's
10. Licensee(s) can represent the interests of one party to the exclusion or detriment of the other party. The parties understand and further
11. consent to the following:
12. a) The Licensee or each Licensee represents both the Buyer and the Seller with limitations of the duties owed to the Buyer and the
13. Seller, such as:
14. 1) The Licensee(s) will not, without written authorization, disclose to the other party that the Seller will accept a price or terms other
15. than stated in the listing or that the Buyer will accept a price or terms other than offered;
16. 2) There will be conflicts in the duties of loyalty, obedience, disclosure and confidentiality. Disclosure of confidential information may
17. be made only with written authorization. This does not relieve each Licensee of any legal obligation to disclose all known facts
18. which materially and adversely affect the consideration to be paid by any party to the transaction.
19. 3) Pursuant to A.R.S. §32-2156, Sellers, Lessors and Broker/Licensee(s) are not obligated to disclose that the Subject Property is or
20. has been: (1) the site of a natural death, suicide, homicide, or any crime classified as a felony; (2) owned or occupied by a person
21. exposed to HIV, or diagnosed as having AIDS or any other disease not known to be transmitted through common occupancy of
22. real estate; or (3) located in the vicinity of a sex offender.
23. b) The Licensee(s) shall exercise reasonable skill and care in the performance of their duties.
24. c) The Licensee(s) shall be obligated at all times to deal honestly with all parties.
25. d) The duties of the Licensee(s) in this transaction do not relieve the Seller or the Buyer from the responsibility to protect their own interests.
26. **Compensation:** Compensation to the Broker shall be paid pursuant to separate agreement(s).
27. **Prior Agreements:** Seller and Buyer understand this Consent does not replace prior agreements entered into with Broker and such agreements
28. shall remain in effect. However, to the extent that the terms of this Consent contradict or conflict with the terms of prior agreements, this Consent
29. shall supersede.
30. **Termination:** If the Seller and Buyer do not enter into a contract relating to the Subject Property or if the transaction between the Seller
31. and the Buyer fails to close, the parties agree that this Consent is terminated, and the parties shall have no further rights or obligations
32. pursuant to this Consent.
33. **Indemnification:** Seller and Buyer agree to indemnify and hold Broker harmless against any and all claims, damages, losses, expenses or
34. liabilities including attorneys' fees and costs incurred by Broker in any defense thereof arising from Broker's role of limited representation.
35. THE UNDERSIGNED PARTIES ACKNOWLEDGE THAT THEY HAVE THOROUGHLY READ, UNDERSTOOD AND APPROVED THIS
36. CONSENT AND ACKNOWLEDGE RECEIPT OF A COPY.

37. Dated: \_\_\_\_\_ Dated: \_\_\_\_\_  
(MO/DA/YR) (MO/DA/YR)

38. Seller's Signature: \_\_\_\_\_ Buyer's Signature: \_\_\_\_\_

39. Seller's Signature: \_\_\_\_\_ Buyer's Signature: \_\_\_\_\_

This form is available for use by the entire real estate industry. The use of this form is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark that may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics.

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## **AGENCY – What's all the fuss about?**

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Most people are aware that a real estate broker or salesperson ("Broker") is an agent with fiduciary duties to the party that the Broker represents. This agency relationship is most often created by express agreement; however, an agency relationship can be legally implied by the parties' actions. Regardless of whether the agency relationship is express or implied, the agency relationship imposes on a Broker the fiduciary duties of loyalty, obedience, disclosure, confidentiality, and accounting.

Unfortunately, there are times when a Broker's agency relationship or duties may be unclear. The following is a discussion of several of these agency dilemmas, along with some possible solutions. As you will see, these situations can generally be avoided if the Broker defines his or her relationship with a buyer or seller as soon as possible and educates the buyer and seller about the scope of the Broker's duties.

### **Information Obtained During a Listing Presentation**

**During a listing presentation, the seller divulges what could be considered confidential information to the Broker. The seller does not enter into a listing agreement with the Broker, but lists the property with another brokerage firm. Is an implied agency created?**

The concept of agency is one of law. Its existence depends upon factual elements that enable a determination, as to whether an agency relationship existed, to be made from all the peculiar circumstances of the particular case. No one fact, seized from its setting, should be regarded as conclusive or controlling under any and all circumstances. *Busk v. Hoard*, 396 P.2d 171 (1964 Wash. 1964).

In *Hayward v. Graham*, 104 Ariz. 103, 449 P.2d 31 (1968), the court stated:

An implied agency must be based on facts...such as to imply an intention to create the agency, and the implication must arise from a natural and reasonable, and not from a forced, strained, or distorted, construction of them. They must lead to the reasonable conclusion that mutual assent exists, and be such as naturally lead another to believe in and to rely on the agency. (Emphasis in original)

*See also, Walter v. Moore*, 700 P.2d 1219 (Wyo. 1985).

Generally, a listing presentation alone does not include the intent to create an agency relationship. Further, the mutual assent necessary to create an agency relationship would generally not occur until the seller agreed to list the property with the Broker and an express agency relationship was entered into. Thus, an implied agency is not created in a listing presentation, unless the Broker implies an intention to create an agency relationship and the seller consents. To avoid this situation, and any implied agency, a Broker could explain to the seller early in the listing presentation that no agency relationship will exist until the seller enters into a listing agreement with the Broker.

### **Agent Representing Seller Only Should Not be Obligated to Disclose Comparable Sales Information to Buyer**

**The Seller has insisted on listing the property at a list price that is above the listing agent's comparable price opinion because the seller believes that the property is worth the price. Is a listing Broker violating a duty to the seller by providing the buyer information that is public knowledge or is a matter of public record, such as comparables, when that information is detrimental to the seller's interest?**

A listing Broker is an agent with fiduciary duties to the seller. E.g., *Haymes v. Rogers*, 70 Ariz. 257, 219 P.2d 339 (1950) (a real estate broker employed to sell property owes the duty of utmost good faith and loyalty to his principal and a fiduciary relationship exists). This broker-client agency relationship imposes on a Broker the fiduciary duties of "utmost good faith, integrity, honesty, and loyalty in her

## AGENCY – What's all the fuss about?

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transactions with the principal..." *Musselman v. Southwinds Realty, Inc.*, 146 Ariz. 173, 175, 704 P.2d 814, 816 (App. 1985) A listing Broker is obligated to exercise reasonable care to effect a sale to the best advantage of the seller: i.e., secure the best terms at the best price obtainable. *See, e.g., Vivian Arnold Realty Co. v. McCormick*, 19 Ariz. App. 289, 506 P.2d 1074 (1976) (broker has duty to effect a sale for seller on best terms possible); *Meerdink v. Krieger*, 550 P.2d 42 (Wash. App. 1976) (broker has a duty to exercise reasonable care, skill, and judgment in securing best bargain possible).

Despite this fiduciary duty to the seller, the listing Broker is obligated to disclose known information to the buyer that materially and adversely affects the consideration to be paid for the property. *See Lombardo v. Albu*, 199 Ariz. 97, 14 P.3d 288 (2000) (the agent's disclosure obligations are consistent with the disclosure obligations of the client); *see also* A.A.C. R4-28-1101(B). However, public information such as comparable price information should not be the type of material and adverse information that the listing Broker is legally obligated to disclose to the buyer. *See, e.g., Buffington v. Haas*, 124 Ariz. 36, 601 P.2d 1320 (1979) (absent an agency relationship a broker has no obligation to advise a non-client as to the advisability of the contract terms). [Note: other types of public information could be of the type that would require disclosure, despite its public nature: for example, an impending zoning change].


Therefore, the listing Broker should not be legally obligated to disclose the comparables to the buyer. Further, if the disclosure would prevent the listing Broker from effecting a sale to the best advantage of the seller, the listing Broker would breach a duty to the seller by disclosing the information, unless, of course, the Broker obtains the seller's consent.

### Use of Comparable Sales Information in a Dual Agency Situation

**The Broker is acting as a dual agent in a transaction. The buyer and the seller have executed an AAR Limited Dual Representation Agreement. Does the dual agent have a duty to disclose comparable sales information to the buyer? Does the dual agent breach a duty to the seller by disclosing such information to the buyer?**

Many courts acknowledge that comparable sales information is the preferred manner to compute the market value of a property. *See, e.g., State v. Sonnier*, 503 So.2d 1144 (La. App 1987). But research revealed no case law specifically stating that a buyer's broker has a fiduciary duty to obtain comparable sales information on behalf of a buyer client. Therefore, for the purposes of this discussion, we will assume that the Broker possesses the comparable sales information.

A broker, as an agent, has a duty to disclose to the client all information possessed by the broker that relates to the transaction. *See, Jennings v. Lee*, 105 Ariz. 167, 461 P.2d 161 (1969). Therefore, if the Broker had information on comparable sales and represented only the buyer, the Broker would have a duty to disclose the information to the buyer, which would violate no duty to the seller.

There are no easy answers when it comes to dual agency. When a Broker acts as a dual agent, the Broker attempts to serve two clients with conflicting interests. This inherent conflict is why dual agents are required to obtain the informed written consent of the parties. *See* R4-28-1101(F). This informed written consent may be obtained with [AAR's Limited Dual Representation Agreement](#)  ("Agreement"). The Agreement acknowledges that there will be conflicts in the duties of loyalty, obedience, disclosure, and confidentiality. Therefore, the Agreement limits the duties the Broker owes to the buyer and seller as follows:

1. The Broker will not, without written authorization, disclose to the buyer that the seller will accept the price or terms other than stated in the listing.
2. The Broker will not, without written authorization, disclose to the seller that the buyer will accept a price or terms other than offered.



## AGENCY – What's all the fuss about?

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3. The Broker will not disclose confidential information without written authorization.

Comparable sales information should not be considered confidential information and therefore should not fall within any of the above limitations on the Broker's duties.

The Agreement also obligates the Broker to:

1. Exercise reasonable skill and care in the performance of the Broker's duties.
2. Deal honestly and fairly with all parties.

Arguably, the failure to disclose known non-confidential comparable sales information to the buyer in a dual agency relationship could violate these obligations.

For the foregoing reasons, a Broker acting as a dual agent under the terms of the Limited Dual Representation Agreement has a duty to the buyer to disclose known non-confidential comparable sales information. Further, because the comparable sales information is not confidential information and does not disclose that the seller will accept a price or terms other than stated in the listing, the disclosure of such information by a dual agent to the buyer should breach no duty to the seller. However, if the Broker anticipates that the comparables are going to be an issue, the best course would be to address the issue in the Dual Representation Agreement.

### Limiting the Scope of Agency Representation Based on Compensation

**The Broker is representing the buyer and the buyer has executed the Real Estate Agency Disclosure and Election ("READE") form, electing that the Broker represent the buyer as a buyer's broker. The Broker and the buyer have not entered into a Buyer-Broker Exclusive Agreement. The Broker has not discussed compensation or limited the Broker's representation to those properties in the MLS offering a certain amount of compensation. Does the Broker breach the Broker's fiduciary duty to the buyer by failing to show a property to the buyer because of insufficient compensation offered by the listing agent or because the property is a FSBO?**

A Broker has a right to set the terms of the Broker's compensation and has no duty to represent a client if the client does not agree to those terms. Further, a Broker has no duty to reduce the agreed upon compensation to assist a buyer or seller in putting a transaction together.

However, in the above factual scenario, although the Broker and the buyer have not agreed upon the Broker's compensation or limited the properties to be shown, the Broker has undertaken the "fiduciary duties of loyalty, obedience, disclosure, confidentiality, and accounting in dealings with the buyer." *See, READE form, line 11.* Further, the buyer's Broker has not disclosed that the Broker will not show the buyer certain properties based on compensation. Therefore, the terms of the buyer-broker relationship are ambiguous.

Research revealed no case law specifically addressing this issue. However, clearly, an agency agreement may exist without a compensation agreement. *See, e.g., Foremost Ins. Co. v. Parham*, 693 So.2d 409 (Ala. 1997). In other words, an agent, like the Broker in the above factual scenario, can undertake fiduciary duties with no guarantee of compensation.

The lack of compensation does not lessen the agent's duties. Once an agency agreement is established, the agent has a duty to give the client all relevant information. "An agent who acquires information relevant to matters within his province and of which he should know the principal would want to know, has a duty to reveal it, unless it was received confidentially." *Musselman v. Southwinds Realty, Inc.*, 146 Ariz. 173, 704 P.2d 814 (1985), citing *W. Seavey, Law of Agency*, § 143, p.238 (1964). "It is the duty of the agent to give his principal reasonable and timely notice of every fact relating to the subject-matter of the agency, coming to the knowledge of the agent while acting as such, and which it may



## AGENCY – What's all the fuss about?

Page 4 of 5

fairly be deemed material for the principal to know for the protection or preservation of his interests." *Id. citing F. Mechem, 1 Law of Agency* § 1353, pp. 993-94 (2d ed. 1914). Therefore, an argument could be made that, unless the buyer's broker clarifies the terms of the agency agreement by disclosing that the Broker will represent the buyer only in regards to listed properties offering a certain amount of compensation, the Broker has a duty to inform the buyer of the availability of all property of which the buyer would want to know. The Broker may have this duty even if the Broker would not actually show the buyer the property, participate in the transaction, or be entitled to compensation.

However, *Musselman* Court also states: "[t]o require the agent to give the principal notice of any conceivable information which might possibly influence the principal would create an oppressive burden on the agent." *Id.* Thus, a buyer's broker could argue that it would create an oppressive burden on the Broker to give a buyer information on a property for which the Broker would not be compensated. Further, the Broker could argue that a certain amount of compensation for the Broker's services were implied. Therefore, a contrary argument could be made that the failure to give the buyer notice of the property would not be a breach of fiduciary duty.

The solution to the dilemma presented above is for the buyer's broker to define the terms of the broker's representation and address compensation for the broker's services by using the Buyer-Broker Exclusive Employment Agreement or other written agreement. In the alternative, the buyer's broker could disclose to the buyer, in writing, that the agency agreement extends only to properties for which the broker would receive a certain amount of compensation. Such a disclosure would inform the buyer what to expect of the agent and, more importantly, the limitations in the agency relationship.

### Confidential Information Remains Confidential After Termination of Agency Relationship

**The Broker listed a property for the seller, but was unable to sell the property. When the Broker's listing expired, the seller re-listed the property with another brokerage firm. The Broker possesses confidential information about the seller, which was acquired while the Broker represented the seller. May the Broker disclose the confidential information about the seller?**

Arizona courts generally follow the Restatement of Law if its view "is logical, furthers the interests of justice, is consistent with Arizona law and policy, and has been generally acknowledged elsewhere." *Ramirez v. Health Partners of Southern Arizona*, 193 Ariz. 325, 972 P.2d 658 (App. 1998). Pursuant to the *Restatement (Second) of Agency*:

#### §396 Using Confidential Information After Termination of Agency

Unless otherwise agreed, after the termination of the agency, the agent:

- (b) has a duty to the principal not to use or to disclose to third persons, on his own account or on account of others, in competition with the principal or to his injury, trade secrets, written lists of names, or other similar confidential matters given to him only for the principal's use or acquired by the agent in violation of duty. The agent is entitled to use general information concerning the method of business of the principal and the names of the customers retained in his memory, if not acquired in violation of his duty as agent;
- (d) has a duty to the principal not to take advantage of a still subsisting confidential relation created during the prior agency relation. (Emphasis added).

## **AGENCY – What’s all the fuss about?**

Page 5 of 5

The Comment on subsection (d) of § 396 also states in pertinent part that "one who customarily buys or sells property through a broker can properly assume that the broker will keep confidential information given him in matters connected with dealings in such property, although not in connection with a transaction in which he is employed." Therefore, the Broker's duty of confidentiality to the seller would preclude the Broker from disclosing the confidential information about the seller even after termination of the agency relationship, unless the Broker obtains the seller's consent.

An article by

**By K. Michelle Lind**

**October 2001**

**Agency Dilemmas**

This information has been provided courtesy of  
Lori & "G-II", Coldwell Banker Success Realtors®, e-PROs, ABRs & Mentors

# WHAT BUILDERS DON'T WANT BUYERS TO KNOW

Hello my friends,

We wanted to share some information about how our New Construction Market works here in the valley. When a buyer *so much as **walks onto a Builders Construction Site or through** a Model Home Center*, and is not accompanied with a Realtor, the Buyer ***GIVES UP THEIR RIGHT TO HAVE THEIR INTERESTS REPRESENTED*** by a professional. This is commonly referred to as "***The Threshold Rule***". They are on their own, and at the mercy of the builder. The buyer has ***NO BUYERS REPRESENTATION*** and no support mechanism in the long process of writing the contract, financing, inspections and/or remedies to any issues that may arise as the process moves forward. Therefore, the information below is intended to let you know:

**[CLICK THIS LINK To Learn What Builders Hope Buyers NEVER Learn. FREE Report Reveals Secrets About New Construction That Can Save You Thousands of Dollars!](#)**

If you are in the market to buy a house, one of the first things you will probably do is check out all the new construction in the area. Studies show that, given their "druthers", most people would rather buy a brand new home than purchase a resale. Like a new car, a new house has a special feeling attached to it, right down to that 'new house smell'.

The average couple begin shopping for new construction in this way: they buy the Sunday newspaper, circle all the big ads, climb into the car, and plan a day of visiting sample homes. They are excited and in high spirits. After all, this is going to be great fun!

They drive up to the first sub-division. (Finding the sample home in one of these developments is never difficult. You just look for the flags in the driveway, the sign on the lawn, and thousands of dollars in professional landscaping.) They pile out of the car, go through the door, and are greeted by an attractive, smiling salesperson.

"Just looking," they tell the Builder's Representative.

"No problem," says the salesperson. "If you'll simply register here, I'll give you a brochure, and point you in the right direction."

They dutifully fill out the registration form, get the brochure, and tour the house. More likely than not, to exit the sample home, they have to go right back past the Builder's Representative. The salesperson, still smiling, stands ready to answer any and all questions they may have.

If the home they saw holds any interest for them, they will probably view the plot plan. The salesperson points out which lots are still available, which have premiums, and which are ready for immediate delivery. He or she will sincerely confide to our couple that a small, totally refundable, deposit will "hold" the lot they like best. This will give them a chance to think about it, without running the risk of someone else grabbing "their" lot.

# WHAT BUILDERS DON'T WANT BUYERS TO KNOW

CONTINUED

The couple, feeling very comfortable with this pleasant and non-aggressive salesperson, and very appreciative of the special "insider-information" about the lot, decide to leave the deposit.

After all, they have nothing to lose and everything to gain, right?

## To Learn Why, your Wrong - Dead Wrong

Look at the following page

What the couple did when they first walked in and registered was to sign away their opportunity to have their own agent represent them if they buy from that builder – with the builder footing the bill for that representation! When they left the deposit on the lot, they further sealed their fate.

Here's the truth that builders hope you never discover.

In today's competitive market, most developers realize that the buyer for their home may already be working with a real estate agent, and THEY BUILD A COMMISSION FOR THE AGENT INTO THE SALES PRICE OF THE HOME. That's right, the commission to pay YOUR agent is ALREADY figured into the price that the salesperson quoted you. And the house is the SAME price, even if you walk into the sample home all by yourself, without an agent.

How much money are we talking about? Well, if a house is \$200,000, the builder may be offering anywhere from 2%, to a full 6%, for the agent who brings a buyer. That's \$4,000 -- \$12,000 that you are going to pay, whether you are represented by an agent or not! What happens to all that extra money if you walk into the sample home yourself, as the couple above did? You guessed it, the builder keeps it!

And that is not even the WORST part. While you are going to pay that extra money even if you do not have representation, the risks you run by just having the Builder's Representative "take care" of everything could end up costing you a whole lot more!

Below are some examples of what the builder warnings look like. Heed these warnings or you  
**ARE ON YOUR OWN!**

# Builder Warnings Posted

The Buyer **Warnings** posted below are typical of those posted by **100%** of the Builders in Maricopa County AZ.

Coventry  
Homes

at  
Anthem, AZ



KB Homes

at  
Happy Valley  
Rd



T.W. Lewis  
Homes

at  
Stetson Hills,  
AZ



Shea Homes

at  
Northern Lights



US Homes

at  
Tamarar, AZ



Ryland Homes

at  
Tamarar, AZ



Buyer **Warning**



Buyer  
**Warning**



Buyer **Warning**



Buyer **Warning**



Buyer **Warning**



Buyer **Warning**



## Back to What Builders Hope Buyers Never Find Out

*Can you really afford not to be represented by a Professional Realtor?*

*Remember, the Builder PAYS for your representation if you have Realtor representation BUT...*

*You are not given a \$\$\$ credit if you buy your new home Without Realtor Representation...*

*it's the way of the Wild Wild West*

Engle Homes

at  
Tamarar, AZ



Standard Pacific

at  
Tamarar, AZ



Hancock Homes

at  
Tamarar, AZ



Buyer  
**Warning**



Buyer **Warning**



Buyer **Warning**



## Back to What Builders Hope Buyers Never Find Out

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# Residents say they were misled on sewer plant site

By J CRAIG ANDERSON  
TRIBUNE

Oct. 10 - Elizabeth and Ricardo Baker say the only thing that stinks worse than raw sewage is not being told the plant that will treat it is being built near their home.

The northern Pinal County residents, who live in the San Tan Heights subdivision of Johnson Ranch southeast of Queen Creek, have filed a formal complaint with the Arizona Department of Real Estate claiming that before they signed the purchase agreement for their home in March, a Dietz Crane Homes sales agent lied to them about a sewage treatment plant being built a few hundred feet beyond their back yard.

The Bakers claim they were told the plant would be 2 miles to the west, but it is under construction only about a football field's length away from their home. Other residents also say they weren't told about the plant, although disclosure is required by law.

"I don't want to look out my window and see the waste-water plant, or sit on my patio and smell it," Elizabeth Baker said. "I never would have purchased this property had I not been misled."

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• OTHE

**WRITE I**  
Question c  
MSNBC at  
Send us at



Some homes are less than 50 yards away from the plant, owned by Johnson Utilities LLC, which is surrounded by a block wall. Posted signs warn residents to keep away, but there is no indication of what lies behind the wall.

"All I will say is that I have received the complaint from the Department of Real Estate as you have, and we are investigating it," said Joe Spangler, a Dietz Crane sales department official.

When a Tribune reporter inquired about the walled-in area without identifying himself, sales agent Kirstin Haws did disclose that the facility was a "water treatment plant," and even expressed concern that it might smell bad when completed.

But the Bakers claim Haws told them the project was a "water feature" when they became suspicious in August of a large hole that construction workers dug and then filled with water. In fact, the pool is a retention area for the still-uncompleted treatment plant. It has since been capped with concrete.

San Tan Heights resident Mike Talbert said he had no idea a treatment plant was being built so close to his home until his neighbors alerted him.

"Two miles south is what the disclosure statement said," Talbert added, referring to a document required by the Department of Real Estate that must be presented to prospective home buyers before they sign a purchase contract.

Ricardo Baker said it took three days of due diligence to get anyone to verify that the construction project was to be a treatment plant.

He said he began by calling contractor Omega Management Services Inc., because the company's name and phone number were on a banner hanging outside the plant.

Omega employee Rick McMillan referred him to Johnson Utilities, Baker said. That's when, the complaint contends, things became muddled.

"We called Johnson Utilities and were informed that they had no knowledge of the project, that it was being run by Omega," the complaint states.

"I called the town of Queen Creek, and (community development engineer) Jan Martin said she had no knowledge

of it and to call Pinal County. I called (Pinal County) public works who in turn had no knowledge of it," Baker said.

Baker said he finally had a useful - but ultimately confusing - exchange with Pinal County planning department employee Louis Ramirez.

"He did call me back in several minutes to tell me that the wastewater plant did in fact belong to Johnson Utilities and they had not submitted an application or plans for the project," the complaint states. "He told us he would have the project stopped today (Aug. 19)."

However, the Bakers claim Ramirez then called again and referred them to the Arizona Department of Environmental Quality. Construction on the plant has continued as of Wednesday.

DEQ spokesman Patrick Gibbons said Wednesday that Johnson Utilities does have state approval to build the plant, and that it will be a state-of-the-art facility.

Ramirez was reached by phone on Wednesday but refused to speak without the planning department's lawyer present. He did not call back before deadline. Johnson Utilities chief engineer Brian Tompsett did not return a message left Wednesday. Department of Real Estate spokeswoman Liz Carrasco said the complaint is currently under investigation.

[NEXT STORY >>](#)

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# BUYER ATTACHMENT

*This attachment should be given to the Buyer prior to the submission of any offer and is not a part of the Residential Resale Real Estate Purchase Contract's terms.*

## ATTENTION BUYER!

You are entering into a legally binding agreement.

1. **Read the entire contract before you sign it.** \_\_\_\_\_  
Buyer's Initials      Buyer's Initials
2. **Review the Seller's Property Disclosure Statement (See Section 4a).** \_\_\_\_\_  
Buyer's Initials      Buyer's Initials
  - This information comes directly from the Seller.
  - Investigate any blank spaces, unclear answers or any other information that is important to you.
3. **Review the Inspection Paragraph (see Section 6a).**  
If important to you, hire a qualified:
  - Mold inspector
  - Roof inspector
  - Pest inspector
  - Pool inspector
  - Heating/cooling inspector
 Verify square footage (see Section 6b)  
 Verify the property is on sewer or septic (see Section 6f) \_\_\_\_\_  
Buyer's Initials      Buyer's Initials
4. **Confirm your ability to obtain insurance and insurability of the property during the inspection period with your insurance agent (see Sections 6a and 6e).** \_\_\_\_\_  
Buyer's Initials      Buyer's Initials
5. **Apply for your home loan now, if you have not done so already, and provide your lender with all requested information (see Section 2e).** It is your responsibility to make sure that you and your lender deliver the necessary funds to escrow in sufficient time to allow escrow to close on the agreed upon date. Otherwise, the Seller may cancel the contract. \_\_\_\_\_  
Buyer's Initials      Buyer's Initials
6. **Read the title commitment within five days of receipt (see Section 3c).** \_\_\_\_\_  
Buyer's Initials      Buyer's Initials
7. **Read the CC&R's and all other governing documents within five days of receipt (see Section 3c), especially if the home is in a homeowner's association.** \_\_\_\_\_  
Buyer's Initials      Buyer's Initials
8. **Conduct a thorough final walkthrough (see Section 6m).** If the property is unacceptable, speak up. After the closing may be too late. \_\_\_\_\_  
Buyer's Initials      Buyer's Initials

You can obtain information through the Buyer's Advisory at <http://www.aaronline.com>. **Remember, you are urged to consult with an attorney, inspectors, and experts of your choice in any area of interest or concern in the transaction.** Be cautious about verbal representations, advertising claims, and information contained in a listing. Verify anything important to you.

# RESIDENTIAL RESALE REAL ESTATE PURCHASE CONTRACT

The printed portion of this contract has been approved by the Arizona Association of REALTORS® ("AAR"). This is intended to be a binding contract. No representation is made as to the legal validity or adequacy of any provision or the tax consequences thereof. If you desire legal, tax or other professional advice, consult your attorney, tax advisor, insurance agent or professional consultant.



## 1. PROPERTY

- 1a. 1. BUYER:** \_\_\_\_\_  
BUYER'S NAME(S)
- 2. SELLER:** \_\_\_\_\_ or ☐ as identified in section 9c.  
SELLER'S NAME(S)
3. Buyer agrees to buy and Seller agrees to sell the real property with all improvements, fixtures, and appurtenances thereon  
4. or incidental thereto, plus the personal property described herein (collectively the "Premises").
- 1b. 5. Premises Address:** \_\_\_\_\_ Assessor's #: \_\_\_\_\_  
6. City: \_\_\_\_\_ County: \_\_\_\_\_ AZ, Zip Code: \_\_\_\_\_  
7. Legal Description: \_\_\_\_\_
- 1c. 8. \$** \_\_\_\_\_ Full Purchase Price, paid as outlined below  
9. \$ \_\_\_\_\_ Earnest money \_\_\_\_\_  
10. \$ \_\_\_\_\_  
11. \$ \_\_\_\_\_  
12. \_\_\_\_\_
- 1d. 13. Close of Escrow:** Close of Escrow ("COE") shall occur when the deed is recorded at the appropriate county recorder's office.  
14. Buyer and Seller shall comply with all terms and conditions of this Contract, execute and deliver to Escrow Company all  
15. closing documents, and perform all other acts necessary in sufficient time to allow COE to occur on  
16. \_\_\_\_\_ MONTH \_\_\_\_\_ DAY \_\_\_\_\_ YEAR ("COE Date"). If Escrow Company or recorder's office is closed on  
17. COE Date, COE shall occur on the next day that both are open for business.  
18. Buyer shall deliver to Escrow Company a cashier's check, wired funds or other immediately available funds to pay any down  
19. payment, additional deposits or Buyer's closing costs, and instruct the lender, if applicable, to deliver immediately available funds  
20. to Escrow Company, in a sufficient amount and in sufficient time to allow COE to occur on COE Date.
- 1e. 21. Possession:** Seller shall deliver possession, occupancy, access to keys and/or means to operate all locks, mailbox,  
22. security system/alarms, and all common area facilities to Buyer at COE or ☐ \_\_\_\_\_  
23. Broker(s) recommend that the parties seek appropriate counsel from insurance, legal, tax, and accounting professionals  
24. regarding the risks of pre-possession or post-possession of the Premises.
- 1f. 25. Addenda Incorporated:** ☐ Assumption and Carryback ☐ Buyer Contingency ☐ Domestic Water Well ☐ HUD forms  
26. ☐ H.O.A. ☐ Lead-Based Paint Disclosure ☐ Additional Clause ☐ On-site Wastewater Treatment Facility  
27. ☐ Other: \_\_\_\_\_
- 1g. 28. Fixtures and Personal Property:** Seller agrees that all existing fixtures on the Premises, and any existing personal  
29. property specified herein, shall be included in this sale, including the following:
- |  |   |  |
|--|---|--|
| 30. • free-standing range/oven             | • flush-mounted speakers                      | • outdoor landscaping, fountains, and lighting |
| 31. • built-in appliances                  | • attached fireplace equipment                | • water-misting systems                        |
| 32. • light fixtures                       | • window and door screens, sun screens        | • solar systems                                |
| 33. • ceiling fans                         | • storm windows and doors                     | • pellet, wood-burning or gas-log stoves       |
| 34. • towel, curtain and drapery rods      | • shutters and awnings                        | • timers                                       |
| 35. • draperies and other window coverings | • garage door openers and controls            | • mailbox                                      |
| 36. • attached floor coverings             | • attached TV/media antennas/satellite dishes | • storage sheds                                |

Initials: \_\_\_\_\_ / \_\_\_\_\_  
SELLER SELLER

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Initials: \_\_\_\_\_ / \_\_\_\_\_  
BUYER BUYER

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37. If owned by the Seller, the following items also are included in this sale:

38. • pool and spa equipment (including any mechanical or other cleaning systems) • security and/or fire systems and/or alarms • water softeners • water purification systems

40. **Additional existing personal property included in this sale (if checked):** ☐ refrigerator ☐ washer ☐ dryer

41. As described: \_\_\_\_\_

42. \_\_\_\_\_

43. ☐ Other: \_\_\_\_\_

44. \_\_\_\_\_

45. \_\_\_\_\_

46. Additional existing personal property included shall not be considered part of the Premises and shall be transferred with no monetary value, and free and clear of all liens or encumbrances.

48. Fixtures and leased items NOT included: \_\_\_\_\_

49. **IF THIS IS AN ALL CASH SALE, GO TO SECTION 3.**

## 2. FINANCING

**2a. 50. Loan Contingency:** Buyer's obligation to complete this sale is contingent upon Buyer obtaining loan approval for the loan described in the AAR Loan Status Report without conditions no later than COE Date. If Buyer is unable to obtain loan approval without conditions by COE Date, Buyer shall deliver a notice of the inability to obtain loan approval without conditions to Seller or Escrow Company no later than COE Date.

**2b. 54. Unfulfilled Loan Contingency:** This Contract shall be cancelled and Buyer shall be entitled to a return of the Earnest Money if after diligent and good faith effort, Buyer is unable to obtain loan approval without conditions by COE Date. Buyer is aware that failure to have the down payment or other funds due from Buyer necessary to obtain the loan approval without conditions and close this transaction is not an unfulfilled loan contingency. Buyer acknowledges that prepaid items paid separately from earnest money are not refundable.

**2c. 59. Appraisal Contingency:** Buyer's obligation to complete this sale is contingent upon an appraisal of the Premises by an appraiser acceptable to lender for at least the sales price. If the Premises fails to appraise for the sales price, Buyer has five (5) days after notice of the appraised value to cancel this Contract and receive a refund of the Earnest Money or the appraisal contingency shall be waived.

**2d. 62. Loan Status Report:** The AAR Loan Status Report ("LSR") with, at a minimum, the Buyer's Loan Information section completed, describing the current status of the Buyer's proposed loan, is attached hereto and incorporated herein by reference.

**2e. 64. Loan Application:** Unless previously completed, within five (5) days after Contract acceptance, Buyer shall (i) complete, sign and deliver to the lender a loan application with requested disclosures and documentation; (ii) grant lender permission to access Buyer's Trimerget Residential Credit Report; and (iii) pay all required loan application fees.

**2f. 67. Loan Processing During Escrow:** Buyer agrees to diligently work to obtain the loan and will promptly provide the lender with all additional documentation required. Buyer instructs the lender to provide loan status updates to Broker(s) and Seller. **Buyer shall sign all loan documents no later than three (3) days prior to the COE Date.**

**2g. 70. Type of Financing:** ☐ Conventional ☐ FHA ☐ VA ☐ Assumption ☐ Seller Carryback ☐ \_\_\_\_\_  
71. (If financing is to be other than new financing, see attached addendum.)

**2h. 72. Loan Costs:** Private Mortgage Insurance is required for certain types of loans and shall be paid by Buyer at COE in a manner acceptable to lender. The following may be paid by either party:

74. Discount points shall be paid by: ☐ Buyer ☐ Seller ☐ Other \_\_\_\_\_

75. Discount points shall not exceed: \_\_\_\_\_ total points (Does not include loan origination fee)

76. A.L.T.A. Lender Title Insurance Policy shall be paid by ☐ Buyer ☐ Seller

77. Loan Origination Fee (Not to exceed \_\_\_\_\_ % of loan amount) shall be paid by ☐ Buyer ☐ Seller

78. Appraisal Fee, when required by lender, shall be paid by ☐ Buyer ☐ Seller ☐ Other \_\_\_\_\_

**2i. 79. Other Loan Costs:** In the event of an FHA or VA loan, Seller agrees to pay up to \$ \_\_\_\_\_ of loan costs not permitted to be paid by the Buyer, in addition to the other costs Seller has agreed to pay herein. In addition, for VA loans, Seller agrees to pay the escrow fee. All other costs of obtaining the loan shall be paid by the Buyer.

Initials: \_\_\_\_\_ / \_\_\_\_\_  
SELLER SELLER

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Initials: \_\_\_\_\_ / \_\_\_\_\_  
BUYER BUYER

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43. ☐ Other: \_\_\_\_\_

44. \_\_\_\_\_

45. \_\_\_\_\_

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2c. 59. **Appraisal Contingency:** Buyer's obligation to complete this sale is contingent upon an appraisal of the Premises by an appraiser acceptable to lender for at least the sales price. If the Premises fails to appraise for the sales price, Buyer has five (5) days after notice of the appraised value to cancel this Contract and receive a refund of the Earnest Money or the appraisal contingency shall be waived.

2d. 62. **Loan Status Report:** The AAR Loan Status Report ("LSR") with, at a minimum, the Buyer's Loan Information section completed, describing the current status of the Buyer's proposed loan, is attached hereto and incorporated herein by reference.

2e. 64. **Loan Application:** Unless previously completed, within five (5) days after Contract acceptance, Buyer shall (i) complete, sign and deliver to the lender a loan application with requested disclosures and documentation; (ii) grant lender permission to access Buyer's Trimerged Residential Credit Report; and (iii) pay all required loan application fees.

2f. 67. **Loan Processing During Escrow:** Buyer agrees to diligently work to obtain the loan and will promptly provide the lender with all additional documentation required. Buyer instructs the lender to provide Loan Status Updates to Broker(s) and Seller. **Buyer shall sign all loan documents no later than three (3) days prior to the COE Date.**

2g. 70. **Type of Financing:** ☐ Conventional ☐ FHA ☐ VA ☐ Assumption ☐ Seller Carryback ☐ \_\_\_\_\_  
71. (If financing is to be other than new financing, see attached addendum.)

2h. 72. **Loan Costs:** Private Mortgage Insurance is required for certain types of loans and shall be paid by Buyer at COE in a manner acceptable to lender. The following may be paid by either party:

74. Discount points shall be paid by: ☐ Buyer ☐ Seller ☐ Other \_\_\_\_\_

75. Discount points shall not exceed: \_\_\_\_\_ total points (Does not include loan origination fee) \_\_\_\_\_

76. A.L.T.A. Lender Title Insurance Policy shall be paid by ☐ Buyer ☐ Seller \_\_\_\_\_

77. Loan Origination Fee (Not to exceed \_\_\_\_\_ % of loan amount) shall be paid by ☐ Buyer ☐ Seller \_\_\_\_\_

78. Appraisal Fee, when required by lender, shall be paid by ☐ Buyer ☐ Seller ☐ Other \_\_\_\_\_

2i. 79. **Other Loan Costs:** In the event of an FHA or VA loan, Seller agrees to pay up to \$ \_\_\_\_\_ of loan costs not permitted to be paid by the Buyer, in addition to the other costs Seller has agreed to pay herein. In addition, for VA loans, Seller agrees to pay the escrow fee. All other costs of obtaining the loan shall be paid by the Buyer.

See CURE PERIOD on Page 7, Lines 271 through 274

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SELLER SELLER

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BUYER BUYER



THIS FORM CAN BE COMPLETED ON YOUR COMPUTER

# LOAN STATUS REPORT ("LSR")

The printed portion of this form has been approved by the Arizona Association of REALTORS®.



## BUYER'S LOAN INFORMATION

\_\_\_\_ ("Buyer") submits the following LSR.

Buyer intends to obtain a loan on the following terms:

Purchase Price \$ \_\_\_\_\_

Loan amount requested 1st \$ \_\_\_\_\_

Loan to value ("LTV") \_\_\_\_\_

Combined loan to value ("CLTV") \_\_\_\_\_

Term of Loan \_\_\_\_\_. Interest Rate shall not exceed: \_\_\_\_\_ % as an annual rate for a fixed rate loan or an initial rate for an adjustable rate loan.

Loan amount requested 2nd \$ \_\_\_\_\_

Loan to value ("LTV") \_\_\_\_\_

Combined loan to value ("CLTV") \_\_\_\_\_

Term of Loan \_\_\_\_\_. Interest Rate shall not exceed: \_\_\_\_\_ % as an annual rate for a fixed rate loan or an initial rate for an adjustable rate loan.

Loan Program: ☐ Conventional ☐ FHA ☐ VA ☐ Other: \_\_\_\_\_

Occupancy: ☐ Primary ☐ Secondary ☐ Non-Owner Occupied

Buyer ☐ Is ☐ Is not relying on the sale or lease of a property to qualify for this loan.

☐ Buyer has not yet had the opportunity to consult with a lender.

☐ Buyer has consulted with a lender and submits the loan information below or attached.

Buyer instructs lender to provide loan status updates to Seller and Broker(s) upon request.

\_\_\_\_\_  
BUYER'S SIGNATURE

\_\_\_\_\_  
MO/DA/YR

\_\_\_\_\_  
BUYER'S SIGNATURE

\_\_\_\_\_  
MO/DA/YR

## LENDER PRE-QUALIFICATION

The undersigned Lender has discussed the loan strategy listed above with the Buyer(s) and has completed the following action points noted.

	YES	NO		DATE
1.	<input type="checkbox"/>	<input type="checkbox"/>	Lender has completed a verbal discussion with Buyer for the above loan strategy including a discussion of income, assets & debts. Based on information provided and a Trimerged Residential Credit Report ("TMRRCR"), the Buyer is pre-qualified.	____/____/____
2.	<input type="checkbox"/>	<input type="checkbox"/>	Lender has received a completed written signed Application/1003. Based on the information provided and a TMRRCR, the Buyer is pre-qualified.	____/____/____
3.	<input type="checkbox"/>	<input type="checkbox"/>	Lender has received and reviewed a written signed Application/1003 with all requested disclosures and supporting documentation. Based on information provided and a TMRRCR, the Buyer is pre-qualified.	____/____/____
4.	<input type="checkbox"/>	<input type="checkbox"/>	Lender has provided Buyer with a Good Faith Estimate.	____/____/____

Lender agrees to provide updates to Seller and Broker(s) in this transaction using the LSU \_\_\_\_\_/\_\_\_\_/\_\_\_\_

Lender Name: \_\_\_\_\_ Loan Officer: \_\_\_\_\_

Street Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_ Mortgage License #: \_\_\_\_\_

\_\_\_\_\_  
LENDER'S SIGNATURE

\_\_\_\_\_  
MO/DA/YR



## LOAN STATUS UPDATE ("LSU")

Contract Dated: \_\_\_\_\_

Buyer: \_\_\_\_\_

Seller: \_\_\_\_\_

Premises Address: \_\_\_\_\_

City: \_\_\_\_\_ AZ Zip Code \_\_\_\_\_

Broker/Seller requests a Loan Status Update

## LOAN STATUS UPDATE

## DOCUMENTATION

	YES	NO		DATE	LENDER INITIALS
1.	<input type="checkbox"/>	<input type="checkbox"/>	Lender has received the Contract and all Addenda	/ /	_____
2.	<input type="checkbox"/>	<input type="checkbox"/>	Lender has received and reviewed the Title Commitment	/ /	_____
3.	<input type="checkbox"/>	<input type="checkbox"/>	Lender has ordered the Appraisal	/ /	_____
4.	<input type="checkbox"/>	<input type="checkbox"/>	Lender has received the Appraisal and the Premises has appraised for at least The sales price.	/ /	_____

## UNDERWRITING AND APPROVAL

	YES	NO		DATE	LENDER INITIALS
5.	<input type="checkbox"/>	<input type="checkbox"/>	Lender has submitted the loan package to the Underwriter	/ /	_____
6.	<input type="checkbox"/>	<input type="checkbox"/>	Lender has obtained loan approval with Prior to Document ("PTD") Conditions.	/ /	_____
7.	<input type="checkbox"/>	<input type="checkbox"/>	Lender has cleared all PTD Conditions	/ /	_____
8.	<input type="checkbox"/>	<input type="checkbox"/>	Buyer has loan approval without PDT Conditions.	/ /	_____

## CLOSING

	YES	NO		DATE	LENDER INITIALS
9.	<input type="checkbox"/>	<input type="checkbox"/>	Lender has ordered the Closing Loan Documents ("DOCs") and Instructions.	/ /	_____
10.	<input type="checkbox"/>	<input type="checkbox"/>	Lender has sent the DOCs to the Escrow Company.	/ /	_____
11.	<input type="checkbox"/>	<input type="checkbox"/>	Lender has received and approved the pre-audit from Escrow Company	/ /	_____
12.	<input type="checkbox"/>	<input type="checkbox"/>	Lender has received signed DOCs with Prior To Funding Conditions ("PTF")	/ /	_____
13.	<input type="checkbox"/>	<input type="checkbox"/>	Buyer has obtained loan approval without conditions.	/ /	_____
14.	<input type="checkbox"/>	<input type="checkbox"/>	Funds have been ordered	/ /	_____

LENDER'S SIGNATURE

MO/DA/YR

2j. 82. **Changes:** Buyer shall immediately notify Seller of any changes in the loan program, financing terms, or lender described in  
83. the LSR and shall only make any such changes without the prior written consent of Seller if such changes do not adversely  
84. affect Buyer's ability to obtain loan approval without conditions, increase Seller's closing costs, or delay COE.

2k. 85. **FHA Notice (FHA Buyer Initials Required):** HUD does not warrant the condition of the property. By initialing below, Buyer acknowl-  
86. edges receipt of Form HUD-92564-CN, "For Your Protection: Get a Home Inspection." Buyer further acknowledges that such  
87. form was signed at or before the Contract date. Signed HUD-92564-CN is attached and made a part of this Purchase Contract.

88.

(FHA BUYER'S INITIALS REQUIRED)

BUYER

BUYER

### 3. TITLE AND ESCROW

3a. 89. **Escrow:** This Contract shall be used as escrow instructions. The Escrow Company employed by the parties to carry out the  
90. terms of this Contract shall be:

91.

"ESCROW/TITLE COMPANY"

PHONE/FAX

3b. 92. **Title and Vesting:** Buyer will take title as determined before COE. Taking title may have significant legal, estate planning  
93. and tax consequences. Buyer should obtain legal and tax advice.

3c. 94. **Title Commitment and Title Insurance:** Escrow Company is hereby instructed to obtain and deliver to Buyer and Seller  
95. directly, addressed pursuant to 8t and 9c or as otherwise provided, a Commitment for Title Insurance together with  
96. complete and legible copies of all documents that will remain as exceptions to Buyer's policy of Title Insurance ("Title  
97. Commitment"), including but not limited to Conditions, Covenants and Restrictions ("CC&Rs"); deed restrictions; and  
98. easements. Buyer shall have five (5) days after receipt of the Title Commitment and after receipt of notice of any  
99. subsequent exceptions to provide notice to Seller of any items disapproved. Seller shall convey title by general warranty  
100. deed. Buyer shall be provided at Seller's expense an American Land Title Association ("ALTA") Homeowner's Title  
101. Insurance Policy, or if not available, an ALTA Residential Title Insurance Policy ("Plain Language"/"1-4 units") or, if not  
102. available, a Standard Owner's Title Insurance Policy, showing title vested in Buyer. Buyer may acquire extended coverage  
103. at Buyer's own additional expense.

3d. 104. **Additional Instructions:** (i) Escrow Company shall promptly furnish notice of pending sale that contains the name and  
105. address of the Buyer to any homeowner's association in which the Premises is located. (ii) If the Escrow Company is also  
106. acting as the title agency but is not the title insurer issuing the title insurance policy, Escrow Company shall deliver to the  
107. Buyer and Seller, upon deposit of funds, a closing protection letter from the title insurer indemnifying the Buyer and Seller for  
108. any losses due to fraudulent acts or breach of escrow instructions by the Escrow Company. (iii) All documents necessary to  
109. close this transaction shall be executed promptly by Seller and Buyer in the standard form used by Escrow Company. Escrow  
110. Company shall modify such documents to the extent necessary to be consistent with this Contract. (iv) Escrow Company  
111. fees, unless otherwise stated herein, shall be allocated equally between Seller and Buyer. (v) Escrow Company shall send  
112. to all parties and Broker(s) copies of all notices and communications directed to Seller, Buyer and Broker(s). (vi) Escrow  
113. Company shall provide Broker(s) access to escrowed materials and information regarding the escrow. (vii) If an Affidavit of  
114. Disclosure is provided, Escrow Company shall record the Affidavit at COE.

3e. 115. **Tax Prorations:** Real property taxes payable by the Seller shall be prorated to COE based upon the latest tax information available.

3f. 116. **Release of Earnest Money:** In the event of a dispute between Buyer and Seller regarding any Earnest Money deposited with Escrow  
117. Company, Buyer and Seller authorize Escrow Company to release Earnest Money pursuant to the terms and conditions of this Contract  
118. in its sole and absolute discretion. Buyer and Seller agree to hold harmless and indemnify Escrow Company against any claim, action  
119. or lawsuit of any kind, and from any loss, judgment, or expense, including costs and attorney fees, arising from or relating in any way to  
120. the release of Earnest Money.

3g. 121. **Prorations of Assessments and Fees:** All assessments and fees that are not a lien as of the COE, including homeowner's  
122. association fees, rents, irrigation fees, and, if assumed, insurance premiums, interest on assessments, interest on  
123. encumbrances, and service contracts, shall be prorated as of COE or ☐ Other: \_\_\_\_\_

3h. 124. **Assessment Liens:** The amount of any assessment, other than homeowner's association assessments, that is a lien as of  
125. the COE, shall be ☐ paid in full by Seller ☐ prorated and assumed by Buyer. Any assessment that becomes a lien after  
126. COE is the Buyer's responsibility.

3i. 127. **IRS and FIRPTA Reporting:** Seller agrees to comply with IRS reporting requirements. If applicable, Seller agrees to  
128. complete, sign, and deliver to Escrow Company a certificate indicating whether Seller is a foreign person or a non-resident  
129. alien pursuant to the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller acknowledge that if the Seller  
130. is a foreign person, the Buyer must withhold a tax equal to 10% of the purchase price, unless an exemption applies.

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BUYER BUYER

## 4. DISCLOSURES

- 4a. 131. Seller Property Disclosure Statement ("SPDS"):** Seller shall deliver a completed AAR SPDS form to the Buyer within five (5) days after Contract acceptance. Buyer shall provide notice of any SPDS items disapproved within the Inspection Period or five (5) days after receipt of the SPDS, whichever is later.
- 4b. 134. Insurance Claims History:** Seller shall deliver to Buyer a written five-year insurance claims history regarding Premises (or a claims history for the length of time Seller has owned the Premises if less than five years) from Seller's insurance company or an insurance support organization or consumer reporting agency, or if unavailable from these sources, from Seller, within five (5) days after Contract acceptance. (Seller may obscure any reference to date of birth or social security number from the document). Buyer shall provide notice of any items disapproved within the Inspection Period or five (5) days after receipt of the claims history, whichever is later.
- 4c. 140. Lead-Based Paint Disclosure:** If the Premises were built prior to 1978, the Seller shall: (i) notify the Buyer of any known lead-based paint ("LBP") or LBP hazards in the Premises; (ii) provide the Buyer with any LBP risk assessments or inspections of the Premises in the Seller's possession; (iii) provide the Buyer with the Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards, and any report, records, pamphlets, and/or other materials referenced therein, including the pamphlet "Protect Your Family from Lead in Your Home" (collectively "LBP Information"). Buyer shall return a signed copy of the Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards to Seller prior to COE.
146. ☐ LBP Information was provided prior to Contract acceptance and Buyer acknowledges the opportunity to conduct LBP risk assessments or inspections during Inspection Period.
148. ☐ Seller shall provide LBP Information within five (5) days after Contract acceptance. Buyer may within ten (10) days or \_\_\_\_\_ days after receipt of the LBP Information conduct or obtain a risk assessment or inspection of the Premises for the presence of LBP or LBP hazards ("Assessment Period"). Buyer may within five (5) days after receipt of the LBP Information or five (5) days after expiration of the Assessment Period cancel this Contract.
152. If Premises were constructed prior to 1978, **BUYER'S INITIALS REQUIRED**
153. If Premises were constructed in 1978 or later, **BUYER'S INITIALS REQUIRED**
- |       |       |
|-------|-------|
| BUYER | BUYER |
| BUYER | BUYER |
- 4d. 154. Affidavit of Disclosure:** If the Premises is located in an unincorporated area of the county, and five or fewer parcels of property other than subdivided property are being transferred, the Seller shall deliver a completed Affidavit of Disclosure in the form required by law to the Buyer within five (5) days after Contract acceptance. Buyer shall provide notice of any Affidavit of Disclosure items disapproved within the Inspection Period or five (5) days after receipt of the Affidavit of Disclosure, whichever is later.
- 4e. 159. Changes During Escrow:** Seller shall immediately notify Buyer of any changes in the Premises or disclosures made herein, in the SPDS, or otherwise. Such notice shall be considered an update of the SPDS. Unless Seller is already obligated by Section 5a, or otherwise by this Contract or any amendments hereto, to correct or repair the changed item disclosed, Buyer shall be allowed five (5) days after delivery of such notice to provide notice of disapproval to Seller.

## 5. WARRANTIES

- 5a. 163. Seller Warranties:** Seller warrants and shall maintain and repair the Premises so that, at the earlier of possession or COE: (i) all 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 will be in working condition; (ii) all other agreed upon repairs and corrections will be completed pursuant to Section 6j; (iii) 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; and (iv) all personal property not included in the sale and all debris will be removed from the Premises.
- 5b. 169. Warranties that Survive Closing:** Seller warrants that Seller has disclosed to Buyer and Broker(s) all material latent defects and any information concerning the Premises known to Seller, excluding opinions of value, which materially and adversely affect the consideration to be paid by Buyer. Prior to the COE, Seller warrants that payment in full will have been made 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. Seller warrants that the information regarding connection to a sewer system or on-site wastewater treatment facility (conventional septic or alternative) is correct to the best of Seller's knowledge.

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BUYER BUYER

- 5c. 176. **Buyer Warranties:** Buyer warrants that Buyer has disclosed to Seller any information that may materially and adversely affect  
 177. the Buyer's ability to close escrow or complete the obligations of this Contract. At the earlier of possession of the Premises or  
 178. COE, Buyer warrants to Seller that Buyer has conducted all desired independent inspections and investigations and accepts  
 179. the Premises. **Buyer warrants that Buyer is not relying on any verbal representations concerning the Premises**  
 180. **except disclosed as follows:** \_\_\_\_\_  
 181. \_\_\_\_\_

## 6. DUE DILIGENCE

- 6a. 182. **Inspection Period:** Buyer's Inspection Period shall be ten (10) days or \_\_\_\_\_ days after Contract  
 183. acceptance. During the Inspection Period, Buyer, at Buyer's expense, shall (i) conduct all desired physical, environmental,  
 184. and other types of inspections and investigations to determine the value and condition of the Premises; (ii) make inquiries  
 185. and consult government agencies, lenders, insurance agents, architects, and other appropriate persons and entities  
 186. concerning the suitability of the Premises and the surrounding area; (iii) investigate applicable building, zoning, fire, health,  
 187. and safety codes to determine any potential hazards, violations or defects in the Premises; and (iv) verify any material multiple  
 188. listing service ("MLS") information. If the presence of sex offenders in the vicinity or the occurrence of a disease, natural death,  
 189. suicide, homicide or other crime on or in the vicinity is a material matter to the Buyer, it must be investigated by the Buyer  
 190. during the Inspection Period. Buyer shall keep the Premises free and clear of liens, shall indemnify and hold Seller  
 191. harmless from all liability, claims, demands, damages, and costs, and shall repair all damages arising from the inspections.  
 192. Buyer shall provide Seller and Broker(s) upon receipt, at no cost, copies of all inspection reports concerning the Premises  
 193. obtained by Buyer. Buyer is advised to consult the Arizona Department of Real Estate *Buyer Advisory* provided by AAR to  
 194. assist in Buyer's due diligence inspections and investigations.
- 6b. 195. **Square Footage: BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE PREMISES, BOTH**  
 196. **THE REAL PROPERTY (LAND) AND IMPROVEMENTS THEREON, IS APPROXIMATE. IF SQUARE FOOTAGE IS A**  
 197. **MATERIAL MATTER TO THE BUYER, IT MUST BE INVESTIGATED DURING THE INSPECTION PERIOD.**
- 6c. 198. **Wood-Destroying Organism or Insect Inspection: IF CURRENT OR PAST WOOD-DESTROYING ORGANISMS OR**  
 199. **INSECTS (SUCH AS TERMITES) ARE A MATERIAL MATTER TO THE BUYER, THESE ISSUES MUST BE**  
 200. **INVESTIGATED DURING THE INSPECTION PERIOD.** The Buyer shall order and pay for all wood-destroying organism or  
 201. insect inspections performed during the Inspection Period. If the lender requires an updated Wood-Destroying Organism or  
 202. Insect Inspection Report prior to COE, it will be performed at Buyer's expense.
- 6d. 203. **Flood Hazard:** Flood hazard designations or the cost of flood hazard insurance shall be determined by Buyer during the  
 204. Inspection Period. If the Premises are situated in an area identified as having any special flood hazards by any  
 205. governmental entity, the lender may require the purchase of flood hazard insurance. Special flood hazards may also affect  
 206. the ability to encumber or improve the Premises.
- 6e. 207. **Insurance: IF HOMEOWNER'S INSURANCE IS A MATERIAL MATTER TO THE BUYER, BUYER SHALL APPLY FOR**  
 208. **AND OBTAIN WRITTEN CONFIRMATION OF THE AVAILABILITY AND COST OF HOMEOWNER'S INSURANCE FOR**  
 209. **THE PREMISES FROM BUYER'S INSURANCE COMPANY DURING THE INSPECTION PERIOD.** Buyer understands that  
 210. any homeowner's, fire, casualty, or other insurance desired by Buyer or required by lender should be in place at COE.
- 6f. 211. **Sewer or On-site Wastewater Treatment System:** The Premises are connected to a:  
 212. ☐ sewer system; ☐ septic system; ☐ alternative system.
213. **IF A SEWER CONNECTION IS A MATERIAL MATTER TO THE BUYER, IT MUST BE INVESTIGATED DURING THE**  
 214. **INSPECTION PERIOD.** If the Premises are served by a septic or alternative system, the AAR On-site Wastewater Treatment  
 215. Facility Addendum is incorporated herein by reference.  
 216. **(BUYER'S INITIALS REQUIRED)** \_\_\_\_\_ BUYER \_\_\_\_\_ BUYER
- 6g. 217. **Swimming Pool Barrier Regulations:** During the Inspection Period, Buyer agrees to investigate all applicable state,  
 218. county, and municipal Swimming Pool barrier regulations and agrees to comply with and pay all costs of compliance  
 219. with said regulations prior to occupying the Premises, unless otherwise agreed in writing. If the Premises contains a Swimming  
 220. Pool, Buyer acknowledges receipt of the Arizona Department of Health Services approved private pool safety notice.  
 221. **(BUYER'S INITIALS REQUIRED)** \_\_\_\_\_ BUYER \_\_\_\_\_ BUYER

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 BUYER BUYER

6h. 222. **BUYER ACKNOWLEDGMENT: BUYER RECOGNIZES, ACKNOWLEDGES, AND AGREES THAT BROKER(S) ARE NOT**  
 223. **QUALIFIED, NOR LICENSED, TO CONDUCT DUE DILIGENCE WITH RESPECT TO THE PREMISES OR THE**  
 224. **SURROUNDING AREA. BUYER IS INSTRUCTED TO CONSULT WITH QUALIFIED LICENSED PROFESSIONALS TO**  
 225. **ASSIST IN BUYER'S DUE DILIGENCE EFFORTS. BECAUSE CONDUCTING DUE DILIGENCE WITH RESPECT TO THE**  
 226. **PREMISES AND THE SURROUNDING AREA IS BEYOND THE SCOPE OF THE BROKER'S EXPERTISE AND**  
 227. **LICENSING, BUYER EXPRESSLY RELEASES AND HOLDS HARMLESS BROKER(S) FROM LIABILITY FOR ANY**  
 228. **DEFECTS OR CONDITIONS THAT COULD HAVE BEEN DISCOVERED BY INSPECTION OR INVESTIGATION.**

229.

(BUYER'S INITIALS REQUIRED)

BUYER

BUYER

6i. 230. **Inspection Period Notice:** Prior to expiration of the Inspection Period, Buyer shall deliver to Seller a signed notice of any  
 231. items disapproved. AAR's Buyer's Inspection Notice and Seller's Response form is available for this purpose. Buyer shall  
 232. conduct all desired inspections and investigations prior to delivering such notice to Seller and all Inspection Period items  
 233. disapproved shall be provided in a single notice.

6j. 234. **Buyer Disapproval:** If Buyer, in Buyer's sole discretion, disapproves of items as allowed herein, Buyer shall deliver to Seller  
 235. notice of the items disapproved and state in the notice that Buyer elects to either:

236. (1) immediately cancel this Contract and all Earnest Money shall be released to Buyer, or

237. (2) provide the Seller an opportunity to correct the items disapproved, in which case:

238. (a) Seller shall respond in writing within five (5) days or \_\_\_\_\_ days after delivery to Seller of Buyer's notice of  
 239. items disapproved. Seller's failure to respond to Buyer in writing within the specified time period shall  
 240. conclusively be deemed Seller's refusal to correct any of the items disapproved.

241. (b) **If Seller agrees in writing to correct items disapproved, Seller shall correct the items, complete any**  
 242. **repairs in a workmanlike manner and deliver any paid receipts evidencing the corrections and repairs**  
 243. **to Buyer three (3) days or \_\_\_\_\_ days prior to COE Date.**

244. (c) If Seller is unwilling or unable to correct any of the items disapproved, Buyer may cancel  
 245. this Contract within five (5) days after delivery of Seller's response or after expiration of the time for  
 246. Seller's response, whichever occurs first, and all Earnest Money shall be released to Buyer. If Buyer does  
 247. not cancel this Contract within the five (5) days as provided, Buyer shall close escrow without correction  
 248. of those items that Seller has not agreed in writing to correct.

249. VERBAL DISCUSSIONS WILL NOT EXTEND THESE TIME PERIODS. Only a written agreement signed by both parties will  
 250. extend response times or cancellation rights.

251. BUYER'S FAILURE TO GIVE NOTICE OF DISAPPROVAL OF ITEMS OR CANCELLATION OF THIS CONTRACT WITHIN  
 252. THE SPECIFIED TIME PERIOD SHALL CONCLUSIVELY BE DEEMED BUYER'S ELECTION TO PROCEED WITH THE  
 253. TRANSACTION WITHOUT CORRECTION OF ANY DISAPPROVED ITEMS.

6k. 254. **Notice of Non-Working Warranted Items:** Buyer shall provide Seller with notice of any non-working warranted item(s) of  
 255. which Buyer becomes aware during the Inspection Period or the Seller warranty for that item(s) shall be waived. Delivery of  
 256. such notice shall not affect Seller's obligation to maintain or repair the warranted item(s).

6l. 257. **Home Warranty Plan:** Buyer and Seller are advised to investigate the various home warranty plans available for purchase.  
 258. The parties acknowledge that different home warranty plans have different coverage options, exclusions, limitations, service  
 259. fees and most plans exclude pre-existing conditions.

260. ☐ A Home Warranty Plan will be ordered by ☐ Buyer or ☐ Seller with the following optional coverage

261. \_\_\_\_\_, to be issued by \_\_\_\_\_ at a cost not to exceed

262. \$ \_\_\_\_\_, to be paid for by ☐ Buyer ☐ Seller

263. ☐ Buyer declines the purchase of a Home Warranty Plan.

6m. 264. **Walkthrough(s):** Seller grants Buyer and Buyer's inspector(s) reasonable access to conduct walkthrough(s) of the Premises for the  
 265. purpose of satisfying Buyer that any corrections or repairs agreed to by the Seller have been completed, warranted items are in  
 266. working condition and that the Premises is in substantially the same condition as of the date of Contract acceptance. If Buyer does  
 267. not conduct such walkthrough(s), Buyer releases Seller and Broker(s) from liability for any defects that could have been discovered.

6n. 268. **Seller's Responsibility Regarding Inspections and Walkthrough(s):** Seller shall make the Premises available for all  
 269. inspections and walkthrough(s) upon reasonable notice by Buyer. Seller shall, at Seller's expense, have all utilities on,  
 270. including any propane, until COE to enable Buyer to conduct these inspections and walkthrough(s).

Initials: \_\_\_\_\_ / \_\_\_\_\_  
 SELLER SELLER

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Initials: \_\_\_\_\_ / \_\_\_\_\_  
 BUYER BUYER



## 7. REMEDIES

- 7a. 271. **Cure Period:** A party shall have an opportunity to cure a potential breach of this Contract. If 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. If the non-compliance is not cured within three (3) days after delivery of such notice ("Cure Period"), the failure to comply shall become a breach of Contract.
- 7b. 275. **Breach:** In the event of a breach of Contract, the non-breaching party may cancel this Contract and/or proceed against the breaching party in any claim or remedy that the non-breaching party may have in law or equity, subject to the Alternative Dispute Resolution obligations set forth herein. In the case of the Seller, because it would be difficult to fix actual damages in the event of Buyer's breach, the Earnest Money may be deemed a reasonable estimate of damages and Seller may, at Seller's option, accept the Earnest Money as Seller's sole right to damages; and in the event of Buyer's breach arising from Buyer's failure to deliver the notice required by Section 2a, or Buyer's inability to obtain loan approval due to the waiver of the appraisal contingency pursuant to Section 2c, Seller shall exercise this option and accept the Earnest Money as Seller's sole right to damages. An unfulfilled contingency is not a breach of Contract.
- 7c. 283. **Alternative Dispute Resolution ("ADR"):** Buyer and Seller agree to mediate any dispute or claim arising out of or relating to this Contract in accordance with the REALTORS® Dispute Resolution System, or as otherwise agreed. All mediation costs shall be paid equally by the parties. In the event that mediation does not resolve all disputes or claims, the unresolved disputes or claims shall be submitted for binding arbitration. In such event, the parties shall agree upon an arbitrator and cooperate in the scheduling of an arbitration hearing. If the parties are unable to agree on an arbitrator, the dispute shall be submitted to the American Arbitration Association ("AAA") in accordance with the AAA Arbitration Rules for the Real Estate Industry. The decision of the arbitrator shall be final and nonappealable. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, either party may opt out of binding arbitration within thirty (30) days after the conclusion of the mediation conference by notice to the other and in such event either party shall have the right to resort to court action.
- 7d. 293. **Exclusions from ADR:** The following matters are excluded from the requirement for ADR hereunder: (i) any action brought in the Small Claims Division of an Arizona Justice Court (up to \$2,500) so long as the matter is not thereafter transferred or removed from the small claims division; (ii) judicial or nonjudicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or agreement for sale; (iii) an unlawful entry or detainer action; (iv) the filing or enforcement of a mechanic's lien; or (v) any matter that is within the jurisdiction of a probate court. Further, the filing of a judicial action to enable the recording of a notice of pending action ("lis pendens"), or order of attachment, receivership, injunction, or other provisional remedies shall not constitute a waiver of the obligation to submit the claim to ADR, nor shall such action constitute a breach of the duty to mediate or arbitrate.
- 7e. 301. **Attorney Fees and Costs:** The prevailing party in any dispute or claim between Buyer and Seller arising out of or relating to this Contract shall be awarded their reasonable attorney fees and costs. Costs shall include, without limitation, attorney fees, expert witness fees, fees paid to investigators, and arbitration costs.

## 8. ADDITIONAL TERMS AND CONDITIONS

- 8a. 304. Buyer shall deliver to Seller the attached AAR/LSR on AAR Form # LSR 05/05,  
305. completed by Buyer's Lender. Buyer is to sign and date the LSR in the space  
306. provided. Buyer is to deliver the LSR, signed and dated by Buyer's Lender in  
307. the space provided under LENDER PRE-QUALIFICATION.  
308. \_\_\_\_\_  
309. Buyer authorizes Buyer's Lender to disclose any and all aspects of the  
310. Buyer's loan status and progress with any authorized representative/agents of  
311. the Escrow Company of record, Seller's Agent and Buyer's Agent. Said  
312. authorization is made in compliance with the GLB (Gramm-Leach-Bliley) Act of  
313. 1999 and as modified in 2001.  
314. \_\_\_\_\_  
315. SEE ADDITIONAL CLAUSE ADDENDUM

Initials: \_\_\_\_\_ / \_\_\_\_\_  
SELLER SELLER

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Initials: \_\_\_\_\_ / \_\_\_\_\_  
BUYER BUYER

- 8b. 316. Risk of Loss:** If there is any loss or damage to the Premises between the date of Contract acceptance and COE or 317. possession, whichever is earlier, by reason of fire, vandalism, flood, earthquake, or act of God, the risk of loss shall be on 318. the Seller, provided, however, that if the cost of repairing such loss or damage would exceed ten percent (10%) of the 319. purchase price, either Seller or Buyer may elect to cancel the Contract.
- 8c. 320. Permission:** Buyer and Seller grant Broker(s) permission to advise the public of this Contract.
- 8d. 321. Arizona Law:** This Contract shall be governed by Arizona law and jurisdiction is exclusively conferred on the State of Arizona.
- 8e. 322. Time is of the Essence:** The parties acknowledge that time is of the essence in the performance of the obligations 323. described herein.
- 8f. 324. Compensation:** Seller and Buyer acknowledge that Broker(s) shall be compensated for services rendered as previously agreed by 325. separate written agreement(s), which shall be delivered by Broker(s) to Escrow Company for payment at COE, if not previously paid. 326. If Seller is obligated to pay Broker(s), this Contract shall constitute an irrevocable assignment of Seller's proceeds at COE. If Buyer 327. is obligated to pay Broker(s), payment shall be collected from Buyer as a condition of COE. COMMISSIONS PAYABLE FOR THE 328. SALE, LEASING, OR MANAGEMENT OF PROPERTY ARE NOT SET BY ANY BOARD OR ASSOCIATION OF REALTORS®, OR 329. MULTIPLE LISTING SERVICE, OR IN ANY MANNER OTHER THAN BETWEEN THE BROKER AND CLIENT.
- 8g. 330. Copies and Counterparts:** A fully executed facsimile or electronic copy of the Contract shall be treated as an original Contract. This Contract 331. and any other documents required by this Contract may be executed by facsimile or other electronic means and in any number of counterparts, 332. which shall become effective upon delivery as provided for herein, except that the Lead-Based Paint Disclosure Statement may not be signed 333. in counterpart. All counterparts shall be deemed to constitute one instrument, and each counterpart shall be deemed an original.
- 8h. 334. Days:** All references to days in this Contract shall be construed as calendar days and a day shall begin at 12:00 a.m. and end at 11:59 p.m.
- 8i. 335. Calculating Time Periods:** In computing any time period prescribed or allowed by this Contract, the day of the act or event 336. from which the time period begins to run is not included and the last day of the time period is included. Contract acceptance 337. occurs on the date that the signed Contract (and any incorporated counter offer) is delivered to and received by the 338. appropriate Broker. Acts that must be performed three days prior to the COE Date must be performed three full days prior 339. (i.e., if COE Date is Friday the act must be performed by 11:59 p.m. on Monday).
- 8j. 340. Entire Agreement:** This Contract, and any addenda and attachments, shall constitute the entire agreement between Seller and 341. Buyer, shall supersede any other written or oral agreements between Seller and Buyer and can be modified only by a writing 342. signed by Seller and Buyer. The failure to initial any page of this Contract shall not affect the validity or terms of this Contract.
- 8k. 343. Subsequent Offers:** Buyer acknowledges that Seller has the right to accept subsequent offers until COE. Seller understands that 344. any subsequent offer accepted by the Seller must be a backup offer contingent on the cancellation of this Contract.
- 8l. 345. Cancellation:** A party who wishes to exercise the right of cancellation as allowed herein may cancel this Contract by 346. delivering notice stating the reason for cancellation to the other party or to the Escrow Company. Cancellation shall become 347. effective immediately upon delivery of the cancellation notice.
- 8m. 348. Notice:** Unless otherwise provided, delivery of all notices and documentation required or permitted hereunder shall be in 349. writing and deemed delivered and received when (i) hand-delivered, (ii) sent via facsimile transmission, (iii) sent via 350. electronic mail, if email addresses are provided herein, or (iv) sent by recognized overnight courier service, and addressed 351. to Buyer as indicated in Section 8r, to Seller as indicated in Section 9a and to the Escrow Company indicated in Section 3a.
- 8n. 352. Earnest Money:** Earnest Money is in the form of: ☐ Personal Check ☐ Other: \_\_\_\_\_ 353. If applicable, Earnest Money has been received by Broker named in Section 8r and upon acceptance of this offer will be 354. deposited with: ☐ Escrow Company ☐ Broker's Trust Account
- 8o. 355. Release of Broker(s):** Seller and Buyer hereby expressly release, hold harmless and indemnify Broker(s) in this 356. transaction from any and all liability and responsibility regarding financing, the condition, square footage, lot lines, 357. boundaries, value, rent rolls, environmental problems, sanitation systems, roof, wood infestation, building codes, 358. governmental regulations, insurance or any other matter relating to the value or condition of the Premises. 359.
- (BUYER'S INITIALS REQUIRED)** \_\_\_\_\_ BUYER \_\_\_\_\_ BUYER
- 8p. 360. Terms of Acceptance:** This offer will become a binding Contract when acceptance is signed by Seller and 361. a signed copy delivered in person, by mail, facsimile or electronically, and received by Broker named in Section 8r 362. by \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ ☐ a.m. ☐ p.m., Mountain Standard Time. Buyer 363. may withdraw this offer at any time prior to receipt of Seller's signed acceptance. If no signed acceptance is received by this 364. date and time, this offer shall be deemed withdrawn and the Buyer's Earnest Money shall be returned.
- 8q. 365. THIS CONTRACT CONTAINS NINE PAGES EXCLUSIVE OF ANY ADDENDA AND ATTACHMENTS. PLEASE ENSURE THAT 366. YOU HAVE RECEIVED AND READ ALL NINE PAGES OF THIS OFFER AS WELL AS ANY ADDENDA AND ATTACHMENTS.**

Initials: \_\_\_\_\_ / \_\_\_\_\_  
SELLER SELLER

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Initials: \_\_\_\_\_ / \_\_\_\_\_  
BUYER BUYER



**8r. 367. Broker on behalf of Buyer:**

368. \_\_\_\_\_  
PRINT SALESPERSON'S NAME      AGENT CODE      PRINT FIRM NAME      FIRM CODE

369. \_\_\_\_\_  
FIRM ADDRESS      STATE      ZIP CODE

370. \_\_\_\_\_  
TELEPHONE      FAX      EMAIL

**8s. 371. Agency Confirmation:** The Broker named in Section 8r above is the agent of (check one):

372. ☐ the Buyer; ☐ the Seller; or ☐ both the Buyer and Seller

**8t. 373. The undersigned agree to purchase the Premises on the terms and conditions herein stated and acknowledge receipt of a copy hereof including the Buyer Attachment.**

375. \_\_\_\_\_  
BUYER'S SIGNATURE      MO/DA/YR      BUYER'S SIGNATURE      MO/DA/YR

376. \_\_\_\_\_  
ADDRESS      ADDRESS

377. \_\_\_\_\_  
CITY, STATE, ZIPCODE      CITY, STATE, ZIPCODE

## 9. SELLER ACCEPTANCE

**9a. 378. Broker on behalf of Seller:**

379. \_\_\_\_\_  
PRINT SALESPERSON'S NAME      AGENT CODE      PRINT FIRM NAME      FIRM CODE

380. \_\_\_\_\_  
FIRM ADDRESS      STATE      ZIP CODE

381. \_\_\_\_\_  
TELEPHONE      FAX      EMAIL

**9b. 382. Agency Confirmation:** The Broker named in Section 9a above is the agent of (check one):

383. ☐ the Seller; or ☐ both the Buyer and Seller

**9c. 384. The undersigned agree to sell the Premises on the terms and conditions herein stated, acknowledge receipt of a copy hereof and grant permission to Broker named on Section 9a to deliver a copy to Buyer.**

386. ☐ Counter Offer is attached, and is incorporated herein by reference. Seller should sign both this offer and the Counter Offer.

387. ☐ If there is a conflict between this offer and the Counter Offer, the provisions of the Counter Offer shall be controlling.

388. \_\_\_\_\_  
SELLER'S SIGNATURE      MO/DA/YR      SELLER'S SIGNATURE      MO/DA/YR

389. \_\_\_\_\_  
SELLER'S NAME PRINTED      SELLER'S NAME PRINTED

390. \_\_\_\_\_  
ADDRESS      ADDRESS

391. \_\_\_\_\_  
CITY, STATE, ZIPCODE      CITY, STATE, ZIPCODE

392. ☐ **OFFER REJECTED BY SELLER:** \_\_\_\_\_  
MONTH      DAY      YEAR      (SELLER'S INITIALS)

**For Broker Use Only:**

Brokerage File/Log No. \_\_\_\_\_ Manager's Initials \_\_\_\_\_ Broker's Initials \_\_\_\_\_ Date \_\_\_\_\_  
MO/DA/YR

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Initials: \_\_\_\_\_ / \_\_\_\_\_  
SELLER      SELLER

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Initials: \_\_\_\_\_ / \_\_\_\_\_  
BUYER      BUYER

**ADDENDUM**  
**Coldwell Banker Success Realty**



THE PRINTED PORTION OF THIS CONTRACT HAS BEEN APPROVED BY THE ARIZONA ASSOCIATION OF REALTORS®. THIS IS INTENDED TO BE A BINDING CONTRACT. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OR THE TAX CONSEQUENCES THEREOF. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT YOUR ATTORNEY OR TAX ADVISOR.

- A. 1. This is an addendum originated by the: ☐ Seller ☐ Buyer ☐ Landlord ☐ Tenant.  
A. 2. This is an Addendum to the Contract dated \_\_\_\_\_ between the following Parties:

A. 3. Seller/Landlord: \_\_\_\_\_ MO/DA/YR

A. 4. Buyer/Tenant: \_\_\_\_\_

A. 5. Premises: \_\_\_\_\_

A. 6. The following additional terms and conditions are hereby included as a part of the Contract described above:

A. 7. ----- **ADDITIONAL CLAUSE ADDENDUM** -----

A. 8. \_\_\_\_\_

A. 9. Buyer and Seller agree that any portion of the contract and any attachment or  
A. 10. addenda may be accepted as 'signed electronically via an Digital Signature' in  
A. 11. accordance with the AETA (Arizona Electronic Transaction Act) of 2000.

A. 12. \_\_\_\_\_

A. 13. Buyer is to obtain written confirmation that Buyer's/Seller's agent will accept  
A. 14. 'Constrive Notice of Delivery' via both Fax and/or eMail. Buyer/Seller is to obtain  
A. 15. written confirmation of Buyer's/Seller's agnte's Fax & eMail address and deliver  
A. 16. that information to Buyer's/Seller's agent on the attached Buyer's Agent's Contact  
A. 17. Information (BACI) form. The BACI must be signed by Seller, Buyer, and Buyer's agent  
A. 18. and Seller's agent. The BACI will become part of this contract.

A. 19. \_\_\_\_\_

A. 20. Buyer shall instruct Buyer's Lender to complete the attached Loan Status Update form  
A. 21. at no less than three (3) intervals during the loan processing period. Once after  
A. 22. Lender has received the Contract, Appraisal & Preliminary Title Commitment; Once  
A. 23. after Lender has received Underwriting approval; and once not less than 72 hours  
A. 24. prior to scheduled Close Of Escrow.

A. 25. \_\_\_\_\_

A. 26. The term "Working Condition" as stated on Page 4, Lines 165 & 166 of the contract  
A. 27. shall mean, "Operating in a manner in which the item/s was/were designed to operate  
A. 28. by the manufacturer in all manners of FORM, FIT and FUNCTION and that assembly  
A. 29. and/or installation of the item are consistent with the manufacturers written  
A. 30. recommendation and/or instructions of that/those item/s."

A. 31. \_\_\_\_\_

A. 32. Reference Line 334 of the Contract. The term Days shall mean Business Days and not  
A. 33. Calendar days. A Business day is defined as any day, Monday through Friday,  
A. 34. excluding Weekends and legal State and/or Federal Holidays and shall commence at  
A. 35. 12:00am and conclude at 11:59pm.

A. 36. \_\_\_\_\_

A. 37. Ref: D of HOA Addendum. Fees related to the transfer of the Premises shall mean in  
A. 38. include ANY & ALL fees related to the transfer of the Premises and is not limited to  
A. 39. the fee commonly referred to as "Transfer Fee".

A. 40. \_\_\_\_\_

A. 41. -----

A. 42. The undersigned agrees to the additional terms and conditions and acknowledges receipt of a copy hereof.

A. 43. \_\_\_\_\_

A. 44. ☐ Seller ☐ Buyer MO/DA/YR ☐ Seller ☐ Buyer MO/DA/YR

A. 45. ☐ Landlord ☐ Tenant ☐ Landlord ☐ Tenant

A. 46. \_\_\_\_\_

A. 47. ☐ Seller ☐ Buyer MO/DA/YR ☐ Seller ☐ Buyer MO/DA/YR

A. 48. ☐ Landlord ☐ Tenant ☐ Landlord ☐ Tenant

A. 49. **For Broker Use Only**  
Brokerage File/Log No. \_\_\_\_\_ Manager's Initials \_\_\_\_\_ Broker's Initials \_\_\_\_\_ Date \_\_\_\_\_

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This Form Available Through Your Local Board of REALTORS®

(1298-830 ADDENDUM Rev 6/93)

# Buyer Agent Contact Information (BACI)

Seller: \_\_\_\_\_

Buyer: \_\_\_\_\_

Property Address: \_\_\_\_\_

Buyers' Agent agrees to accept all contract and delivery notices by either:

☒ Fax: at 602-296-0124

And/or

☒ Email: at [Lori.and.G-II@RealEstateInPhoenix.net](mailto:Lori.and.G-II@RealEstateInPhoenix.net)

\_\_\_\_\_  
Lori Klindera or George "G-II" Varrato II Date

Sellers' Agent agrees to accept all contract and delivery notice by either:

☐ Fax: at \_\_\_\_\_  
(fax number)

And/or

☐ Email: at \_\_\_\_\_  
(email address)

\_\_\_\_\_  
Sellers' Agent Date

\_\_\_\_\_  
Buyer Date

\_\_\_\_\_  
Buyer Date

\_\_\_\_\_  
Seller Date

\_\_\_\_\_  
Seller Date

# H.O.A. CONDOMINIUM/ PLANNED COMMUNITY ADDENDUM

The printed portion of this form has been approved by the Arizona Association of REALTORS®.



This is an addendum to the Contract dated \_\_\_\_\_ between the following parties:

Seller: \_\_\_\_\_ MONTH/DAY/YEAR

Buyer: \_\_\_\_\_

Premises Address: \_\_\_\_\_

If the Premises are located within a homeowner's association or a condominium/planned community:

**A. Dues and Fees: The current regular association dues are:** \$ \_\_\_\_\_ monthly, or \$ \_\_\_\_\_ / \_\_\_\_\_ ;

**B. Additional homeowner's association fees are:** \$ \_\_\_\_\_ monthly, or \$ \_\_\_\_\_ / \_\_\_\_\_ ;

**C. Any current homeowner's association assessment which is a lien as of Close of Escrow to be:**

☐ paid in full by Seller ☐ prorated and assumed by Buyer

Any assessment that becomes a lien after the Close of Escrow is the Buyer's responsibility.

**D. Any additional fees related to the transfer of the Premises shall be paid by** ☐ Seller ☐ Buyer ☐ Other: \_\_\_\_\_

Any inspection or certification fee charged by a homeowner's association shall be paid by Seller.

**E. If the homeowner's association has less than 50 units,** no later than ten (10) days after Contract acceptance, the Seller shall provide in writing to Buyer the information described below as required by Arizona law.

**F. If the homeowner's association has 50 or more units,** Seller shall furnish notice of pending sale that contains the name and address of the Buyer to the homeowner's association within five (5) days after Contract acceptance and pursuant to Section 3d of the Contract has instructed Escrow Company to provide such notice on Seller's behalf. The association is obligated by Arizona law to provide the information described below to Buyer within ten (10) days after receipt of Seller's notice.

Buyer is allowed five (5) days after receipt of the information from the Seller or homeowner's association to provide written notice to Seller of any items disapproved.

BUYER'S SIGNATURE \_\_\_\_\_ MO/DA/YR

BUYER'S SIGNATURE \_\_\_\_\_ MO/DA/YR

SELLER'S SIGNATURE \_\_\_\_\_ MO/DA/YR

SELLER'S SIGNATURE \_\_\_\_\_ MO/DA/YR

## Information required by law to be provided:

1. A copy of the bylaws and the rules of the association.
2. A copy of the declaration of Covenants, Conditions and Restrictions ("CC&Rs").
3. A dated statement containing:
  - (a) The telephone number and address of a principal contact for the association, which may be an association manager, an association management company, an officer of the association or any other person designated by the board of directors.
  - (b) The amount of the common regular assessment and the unpaid common regular assessment, special assessment or other assessment, fee or charge currently due and payable from the Seller.
  - (c) A statement as to whether a portion of the unit is covered by insurance maintained by the association.
  - (d) The total amount of money held by the association as reserves.
  - (e) If the statement is being furnished by the association, a statement as to whether the records of the association reflect any alterations or improvements to the unit that violate the declaration. The association is not obligated to provide information regarding alterations or improvements that occurred more than six years before the proposed sale. Seller remains obligated to disclose alterations or improvements to the Premises that violate the declaration. The association may take action against the Buyer for violations apparent at the time of purchase that are not reflected in the association's records.
  - (f) If the statement is being furnished by the Seller, a statement as to whether the Seller has any knowledge of any alterations or improvements to the unit that violate the declaration.
  - (g) A statement of case names and case numbers for pending litigation with respect to the Premises or the association.
4. A copy of the current operating budget of the association.
5. A copy of the most recent annual financial report of the association. If the report is more than ten pages, the association may provide a summary of the report in lieu of the entire report.
6. A copy of the most recent reserve study of the association, if any.
7. Any other information required by law.
8. A statement for Buyer acknowledgement and signature as required by Arizona Law.

# Welcome to TERMITES.NET



Click on a house about the size of yours

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[Meet your termite & pest control company](#)

[Learn more about termites and treatment options](#)

[Florida Bureau of Entomology](#)

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**Duplex or townhouse  
\$395**



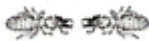
**Medium single family home  
\$495-\$595**



**Small single family home  
\$395-\$495**



**Large single family home  
\$595-\$695**



Illustrations provided courtesy of [HomeStyles.com](#) and [B4UBUILD.COM](#)



Maximum Protection.  
Minimum Concern.

The illustrations and prices above are approximate and include a preventative treatment for subterranean termites with [Termidor](#) (BASF) or [Premise 75](#) (Bayer Environmental Science), a retreat guaranty, a termite damage repair guaranty, and a free onetime or initial pest control for roaches, ants, silverfish, spiders, and other miscellaneous pests.

The Exterra Termite Interception and Bait System can be used in conjunction with Premise for superior protection or separately if a bait system is preferred. Call or e-mail for details. Prices start at \$695.00 (Easy Pay - 0% Interest)

Our Termite Damage Insurance is with [Weisburger Insurance](#). Your home will be covered against termite damage in accordance with our liability limits. Please contact your termite technician if you want more information about your coverage.

Live infestations, construction types, conditions such as drainage, leakage, and cooperation from the occupant will cause the approximate prices to vary. A contract with guarantees, terms, graph, and work specification sheet will be provided and agreed upon by the owner and the company before any work is performed.

If you need help with any of this information, please contact [Termites.Net](#)

Thank You & God Bless



# TERMIDOR VS PREMISE \*\*

*Research conducted by Dr. Gregg Henderson, Professor and Urban Entomologist, Department of Entomology at the Louisiana State University Agriculture Center.*

## **The stealthy power of fipronil and the "Transfer Effect"™**

Unlike any other termiticide, **Termidor® termiticide/insecticide** kills termites through ingestion or contact. Because Termidor is non-repellent, termites unknowingly ingest it (and its active ingredient, fipronil) when they eat. And, since termites can't detect anything, they readily contact it as they go about their routine activities. So, even if termites are not feeding, Termidor will kill them.

Thanks to Termidor's unique "Transfer Effect," termites don't even need to come in contact with Termidor-treated soil to die. Termites that come into direct contact with this termiticide subsequently carry it on their bodies, serving as carriers who transfer the termiticide to other termites almost as though it were a virus.

Secondarily affected termites can also pass the treated area on through feeding or mere contact. Termites are social insects, feeding and grooming each other in large colonies — an ideal scenario for the "Transfer Effect." And a key reason no other termiticide performs as well as Termidor.

This controls colonies very fast — two to six times faster than bait/monitoring systems—but is relatively slow-acting in individual termites. So, affected termites have ample time to spread the termiticide to their nestmates before dying — resulting in 100% control in 3 months or less.

This is the beauty of Termidor's unique "Transfer Effect."

**Note:** *Termidor and Phantom are registered trademarks and the Termidor logo and "Transfer Effect" are trademarks of BASF. Premise and "Domino Effect" are registered trademarks of Bayer AG. ©2003 BASF Corporation. All rights reserved. Always read and follow label directions.*

"We set up a behavioral study in the laboratory—an ethogram analysis—using both Termidor and Premise at much lower rates than used in the field," says Henderson. "What we saw within the first four hours was that Premise-treated termites were sluggish and appeared sick. Termidor-treated termites appeared normal — identical to the control group."

After 24 hours, Henderson noted that the Premise-treated termites continued to act sickly and behave abnormally. The Termidor-treated termites were no longer behaving normally or abnormally: They were dead. "There was a 24-hour window in which the Termidor termites acted normally after being treated—24 hours in which they could potentially transfer this chemical to other termites through incidental contact and grooming of each other."

Henderson concludes that this is the probable explanation for Termidor's superior transfer, since the abnormal behavior of the Premise-treated termites is likely to keep healthy termites away from them no matter how long they survive after treatment.

"I've also seen a similar response in the field," says Henderson. "I have noticed that when Premise was used to treat termites, the termites would basically bubble out of the ground, intoxicated with the compound. We don't see that with Termidor." "Termidor-treated termites behave normally over a short period of time before dying—and that is critical if you want transfer to occur," says Henderson.

"Within a 24 hour period you could have thousands and thousands of termites interacting normally and each termite that is treated interacts with another termite. You can get massive effects that way."

***"Termidor-treated termites behave normally over a short period of time before dying - and that is critical if you want transfer to occur."***

— *Dr. Gregg Henderson, Professor and Urban Entomologist, Department of Entomology at the Louisiana State University Agriculture Center.*

There is no doubt the professional pest control industry is steadily moving toward the newest category of termite controls: non-repellents. These compounds — Termidor® and Premise® (plus recently-introduced Phantom®) are odorless and tasteless and reduce rather than repel termite populations. Another hallmark of these controls is their capacity to be passed from one termite to another through grooming and incidental contact — Termidor's "Transfer Effect™" and now Premise's "Domino Effect®".





With so many similarities, one would expect pest control professionals to be divided in their preferences, and Termidor and Premise to share roughly equal portions of the highly competitive termite control market.

But, in spite of being introduced five years after Premise, Termidor is currently the leading liquid termiticide in the United States by a margin of more than two to one, and continues to experience extraordinary growth.

"What we were hearing from pest control professionals using the products in the field was that Termidor seemed to transfer more effectively between termites than Premise," says Dr. Gregg Henderson, Professor and Urban Entomologist, Department of Entomology at the Louisiana State University Agriculture Center.

This apparent performance disparity inspired Henderson to look more closely at the two products in the lab in an effort to determine the cause.

"Based on earlier research, we suspected the explanation may be found in the immediate behavior of the treated termites." Henderson's lab study, "Comparing Behavioral Affects of Termidor vs. Premise," indicated that there was indeed a difference in the way the two products (fipronil in Termidor and imidacloprid in Premise) affect termite behavior. Henderson found that termites treated with Premise immediately began to manifest behavioral abnormalities.

Because healthy termites instinctively avoid sickly-acting termites, this could have a dramatically limiting effect on transfer.

[\\*\\* All research is courtesy of Best Pest Control's WEB site](#)

### **Termidor vs Premise Features**

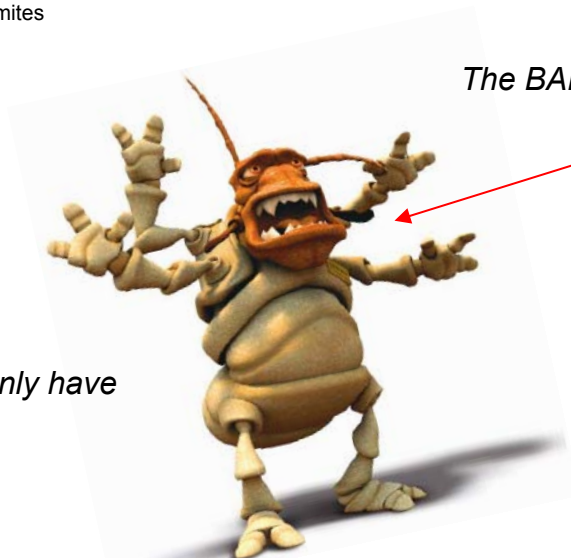
Both Premise and Termidor have been extensively tested by various authorities but Premise has been longer on the market with 100% effectiveness. Premise was first on the market with well proven results and inexpensive.

Product	Non-Repellant	Transfer Effect	Effectiveness	Water solubility (ppm)*	Cost
Premise	YES	YES	Highly Effective	610 (parts per million)	Lower Cost
Termidor	YES	YES	Highly Effective	1.9 (parts per million)	More Expensive

Label Period of Protection (all species except Mastotermes ***)	<b>Premise</b>	<b>Termidor</b>
Label Period of Protection (all species including Mastotermes ***)	2 Years on label	5 Years on label
	1 Year on label	2 Years on label

\*\*\* The Mastotermes Termite is only known to be found in Australia. It is particularly voracious and an ancestor of prehistoric termites



*The BAD news is... HIM !!!*

*The GOOD news is... You only have one termite...*

**MASTOTERMITIDAE or... The Australian Termite**





An Independently Owned and Operated Member  
of Coldwell Banker Residential Affiliates, Inc.  
**Expect the best.™**

## EXPANSIVE SOILS ACKNOWLEDGEMENT DISCLOSURE

The soil in Arizona, in some parts of the state, has "clay like" tendencies. Specific areas of the state are prone to "clay like" tendencies, sometimes referred to as "**EXPANSIVE SOIL**". While it is not unusual for a home/building in Arizona to exhibit signs of settling by evidence of cracks in walls, doorways, garage floors, patio decks, drive ways, roof tie-ins and a number of additional venues in, on and around the home/building, Coldwell Banker Success, its agents and affiliates make no warranty or claim as to the cause or nature or origin of these physical conditions, whether visible or hidden or whether disclosed or undisclosed.

It is the responsibility of a prospective homeowner to satisfy his or her concerns by securing an independent assessment of the home/building and the structural integrity of that home/building. A licensed, bonded and insured (**PE**) Professional Engineer or (**PEF**) Professional Engineering Firm should tender such assessments, in writing to the party or parties raising such concerns. A list of State Certified **PE**'s or **PEF**'s can be found at -----  
<http://www.btr.state.az.us/RegSearchResults.asp?DisciplineID%3D19>. Additional information can be obtained from the Arizona Registrar of Contractors at <http://www.rc.state.az.us/> and at <http://www.az.nrcs.usda.gov/soils/shrinkswell.html>

\* If the prospective homeowner has concerns about the condition of the soil under, near or around the subject property, it is suggested that the prospective homeowner contact one of the following agency locations to inquire about those conditions of concern.

Higley	Tucson	Flagstaff
<b>Wilson, Robert W.</b> Resource Soil Scientist Chandler Soil Survey Office 18256 E. Williams Field Rd. Suite 1 Higley, Arizona 85236  Phone: 480-988-1078 ext. 106 Fax: 480-988-1474 Voice mail: 9011-1875 e-mail: <a href="mailto:rwilson@az.nrcs.usda.gov">rwilson@az.nrcs.usda.gov</a>	<b>Breckenfeld, Donald J.</b> Resource Soil Scientist Tucson Resource Support Team 2000 E. Allen Road, Bldg. 320 Tucson, Arizona 85719-1596  Phone: 520-670-6602 ext. 242 Fax: 520-670-5123 Voice mail: 9011-1465 e-mail: <a href="mailto:dbrecken@az.nrcs.usda.gov">dbrecken@az.nrcs.usda.gov</a>	<b>DeWall, Alfred A.</b> Resource Soil Scientist Flagstaff Resource Support Team 1585 S. Plaza Way, Suite 120 Flagstaff, Arizona 86001-7102  Phone: 520-556-7305 ext. 229 Fax: 520-774-2780 Voice mail: 9011-1605 e-mail: <a href="mailto:adewall@az.nrcs.usda.gov">adewall@az.nrcs.usda.gov</a>

\*The 1997 National Resources Inventory (NRI) is the latest in a series of inventories conducted by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS), formerly the Soil Conservation Service. It provides updated information on the status, condition, and trends of land, soil, water, and related resources on the nation's non-Federal land. The 1997 NRI is unique in that it provides a nationally consistent database that was constructed specifically to estimate 5-, 10- and 15-year trends for natural resources from 1982 to 1997. The 1992 NRI was instrumental in providing data on natural resources for the USDA publication.

### **ADDITIONAL INFORMATION**

In order to maintain the structural integrity of your home, long after you close escrow, proper planning and maintenance of the finish grading, pool and landscaping are the responsibility of the homeowner. Many builders recommend the homeowner take the following preventative measures;

1. Make sure that positive drainage away from your foundation is maintained
2. No landscape plantings should be placed within 2 feet of the house.
3. Landscape plantings within 10 feet of the house should be limited to low water usage plant types
4. Do not over water plants near the foundation, patios or fence walls.
5. Care should be taken when backwashing pools to ensure excess water is not allowed near the foundation, patio or fence walls.
6. Care should be taken when adding pool or landscaping improvements to ensure that any mounding or grade changes direct surface water away from the home and are in conformance with the general grading plans of the home site.
7. Regularly monitor water on your lot after rains or normal watering to ensure these maintenance items are being followed

**PROPERTY ADDRESS:** \_\_\_\_\_

<b>SELLER</b>	<b>DATE</b>	<b>BUYER</b>	<b>DATE</b>
<b>SELLER</b>	<b>DATE</b>	<b>BUYER</b>	<b>DATE</b>

\* <http://www.az.nrcs.usda.gov/soils/tss.htm> \* <http://www.az.nrcs.usda.gov/soils/flagsso.htm> \* <http://www.az.nrcs.usda.gov/soils/tucsonso.htm>  
\* <http://www.az.nrcs.usda.gov/nri/state.html>

MSWORD/EXPANSIVE\_SOILDOC form modified to conform to Word2000 05/10/02  
05/02

**ADDENDUM ID**  
**Coldwell Banker Success Realty**



THE PRINTED PORTION OF THIS CONTRACT HAS BEEN APPROVED BY THE ARIZONA ASSOCIATION OF REALTORS®. THIS IS INTENDED TO BE A BINDING CONTRACT. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OR THE TAX CONSEQUENCES THEREOF. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT YOUR ATTORNEY OR TAX ADVISOR.

A. 1. This is an addendum originated by the: ☐ Seller ☐ Buyer ☐ Landlord ☐ Tenant.  
A. 2. This is an Addendum to the Contract dated \_\_\_\_\_ between the following Parties:  
A. 3. Seller/Landlord: \_\_\_\_\_ MO/DA/YR  
A. 4. Buyer/Tenant: \_\_\_\_\_  
A. 5. Premises: \_\_\_\_\_

A. 6. The following additional terms and conditions are hereby included as a part of the Contract described above:  
A. 7. ----- **INVESTOR DISCLAIMER** -----  
A. 8. \_\_\_\_\_  
A. 9. **The Buyer or Nominee hereby releases Coldwell Banker Success Realty, its Agents**  
A. 10. **and/or Affiliates from any and all liability as to the future value of the property**  
A. 11. **or their return on investment, and have based their buying decision of this property**  
A. 12. **on outside counsel and advise.**

A. 13. \_\_\_\_\_  
A. 14. ----- **INVESTOR DISCLAIMER** -----  
A. 15. \_\_\_\_\_  
A. 16. \_\_\_\_\_  
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A. 37. \_\_\_\_\_  
A. 38. \_\_\_\_\_  
A. 39. \_\_\_\_\_  
A. 40. \_\_\_\_\_  
A. 41. \_\_\_\_\_

A. 42. The undersigned agrees to the additional terms and conditions and acknowledges receipt of a copy hereof.  
A. 43. \_\_\_\_\_  
A. 44. ☐ Seller ☐ Buyer MO/DA/YR ☐ Seller ☐ Buyer MO/DA/YR  
A. 45. ☐ Landlord ☐ Tenant ☐ Landlord ☐ Tenant  
A. 46. \_\_\_\_\_  
A. 47. ☐ Seller ☐ Buyer MO/DA/YR ☐ Seller ☐ Buyer MO/DA/YR  
A. 48. ☐ Landlord ☐ Tenant ☐ Landlord ☐ Tenant

A. 49. **For Broker Use Only** \_\_\_\_\_  
Brokerage File/Log No. Manager's Initials Broker's Initials Date

This form is available for use by the entire real estate industry. The use of this form is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics.

© 1993 Arizona Association of REALTORS® This Form Available Through Your Local Board of REALTORS® (1298-830 ADDENDUM Rev 6/93)

**MARKET CONDITIONS ADVISORY**

Real estate markets are cyclical and what goes up may well come down. It is impossible to predict what the market conditions will be at any given time. The ultimate decision of what amount to offer on any property rests with Buyer. Buyer needs to decide what they are willing to pay for a property in light of market conditions and their own financial resources. Buyer also needs to decide what type of offer they are willing to make in recognition of market conditions existing at the time of their offer. Broker does not provide advice on property as an investment. The purpose of this Advisory is to bring to the attention of Buyers and Sellers some of the risks attributed to changing market conditions.

**Non-Contingent Offers**

A non-contingent offer means that Buyer will proceed with the purchase of the property, regardless of what Buyer may learn about the condition of the property prior to the close of escrow, regardless of whether Buyer's financing is available or approved by the lender and regardless of the appraisal. If Buyer cancels the contract for whatever reason, under these terms, it is possible that Buyer will have to pay damages to Seller, which may or may not be limited to the amount of their earnest money deposit, or Seller could take legal action against Buyer for specific performance. Some Sellers are insisting that their contract be non-contingent. Some Buyers are choosing to forego certain contingencies so that their offer is more attractive to the Seller.

**Buyer Disapproval**

If Buyer waives their rights under the Buyer Disapproval option and Buyer becomes aware of an aspect of the condition of the property that affects its value or desirability, Buyer may still be required to proceed with their purchase. If this is a condition that must be repaired after the close of escrow, Buyer may have to pay to correct the problem. Buyer then may have no legal recourse against any of the parties in the transaction, including Seller, the broker(s) or the inspectors. NOTE: Waiving the right under the Buyer Disapproval option does not waive Buyer's right to a property inspection. Regardless of whether Buyer has waived their rights under the Buyer Disapproval option, Broker recommends that Buyer have the property thoroughly inspected by their own experts prior to the close of escrow.

**Financing/Appraisal**

The lender's approval of financing includes the lender's determination that (A) Buyer is creditworthy and can afford to make the mortgage payments and (B) that the property appraises for at least the purchase price. Even if Buyer has obtained a prequalification or preapproval letter from a lender, the lender may not ultimately approve the loan if the lender's appraiser determines that the property's fair market value is less than the amount of the purchase price or if Buyer's financial/employment situation has changed. If there is no financing and/or appraisal contingency and the property does not appraise for the purchase price, Buyer will be obligated to pay the difference between the loan amount and the purchase price at close of escrow. Under those circumstances, Buyer may not be able to perform on their contractual obligations.

Buyer should carefully assess their financial situation with their own financial advisor prior to determining whether to waive any rights to have a financing and/or appraisal contingency.

Buyer must, upon careful deliberation, decide how much risk they are willing to assume. Buyer and Seller understand the risks of eliminating any contingencies. Buyer assumes all responsibility should the return on investment, tax benefits, or financing methods do not meet their expectations. Buyer and Seller understand and agree that the Broker(s) makes no representation regarding the above items.

**THE UNDERSIGNED ACCEPT AND UNDERSTAND THE FOREGOING AND ACKNOWLEDGE RECEIPT OF A COPY OF THIS ADVISORY.**

\_\_\_\_\_  
BUYER DATE

\_\_\_\_\_  
BUYER DATE

\_\_\_\_\_  
SELLER DATE

\_\_\_\_\_  
SELLER DATE

## Mold in the Home: Is it as Dangerous as You're Led to Believe?

Reprinted with permission from the Arizona  
Department of Real Estate Bulletin April 2001

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Stories about Arizona homes infected with mold are appearing everywhere, in print and on television. Is there a real problem, or has the media blown everything out of proportion? How does this "mold mania" affect the real estate licensee?

Will Humble, an epidemiologist and Office Chief of the Arizona Department of Health Services' Environmental Epidemiology Section believes the problem is not as bad as you might be led to believe.

His advice to real estate licensees: "Do not hire someone to take samples in a home. They will find mold every time. The presence of mold revealed by sampling does not mean there is a mold problem in the house."

He suggests having a competent home inspector check the attic for water damage from a leaking roof, checking for musty odor in the house, and looking for obvious signs of water damage — discolored walls or wet areas under sinks.

If a bedroom has a musty odor, ask whether the carpet has ever been flooded with water. If the water was not extracted immediately and completely, mold could have begun growing under the carpet. Drying the carpet does not remove dead mold spores, and re-wetting can cause mold growth to return. If there is heavy mold, the carpet may have to be replaced.

*Mold in My Home: What Do I Do?* is an information sheet published by the Department of Health Services' Office of Environmental Health. You can download a copy from their web site at <http://www.hs.state.az.us/phs/oeht/index.htm>.  Look for the mold link in the last line of the last paragraph on the page.

Some excerpts from the Information Sheet:

*Should I be concerned about mold in my home?*

Yes, if the contamination is extensive. When airborne mold spores are present in large numbers, they can cause allergic reactions, asthma episodes, infections and other respiratory problems for people. Exposure to high spore levels can cause the development of an allergy to the mold. Mold can also cause structural damage to your home.

*How can I tell if I have mold in my house?*

If you can see mold, or if there is an earthy or musty odor, you can assume you have a mold problem. Look for previous water damage. Visible mold growth is found underneath materials where water has damaged surfaces, or behind walls. Look for discoloration and leaching from plaster.

Having a home sampled for mold and receiving a report that mold is in the home may stigmatize a home that actually has no problem. Mold inspection is an unregulated field, and lots of people are making money on mold. Humble cited a recent newspaper ad placed by a company recruiting mold inspectors. "Mold is Gold," the headline read.

To complicate matters, the Department of Health Services says "there are few available standards for judging what is an acceptable quantity of mold. In all locations, there are some outdoor levels of molds. If sampling is carried out, an outdoor air sample needs to be taken at the same time as the sample indoors to provide a baseline measurement. Since the susceptibility of individuals varies so greatly, sampling is at best a general guide."

Much has been made about the "deadly" *Stachybotrys* mold. It is dangerous, Humble said, but only in massive doses. "We don't talk about particular molds. The bigger problem overall is a person's sensitivity to mold."

The presence of mold in public schools has generated many headlines, and such stories have made some homeowners concerned about the possibility of mold in their homes. An example is Starline Elementary School in Lake Havasu City.

The school has been closed because of extensive mold contamination. The cause of the problem was just what Humble said to look out for: a leaking roof. More than four years ago a contractor hired to replace the school's roof went out of business before the job was completed. The roof was not finished and during the next rainy season water flooded several classrooms. "The roof was never repaired properly and the mold grew from there," said the school's principal.

So what's the bottom line for the real estate licensee? If you see mold, smell mold's musty odor, spot the signs mentioned in the Department of Health Services' information sheet, or learn that one or more carpeted rooms may have been flooded, there may be a problem.



If your client asks whether the home should be sampled for mold, give them a copy of the information sheet and let them decide.

While any home will test positive for mold, a serious mold infection cannot be ignored. Some individuals are at a higher risk for adverse health effects, the Department of Health Services says. These include:

- Infants and children
- The elderly
- Immune-compromised patients (people with HIV infection, cancer chemotherapy, liver disease, etc.)
- Pregnant women
- Individuals with existing respiratory conditions such as allergies, multiple chemical sensitivity and asthma.

Remediation of a serious mold infection can be very expensive — five-figures expensive. Walls may have to be opened and even rebuilt. Structural damage may have to be repaired. Air conditioning and heating ducts may have to be replaced.

While the presence of mold in some structures may pose a significant health problem to susceptible individuals, the mere presence of mold is not necessarily something to be concerned about. If your client has concerns about mold, direct them to the Department of Health Services' information available on the Internet. Copies may also be obtained from the Office of Environmental Health, 3815 N. Black Canyon Highway, Phoenix, AZ 85018. You can telephone the office at 602/230-5830.

Also visit the Department of Real Estate's web site, [www.re.state.az.us](http://www.re.state.az.us),  and navigate to the [Table of Contents](#).  There you'll find additional information from the Center for Disease Control and the State of California Environmental Health Investigations Branch.

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Buyer Initials

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Buyer Initials

## ARDONLINE FEATURES

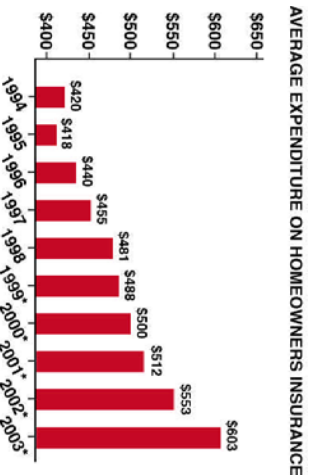
### Emerging concerns about homeowner's insurance

By K. Michelle Lind

Homeowner's insurance is generally required to obtain a loan and close escrow on a home purchase. Most loan documents require homeowners to maintain homeowner's insurance for the term of the loan. Recently, buyers are reporting difficulty obtaining the necessary insurance. The Arizona Association of REALTORS® ("AAR") has asked the NATIONAL ASSOCIATION OF REALTORS® ("NAR") to investigate these problems from a national perspective. AAR has also contacted the Arizona Department of Insurance and continues to look for solutions to these emerging concerns.

#### Rising premiums

Homeowner's insurance premiums are rising dramatically. The following Insurance Information Institute chart illustrates the increasing cost of homeowner's insurance over the last ten years.



Source: NAIC, Insurance Information Institute.

The Insurance Information Institute reports that the number of recent catastrophes, the high cost of home repairs, the aging of the housing stock and mold claims are responsible for the increasing rates.

In response to the mold claims, federal legislation has been introduced (HR 5040) that calls for the Environmental Protection Agency to establish guidelines to identify conditions that facilitate indoor mold growth, measures to prevent mold growth, identify acceptable levels of mold in a home, and establish professional standards for mold inspectors. The proposed legislation would also establish an insurance pool that would cover the costs associated with toxic mold cleanup for people who opt to purchase the additional coverage from the pool. Advocates of this legislation claim that this legislation would result in lower insurance premiums.

#### Homeowner's insurance in areas affected by wildfires

Some insurers have stopped selling new insurance in the areas affected by the recent wildfires in northern Arizona. AAR continues to monitor this situation. Department of Insurance Director Charles Cohen has been quoted as stating, "I am very concerned about the moratoria placed on new business by insurers in the area of the Chediski-Rodeo fires. Accession in selling new insurance coverage while a loss is actually occurring is understandable but should be as temporary and restricted as is absolutely necessary."

The Department has published information to assist wildfire victims with insurance issues. The Department's information may be accessed online or by calling 602-912-8444 or 800-325-2548.

#### Canceling policies based on claims history

The insurance industry reportedly has been canceling policies on homeowners who they characterize as having filed too many claims. Some insurers have begun investigating the property itself, and if the property has had too many claims in the past, they are declining to insure it. There have also been reports of homebuyers having their homeowner's insurance canceled after closing escrow on a home purchase because of the insurance claims previously submitted by the seller of the home. Again, the claims that appear to be of most concern to insurers have to do with mold and conditions conducive to mold, such as water damage.

The Department of Insurance states that Arizona law does not appear to prohibit an insurer from canceling a homeowner's policy in the first sixty days of the policy based on the claims history of prior owners. An insurer can generally cancel a homeowner's insurance policy in the first sixty days after issuance for any reason. See A.R.S. §20-1652. However, if an insurer cancels a policy based on the prior owner's claim history after the policy has been in effect for 60 days, the buyer should file a complaint with the Department of Insurance. Once the policy has been in effect for 60 days, an insurer can only cancel a policy mid-term for:

- Nonpayment of premium.
- Conviction of a crime that increases the hazard insured against.

[click here to continue article](#)



- Fraud or material misrepresentation in obtaining the policy, continuing the policy, or presenting a claim under the policy.
- Grossly negligent acts or omissions substantially increasing any of the hazards insured against.
- Substantial change in the risk assumed by the insurer, since the policy was issued, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the contract.
- A determination by the director of insurance that the continuation of the policy would place the insurer in violation of the insurance laws of this state.
- Failure to take reasonable steps to eliminate or reduce any conditions in or on the insured premises which contributed to a loss in the past or will increase the probability of future losses.
- At policy renewal time, an insurer can generally refuse to renew a policy for any reason except for reasons related to a condition of the premises. If a non-renewal is based on condition of the premises, the insurer must give the homeowner thirty days notice to remedy the identified conditions. If the identified conditions are remedied, coverage must be renewed. If the identified conditions are not satisfactorily remedied within thirty days, the insurer must give the homeowner an additional thirty days, upon payment of premium, to cure the defective condition.

### Buyers should consider investigating a homes' claims history

A home's insurance claim history may be obtained from the [Comprehensive Loss Underwriting Exchange \("CLUE"\)](#), a shared repository containing 90 percent of the insurance claims made in the United States. CLUE generally tracks claims going back for five years and provides information on the cause of loss and the claim amount.

Homeowners have the right to request a CLUE report on their own property, but buyers do not have the right to the report until they close escrow. However, buyers should consider asking sellers for a copy of the home's CLUE report before submitting an offer or during the contract inspection period. If the report will not be available until after the inspection period, a buyer can make an offer contingent upon review and approval of the report.

A CLUE report costs \$8. The [report may be obtained online](#) or by calling 800-456-6004 or 866-527-2600. Currently, it will take a week to ten days to receive the report. The company that maintains this information indicates there will be instant access to these reports (for a fee) online in the future.

### To file a complaint or obtain additional information

To file a complaint with the Arizona Department of Insurance, include your name, address and telephone number; the name of the company or agent about which you are complaining; the policy number and the type of insurance and a description of the problem and send it to:

Consumer Services Division

Arizona Department of Insurance

2910 N. 44th St. Suite 210

Phoenix, Arizona 85018-7256

**OR** call the Department: Phoenix, 602-912-8444; Tucson, 520-628-6370; Statewide, 800-325-2548

**OR** visit the [Department's website](#)

For additional insurance information, contact the [Insurance Information Institute](#).

Finally, AAR is considering other possible actions to address these concerns, such as adding information about homeowner's insurance to the [Buyer Advisory](#) and determining

whether information on claims history should be elicited in the Seller's Property Disclosure Statement. In the meantime, educate yourself and your clients about these issues. ▲

### Refinancing: it's not just about the interest rate

Most people refinance their mortgage to take advantage of lower interest rates and reduced monthly payments — but those are not the only reasons to consider trading in an old mortgage for a new one. The [Arizona Society of CPAs](#) has identified other reasons why refinancing makes sense and offers advice on getting the best deal.

### Give up your ARM

When rates are high, many homeowners choose adjustable rate mortgages (ARMs) to take advantage of low initial rates. But ARMs come with the risk that interest rates could rise and significantly increase the cost of your loan. By refinancing your ARM with a fixed-rate mortgage, you can lock in a low interest rate and predictable monthly payments for the life of the loan. Although rates have edged up slightly, switching to a fixed-rate mortgage may still be best for you if you plan to stay in your home for a long period.

### Borrow cheaply

If you need a significant amount of cash to pay off high-interest credit card debt, make home improvements, or pay college tuition bills,

[click here to continue article](#) ➤

# The Homeowner's Insurance Crisis

by K. Michelle Lind, AAR Legal Counsel

## The Problem

Homeowner's insurance is generally required to obtain a loan and close escrow on a home purchase. Most loan documents require homeowners to maintain homeowner's insurance for the term of the loan. However, homeowner's insurance in Arizona, as in other states, is less available and more expensive than in years past. The Consumer Federation of America reports that homeowner's insurance rates in Arizona rose 13.25 percent in 2001 and 14.82 percent in 2002. Some homes may be virtually uninsurable.

## The Cause

The insurance industry cites some of the following reasons for the increased cost and reduced availability of homeowner's insurance:

- Number of recent catastrophes
- Mold claims
- Stock market losses
- Repair cost increases
- Past use of these policies as a "loss leader" to secure auto and other coverages

## People and property most likely to be affected

- Those most likely to be affected are:
- People who have made an insurance claim or claims inquiry in the last five years.
  - People with adverse credit issues.
  - A home on which an insurance claim has been made, especially if the claim involved mold

and conditions conducive to mold, such as water damage.

The Arizona Department of Insurance reports that in 2002, consumers reported difficulty in obtaining insurance for "vacant dwellings, dwellings in unprotected areas, low-valued dwellings, old dwellings, high-priced dwellings and dwellings that have had any losses within the last three years." (*Press Release, April 2, 2003*).

## Reports from the Comprehensive Loss Underwriting Exchange ("CLUE")

CLUE tracks both the person making an insurance claim and the property on which the claim was made. This repository of information reportedly contains 95 percent of all insurance claims or claim inquiries made in the United States for a five year period. The report includes information on the cause of loss and the amount paid by the insurance company on the claim, if any. The report also contains personal information on the homeowner, such as the owner's social security number and date of birth.

## Obtaining a claims history report

A homeowner may be able to obtain a five-year claim history at no cost by simply requesting the report from their insurance agent. In the alternative, homeowners may purchase a CLUE report on their own property. Buyers may request a

copy of the CLUE or claims history report from the seller, but do not have the right to order a report on a home they do not own.

The CLUE report is sold by a company called ChoicePoint and currently costs \$12.99. The report may be obtained [online](#) or by calling 866-527-2600. Individuals may also obtain their personal insurance history from the same company.

## Insurance cancellations after close of escrow

Some insurance companies that use information from CLUE or other insurance reporting agencies in their underwriting practices obtain a report only after a binder (contract for temporary insurance) is issued or after escrow has closed and the policy is to be issued. Thus, there have been numerous reports of homebuyers having their homeowner's insurance cancelled after closing escrow on a home purchase.

An insurer can generally cancel a homeowner's insurance policy for any reason in the first sixty days after issuance. See A.R.S. §20-1652. And, once a policy is cancelled, the cost of replacement coverage can be two to three times higher than the original cost, depending on the reason for the cancellation.

Simply obtaining the CLUE report or claims history does not solve the problem. The underwriting practices of individual insurance companies vary and not all insurance companies use CLUE reports on both the person and the property. The companies that do use CLUE or other claims history reports evaluate the

[click here to continue article](#)

information in different ways. Therefore, simply obtaining a copy of the report will not tell a buyer how an individual insurance company will evaluate the risk of insuring that particular buyer in that particular home.

### AAR's response to this concern

AAR has been proactive in responding to this homeowner's insurance crisis. AAR has undertaken to educate buyers about this issue and encourage them to apply for homeowner's insurance as soon as a purchase contract is executed. The [AAR Residential Resale Purchase Contract](#) advises buyers to make inquiries and consult insurance agents during the contract inspection period (lines 222-226). A buyer may give written notice of reasonable disapproval and elect to cancel the contract based on that inquiry. AAR's [Seller's Property Disclosure Statement](#) now prompts the seller to disclose any known homeowner's insurance claims regarding the home. The [Buyer Advisory](#) was revised to inform buyers about how claims history may affect their homeowner's insurance.

AAR also initiated a legislative response to address these problems. Senator Barbara Left agreed to sponsor Senate Bills 1265 and 1266, both of which have been passed by the legislature.

SB 1265 requires that if an insurer uses information from an insurance support organization, such as CLUE, or information from a consumer reporting agency for underwriting purposes, the insurer must obtain that information as soon as practicable and before the issuance of a binder of insurance coverage. The failure of the insurer to timely obtain the information precludes the insurer from declining insurance coverage or terminating a binder of insurance coverage based on the information. Finally, thirty days after the application for insurance coverage, no declination or termination of

### Residential Resale Purchase Contract (lines 222-226)

**Buyer Responsibility Regarding Inspections and Investigations:** Buyer is advised by Broker to obtain inspections and investigations of the Premises. Buyer acknowledges that Buyer should make inquiries and consult government agencies, lenders, insurance agents, architects, and other appropriate persons and entities concerning the use of the Premises and the surrounding areas under applicable building, zoning, fire, health, and safety codes, and for evaluation of potential hazards. Buyer acknowledges that more than one inspection may be required.

insurance coverage may be based on information from an insurance support organization or consumer reporting agency.

SB 1265 should reduce the possibility that the homebuyer's insurance policy will be cancelled after close of escrow. However, an insurer still may decline or terminate insurance coverage based on the condition of the premises as determined through a physical inspection of the premises. This legislation will become effective on December 31, 2003.

SB 1266 addresses premium increases when the insurance company has suffered no loss. Homeowners have complained that their premiums were increased based upon property damage or loss when the insurer made no payments under the policy. AAR believes that a claim that results in no payment by an insurance company should not result in increased premiums to the homeowner. However, in a compromise with the insurance industry, AAR accepted the following language: "[a]n insurer shall not charge more for homeowner's insurance coverage with a single below-deductible claim, not exceeding five hundred dollars in the previous three years, than it would charge for like coverage on the same property if the property had no below-deductible claims." "Below-deductible claim" means a claim was closed without any payment because the amount of the loss was less than the amount of the deductible provided

by the policy. This legislation will become effective 90 days after the end of the current legislative session.

### To obtain additional information on homeowner's insurance

The Arizona Department of Insurance has developed a [comparison of homeowner's insurance rates](#) to encourage consumers to comparison shop for their insurance. The Department also developed a [Consumers Guide to Homeowner's Insurance](#).

### Advice to homebuyers

AAR is considering other possible actions to address these concerns and further legislation may be necessary. In the meantime, buyers should educate themselves about their insurance company's underwriting practices and shop around for a company that will best suit the buyer's needs. Further, a buyer may want to request that the seller provide the buyer with a five year claims history on the home, so any claims issues are identified early in the transaction. Finally, buyers should apply for homeowner's insurance as soon as possible after entering a contract to purchase a home. ▲

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## Get a CLUE

**Part 3 of 5: Insurers  
score claims in stone,  
homes and owners  
tote the weight**

*Thursday, January 23,  
2003*

By Susan Romero  
Inman News Features

### Inman News Special Reports

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Homeowners insurance: use it and lose it. The same caveat applies to homeowners who merely discuss with their carrier the possibility of filing a claim.



Underwriters check a policy applicant's claims history through the Comprehensive Loss Underwriting Exchange, known as CLUE. They're looking for claims filed by a homeowner or home buyer and on the property itself. In today's hardening insurance market, a claims history on either could be trouble for insurance applicants.

Approximately 90 percent of homeowners insurance companies utilize the CLUE database, which contains 41 million claims, according to [ChoicePoint](#) VP of sales and marketing property Richard Collier. In some states consumer-reported incidents that don't result in a paid claim are also kept in CLUE. Claims older than five years are removed and stored in an archive.

ChoicePoint originally developed CLUE to help insurers track auto insurance fraud in the 1980s and in 1992 a homeowners' version was developed. Today insurers also use CLUE as an underwriting tool. The reports contain claims information, individuals' identifying information, including previous addresses, birth dates and Social Security numbers, and lists companies that have accessed one's claims history report within the past two years.

Some are concerned that the nation's housing stock is at risk for developing a collection of potentially uninsurable and therefore un-sellable homes because increasingly insurers are refusing to write coverage for homes, especially those with previous water damage.



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“The hardening market is causing carriers to make more stringent underwriting rules than they did in years past (when) a small water damage claim didn’t scare the heck out of them for the fear of mold,” said Collier.

Consumer groups say underwriters who formulate insurance scores by counting past claims may deny applicants the coverage they need to close a home sales transaction or to raise existing policyholders’ premium rates. And in some cases to drop longstanding policyholders who’ve filed as few as one claim. The result can stigmatize homeowners, home buyers and their properties as uninsurable via normal underwriting standards.

One California first-time home buyer was denied homeowners insurance after a CLUE report revealed that his brother had filed a water damage claim. The home buyer had lived with his brother while saving for his home purchase and had listed his brother’s address as his last -- that is how the insurance underwriter connected the claim to him.

Theoretically underwriters who don’t make the effort to consider the merits of each claim could refuse to provide insurance for just about anyone who’s previous address turns up in CLUE and this concerns Nanci Kramer, spokesperson for the [California Department of Insurance](#).

“It could happen to anyone,” she said.

Kramer has seen a fourfold increase in consumer complaints who’ve contacted the department with stories about being dropped by their carriers or denied coverage altogether. In last quarter of 2002 the department fielded 1,283 written consumer complaints compared with the 326 filed in all of 2001.



“It used to be that underwriting was done on a personal basis – you literally looked at the potential risk of that individual. Our concern is that underwriting is becoming mechanized and not considering the individual specifics of consumers’ situations,” said Kramer.

Insurers disagree and say claims history, credit scoring and other proprietary underwriting risk models have helped the industry objectively arrive at an equally objective insurance score, which determines policy applicants’ risk potential.

“Insurers are looking carefully at (CLUE) reports because a basic premise in insurance is that a prior loss is indicative of the likelihood of a future loss,” said Eric Goldberg, assistant general counsel for the [American Insurance Association](#), a property and casualty insurance trade organization that represents more than 410 insurers.

But Kramer said there is nothing objective about the CLUE database.

"The insurance companies are creating this database so it's based on what they say. They decide what a claim is, they decide how to define it and they decide what's going to be entered about you," said Kramer.

An even bigger issue with CLUE reports is that consumers by and large don't know the reports exist, said Kramer.

ChoicePoint and its state analogues are considered to be a consumer reporting agency under the Federal Fair Credit Reporting Act. If an insurance applicant is denied coverage because of information contained in a CLUE report, ChoicePoint is required to disclose the finding to the applicant and offer the consumer a free copy of the report. Consumers may purchase a copy of their CLUE report for \$12.95 at [ChoiceTrust](#) and like a credit report, they may add a 100-word addendum to a claim.

"The glaring difference between a credit report and a CLUE report is that most of us as consumers know that our credit history is tracked and followed (and) virtually no consumer knows that their insurance activity is tracked and reported. They don't know it follows them (and) they don't know that it can affect their ability to sell their house," she said.

Collier said that **only** 65 percent of CLUE searches return a clean report and that a for-sale home with a claims history isn't necessarily a deal killer, the report could verify to a home buyer that previous damage was fixed properly.

"In some cases you can turn vinegar into sugar," he said.

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## AN IMPORTANT NOTICE ABOUT POOL SAFETY<sup>i</sup>

Drowning is a serious threat to young children in Arizona. Young children also suffer from a high number of near drownings that may lead to permanent, severe disability. Most of these incidents occur in the child's own backyard swimming pool. These tragedies must be stopped. To that end, the Arizona Legislature has passed a law requiring that new occupants of dwellings with pools, and persons having a pool installed, receive this safety message about steps to prevent drownings and the legal responsibilities of pool ownership.

### **State of Arizona law requires a barrier between the house and pool.<sup>ii</sup>**

This law applies to homes with both a child under 6 years of age and a pool built after June 1, 1991. This law aims to impede children's access to their own pools. Likewise, all pools must have a barrier to keep out uninvited neighborhood children.

Unless a local code provides otherwise<sup>iii</sup>, the barrier must:

- **Entirely enclose the pool area.**
- **Be at least 5 feet high**, measured on the outside of the barrier.
- **Not have openings, handholds or footholds** that can be used to climb the barrier. Wire mesh or chain link fences shall have a maximum mesh size of 1 3/4 inches measured horizontally.
- **Have no openings through which a sphere 4 inches in diameter can pass.** Horizontal components of any barrier shall be spaced not less than 4.5 inches apart measured vertically or shall be placed on the pool side of the barrier which shall have no opening greater than 1 3/4 inches measured horizontally.
- **Be at least 20 inches from the water's edge.**
- **Prevent direct access from the house to the pool.**

Gates must be self-closing and self-latching with the latch located at least 54 inches above the ground or on the pool side with a release mechanism at least 5 inches below the top of the gate and no opening greater than 1/2 inch within 24 inches of the release mechanism or be secured by a padlock or similar device which requires a key, electronic opener or integral combination which can have the latch at any height. **Gates must open outward from the pool.**

If a wall of the home forms part of the barrier, one of the following must be used:

- A barrier at least 4 feet high between the home and the pool which otherwise meets all of the requirements for a barrier set forth above.
- A motorized, safety pool cover which does not require manual operation other than the use of a key switch which meets the American Society of Testing and Materials (ASTM) emergency standard 13-89 (now 1346-91).

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Buyer Initials

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Date

## **Supervision is the key to prevent drownings.**

Never leave children unsupervised in the pool or inside the pool area — **not even for a second!**

Inform guests to your home of the importance of closely watching children around water. At parties, make sure someone is always watching the children around the pool.

Don't count on barriers to keep children from reaching the pool. **No barrier is foolproof.** Barriers only slow a child's access to the pool.

### **In case of an emergency: act immediately -**

1. Shout for help.
2. Pull the child out of the water.
3. Take the child to the phone and dial 911 (or the local emergency number) for help.
4. Check airway and breathing. If needed, start CPR immediately. CPR can save lives and prevent serious injury.

### **Other smart tips to protect children around water:**

#### **DON'T**

- Don't keep toys, tricycles or other playthings in the pool area. Also, remove items that a child could use to climb over the barrier.
- Don't be distracted by phone calls, doorbells, or chores while children are in the pool. Your full attention should be on the children.
- Don't rely on swimming lessons or "floaties" to protect your children.
- Don't prop gates open.

#### **DO**

- Attend a CPR class. All family members and babysitters should know CPR. For the nearest class, contact your local fire department.
- Post 911 (or the local emergency number) on all phones.
- Learn water rescue. Keep lifesaving equipment mounted near the pool, especially if you can't swim.
- Lock passageways (such as pet doors) leading to the pool.
- Inspect latches and gates regularly; keep them in working order.
- Set a good example. Insist on safety around the pool.

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- Self latching devices on all doors with direct access to the pool. Such latches shall meet the requirements for latches on self-closing gates set forth above.
- Emergency escape or rescue windows from sleeping rooms with access to the pool shall be equipped with a latching device not less than 54 inches above the floor. All other openable dwelling unit or guest room windows with similar access shall be equipped with a screwed-in-place wire mesh screen, or a keyed lock that prevents opening the window more than 4 inches or a latching device located not less than 54 inches above the floor.

**An above-ground swimming pool shall have non-climbable exterior sides which are a minimum height of 4 feet.** Any access ladder or steps shall be removable without tools and secured in an inaccessible position with a latching device not less than 54 inches above the ground when the pool is not in use.

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<sup>i</sup> Approval pursuant to Arizona Revised Statutes § 36-1681 and A.A.C. R9-3-101.

<sup>ii</sup> "Pool" means an in-ground or above-ground swimming pool or other contained body of water 18 or more inches in depth, wider than 8 feet, and intended for swimming.

<sup>iii</sup> Phoenix, Peoria, Tucson, and some other cities and unincorporated areas of Maricopa, Pima, and Pinal counties have different pool barrier requirements. Check with your city and county governments to see if they have adopted different pool barrier requirements.

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Date

# Residential Pool Safety Notice

## AN IMPORTANT NOTICE ABOUT POOL SAFETY

The purpose of this notice is to educate residential pool\* owners on proper pool safety and the legal requirements of pool ownership. Each year in Arizona, too many young children are victims of drownings or near drownings. The Arizona State Legislature recognized this threat to the health and safety of children and passed A.R.S. § 36-1681 to prevent children from gaining unsupervised access to residential swimming pools. In A.R.S. § 36-1681(E), the Legislature also requires that all pool owners receive a safety notice explaining the Arizona Department of Health Services recommendations on pool safety and the legal requirements of pool ownership.

## ARIZONA DEPARTMENT OF HEALTH SERVICES POOL SAFETY RECOMMENDATIONS

- A child should never be left unattended in the pool or pool area.
- A child should always be watched when in or around the pool area. Floatation devices and swimming lessons are not substitutes for supervision.
- CPR instructions and the 911 emergency number should be posted in the pool area.
- All residential pool owners should attend water rescue and CPR classes.
- Lifesaving equipment should be easily accessible and stored in the pool area.
- A phone should be located in the pool area or easily accessible in case of an emergency.
- All gate locks and latches should be checked regularly to insure they are working properly.
- A gate should never be left propped open.
- All items that could be used to climb a pool barrier should be removed from around the barrier.

## POOL ENCLOSURE REQUIREMENTS

A.R.S. § 36-1681 requires that all residential swimming pools are enclosed by a barrier.

Unless a local code\*\* provides otherwise, the barrier must:

- Entirely enclose the pool area,
- Be at least 5 feet high,
- Not have openings, handholds, or footholds that can be used to climb the barrier,
- Have no opening through which an object 4 inches in diameter can pass,
- Be at least 20 inches from the water's edge, and
- Prevent direct access from the house to the pool.

If the wall of the residence forms part of the pool enclosure, there must be:

- A barrier at least 4 feet high between the residence and the pool, or
- A motorized safety pool cover that requires a key switch and meets the American Society of Testing and Materials (ASTM) standards in F1346-91 ([www.astm.org](http://www.astm.org)), or
- Self-latching devices on all doors with direct access to the pool, and
- Self-latching devices at least 54 inches above the floor on all emergency or rescue windows with direct access to the pool or pool area, and

- For all other openable windows with access to the pool or pool area:
  1. Screwed in place wire mesh screens or a keyed lock that prevents opening a window more than 4 inches, or
  2. Self-latching devices at least 54 inches above the floor.

### **GATE REQUIREMENTS**

A.R.S. § 36-1681(B)(3) requires that all gates for the pool enclosure be:

1. Self-closing,
2. Self-latching, and
3. Open outward from the pool,

The latches must be:

1. Located at least 54 inches above the ground; or
2. If on the pool side with a release mechanism,
  - a. Located at least 5 inches below the top of the gate, and
  - b. So that no opening greater than 1/2 inch is within 24 inches of the release mechanism; or
3. Secured at any height if secured by a padlock or similar device which requires a key, electronic opener, or integral combination.

### **ABOVEGROUND POOLS**

A.R.S. § 36-1681(C)(4) requires that the exterior sides of an aboveground pool are non-climbable and a minimum of 4 feet high. Any access ladder or steps must be secured and locked or removed when the pool is not in use.

#### **REMEMBER**

1. Supervision is the only way to prevent drownings.
2. Never leave a child unattended in the water or pool area.
3. And always watch a child when in the water or pool area.

### **IN AN EMERGENCY**

1. Shout for help.
2. Pull the child from the water.
3. Call 911 (or the local emergency number) for help
4. Check airway and breathing. If needed, start CPR immediately.

\* "Pool" means an in-ground or aboveground swimming pool or other contained body of water 18 or more inches in depth, wider than 8 feet at any point, and intended for swimming, pursuant to A.R.S. § 36-1681(A)

\*\* Phoenix, Peoria, Tucson, and some other cities and unincorporated areas of Maricopa, Pima, and Pinal Counties have different pool barrier requirements. Check with your city and county governments to see if they have adopted different pool barrier requirements.

Last modified on August 15, 2001

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General comments, questions, or concerns: [ADHS Webmaster](#)

# DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS (RENTALS)



Property Address: \_\_\_\_\_

**Lead Warning Statement:** Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not taken care of properly. Lead exposure is especially harmful to young children and pregnant women. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Before renting pre-1978 housing, landlords must disclose the presence of known lead-based paint and lead-based paint hazards in the dwelling. Tenants must also receive a federally-approved pamphlet on lead poisoning prevention.

LANDLORD'S DISCLOSURE (Landlord must complete and initial sections A, B and C below)

A. Lead-based paint and/or lead-based paint hazards (check A.1 or A.2 below):

A.1 ☐ Landlord is aware that lead-based paint and/or lead-based paint hazards are present in the residence(s) and/or building(s) included in this rental. (Explain) \_\_\_\_\_

A.2 ☐ Landlord has no knowledge of any lead-based paint and/or lead-based paint hazards in the residence(s) and building(s) included in this rental.

\_\_\_\_\_ Landlord's initials required

B. Records and reports available to the landlord (check B.1 and B.2 below):

B.1 ☐ Landlord has provided the tenant with all available records and reports relating to lead-based paint and/or lead-based paint hazards in the residence(s) and building(s) included in this rental. (List documents).

B.2 ☐ Landlord has no records or reports relating to lead-based paint and/or lead-based paint hazards in the residence(s) and building(s) included in this rental.

\_\_\_\_\_ Landlord's initials required

C. Landlord acknowledges his obligation to disclose to any real estate agent(s) to whom the landlord directly or indirectly is to pay compensation with regard to the transaction contemplated by this disclosure any known lead-based paint or lead-based paint hazards in the premises to be rented, as well as the existence of any reports or records relating to lead-based paint or lead-based paint hazards in the premises to be rented. Landlord further acknowledges that this disclosure accurately reflects the entirety of the information provided by the landlord to the agent(s) with regard to lead-based paint, lead-based paint hazards, and lead-based paint risk-assessment or inspection reports and records.

\_\_\_\_\_ Landlord's initials required

TENANT'S ACKNOWLEDGMENT (Tenant must complete and initial sections D and E below):

\_\_\_\_\_ D. Tenant has read the information set forth above, and has received copies of the reports, records, or other materials referenced above, if any.

\_\_\_\_\_ E. Tenant has received the pamphlet *Protect Your Family from Lead in Your Home*.

AGENT'S ACKNOWLEDGMENT (Any real estate agent who is to receive compensation from the landlord or the property manager with regard to the transaction contemplated in this disclosure must initial section F below.)

F. The agent(s) whose initials appear below has (have) ensured the landlord's compliance under the Residential Resale Lead-Based Paint Hazard 1992 by the landlord's use and completion of this disclosure form.

Agent's initials required: \_\_\_\_\_  
Property Manager/Listing Agent Leasing Agent

## CERTIFICATION OF ACCURACY

By signing below, each signatory acknowledges that he or she has reviewed the above information, and certifies that, to the best of his or her knowledge, the information provided by the signatory is true and accurate.

Landlord: \_\_\_\_\_ Date \_\_\_\_\_ Tenant: \_\_\_\_\_ Date \_\_\_\_\_

Landlord: \_\_\_\_\_ Date \_\_\_\_\_ Tenant: \_\_\_\_\_ Date \_\_\_\_\_

Property Manager/Listing Agent: \_\_\_\_\_ Date \_\_\_\_\_ Leasing Agent: \_\_\_\_\_ Date \_\_\_\_\_

This form is available for use by the entire real estate industry. The use of this form is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its Code of Ethics.

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# Lead-Based Paint Disclosure Tips for Rentals of Residential Properties

## Steps for REALTORS® to follow:

**NOTE:** The lead-based paint disclosure requirements apply to all real estate agents involved in the transaction except for tenant's agents receiving compensation from the tenant only. The following recommended steps are provided to help REALTORS® meet the law's obligations in a typical residential rental transaction.

1. When entering into an agreement to manage a property, the property manager/listing agent (hereinafter "property manager") should determine if the property is "target housing" (generally, built before January 1, 1978). This can generally be accomplished by asking the landlord/owner ("the owner"). If the owner doesn't know, the property manager should consult property records.

The property manager should also determine if the property falls within an exemption from the lead-based paint disclosure requirements. For example, if a certified inspector has determined that the property is free from lead-based paint and lead-based paint hazards, or if the lease is for less than 100 days with no opportunity for renewal or extension, the disclosure requirements will not apply. Even if an exemption applies, the property manager should have the owner complete and sign the disclosure form, acknowledging in writing the claimed basis for the exemption. If an exemption applies, the disclosure form need not be given to potential tenants.

2. The lead-based paint disclosure requirements became effective for all "target housing" on December 6, 1996. All target housing will require the following steps.
3. If the property is target housing, the property manager must advise the owner of certain obligations, namely the following: 1) disclose to the tenant known lead-based paint or lead-based paint hazards; 2) provide the tenant any existing records, test results, reports, or other known lead-based paint information related to the presence of lead-based paint or lead-based paint hazards in the property, if any; 3) provide the tenant with the pamphlet *Protect Your Family From Lead in Your Home* (EPA approved lead-based paint hazard information pamphlet); and 4) include disclosure and acknowledgment language as part of the rental contract or addenda. (NOTE: The law does not require that all interested tenants must be informed, only the actual tenant).
4. The property manager should have the owner complete, initial and sign the disclosure form. The property manager should obtain from the landlord any records, test results, reports, or other lead-based paint information related to the presence of lead-based paint or lead-based paint hazards in order to be ready to provide copies to a tenant making an offer to rent the property. The property manager should then initial and sign the form.
5. The property manager should disclose to potential leasing agents that the listed property is target housing, probably through the MLS or other offerings to REALTORS®.
6. The leasing agent (the agent working with the tenant who expects to be paid by the property manager or the owner - whether it be tenant's agent, subagent, "facilitator," or whatever) also has an obligation to ensure the owner's compliance. If the disclosure form has not been provided by the property manager, the leasing agent should provide the disclosure form to the property manager for the owner to complete and sign, or directly to the owner if no property manager is involved.
7. When the tenant is ready to make an offer on target housing, the leasing agent should provide the tenant with a copy of the disclosure form signed by the owner and the property manager, together with related test results and records, if any, and a copy of *Protect Your Family From Lead in Your Home*. Ideally, these documents will be obtained by the leasing agent from the property manager before the offer is signed by the tenant, but the signed disclosure form with attachments must be provided to the tenant before the offer to rent is accepted by the owner.
8. The disclosure form must be initialed and signed by the tenant and the leasing agent, which should be done after the owner and the property manager have initialed and signed the form. (By initialing section F of the AAR Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (Rentals) form, signing the Certification, and complying with the other terms of this AAR form, both the property manager and leasing agent will have met their obligations under the law.)

This form is available for use by the entire real estate industry. The use of this form is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its Code of Ethics.

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## MULTIPLE COUNTER OFFER

MADE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

This is a Counter Offer to the Residential Resale Real Estate Purchase Contract ("Contract") dated \_\_\_\_\_, 20\_\_\_\_ between:

SELLER: \_\_\_\_\_ BUYER: \_\_\_\_\_

PREMISES: \_\_\_\_\_

This Counter Offer is made with the understanding that one or more other counter offers may be made to one or more other prospective buyers at the same time.

Acceptance of this Counter Offer by Buyer shall not be binding unless and until the written acceptance by Buyer of this Counter Offer is received by Seller and signed a second time under item #3 below and delivered back to Buyer or Buyer's agent.

Seller reserves the right to make other counter offers or accept any other offer, at any time prior to Seller's receipt and re-signing of this Multiple Counter Offer. Notification to Buyer of acceptance of another offer by Seller shall automatically revoke this Counter Offer.

1. Seller acknowledges receipt of multiple Residential Resale Real Estate Purchase Contracts and hereby agrees to sell said Premises to this Buyer on the terms and conditions set forth therein except as modified by this Multiple Counter Offer.

This Multiple Counter Offer will expire and will be null and void unless written acceptance by Buyer of this Counter Offer is received and signed a second time by Seller no later than \_\_\_\_\_, 20\_\_\_\_; \_\_\_\_\_ ☐ a.m. ☐ p.m. MST

SELLER \_\_\_\_\_ DATE \_\_\_\_\_ TIME \_\_\_\_\_ SELLER \_\_\_\_\_ DATE \_\_\_\_\_ TIME \_\_\_\_\_

2. BUYER HEREBY ACCEPTS THE ABOVE COUNTER OFFER AND ACKNOWLEDGES RECEIPT OF A COPY HEREOF.

☐ COUNTER OFFER IS ATTACHED

Buyer's Acceptance of this Counter Offer will expire and will be null and void unless written acceptance by Seller of this Counter Offer is received and signed a second time by Seller no later than \_\_\_\_\_, 20\_\_\_\_; \_\_\_\_\_

☐ a.m. ☐ p.m. MST

BUYER \_\_\_\_\_ DATE \_\_\_\_\_ TIME \_\_\_\_\_ BUYER \_\_\_\_\_ DATE \_\_\_\_\_ TIME \_\_\_\_\_

3. SIGNATURE BY SELLER BELOW AND DELIVERY TO BUYER OR BUYER'S AGENT HEREBY CREATES A BINDING AGREEMENT.

Seller acknowledges receipt of this acceptance by this Buyer and, by signing below, Seller revokes all other offers by separate notice and agrees to sell the property to this Buyer, subject to the terms and conditions of the Contract.

SELLER \_\_\_\_\_ DATE \_\_\_\_\_ TIME \_\_\_\_\_ SELLER \_\_\_\_\_ DATE \_\_\_\_\_ TIME \_\_\_\_\_

**COUNTER OFFER \_\_\_\_\_**  
**Coldwell Banker Success Realty**



THE PRINTED PORTION OF THIS CONTRACT HAS BEEN APPROVED BY THE ARIZONA ASSOCIATION OF REALTORS®. THIS IS INTENDED TO BE A BINDING CONTRACT. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OR THE TAX CONSEQUENCES THEREOF. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT YOUR ATTORNEY OR TAX ADVISOR.

C. 1. This is a Counter Offer originated by the: ☐ Seller ☐ Buyer ☐ Landlord ☐ Tenant. This is a Counter Offer to the ☐ Offer

C. 2. ☐ Counter Offer dated \_\_\_\_\_ between the following Parties:  
MO/DA/YR

C. 3. Seller/Landlord: \_\_\_\_\_

C. 4. Buyer/Tenant: \_\_\_\_\_

C. 5. Premises: \_\_\_\_\_

C. 6. Acceptance of the above Offer and/or Counter Offer is contingent upon agreement to the following:

C. 7. \_\_\_\_\_

C. 8. \_\_\_\_\_

C. 9. \_\_\_\_\_

C. 10. \_\_\_\_\_

C. 11. \_\_\_\_\_

C. 12. \_\_\_\_\_

C. 13. \_\_\_\_\_

C. 14. \_\_\_\_\_

C. 15. \_\_\_\_\_

C. 16. \_\_\_\_\_

C. 17. \_\_\_\_\_

C. 18. \_\_\_\_\_

C. 19. \_\_\_\_\_

C. 20. \_\_\_\_\_

C. 21. \_\_\_\_\_

C. 22. \_\_\_\_\_

C. 23. \_\_\_\_\_

C. 24. \_\_\_\_\_

C. 25. \_\_\_\_\_

C. 26. \_\_\_\_\_

C. 27. \_\_\_\_\_

C. 28. \_\_\_\_\_

C. 29. Time for acceptance: Unless acceptance of this Counter Offer is signed by all parties and a signed copy delivered in person, by mail or facsimile

C. 30. and received by the party originating the Counter Offer, indicated on line C.1. or received by \_\_\_\_\_

(BROKER)

C. 31. by \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m., Mountain Standard Time or unless this Counter Offer has been previously withdrawn by the originating  
(MO/DA/YR) (TIME)

C. 32. party, this Counter Offer shall be considered withdrawn at the date and time specified on line C.31. Except as otherwise provided in this Counter

C. 33. Offer, the Parties accept and agree to all terms and conditions of the above Offer and/or Counter Offer. Until this Counter Offer has been

C. 34. accepted in the manner described above, the Parties understand that the Premises can be sold or leased to someone else or either Party may

C. 35. withdraw the offer to buy, sell, or lease the Premises. The undersigned acknowledges receipt of a copy hereof.

C. 36. \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

C. 37. ☐ Seller ☐ Buyer ☐ Landlord ☐ Tenant MO/DA/YR

C. 38. \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

C. 39. ☐ Seller ☐ Buyer ☐ Landlord ☐ Tenant MO/DA/YR

**ACCEPTANCE**

C. 40. The undersigned agrees to the modified or additional terms and conditions in the above Counter Offer and acknowledges receipt of a copy hereof.

C. 41. ☐ An additional Counter Offer is attached.

C. 42. \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

C. 43. ☐ Seller ☐ Buyer ☐ Landlord ☐ Tenant MO/DA/YR

C. 44. \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

C. 45. ☐ Seller ☐ Buyer ☐ Landlord ☐ Tenant MO/DA/YR

**For Broker Use Only**

Brokerage File/Log No. \_\_\_\_\_

Manager's Initials \_\_\_\_\_

Broker's Initials \_\_\_\_\_

Date \_\_\_\_\_

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This Form Available Through Your Local Board of REALTORS®

(Counter Offer Rev 5/96)

## Expert Contract Writing and Power Negotiations Win Out Over 16 Competing Offers

----- Original Message -----

**From:** [Alice DeShane](#)

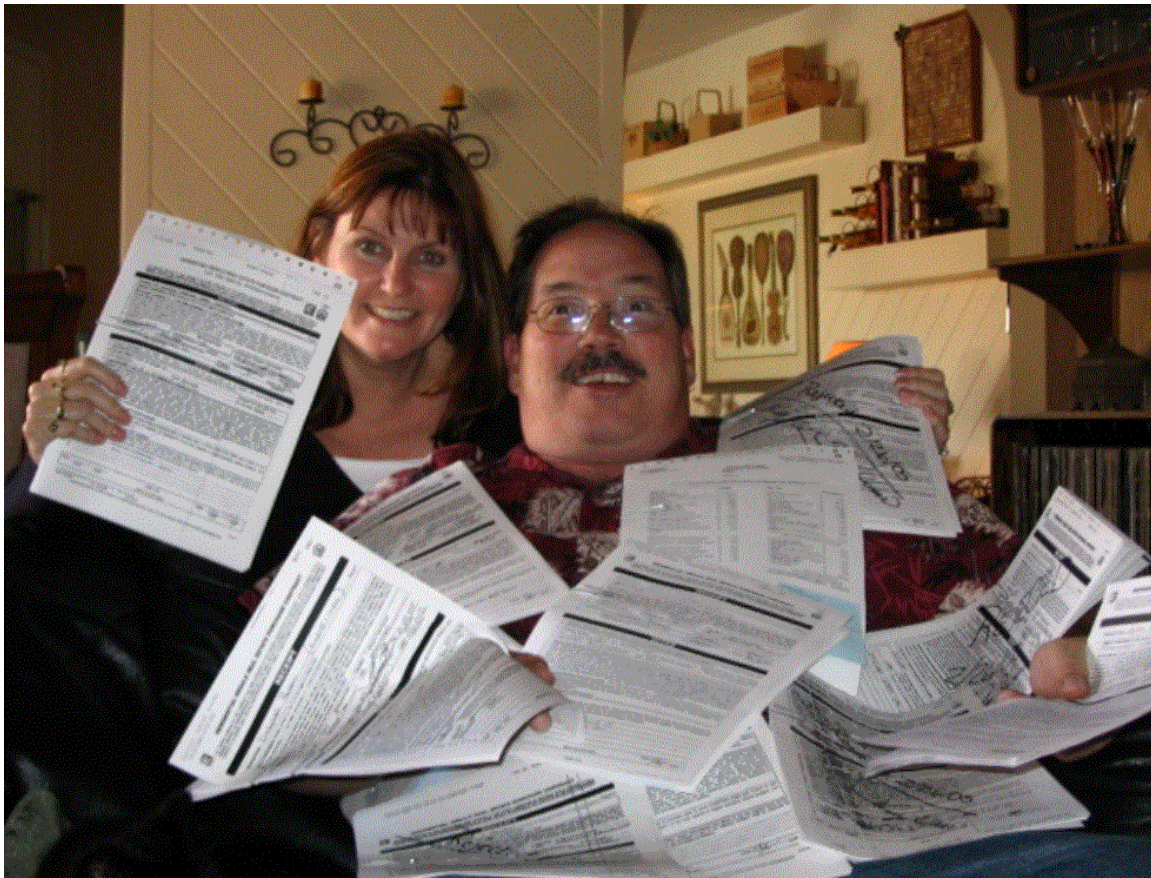
**To:** [sfleander@msn.com](mailto:sfleander@msn.com)

**Sent:** Sunday, February 27, 2005 8:46 PM

**Subject:** 1727 Alamo Court -- the photo.....

Sara,

I thought your buyers would enjoy this photo of Mike and Wendy with the offers. We took it yesterday afternoon after you left. Note that Wendy has yours in her hand (the only one with a perforated top), and look at that smile. I spoke to them this morning, and Mike said that he didn't sleep well, for thinking of all the other buyers they couldn't sell the house to. We're so excited about your buyers, and hope that they enjoy the home as much as Mike and Wendy have. We look forward to working with you.



Thanks again for all your work yesterday, and please let us know if there is anything that we can do to make your job easier.

Alice DeShane, P.C., ABR

Associate Broker

Dan Schwartz Realty, Inc.

(602)274-8322 Office

(602)435-3300 Mobile



**Addendum To Contract For Sale Of Real Estate**

***Military Clause Addendum No.: "MC"***

**CONTRACT/OFFER DATE:** \_\_\_\_\_

**SELLER:** \_\_\_\_\_

**BUYER :** \_\_\_\_\_

**PROPERTY ADDRESS :** \_\_\_\_\_

**LEGAL DESCRIPTION:** \_\_\_\_\_

*It is understood and agreed by all parties with their signatures affixed hereto that the additional provisions of this addendum become a permanent part of the subject Contract and all other terms and conditions of the above mentioned Contract shall remain in full force and effect.*

1. It is agreed that Government orders transferring BUYER from this area will cancel this CONTRACT without penalty and all monies deposited by the BUYER with the escrow agent will be returned to the BUYER, withstanding the stipulation noted in Item 3 of this Military Clause Addendum.
2. BUYER agrees to give written notice, along with a copy of PCS (Permanent Change of Station), Retirement, or Separation orders transferring BUYER from this area to the SELLER and/or his/her agent within 72 hours of BUYER'S receipt of PCS (Permanent Change of Station), Retirement, or Separation orders from his commanding officer.
3. If BUYER fails to deliver notice, to the SELLER and/or the SELLER'S agent in accordance with Item 2 of this addendum, of relocation by the US Government, BUYER will forfeit up to a maximum \$500 of monies on deposit with escrow agent in favor of the SELLER.
4. All remaining monies, deposited by the BUYER with the escrow agent will be returned to BUYER by the escrow agent for this transaction, not more than 1 business day after termination of this transaction.

**SEEK LEGAL AND TAX ADVICE PRIOR TO SIGNING, IF NOT UNDERSTOOD.**

Witnesses as to Signature of buyer:

Accepted and approved: \_\_\_\_\_

**Buyers:**   
Enter Name Here

**Buyers:**   
Enter Name Here

Witnesses as to Signature of seller:

Accepted and approved: \_\_\_\_\_

**Sellers:** \_\_\_\_\_  
Enter Name Here

**Sellers:** \_\_\_\_\_  
Enter Name Here



## PROPERTY INSPECTION NOTICE/WAIVER

**PREMISES:** \_\_\_\_\_

### HOME INSPECTIONS - WHY YOU SHOULD OBTAIN ONE

As a homebuyer, are you sophisticated in identifying problem areas in your potential new home? Most of us are not. Professional home inspectors survey the premises for the integrity of the interior and exterior components of the dwelling. Home inspectors must be *certified* by the State of Arizona and must comply with certain State requirements when inspecting a home. Certified home inspectors provide a unique customer service in identifying existing problems, should there be any, and assist in promoting and facilitating communication with the home seller. Here are a few areas that home inspectors look at:

#### **\*\*Structural**

How is the integrity of the essential interior and exterior structural components, including foundations, walls, ceilings and roofs? Home inspectors are not structural engineers, but they can identify visual defects in these areas requiring immediate repairs.

#### **\*\*Electrical**

Do the outlets work? Are there any visible signs of fraying on the wiring? Are there any serious code violations?

#### **\*\*Heating and Cooling**

Are the units functioning properly? What type are they, how old?

#### **\*\*Plumbing**

Are there any leaks or annoying drips? Are the mechanical systems and fixtures working properly?

#### **\*\*Built-In Appliances**

Are they functioning properly?

#### **\*\*Safety Hazards**

Home inspectors are not environmental specialists, but they can identify many safety hazards or dangerous conditions.

#### **\*\*Miscellaneous**

Other items may or may not be included in a general home inspection. Some of these may be: septic systems, roofs, drainage problems, wood decks, patios, other exterior structures, pool equipment, sprinkler systems, alarm system, etc. Be sure and verify which, if any, of these items are included in your home inspection.

Mold, termite, geological, or land surveys and environmental or pollution inspections are normally not included but may be required or completed separately for your own peace of mind.

**We strongly recommend you always obtain a general home inspection from a certified home inspector, as well as surveys and inspections in specialized areas that are beyond the scope of the general home inspection. Buyer may obtain a list of certified home inspectors by visiting the Arizona Board of Technical Registration at [www.btr.state.az.us](http://www.btr.state.az.us).**

BUYER: \_\_\_\_\_ DATE: \_\_\_\_\_

BUYER: \_\_\_\_\_ DATE: \_\_\_\_\_

*A "Buyer Advisory" located at [www.cbsuccess.com](http://www.cbsuccess.com) contains valuable information regarding the purchase of real property. Buyer has been advised to visit this website.*

BUYER INITIALS

BUYER INITIALS

\_\_\_\_\_

\_\_\_\_\_

## WAIVER

Buyer waives their right to a general home inspection by a certified home inspector, and is relying upon Buyer's own inspection to determine the condition of the property. This does not void the Seller Warranties section of the "Residential Resale Real Estate Purchase Contract" or the seller's representations on the "Sellers Property Disclosure Statement," if any. The Buyer reserves the right to conduct a walk-through inspection prior to Close of Escrow to determine that the condition of the premises has not changed.

BUYER: \_\_\_\_\_ DATE: \_\_\_\_\_

BUYER: \_\_\_\_\_ DATE: \_\_\_\_\_

Prop Insp Waiver 7.03

Coldwell Banker Success Realty 3050 Agua Fria Freeway, Suite 110, Phoenix AZ 85027

Phone: (623) 344-4000

Fax: (602) 296-0124

Lori Klindera, CBSuccess Realt

First New Cont

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# BUYER'S INSPECTION NOTICE AND SELLER'S RESPONSE

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Contract dated: \_\_\_\_\_ MONTH \_\_\_\_\_ DAY \_\_\_\_\_ YEAR

Seller: \_\_\_\_\_

Buyer: \_\_\_\_\_

Premises Address: \_\_\_\_\_

## BUYER INSPECTIONS AND INVESTIGATIONS COMPLETED

### Buyer has completed all desired:

- (a) physical, environmental, and other inspections and investigations;
- (b) inquiries and consultations with government agencies, lenders, insurance agents, architects, and other persons and entities;
- (c) investigations of applicable building, zoning, fire, health, and safety codes;
- (d) inquiries regarding sex offenders and the occurrence of a disease, natural death, suicide, homicide or other crime on the Premises or in the vicinity;
- (e) inspections and investigations pertaining to square footage, wood-destroying organisms or insects, sewer/on-site wastewater treatment system, flood hazard, swimming pool barriers, and insurance; and
- (f) inspections and investigations of any other items important to the Buyer.

### Buyer has verified all information deemed important including:

- (a) MLS or listing information; and
- (b) all other information obtained regarding the Premises.

### Buyer elects as follows:

- ☐ Premises Accepted – No corrections requested. Buyer accepts the Premises in its present condition and no corrections or repairs are requested.
- ☐ Premises Rejected – Buyer disapproves of the items listed below and elects to immediately cancel the Contract.
- ☒ Buyer elects to provide Seller an opportunity to correct the disapproved items listed below.

Items disapproved: A copy of the Buyer's Professional Home Inspection and a copy of the Buyer's Request for Repair Letter are attached to and becomes an attachment to this Buyer's Inspection Notice and Seller's Response form. Seller is to respond to this Buyer's Inspection Notice and Seller's Response form in a manner consistent with instructions contained in Lines 234 through 248 of the Contract.

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Addenda Incorporated: ☒ Specify: Home Inspection Report & Repair Request Letter

### Notice of Non-Working Warranted Items

Buyer provides Seller with notice of the following non-working warranted item(s). Seller remains obligated to maintain or repair warranted items as provided in Section 5a of the Contract.

SEE ATTACHED BUYER'S REPAIR REQUEST LETTER RE: NON-WORKING / DEFECTIVE WARRANTED ITEMS

----- SEE STUCCO SYSTEM INSTALLATION CARD "SAMPLE" -----

-----

## ~~BUYER'S WAIVER OF INSPECTIONS~~

~~BUYER ACKNOWLEDGES THAT BUYER WAS ADVISED TO OBTAIN INSPECTIONS OF THE PREMISES BY QUALIFIED INSPECTOR(S) AND BUYER DECLINED. By acting against the Broker's advice, Buyer accepts responsibility and hereby releases, indemnifies and holds harmless Brokers from any and all liability for all matters that professional inspections could have revealed.~~

\_\_\_\_\_  
BUYER

\_\_\_\_\_  
BUYER

## BUYER'S ACKNOWLEDGEMENT

Buyer acknowledges that the Broker(s): (1) make no representations concerning the competency of any inspectors, contractors and/or repair persons and assume no responsibility for any deficiencies or errors made; and (2) neither the Seller nor Broker(s) are experts at detecting or repairing physical defects in the Premises. The undersigned acknowledges receipt of a copy hereof.

\_\_\_\_\_  
BUYER'S SIGNATURE

\_\_\_\_\_  
MO/DA/YR

\_\_\_\_\_  
BUYER'S SIGNATURE

\_\_\_\_\_  
MO/DA/YR

## SELLER'S RESPONSE

If Buyer provides Seller an opportunity to correct items disapproved, Seller shall respond within five (5) days or otherwise specified days after delivery of this notice.

### **Seller responds as follows:**

- ☐ Seller agrees to correct the items disapproved by Buyer pursuant to terms set forth herein and Section 6j of the Contract.
- ☐ Seller is unwilling or unable to correct any of the items disapproved by Buyer.
- ☐ Seller's response to Buyer's Notice is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If there is a conflict between the Contract and this form, the provisions of this form shall be controlling. The undersigned agrees to the additional terms and conditions and acknowledges receipt of a copy hereof.

\_\_\_\_\_  
SELLER'S SIGNATURE

\_\_\_\_\_  
MO/DA/YR

\_\_\_\_\_  
SELLER'S SIGNATURE

\_\_\_\_\_  
MO/DA/YR

## BUYER'S ELECTION

- ☐ Buyer elects to cancel this Contract.
- ☐ Buyer accepts the Seller's response to Buyer's Notice and agrees to close escrow without correction of those items Seller has not agreed in writing to correct.
- Buyer elects to close escrow but does not release Seller's from Seller's obligations under the "Seller's Warranty" provisions of the Contract.

\_\_\_\_\_  
BUYER'S SIGNATURE

\_\_\_\_\_  
MO/DA/YR

\_\_\_\_\_  
BUYER'S SIGNATURE

\_\_\_\_\_  
MO/DA/YR

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## MURRAY

For over 100-years Murray has been manufacturing electrical distribution products such as panel boards, transformers and switchboards. [For more information CLICK HERE.](#)

## Installing a Garage Door Opener

While installing a garage door opener is a relatively straightforward project, the installation process is too detailed—and too manufacturer-specific—to be covered fully in any document. The purpose of this document is to give you an overview of the process, either as preparation for installing your garage door opener or to help you decide whether you can install the opener yourself.

The procedures outlined in this document are based on instructions provided by Stanley Door Systems. Other manufacturers' installation procedures may vary. When installing a garage door opener, always refer to the manufacturer's instructions for detailed, step-by-step procedures and follow them closely.



### Step # 1

#### SAFETY PRECAUTIONS

- There are three basic types of garage door openers: 1) chain-driven, 2) belt-driven, and 3) screw-driven. This document covers installation for a chain-drive opener.
- The most important consideration when installing a garage door opener is safety. Please observe the following precautions:

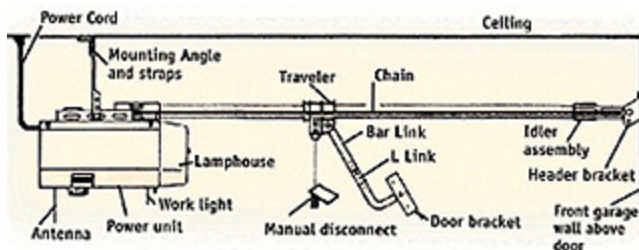


FIG. 1 - The components of a garage door opener.

#### Before Installation:

- Make sure your garage door is well-lubricated and operating properly. The weight of a garage door is supported by the door springs, cables, and pulleys—not the opener. If you can't raise and lower

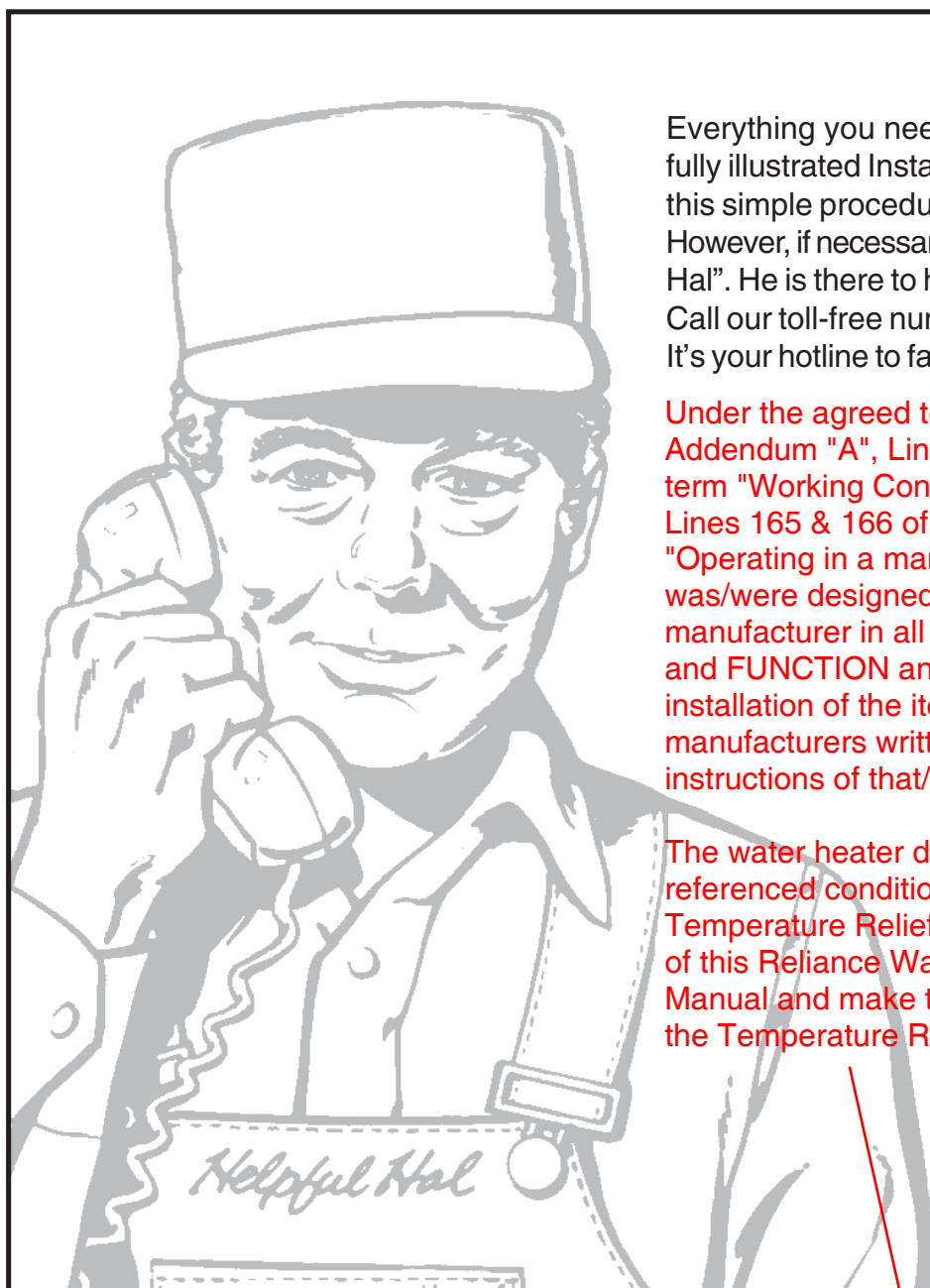
the door normally by hand, do not install the opener until the door is repaired.

- Never alter or remove the door's springs, cables, or pulleys. Doors with torsion springs (a single coil above the door) should only be serviced by qualified service technicians.
- Remove all ropes or cords attached to the garage door so you won't get tangled in them during installation.
- Deactivate or remove all existing garage door locks, so they won't accidentally engage and either damage the opener or cause personal injury.
- Do not wear rings, watches, or loose clothing while installing or servicing a garage door or opener.
- Reinforce lightweight fiberglass or metal garage doors before installing an opener to prevent damage to the door and insure that the safety reverse system will operate properly.

#### During Installation:

- Install the power unit high enough that tall people won't run into it—at least 7' from the floor if possible.
- Garage door openers have a manual disconnect cord; it should be adjusted to approximately 6' from the floor so any adult can reach it.
- If you need to install permanent electrical wiring, always disconnect the power at the main breaker box before attempting to wire connections. Always connect the power cord of the garage door opener to a properly grounded outlet to avoid electrical shock.
- Install the push-button control 5' from the floor so small children cannot reach it and in a location where anyone operating it can easily see the garage door.
- Always adjust the safety reverse system and the electric eye system properly. Refer to your opener manufacturer's instructions for details.


## RESIDENTIAL ELECTRIC WATER HEATERS



Everything you need to know is contained in this fully illustrated Installation Guide. For most of you, this simple procedure booklet is all that's needed. However, if necessary you can get help from "Helpful Hal". He is there to help, with advice and direction. Call our toll-free number and ask for "Helpful Hal". It's your hotline to fast help.

Under the agreed terms and conditions of Addendum "A", Lines A.26 through A.30, The term "Working Condition" as stated on Page 4, Lines 165 & 166 of the contract shall mean, "Operating in a manner in which the item/s was/were designed to operate by the manufacturer in all manners of FORM, FIT and FUNCTION and that assembly and/or installation of the item are consistent with the manufacturers written recommendation and/or instructions of that/those item/s."

The water heater does not meet the above referenced conditions. Please review the Temperature Relief Valve installation section of this Reliance Water Heater Installation Manual and make the appropriate repairs to the Temperature Relief Valve assembly.




GAMA certification applies to all residential electric water heaters with capacities of 20 to 120 Gallons with input rating of 12kW or less at a voltage no greater than 250 V.

### WARNING

READ THE GENERAL SAFETY SECTION BEGINNING ON INSIDE COVER AND THEN THIS ENTIRE MANUAL BEFORE INSTALLING OR OPERATING THIS WATER HEATER.

SAVE THIS MANUAL FOR FUTURE REFERENCE.

## Temperature-Pressure Relief Valve

### WARNING

At the time of manufacture this water heater was provided with a combination temperature-pressure relief valve certified by a nationally recognized testing laboratory that maintains periodic inspection of production of listed equipment or materials, as meeting the requirements for Relief Valves and Automatic Gas Shut-off Devices for Hot Water Supply Systems, and the current edition of ANSI Z21.22 • CSA 4.4 and the code requirements of ASME. If replaced, the valves must meet the requirements of local codes, but not less than a combination temperature and pressure relief valve certified as meeting the requirements for Relief Valves and Automatic Gas Shut-off Devices for Hot Water Supply Systems, ANSI Z21.22 • CSA 4.4 by a nationally recognized testing laboratory that maintains periodic inspection of production of listed equipment or materials.

The valves must be marked with a maximum set pressure not to exceed the marked hydrostatic working pressure of the water heater (150 lbs. p.s.i.) and a discharge capacity not less than the water heater input rate as shown on the model rating plate. (Electric heaters - watts divided by 1000 x 3412 equal BTU/Hr. rate.)

Your local jurisdictional authority, while mandating the use of a temperature-pressure relief valve complying with ANSI Z21.22 • CSA 4.4 and ASME, may require a valve model different from the one furnished with the water heater.

Compliance with such local requirements must be satisfied by the installer or end user of the water heater with a locally prescribed temperature-pressure relief valve installed in the designated opening in the water heater in place of the factory furnished valve.

For safe operation of the water heater, the relief valves must not be removed from their designated openings or plugged.

The temperature-pressure relief valves must be installed directly into the fitting of the water heater designated for the

relief valve. Provide tubing so that any discharge will exit only within 6 inches above, or at any distance below the structural floor. Be certain that no contact is made with any live electrical part. The discharge opening must not be blocked or reduced in size under any circumstances. Excessive length, over 30 feet, or use of more than four elbows can cause restriction and reduce the discharge capacity of the valve.

No valve or other obstruction is to be placed between the relief valves and the tank. Do not connect tubing directly to discharge drain unless a 6" air gap is provided. To prevent bodily injury, hazard to life, or property damage, the relief valves must be allowed to discharge water in quantities should circumstances demand. If the discharge pipes are not connected to a drain or other suitable means, the water flow may cause property damage.

The Discharge Pipe:

- Must not be smaller in size than the outlet pipe size of the valve, or have any reducing couplings or other restrictions.
- Must not be plugged or blocked.
- Must be of material listed for hot water distribution.
- Must be installed so as to allow complete drainage of both the temperature-pressure relief valve, and the discharge pipe.
- Must terminate at an adequate drain.
- Must not have any valve between the relief valve and tank.

### WARNING

The temperature-pressure relief valve must be manually operated at least once a year. Caution should be taken to ensure that (1) no one is in front of or around the outlet of the temperature-pressure relief valve discharge line, and (2) the water manually discharged will not cause any bodily injury or property damage because the water may be extremely hot.

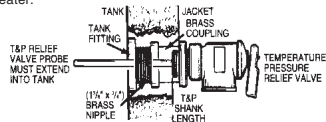
If after manually operating the valve, it fails to completely reset Temperature-Pressure Relief Valve and continues to release water, immediately shut off the water inlet to the water heater, follow the draining instructions, and replace the temperature-pressure relief valve with a new one.

### WARNING "RELIEF VALVE OPENING"

This water heater is provided with a combination Temperature-Pressure Relief Valve listed as complying with the standard for Relief Valves and Automatic Gas Shut-off Devices for Hot Water Supply Systems, ANSI Z21.22 and the code requirements of ASME.

Your local jurisdictional authority, while mandating the use of a Temperature-Pressure Relief Valve complying with ANSI Z21.22 and ASME, may require a valve model different from the one furnished with the water heater.

Compliance with such local requirements must be satisfied by the installer or end user of the water heater with a locally prescribed Temperature-Pressure Relief Valve installed in the designated opening in the water heater.

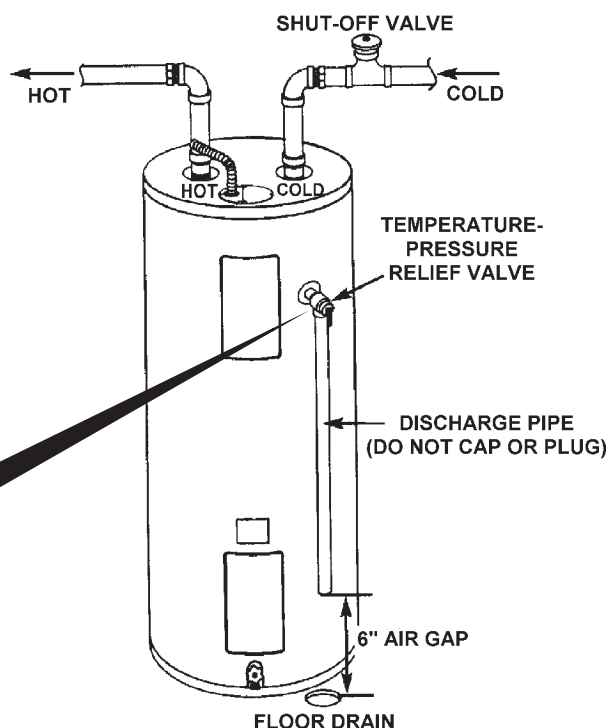


- If a short shank (less than 2") temperature-pressure relief valve is to be installed (as shown), a nipple and coupling must be used.
- If a long shank (2" or longer) is to be installed, do not use the nipple and coupling.

"Install Temperature-Pressure protective equipment required by local codes, but not less than a combination Temperature-Pressure Relief Valve certified as meeting the requirements for Relief Valves and Automatic Gas Shut-off Devices for Hot Water Supply Systems, ANSI Z21.22 by a nationally recognized testing laboratory that maintains periodic inspection of production of listed equipment or materials. The valve must be oriented, provided with tubing, or otherwise installed so that discharge can exit only within 6 inches above, or at any distance below the structural floor, and cannot contact any live electrical part."

For safe operation of the water heater, the Relief Valve must not be removed or plugged.

See manual heading - "Temperature-Pressure Relief Valve" for installation and maintenance of Relief Valve, discharge line and other safety precautions.





Reference <http://www.servicemagic.com>

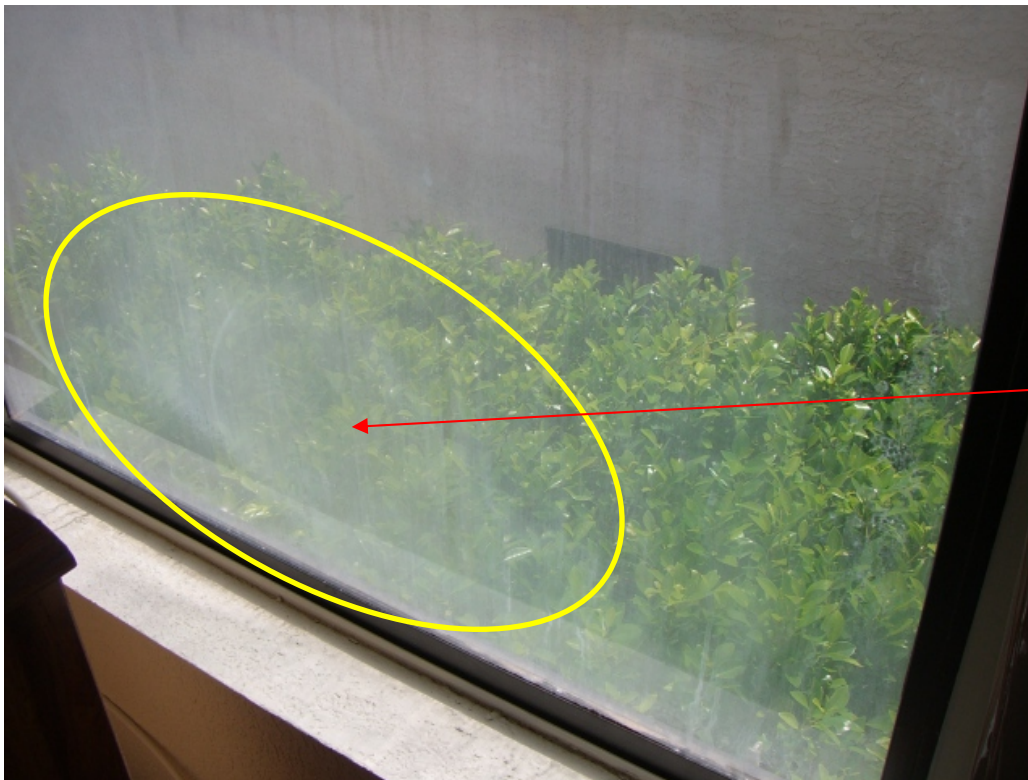
Dual pane windows manufactured in the '80s are notorious for leaking seals. Experienced home inspectors are aware of this and will generally recommend a professional review of all dual pane windows whenever even one shows signs of having leaked. Residual water stains between dual panes are sometimes very faint, and the observability of watermarks can vary according to atmospheric conditions and variations in lighting.

A: The window does not have to be replaced but the glass thermal pane unit does. Once seal failure between the glass has occurred, caulking the inside and outside of the unit will not stop moisture from penetrating into the unit. Subsequently, the unit needs to be changed.

Q: What causes seal failure between dual pane glass?

A: There are basically two causes of seal failure. One is constant soaking of water that is trapped under the glass unit, which breaks down the sealant between the glass. The second cause, which I believe is the most common reason for seal failure in aluminum windows, and especially in wooden windows, is that moisture is allowed to penetrate through the sash and is trapped under the thermal pane unit, at the bottom. Those few nights that we get in the winter when it freezes, the moisture under the unit freezes and expands, subsequently popping the seal between the two panes of glass.

On aluminum windows, not much can be done to prevent that problem. But on wooden windows, a top quality semi-glass latex enamel paint should be applied to the sash, with 1/6 inch minimum paint onto the glass. Getting the paint on the glass will seal the sash to the glass and not allow moisture to penetrate into the unit.



Example of a foggy window interior. Seal has failed. Seal is not compliant with Manufacturer's Specification for repairs or installation.



## DEFINITION OF MECHANICAL

A copy of a Dual Pane Window Industry Standard of an explanation of a failed window seal is included herein. Additionally, below are several examples of the concept of "Mechanical" as the word "Mechanical" is referred to in the Warranted Section 5a of the Contract.

As noted in the Notice of Non-Working Warranted items letter included as an Attachment to the Buyer's Inspection Notice and Seller's Response (BINSR) a warranted item, under the "Mechanical" provisions of Section 5 of the Contract, shall include failed window seals. Additionally, maintenance and/or repair of Warranted Items are inclusive under the "Working Conditions" clause as defined in Addendum "A" (Additional Clause Addendum) Lines A.25 through A.29 wherein these lines read:

*"The term "Working Condition" as stated on Page 4, Lines 165 & 166 of the contract shall mean, "Operating in a manner in which the item/s was/were designed to operate by the manufacturer in all manners of FORM, FIT and FUNCTION and that assembly and/or installation of the item are consistent with the manufacturers written recommendation and/or instructions of that/those item/s."*

### **Definition of Mechanical per Briany Dictionary** [\\*\\*http://www.BrianyDictionary.com](http://www.BrianyDictionary.com)

-----  
\*\* Pertaining to, governed by, or in accordance with, mechanics, or the laws of motion; pertaining to the quantitative relations of force and matter, as distinguished from mental, vital, chemical, etc.; as, mechanical principles; a mechanical theory; mechanical deposits.

-----  
\*\* Of or pertaining to a machine or to machinery or tools; made or formed by a machine or with tools; as, mechanical precision; mechanical products.

### **Definition of Mechanical per Merriam-Webster Dictionary**

-----  
Relating to, governed by, or in accordance with the principles of mechanics <mechanical work> <mechanical energy>

-----  
Relating to the quantitative relations of force and matter <mechanical pressure of air>

### **Allstate Gasket Glossary of Sealing and Sealing Material Terms** [\\*\\*\\*http://www.allstategasket.com](http://www.allstategasket.com)

#### **\*\*\* Gasket (Mechanical) Definition of Mechanical**

Usually a deformable material clamped between stationary faces to effectively seal the coupling. Gaskets are used to guard against the passage of liquids, gases, etc.

# COMMONLY ASKED QUESTIONS About HVAC Systems

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What are Tons of Cooling?



Air conditioners are rated at 95 degrees outside temperature with an inside temperature of 80 degrees and 50% humidity. Each ton is equal to a nominal 12,000 Btu's of cooling per hour.



What is SEER rating?



It is the amount of Btu's you receive per watt of electrical consumption. Seasonal Energy Efficiency Ratio is a standard method of rating air conditioners based on three tests. All three tests are run at 80 degrees Fahrenheit inside and 82 degrees outside. The first test is run with humid inside conditions, the second with dry indoor conditions, and the third with dry conditions cycling the air conditioner on for 6 minutes and off for 24 minutes. The published SEER may not represent the actual efficiency in your climate. These temperatures are not real world conditions. Most people will not run an air conditioner to maintain only a two-degree temperature differential. Every manufacture will use the words TO, UP TO, or AS HIGH AS just before the SEER rating. The only way to determine your actual SEER rating is to have the contractor show you an engineering or product data sheet. Because the indoor cooling coil and air capacity of the blower is what will determine your exact SEER rating. Make sure you get what you pay for!



My present heating and cooling system does not keep us comfortable. Should I have a larger system installed?



In most cases no. Usually the problem is due to poor system design or installation. More likely you will need duct work modifications, a manual J heat load calculation, or possibly an energy audit to find the problem areas and correct them. Bigger is not better. If the air conditioner is over sized, you will have poor humidity control. If the furnace is over sized, you will have wide temperature swings and shorten the life of the furnace.



What type of air cleaner is best?



Claims can be very misleading because there are two types of tests. The weight arrestance test that measures how much dust has been removed by weight, which reveals how well a filter

will remove only large and heavy particles, not the smaller particles found in common household dust. The other is the atmospheric-dust-spot-test that measures small as well as large particles 0.3 and 6 microns (a micron is one millionth of a meter). Both of these tests fall under the ASHRAE standard 52-76. Don't be confused by marketing claims. When it comes to air cleaners, if you are not paying much you are not getting much!



What is an AFUE rating?



A measure of a furnace's heating efficiency. It stands for Annual Fuel Utilization Efficiency. It takes in to account things like on and off cycles and heat loss through chimney or vent. The higher the AFUE%, the more efficient the furnace. However, there are many issues that must be addressed before choosing an 80% or 90+% furnace, such as the need to line your chimney. Contact us for a detailed explanation.



What does HSPF stand for?



Heating System Performance Factor is an efficiency rating for heat pumps that is arrived by dividing the total heat provided during the season in Btu's by the total energy consumed by the system in watt-hours. This is only a very small amount of information you need to know before purchasing a comfort system. Contact us by phone or E-mail. We will be glad to give you the facts.



How do I select a quality contractor?



It's the man not the brand that will make the difference. Does the contractor seem to be someone you can work with now and down the road should your equipment need repair? Did you receive technical information to help you make a decision? Did the contractor design a system or use rule of thumb methods? Check with manufacturers as to the contractor's reputation. How long have they been in business, do they have a place of business. Most important of all never select a contractor because he gave you the lowest price, if the price is low usually so is the workmanship. Also never assume anything. Be sure to get a formal proposal in writing with model numbers and a clear explanation in detail as to what the contractor is doing for you! Do your homework!

[\[Home | Customer Site | Q&A | Contact Us | Employment\]](#)



## BUYER PRE-CLOSING WALK-THROUGH

**DATED** \_\_\_\_\_, 20\_\_\_\_

BUYER: \_\_\_\_\_

PREMISES: \_\_\_\_\_

In accordance with the provisions of the Residential Real Estate Purchase Contract ("Contract") relating to ***Final Walkthrough***, Buyer or Buyer's representative has completed the final walk-through inspection of the premises on the above noted date.

**BUYER SHOULD CHECK ONE OF THE THREE (3) FOLLOWING SECTIONS AND SIGN BELOW:**

- ☐ 1. Buyer(s) finds the property to be as represented at the time the Contract was accepted by the parties. Any subsequent repairs that were agreed to by Seller and Buyer(s) have been completed.

- ☐ 2. Buyer(s) find that the items listed below were agreed upon repairs to be made by Seller, which have not been made and/or are items that are not in substantially the same condition as on the date of the acceptance of the Contract. **The items listed below need to be resolved to the satisfaction of Buyer prior to close of escrow.**

- ☐ 3. Buyer(s) acknowledge that the Buyer(s) was advised to conduct a final walk-through (as described in the Contract) and the Buyer(s) declined. By acting against Broker's advice by not conducting a final walk-through, Buyer(s) accepts responsibility and hereby releases, indemnifies and holds harmless Brokers from any and all liability for all matters that a final walk-through could have revealed.

**BUYER WAIVES THE RIGHT TO A FINAL WALK-THROUGH OF THE PROPERTY:**

**Buyer's initials** \_\_\_\_\_

**Buyer's initials** \_\_\_\_\_

BUYER

---

DATE

BUYER

DATE \_\_\_\_\_

## Buyer Walk-Thru

7/03

Coldwell Banker Success Realty 3050 Agua Fria Freeway, Suite 110, Phoenix AZ 85027

Phone: (623) 344-4000

Fax: (602) 296-0124

Lori Klindera, CBSuccess Realt

First New Cont

Produced with ZipForm™ by RE FormsNet, LLC 18025 Fifteen Mile Road, Clinton Township, Michigan 48035, (800) 383-9805 [www.zipform.com](http://www.zipform.com)

# Seller Advisory

## When in doubt – disclose!



**Sellers are obligated by law to disclose all known material (important) facts about the property to the buyer.** Arizona law requires that you disclose material facts about the property whether or not you are asked by the buyer or a real estate agent, or when asked to complete a disclosure form. There are also some very specific seller disclosures that you are required by statute to make. For example, sellers are required to disclose information on lead based paint in homes built prior to 1978, and if the property is in the vicinity of a military or public airport. You may also be required to complete and record an affidavit of disclosure if you are selling property in an unincorporated area of a county.

If the buyer asks you about an aspect of the property, you have a duty to disclose the information, regardless of whether or not you 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. However, a seller does not generally have a legal obligation to correct defects in the property, as long as the defects are disclosed. Any correction of the defects is a matter of contract negotiation between you and the buyer.

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.

**The Arizona Association of REALTORS® Seller's Property Disclosure Statement ("SPDS") is designed to assist you in making these legally required disclosures and to avoid inadvertent nondisclosures of material facts.**

You should complete the SPDS by answering all questions as truthfully and as thoroughly as possible. Attach copies of any available invoices, warranties, inspection reports, and leases, to insure that you are disclosing accurate information. Also, 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.

The SPDS is divided into six general sections:

- 1) Ownership and Property:** This section asks for general information about the property, such as location, ownership and occupancy. Any seller, whether or not that seller has actually lived in the property, should be able to answer most, if not all, of the questions in this section.
- 2) Building and Safety Information:** This section asks for information regarding the physical aspects of the property. You should disclose any past or present problems with the property and any work or improvements made to the property. You are also asked specifically to disclose any knowledge of past or current presence of termites or other

wood destroying organisms on the property, and whether scorpions or other possible "pests" have ever been present on the property. Although many sellers will answer affirmatively to these questions, they were necessitated by lawsuits involving the alleged non-disclosure of these natural inhabitants.

- 3) Utilities:** You are asked whether the property currently receives the listed utilities, and if so, to identify the provider. The water source and any known information about drinking water problems should also be disclosed.
- 4) Environmental Information:** A variety of environmental information is requested. In addition to questions regarding environmental hazards, you are asked to disclose any issues relating to soil settlement/expansion, drainage/grade, or erosion; noise from the surrounding area including airport and traffic noise; and any odors or other nuisances. As a result of recent lawsuits and potential health concerns, you are asked specifically if you are aware of any past or present mold growth on the property. Mold spores are everywhere and when mold spores drop in places where there is water damage or excessive moisture, or where there has been flooding, mold will grow. Thus, you are asked to disclose any conditions conducive to mold growth, such as past or present dampness/moisture, flooding, and water damage or water leaks of any kind.
- 5) Sewer/Wastewater Treatment:** There are many questions dealing with the topic of sewer or wastewater treatment as a result of claims involving alleged misrepresentations that the property was connected to a sewer, when in fact it was not. You are asked if the entire property is connected to a sewer and if so, whether the sewer connection has been professionally verified. If the property is served by an on-site wastewater treatment facility, i.e., a septic or alternative wastewater system, a variety of additional information is required.
- 6) Other Conditions and Factors—Additional Explanations:** These blank lines provide space for you to disclose any other important information concerning the property that might affect the buyer's decision-making process, the value of the property, or its use, and to make any other necessary explanations.

**Please note:** By law, sellers are not obligated to disclose that the property is or has been: (1) the 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.

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# RESIDENTIAL SELLER'S PROPERTY DISCLOSURE STATEMENT (SPDS) (TO BE COMPLETED BY SELLER)



The printed portion of this FORM has been approved by the Arizona Association of Realtors®. This is NOT intended to be a binding contract.

## MESSAGE TO THE SELLER:

Sellers are obligated by law to disclose all known material (important) facts about the Property to the Buyer. The SPDS is designed to assist you in making these disclosures. If you know something important about the Property that is not addressed on the SPDS, add that information to the form. Prospective Buyers may rely on the information you provide.

**INSTRUCTIONS:** (1) Complete this form yourself. (2) Answer all questions truthfully and as fully as possible. (3) Attach all available supporting documentation. (4) Use explanation lines as necessary. (5) If you do not have the personal knowledge to answer a question, use the explanation lines to explain. By signing below you acknowledge that the failure to disclose known material information about the Property may result in liability.

## MESSAGE TO THE BUYER:

Although Sellers are obligated to disclose all known material (important) facts about the Property, there are likely facts about the Property that the Sellers do not know. Therefore, it is important that you take an active role in obtaining information about the Property.

**INSTRUCTIONS:** (1) Review this form and any attachments carefully. (2) Verify all important information. (3) Ask about any incomplete or inadequate responses. (4) Inquire about any concerns not addressed on the SPDS. (5) Review all other applicable documents, such as CC&R's, association bylaws, rules, and the title report or commitment. (6) Obtain professional inspections of the Property. (7) Investigate the surrounding area.

THE FOLLOWING ARE REPRESENTATIONS OF THE SELLER(S) AND ARE NOT VERIFIED BY THE BROKER(S) OR AGENT(S).

## OWNERSHIP AND PROPERTY

1. As used herein, "Property" shall mean the real property and all fixtures and improvements thereon and appurtenances incidental there-
2. to, plus fixtures and personal property described in the Contract.
3. **PROPERTY ADDRESS:** \_\_\_\_\_  
(STREET ADDRESS) (CITY) (STATE) (ZIP)
4. Is the Property located in an unincorporated area of the county? ☐ Yes ☐ No If yes, and five or fewer parcels of land other than subdivided
5. land are being transferred, the Seller must furnish the Buyer with a written Affidavit of Disclosure in the form required by law.
6. **LEGAL OWNER(S) OF PROPERTY:** \_\_\_\_\_ Date Purchased: \_\_\_\_\_
7. Is the legal owner(s) of the Property a foreign person or a non-resident alien pursuant to the Foreign Investment in Real Property
8. Tax Act (FIRPTA)? ☐ Yes ☐ No If yes, consult a tax advisor; mandatory withholding may apply.
9. Is the property located in a community defined by the fair housing laws as housing for older persons? ☐ Yes ☐ No
10. Explain: \_\_\_\_\_
11. Approximate year built: \_\_\_\_\_. If Property was built prior to 1978, Seller must furnish the Buyer with a lead-based paint disclosure form.
12. **NOTICE TO BUYER: IF THE PROPERTY IS IN A SUBDIVISION, A PUBLIC REPORT, WHICH CONTAINS A VARIETY OF**
13. **INFORMATION ABOUT THE SUBDIVISION AT THE TIME THE SUBDIVISION WAS APPROVED, MAY BE AVAILABLE BY**
14. **CONTACTING THE ARIZONA DEPARTMENT OF REAL ESTATE OR THE HOMEBUILDER. THE PUBLIC REPORT**
15. **INFORMATION MAY BE OUTDATED.**
16. The Property is currently: ☐ Owner-occupied ☐ Leased ☐ Estate ☐ Foreclosure ☐ Vacant If vacant, how long? \_\_\_\_\_
17. If a rental property, how long? \_\_\_\_\_ Expiration date of current lease: \_\_\_\_\_ (Attach a copy of the lease if available.)
18. If any refundable deposits or prepaid rents are being held, by whom and how much? Explain: \_\_\_\_\_
19. \_\_\_\_\_
- YES NO
20. ☐ ☐ Have you entered into any agreement to transfer your interest in the Property in any way, including rental renewals
21. or options to purchase? Explain: \_\_\_\_\_
22. ☐ ☐ Are you aware if there are any association(s) governing this Property?
23. If yes, provide contact(s) information: Name: \_\_\_\_\_ Phone #: \_\_\_\_\_
24. If yes, are there any fees? How much? \$ \_\_\_\_\_ How often? \_\_\_\_\_
25. ☐ ☐ Are you aware of any proposed or existing association assessment(s)? Explain: \_\_\_\_\_
26. \_\_\_\_\_

YES	NO	
27. <input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any pending or anticipated disputes or litigation regarding the Property or the association(s)?
28.		Explain: _____
29. <input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any of the following recorded against the Property? (Check all that apply):
30.		<input type="checkbox"/> Judgment liens <input type="checkbox"/> Tax liens <input type="checkbox"/> Other non-consensual liens
31.		Explain: _____
32. <input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any assessments affecting this Property? (Check all that apply):
33.		<input type="checkbox"/> Paving <input type="checkbox"/> Sewer <input type="checkbox"/> Water <input type="checkbox"/> Electric <input type="checkbox"/> Other _____
34.		Explain: _____
35. <input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any title issues affecting this Property? (Check all that apply):
36.		<input type="checkbox"/> Recorded easements <input type="checkbox"/> Use restrictions <input type="checkbox"/> Lot line disputes <input type="checkbox"/> Encroachments
37.		<input type="checkbox"/> Unrecorded easements <input type="checkbox"/> Use permits <input type="checkbox"/> Other _____
38.		Explain: _____
39. <input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any public or private use paths or roadways on or across this Property?
40.		Explain: _____
41. <input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any problems with legal or physical access to the Property? Explain: _____
42.		The road/street access to the Property is maintained by the <input type="checkbox"/> County <input type="checkbox"/> City <input type="checkbox"/> Homeowners' Association <input type="checkbox"/> Privately
43. <input type="checkbox"/>	<input type="checkbox"/>	If privately maintained, is there a recorded road maintenance agreement? Explain: _____
44. <input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any violation(s) of any of the following? (Check all that apply):
45.		<input type="checkbox"/> Zoning <input type="checkbox"/> Building Codes <input type="checkbox"/> Utility Service <input type="checkbox"/> Sanitary health regulations
46.		<input type="checkbox"/> Covenants, Conditions, Restrictions (CC&R's) <input type="checkbox"/> Other _____ (Attach a copy of notice(s) of violation if available.)
47.		Explain: _____
48.		_____
49. <input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any homeowner's insurance claims having been filed against the Property?
50.		Explain: _____
51.		<b>NOTICE TO BUYER: YOUR CLAIMS HISTORY, YOUR CREDIT REPORT, THE PROPERTY'S CLAIMS HISTORY</b>
52.		<b>AND OTHER FACTORS MAY AFFECT THE INSURABILITY OF THE PROPERTY AND AT WHAT COST. UNDER</b>
53.		<b>ARIZONA LAW, YOUR INSURANCE COMPANY MAY CANCEL YOUR HOMEOWNER'S INSURANCE WITHIN 60</b>
54.		<b>DAYS AFTER THE EFFECTIVE DATE. CONTACT YOUR INSURANCE COMPANY.</b>

## BUILDING AND SAFETY INFORMATION

YES	NO	
55.		<b>STRUCTURAL:</b>
56. <input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any past or present roof leaks? Explain: _____
57.		_____
58. <input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any other past or present roof problems? Explain: _____
59.		_____
60. <input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any roof repairs? Explain: _____
61.		_____
62. <input type="checkbox"/>	<input type="checkbox"/>	Is there a roof warranty? (Attach a copy of warranty if available.)
63. <input type="checkbox"/>	<input type="checkbox"/>	If yes, is the roof warranty transferable? Cost to transfer _____
64.		<b>NOTICE TO BUYER: CONTACT A PROFESSIONAL TO VERIFY THE CONDITION OF THE ROOF.</b>
65. <input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any interior wall/ceiling/door/window/floor problems? Explain: _____
66.		_____
67. <input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any cracks or settling involving the foundation, exterior walls or slab? Explain: _____
68.		_____
69. <input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any chimney or fireplace problems, if applicable? Explain: _____
70.		_____
71. <input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any damage to any structure on the Property by any of the following? (Check all that apply):
72.		<input type="checkbox"/> Flood <input type="checkbox"/> Fire <input type="checkbox"/> Wind <input type="checkbox"/> Expansive soil(s) <input type="checkbox"/> Water <input type="checkbox"/> Hail <input type="checkbox"/> Other _____
73.		Explain: _____

YES NO

**WOOD INFESTATION**

74. Are you aware of any of the following:
75. ☐ ☐ Past presence of termites or other wood destroying organisms on the Property?
76. ☐ ☐ Current presence of termites or other wood destroying organisms on the Property?
77. ☐ ☐ Past or present damage to the Property by termites or other wood destroying organisms?
78. Explain: \_\_\_\_\_
79. \_\_\_\_\_
80. \_\_\_\_\_
81. ☐ ☐ Are you aware of past or present treatment of the Property for termites or other wood destroying organisms?
82. If yes, date last treatment was performed: \_\_\_\_\_
83. Name of treatment provider: \_\_\_\_\_
84. ☐ ☐ Is there a treatment warranty? (Attach a copy of warranty if available.)
85. ☐ ☐ If yes, is the treatment warranty transferrable?
86. **NOTICE TO BUYER: CONTACT STATE OF ARIZONA STRUCTURAL PEST CONTROL COMMISSION**
87. **FOR PAST TERMITE REPORTS OR TREATMENT HISTORY.**

**HEATING & COOLING:**

88. Heating: Type(s) \_\_\_\_\_
89. Cooling: Type(s) \_\_\_\_\_
90. ☐ ☐ Are you aware of any past or present problems with the heating or cooling system(s)?
91. Explain: \_\_\_\_\_
92. \_\_\_\_\_

**PLUMBING:**

93. Are you aware of the type of water pipes, such as galvanized, copper, PVC, CPVC or polybutylene?
94. ☐ ☐ If yes, identify: \_\_\_\_\_
95. ☐ ☐ Are you aware of any past or present plumbing problems? Explain: \_\_\_\_\_
96. \_\_\_\_\_
97. Are you aware of any water pressure problems? Explain: \_\_\_\_\_
98. Type of water heater(s): ☐ Gas ☐ Electric ☐ Solar Approx. age(s): \_\_\_\_\_
99. ☐ ☐ Are you aware of any past or present water heater problems? Explain: \_\_\_\_\_
100. \_\_\_\_\_
101. Is there a landscape watering system? If yes, type: ☐ automatic timer ☐ manual ☐ both
102. ☐ ☐ If yes, are you aware of any past or present problems with the landscape watering system?
103. Explain: \_\_\_\_\_
104. Are there any water treatment systems? (Check all that apply):
105. ☐ water filtration ☐ reverse osmosis ☐ water softener ☐ Other \_\_\_\_\_
106. Is water treatment system(s) ☐ owned ☐ leased (Attach a copy of lease if available.)
107. ☐ ☐ Are you aware of any past or present problems with the water treatment system(s)?
108. Explain: \_\_\_\_\_
109. \_\_\_\_\_

**SWIMMING POOL/SPA/HOT TUB/SAUNA/WATER FEATURE:**

110. Does the Property contain any of the following? (Check all that apply):
111. ☐ ☐ ☐ Swimming pool ☐ Spa ☐ Hot tub ☐ Sauna ☐ Water feature
112. If yes, are either of the following heated? ☐ Swimming pool ☐ Spa If yes, type of heat: \_\_\_\_\_
113. ☐ ☐ Are you aware of any past or present problems relating to the swimming pool, spa, hot tub, sauna or water feature?
114. Explain: \_\_\_\_\_
115. \_\_\_\_\_

**ELECTRICAL AND OTHER RELATED SYSTEMS:**

116. Are you aware of any past or present problems with the electrical system? Explain: \_\_\_\_\_
117. ☐ ☐ \_\_\_\_\_
118. \_\_\_\_\_

	YES	NO	
119.	<input type="checkbox"/>	<input type="checkbox"/>	Is there a security system? If yes, is it (Check all that apply):
120.			<input type="checkbox"/> Leased (Attach copy of lease if available) <input type="checkbox"/> Owned <input type="checkbox"/> Monitored <input type="checkbox"/> Other _____
121.	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any past or present problems with the security system? Explain: _____
122.			_____
123.	<input type="checkbox"/>	<input type="checkbox"/>	Does the Property contain any of the following systems or detectors? (Check all that apply):
124.			<input type="checkbox"/> Smoke/fire detection <input type="checkbox"/> Fire suppression (sprinklers) <input type="checkbox"/> Carbon monoxide detector
125.			If yes, are you aware of any past or present problems with the above system? Explain: _____
126.			_____
127.			<b>MISCELLANEOUS:</b>
128.	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware of or have you observed any of the following on the Property? (Check all that apply):
129.			<input type="checkbox"/> Scorpions <input type="checkbox"/> Rabid animals <input type="checkbox"/> Bee swarms <input type="checkbox"/> Rodents <input type="checkbox"/> Owls <input type="checkbox"/> Reptiles <input type="checkbox"/> Other: _____
130.			Explain: _____
131.			How often is the Property serviced or treated for pests, reptiles, insects or animals? _____
132.			Name of service provider: _____ Date of last service: _____
133.	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any work done on the Property, such as building, plumbing, electrical or other improvements?
134.			(If no, skip to line 143.)
135.			Explain: _____
136.	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any rooms added to the Property or converted to bedrooms?
137.	<input type="checkbox"/>	<input type="checkbox"/>	Were permits for the work required? Explain: _____
138.	<input type="checkbox"/>	<input type="checkbox"/>	If yes, were permits for the work obtained? Explain: _____
139.	<input type="checkbox"/>	<input type="checkbox"/>	Was the work performed by a person licensed to perform the work? Explain: _____
140.	<input type="checkbox"/>	<input type="checkbox"/>	Was approval for the work required by any association governing the property? Explain: _____
141.			If yes, was approval granted by the association? Explain: _____
142.	<input type="checkbox"/>	<input type="checkbox"/>	Was the work completed? Explain: _____
143.	<input type="checkbox"/>	<input type="checkbox"/>	Are there any security bars or other obstructions to door or window openings? Explain: _____
144.	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any past or present problems with any built-in appliances? Explain: _____
145.			_____
146.	<input type="checkbox"/>	<input type="checkbox"/>	Are there any leased propane tanks, equipment or other systems on the Property? Explain: _____
147.			_____

## UTILITIES

148. DOES THE PROPERTY CURRENTLY RECEIVE THE FOLLOWING SERVICES?			PROVIDER
	YES	NO	
149.	<input type="checkbox"/>	<input type="checkbox"/>	Electricity: _____
150.	<input type="checkbox"/>	<input type="checkbox"/>	Fuel: <input type="checkbox"/> Natural gas <input type="checkbox"/> Propane <input type="checkbox"/> Oil _____
151.	<input type="checkbox"/>	<input type="checkbox"/>	Cable: _____
152.	<input type="checkbox"/>	<input type="checkbox"/>	Telephone: _____
153.	<input type="checkbox"/>	<input type="checkbox"/>	Garbage Collection: _____
154.	<input type="checkbox"/>	<input type="checkbox"/>	Fire: _____
155.	<input type="checkbox"/>	<input type="checkbox"/>	Irrigation: _____
156.	<input type="checkbox"/>	<input type="checkbox"/>	Water <input type="checkbox"/> Source: <input type="checkbox"/> Public <input type="checkbox"/> Private water co. <input type="checkbox"/> Private well <input type="checkbox"/> Shared well <input type="checkbox"/> Hauled water
157.			If water source is a private or shared well, complete and attach DOMESTIC WATER WELL/WATER USE ADDENDUM.
158.			If source is public, a private water company, or hauled water, Provider is: _____
159.	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any past or present drinking water problems? Explain: _____
160.			_____
161.	<input type="checkbox"/>	<input type="checkbox"/>	Are there any alternate power systems serving the Property? If yes, indicate type (Check all that apply):
162.			<input type="checkbox"/> Solar <input type="checkbox"/> Wind <input type="checkbox"/> Generator <input type="checkbox"/> Other _____
163.			If yes, are you aware of any past or present problems with the alternate power system(s)? Explain: _____
164.			_____

## ENVIRONMENTAL INFORMATION

	YES	NO	
165.	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any past or present issues or problems with any of the following on the Property? (Check all that apply):
166.			<input type="checkbox"/> Soil settlement/expansion <input type="checkbox"/> Drainage/grade <input type="checkbox"/> Erosion <input type="checkbox"/> Dampness/moisture <input type="checkbox"/> Other
167.			Explain: _____
168.	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any past or present issues or problems in close proximity to the Property related to any of
169.			the following? (Check all that apply):
170.			<input type="checkbox"/> Soil settlement/expansion <input type="checkbox"/> Drainage/grade <input type="checkbox"/> Erosion <input type="checkbox"/> Other _____
171.			Explain: _____
172.	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware if the Property is subject to any present or proposed effects of any of the following? (Check all that apply):
173.			<input type="checkbox"/> Airport noise <input type="checkbox"/> Traffic noise <input type="checkbox"/> Rail line noise <input type="checkbox"/> Neighborhood noise <input type="checkbox"/> Landfill <input type="checkbox"/> Toxic waste disposal
174.			<input type="checkbox"/> Odors <input type="checkbox"/> Nuisances <input type="checkbox"/> Sand/gravel operations <input type="checkbox"/> Other _____
175.			Explain: _____
176.	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware if the Property is located in the vicinity of an airport (military, public, or private)?
177.			Explain: _____
178.	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware of the presence of any of the following on the Property, past or present? (Check all that apply):
179.			<input type="checkbox"/> Asbestos <input type="checkbox"/> Radon gas <input type="checkbox"/> Lead-based paint <input type="checkbox"/> Pesticides <input type="checkbox"/> Underground storage tanks <input type="checkbox"/> Fuel/chemical storage
180.			Explain: _____
181.	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware if the Property is located within any of the following? (Check all that apply):
182.			<input type="checkbox"/> Superfund/ WQARF/ CERCLA <input type="checkbox"/> Wetlands area
183.	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any open mine shafts/tunnels or abandoned wells on the Property?
184.			If yes, describe location: _____
185.	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware if any portion of the Property is in a flood plain/way? Explain: _____
186.			_____
187.	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any portion of the Property ever having been flooded? Explain: _____
188.			_____
189.	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any water damage or water leaks of any kind on the Property? Explain: _____
190.			_____
191.	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any past or present mold growth on the Property? If yes, explain: _____
192.			_____

## SEWER/WASTEWATER TREATMENT

	YES	NO	
193.	<input type="checkbox"/>	<input type="checkbox"/>	Is the entire Property connected to a sewer? Explain: _____
194.	<input type="checkbox"/>	<input type="checkbox"/>	If yes, has a professional verified the sewer connection? If yes, how and when: _____
195.			<b>NOTICE TO BUYER: CONTACT A PROFESSIONAL TO CONDUCT A SEWER VERIFICATION TEST.</b>
196.			Type of sewer: <input type="checkbox"/> Public <input type="checkbox"/> Private <input type="checkbox"/> Planned and approved sewer system, but not connected
197.			Name of Provider _____
198.	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any past or present problems with the sewer? Explain: _____
199.	<input type="checkbox"/>	<input type="checkbox"/>	Is the Property served by an On-Site Wastewater Treatment Facility? (If no, skip to line 212.)
200.			If yes, the Facility is: <input type="checkbox"/> Conventional septic system <input type="checkbox"/> Alternative system; type: _____
201.	<input type="checkbox"/>	<input type="checkbox"/>	If the Facility is an alternative system, is it currently being serviced under a maintenance contract?
202.			If yes, name of contractor: _____ Phone #: _____
203.			Approximate year Facility installed: _____ (Attach copy of permit if available.)
204.	<input type="checkbox"/>	<input type="checkbox"/>	Are you aware of any repairs or alterations made to this Facility since original installation?
205.			Explain: _____
206.			_____
207.			Approximate date of last Facility inspection and/or pumping of septic tank: _____

YES NO

208. ☐ ☐ Are you aware of any past or present problems with the Facility? Explain: \_\_\_\_\_

209. \_\_\_\_\_

210. NOTICE TO SELLER AND BUYER: THE ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY REQUIRES A

211. PRE-TRANSFER INSPECTION OF ON-SITE WASTEWATER TREATMENT FACILITIES ON RE-SALE PROPERTIES.

## OTHER CONDITIONS AND FACTORS

212. What other material (important) information are you aware of concerning the Property that might affect the buyer's decision-making

213. process, the value of the Property, or its use? Explain: \_\_\_\_\_

214. \_\_\_\_\_

215. \_\_\_\_\_

216. \_\_\_\_\_

217. \_\_\_\_\_

218. \_\_\_\_\_

## ADDITIONAL EXPLANATIONS

219. \_\_\_\_\_

220. \_\_\_\_\_

221. \_\_\_\_\_

222. \_\_\_\_\_

223. \_\_\_\_\_

224. \_\_\_\_\_

225. \_\_\_\_\_

226. \_\_\_\_\_

227. \_\_\_\_\_

228. \_\_\_\_\_

229. \_\_\_\_\_

230. \_\_\_\_\_

231. \_\_\_\_\_

232. **SELLER CERTIFICATION:** Seller certifies that the information contained herein is true and complete to the best of Seller's

233. knowledge as of the date signed. Seller agrees that any changes in the information contained herein will be disclosed in writing by

234. Seller to Buyer prior to Close of Escrow, including any information that may be revealed by subsequent inspections.

235. \_\_\_\_\_

SELLER MO/DA/YR SELLER MO/DA/YR

236. Reviewed and updated: Initials: \_\_\_\_\_

SELLER SELLER MO/DA/YR

237. **BUYER'S ACKNOWLEDGEMENT:** Buyer acknowledges that the information contained herein is based only on the Seller's actual

238. knowledge and is not a warranty of any kind. Buyer acknowledges Buyer's obligation to investigate any material (important) facts in

239. regard to the Property. Buyer is encouraged to obtain Property inspections by professional independent third parties and to

240. consider obtaining a home warranty protection plan.

241. **NOTICE:** Buyer acknowledges that by law, Sellers, Lessors and Brokers are not obligated to disclose that the Property is or has been:

242. (1) the site of a natural death, suicide, homicide, or any other crime classified as a felony; (2) owned or occupied by a person exposed

243. to HIV, diagnosed as having AIDS or any other disease not known to be transmitted through common occupancy of real estate; or (3)

244. located in the vicinity of a sex offender.

245. By signing below, Buyer acknowledges receipt only of this SPDS. If Buyer reasonably disapproves of any items provided

246. herein, Buyer shall deliver to Seller written notice of the items disapproved as provided in the Contract.

247. \_\_\_\_\_

BUYER MO/DA/YR BUYER MO/DA/YR





# Every Buyer is Entitled to a SPDS

By: K. Michelle Lind

August 2000

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Every buyer should receive a Seller's Property Disclosure Statement ("SPDS"). The revised AAR Residential Resale Real Estate Purchase Contract form (5/00) (the "Contract") recognizes the importance of the SPDS and provides at lines 141-142:

Seller Property Disclosure Statement ("SPDS"): Seller shall deliver the SPDS to the Buyer within (5) days after acceptance of the Contract.

Thus, pursuant to the Contract, the seller is required to provide a SPDS in every transaction.

Some sellers are reluctant to provide a SPDS. However, where a seller of real property knows of facts materially affecting the value of the property that are not readily observable and are not known to the buyer, the seller is under a duty to disclose those facts to the buyer. *Hill v. Jones*, 151 Ariz. 81, 725 P.2d 1115 (App. 1986). Additionally, pursuant to the Contract, the seller is obligated to disclose all known material latent defects that materially and adversely affect the consideration to be paid by the buyer. The SPDS will evidence the fact that the seller has made these required disclosures.

Sometimes a seller will initially refuse to complete a SPDS on the basis that the seller has never occupied the property, or perhaps has never even seen the property. However, if the seller owns the property, the seller should be able to answer most of the questions in the "Ownership and Property" section of the AAR SPDS. For example, even an institutional seller who has never seen the property can:

- disclose the address of the property (lines 1-2)
- identify the legal owner of the property (line 3)
- indicate whether the owner is or has occupied the property (line 4)
- indicate whether the property is rented (line 5)
- if the property is rented, indicate the expiration of the rental agreement (line 6)
- if the property is vacant, indicate how long (line 7)
- disclose whether a rental agreement or option been promised (line 8)
- disclose whether security deposits or prepaid rents are being held (line 9)
- disclose whether the owner has entered into any agreement to transfer an interest in the property in any way (line 10-11)

Additionally, most sellers know whether the property is in a homeowner's association ("HOA") and whether there are HOA fees (lines 12-15). Arizona law mandates seller disclosure of these and other HOA issues in HOAs with less than 50 units. The seller may also be aware of liens, assessments, or title problems (lines 17-19).

If there are questions on the SPDS for which the seller does not know the answers, the seller can simply indicate "unknown." The fact that certain information is unknown by the seller can be important to the buyer.

Despite the forgoing, some sellers still refuse to provide a SPDS. If a listing states that a SPDS is not available, or will not be provided, a buyer's broker should nonetheless advise the buyer to request the SPDS in the offer. The seller can respond to the offer requesting a SPDS with a counter offer that a SPDS will not be provided. However, before the buyer accepts the counter offer indicating that a SPDS will not be provided, a buyer's broker should provide the buyer with a blank copy of the SPDS form, which will enable the buyer to make an

informed decision regarding whether to waive the SPDS. In these circumstances, a buyer's broker would be wise to obtain the buyer's written acknowledgment of receipt of the blank form.

A buyer should never waive a SPDS without seeing the SPDS form. Even a blank SPDS is valuable to the buyer. The buyer can and should utilize a blank SPDS as a checklist in conducting the desired inspections and investigations. The SPDS can prompt questions that will assist the buyer in evaluating the property.

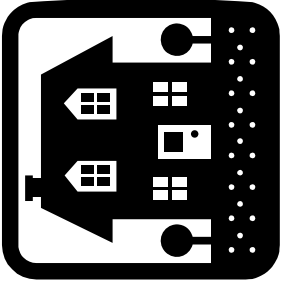
Clearly, the SPDS is a valuable tool for both buyers and sellers in a real property transaction. Therefore, every buyer should receive a SPDS.

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*Arizona Department of Real Estate*

## **BUYER ADVISORY**

***Provided by the Arizona Association of REALTORS®***

A real estate agent is vital to the purchase of real property and can provide a variety of services in locating a property, negotiating the sale, and advising the buyer. A real estate agent is generally not qualified to discover defects or evaluate the physical condition of property; however, a real estate agent can assist a buyer in finding qualified inspectors and provide the buyer with documents and other resources containing vital information about a prospective property.

This advisory is designed to make the purchase of real property as smooth as possible. Some of the more common issues that a buyer may decide to investigate or verify concerning a property purchase are summarized in this Advisory. Included in this Advisory are: (1) common documents a buyer should review; (2) physical conditions in the property the buyer should investigate; and (3) conditions affecting the surrounding area that the buyer should investigate. In addition, a buyer must communicate to the real estate agents in the transaction any special concerns the buyer may have about the property or surrounding area, whether or not those issues are addressed in this Advisory.

**REMEMBER:** *This Advisory is supplemental to obtaining professional property inspections. Professional property inspections are absolutely essential: there is no practical substitute for a professional inspection as a measure to discover and investigate defects or shortcomings in a property.*

*June 2007*

## **COMMON DOCUMENTS A BUYER SHOULD REVIEW**

*The documents listed below may not be relevant in every transaction, nor is the list exhaustive. Unless otherwise stated, the real estate agent has not independently verified the information contained in these documents.*

### **Purchase Contract**

Buyers should protect themselves by taking the time to read the real estate purchase contract and understand their legal rights and obligations before they submit an offer to buy a property.

### **MLS Printout**

A listing is an agreement between the seller and the listing agent and may authorize the listing agent to submit information to the Multiple Listing Service ("MLS"). The MLS printout is similar to an advertisement and contains various abbreviations and symbols. Neither the listing agreement nor the printout is a part of the purchase contract between the buyer and seller. The printout contains a limited description of a property, such as its size, encumbrances, utilities, amenities, etc. The information was probably secured from the seller, the builder, or a governmental agency, and could be inaccurate, incomplete or an approximation. Therefore, the buyer should verify any important information contained in the MLS.

### **The Subdivision Public Report**

Developers are required to give new home buyers in a subdivision an Arizona Department of Real Estate ("ADRE") Public Report. The Public Report should be read before signing any contract to purchase a new home. Although some of the information becomes outdated or is no longer accurate, subsequent buyers may also benefit from reviewing the Public Report. Public Reports dating from January 1, 1997, are now or will be available on the ADRE website at <http://159.87.254.2/publicdatabase/>. The purpose of the Public Report is to point out material information about the development. For example, the section of the Public Report entitled "Adjacent Lands and Vicinity" will disclose adjacent land uses that may be of concern. Note, however, that the Public Report is prepared by the subdivider, could be inaccurate, and should be verified.

*Initials* \_\_\_\_\_ / \_\_\_\_\_

The ADRE does not independently verify the information in the Public Report. Additional information about the Public Report may be found on the ADRE website at [www.azre.gov/PUBLIC\\_INFO/Documents/Property\\_Buyer\\_Checklist.html](http://www.azre.gov/PUBLIC_INFO/Documents/Property_Buyer_Checklist.html)

### **Seller's Property Disclosure Statement ("SPDS")**

Most sellers provide a SPDS. This document poses a variety of questions for the seller to answer about the property and its condition. A buyer should carefully review the SPDS and verify those statements of concern. The ADRE advises: "Read the seller's property disclosure report, and check every item on it. Ask to see receipts for repairs to the home. . . . Look for stains on the ceilings or carpets that might indicate water damage. Read the purchase contract carefully to determine if there are any deadlines for challenging the seller's disclosure report or for having your own inspections conducted."

[www.azre.gov/PUBLIC\\_INFO/Documents/Property\\_Buyer\\_Checklist.html](http://www.azre.gov/PUBLIC_INFO/Documents/Property_Buyer_Checklist.html)

A real estate agent is not responsible for verifying the accuracy of the items on the SPDS. If the real estate agent is aware of a misrepresentation, the agent is required to disclose it to their client, but the agent is not required to confirm all the information on the report. Remember, your review of the SPDS is not a substitute for professional inspections.

### **Covenants, Conditions and Restrictions ("CC&Rs")**

The CC&Rs are recorded against the property and generally empower a homeowner's association to control certain aspects of property use within the development. By purchasing a property in such a development, the buyer agrees to be bound by the CC&Rs. Thus, the CC&Rs form an enforceable contract. The association, the property owners as a whole, and individual property owners can enforce the contract. It is essential that the buyer review and agree to these restrictions prior to purchasing a property.

The ADRE advises: "Read the deed restrictions, also called CC&Rs (covenants, conditions and restrictions). You might find some of the CC&Rs are very strict, especially those addressing landscaping, RV parking, play equipment, satellite antennas, and other common amenities — particularly if the subdivision is governed by a homeowner's association."

[www.azre.gov/PUBLIC\\_INFO/Documents/Property\\_Buyer\\_Checklist.html](http://www.azre.gov/PUBLIC_INFO/Documents/Property_Buyer_Checklist.html)

A short but informative document on the purpose and effect of CC&Rs may be read at [www.realtor.com/BASICS/condos/ccr.asp](http://www.realtor.com/BASICS/condos/ccr.asp). Buyers should consult legal counsel if uncertain of the application of particular provisions in the CC&Rs.

### **Homeowner's Association ("HOA") Governing Documents**

In addition to CC&Rs, HOAs may be governed by Articles of Incorporation, Bylaws, Rules and Regulations, and often architectural control standards. The HOA is in place to own and operate portions of a planned community and attempts to preserve the value of property in the condominium or planned community. Read and understand these documents. Also, be aware that some HOAs impose fees that must be paid when the property is sold, so it is important to ask if the purchase of the property will result in any fees. Condominium and planned community HOAs are also regulated by Arizona statutes; however, they are not under the jurisdiction of the Department of Real Estate. If you have questions about your rights and remedies regarding homeowner's associations or community associations, read the information provided at

[www.azre.gov/PUBLIC\\_INFO/Documents/Purchasing\\_A\\_Home\\_Read\\_This.html#LINK11](http://www.azre.gov/PUBLIC_INFO/Documents/Purchasing_A_Home_Read_This.html#LINK11)

### **HOA Disclosures**

If purchasing a resale home in a condominium or planned community, the seller (if fewer than 50 units in the community) or the HOA (if there are 50 or more units) must provide the buyer with a disclosure containing a variety of information, including the principal contact for the association, assessments, the money held by the association as reserves and, if the statement is being furnished by the association, a statement as to whether the records of the association reflect any alterations or improvements to the unit that violate the declaration. See [www.azleg.state.az.us/ars/33/01260.htm](http://www.azleg.state.az.us/ars/33/01260.htm) and [www.azleg.state.az.us/ars/33/01806.htm](http://www.azleg.state.az.us/ars/33/01806.htm) for the laws detailing these requirements.

### **Title Report or Title Commitment**

The title report or commitment contains important information and is provided to the buyer by the title/escrow company or agent. This report or commitment lists documents that are exceptions to the title insurance (Schedule B Exceptions). Schedule B Exceptions may include



encumbrances, easements, and liens against the property, some of which may affect the use of the property, such as a future addition or swimming pool. Make sure you receive and review all of the listed documents. Questions about the title commitment and Schedule B documents may be answered by the title or escrow officer, legal counsel, or a surveyor. General information regarding title issues may be found at [www.alta.org/consumer/questions.cfm](http://www.alta.org/consumer/questions.cfm) or obtained from the title/escrow company employed in the transaction.

### **Loan Documents**

Unless a buyer is paying cash, the buyer must qualify for a loan in order to complete the purchase. A buyer should complete a loan application with a mortgage broker or a mortgage banker before making an offer on a property if at all possible and, if not, immediately after making an offer. It will be the buyer's responsibility to deposit any down payment and insure that the buyer's lender deposits the remainder of the purchase price into escrow prior to the close of escrow date. Therefore, make sure you get all requested documentation to your lender as soon as possible. For information on loans and the lending process, visit the following websites:

Ginnie Mae:

[www.ginniemae.gov/2\\_prequal/intro\\_questions.asp?Section=YPTH](http://www.ginniemae.gov/2_prequal/intro_questions.asp?Section=YPTH)  
HUD: [www.hud.gov/](http://www.hud.gov/)

Mortgage Bankers Association: [www.mbaa.org/](http://www.mbaa.org/)

National Association of Mortgage Brokers: [www.namb.org/](http://www.namb.org/)

### **Home Warranty Policy**

A home warranty may be part of the sale of the home. Buyers should read the home warranty document for coverage and limitation information. Be aware that pre-existing property conditions are generally not covered under these policies.

### **Affidavit of Disclosure**

If the buyer is purchasing five or fewer parcels of land (whether improved or vacant), other than subdivided land, in an unincorporated area of a county, the seller must furnish the buyer with an Affidavit of Disclosure. A sample form is located at [www.aaronline.com/documents/affidavit.aspx](http://www.aaronline.com/documents/affidavit.aspx).

### **Lead-Based Paint Disclosure Form**

If the home was built prior to 1978, the seller must provide the buyer with a lead-based paint disclosure form. Information about lead-based paint may be obtained at

[www.azre.gov/PUBLIC\\_INFO/Documents/Purchasing\\_A\\_Home\\_Read\\_This.html#LINK12](http://www.azre.gov/PUBLIC_INFO/Documents/Purchasing_A_Home_Read_This.html#LINK12) or [www.epa.gov/lead/](http://www.epa.gov/lead/).

### **County Assessors/Tax Records**

The county assessor's records contain a variety of valuable information, including the assessed value of the property for tax purposes and some of the physical aspects of the property, such as the reported square footage. The date built information in the assessor's records can be either the actual or effective/weighted age if the residence has been remodeled. All information on the site should be verified for accuracy. Information is available on county websites:

Coconino: [www.coconino.az.gov/](http://www.coconino.az.gov/)

Maricopa: [www.maricopa.gov/assessor and http://treasurer.maricopa.gov/parcels/](http://www.maricopa.gov/assessor_and_http://treasurer.maricopa.gov/parcels/)

Pima: [www.co.pima.az.us/navigate.aspx?L1=1&L2=11](http://www.co.pima.az.us/navigate.aspx?L1=1&L2=11)

Yavapai: [www.co.yavapai.az.us/](http://www.co.yavapai.az.us/)

Other counties: [www.az.gov/webapp/portal](http://www.az.gov/webapp/portal)

### **Professional Home Inspection Report**

For the buyer's protection, the importance of having a home inspected by a professional home inspector cannot be over-emphasized, regardless of whether the home is new or a resale. A home inspection is a visual physical examination, performed for a fee, designed to identify material defects in the home. The home inspector will generally provide the buyer with a report detailing information about the home's condition. The inspector and the report will point out existing problems and possible potential problems. The buyer should carefully review this report with the inspector and ask the inspector about any item of concern. Pay attention to the scope of the inspection and any portions of the property excluded from the inspection.

Home inspectors must be licensed by the State of Arizona. A list of certified home inspectors may be found at the Arizona Board of Technical Registration website, [www.btr.state.az.us](http://www.btr.state.az.us). Additional information on



inspections may be found at the American Society of Home Inspectors website, [www.ashi.com](http://www.ashi.com), and guidance on hiring a home inspector may be found at [www.realtor.com/basics/buy/inspnegot/hire.asp?gate=realtor&poe=propertystore](http://www.realtor.com/basics/buy/inspnegot/hire.asp?gate=realtor&poe=propertystore)

### **Termites and Other Wood Destroying Insects and Organisms**

Termites are commonly found in some parts of Arizona. Investigating evidence of termites or other wood infestation is the job of the pest inspector. The Structural Pest Control Commission ("SPCC") regulates these inspectors and can provide the buyer with information regarding past termite treatments on a property. The SPCC publication, *What You Should Know About Wood Infestation Reports*, can be found at [www.sb.state.az.us/TermiteInsp.php](http://www.sb.state.az.us/TermiteInsp.php). Additional information may be obtained at the SPCC website at [www.sb.state.az.us](http://www.sb.state.az.us) or by calling 800-223-0618.

### **COMMON PHYSICAL CONDITIONS IN THE PROPERTY A BUYER SHOULD INVESTIGATE**

*Every buyer and every property is different, so the physical property conditions requiring investigation will vary.*

#### **Repairs and New Construction**

The seller may have made repairs or added a room to the property. For example, the property may have an obvious improvement, covered patio, or garage, or may have been remodeled. The buyer should feel comfortable that the work was properly done or have an expert evaluate the work. Request copies of permits, invoices or other documentation regarding the work performed. The Registrar of Contractors' ("ROC") publication, *Hiring a Licensed Contractor*, is available on the ROC website, [www.rc.state.az.us/Consumer\\_menu.html](http://www.rc.state.az.us/Consumer_menu.html). The Arizona Chapter of the National Association of the Remodeling Industry may be contacted at <http://aznari.com/>. For information regarding permits, contact the city or county building department.

### **Roof**

The inspector might recommend that you have the roof further inspected by a licensed roofer. If the roof is 10 years old or older, a roof inspection by a licensed roofer is highly recommended. See the ROC information on hiring a licensed contractor online at [www.rc.state.az.us/Consumer\\_menu.html](http://www.rc.state.az.us/Consumer_menu.html) or the Arizona Roofing Contractors Association at [www.azroofing.org](http://www.azroofing.org).

### **Swimming Pools and Spas**

If the property has a pool or a spa, the home inspector might determine the cleaning system is not working properly or may exclude the pool or spa from the general inspection. It would then be necessary to have a pool or spa company inspect the pool or spa and evaluate any problem. See the Arizona Chapter of the National Spa and Pool Institute at [www.azpoolspas.org](http://www.azpoolspas.org).

### **Swimming Pool Barriers**

Each city and county has its own swimming pool barrier ordinance. Pool barrier contact information for Arizona cities and counties may be found at [www.aaronline.com/documents/pool\\_contacts.aspx](http://www.aaronline.com/documents/pool_contacts.aspx). The Arizona Department of Health Services Private Pool Safety notice may be found at [www.hs.state.az.us/diro/admin\\_rules/pool\\_rules.htm](http://www.hs.state.az.us/diro/admin_rules/pool_rules.htm). The state law on swimming pools is located at [www.azleg.state.az.us/ars/36/01681.htm](http://www.azleg.state.az.us/ars/36/01681.htm).

### **Square Footage**

Square footage on the MLS printout or as listed by the county assessor's records is often only an estimate and generally should not be relied upon for the exact square footage in a property. An appraiser or architect can measure the property's size to verify the square footage. If the square footage is important, you should have it confirmed by one of these experts during the inspection period in a resale transaction and prior to executing a contract in a new home transaction. A list of appraisers may be found at the Arizona Board of Appraisal, [www.appraisal.state.az.us/Directory/directory.html](http://www.appraisal.state.az.us/Directory/directory.html). A list of architects may be found at the Board of Technical Registration, [www.btr.state.az.us](http://www.btr.state.az.us).

## Sewer

Even if the listing or SPDS indicates that the property is connected to the city sewer, a plumber, home inspector, or other professional should verify it. Some counties and cities can perform this test as well.

## Septic and Other On-Site Wastewater Treatment Facilities

If the home is not connected to a public sewer, it is probably served by an on-site wastewater treatment facility (septic or alternative system). A qualified inspector must inspect any such facility six months prior to transfer of ownership. For information on current inspection and transfer of ownership requirements, contact the county environmental/health agency or the Arizona Department of Environmental Quality at [www.adeq.state.az.us/environ/water/permits/wastewater.html](http://www.adeq.state.az.us/environ/water/permits/wastewater.html).

## Water/Well Issues

You should investigate the availability and quality of the water to the property. For information on wells and assured/adequate water, go to [www.azwater.gov/dwr/Content/Find\\_by\\_Program/Wells/default.htm](http://www.azwater.gov/dwr/Content/Find_by_Program/Wells/default.htm) or [www.azwater.gov/WaterManagement\\_2005/Content/OAAWS/default.asp](http://www.azwater.gov/WaterManagement_2005/Content/OAAWS/default.asp). Arizona is undertaking several General Stream Adjudications, which are court proceedings to determine the extent and priority of water rights in an entire river system. For information regarding water uses and watersheds affected by these adjudications, and the forms upon sale of the property, contact the Department of Water Resources at [www.azwater.gov/dwr/Content/Find\\_by\\_Program/Adjudications/default.htm](http://www.azwater.gov/dwr/Content/Find_by_Program/Adjudications/default.htm).

Additionally, the Verde Valley Water Users assists members in matters pertaining to the Gila River System Adjudication. [www.verdevalleywaterusers.org/](http://www.verdevalleywaterusers.org/)

## Soil Problems

The soil in some areas of Arizona has “clay-like” tendencies, sometimes referred to as “expansive soil.” Other areas are subject to fissures, subsidence and other soil conditions. For additional information on earth fissures, visit [www.azwater.gov/dwr/Content/Hot\\_Topics/Earth\\_Fissures\\_in\\_Arizona/Earth\\_Fissures\\_in\\_Arizona.pdf](http://www.azwater.gov/dwr/Content/Hot_Topics/Earth_Fissures_in_Arizona/Earth_Fissures_in_Arizona.pdf). Properties built on such soils may experience significant movement causing a major problem. If it has been disclosed that the property is subject to any such soil conditions or if the buyer has any

concerns about the soil condition or observes evidence of cracking, the buyer should secure an independent assessment of the property and its structural integrity by a licensed, bonded, and insured professional engineer. To investigate areas in Arizona where expansive soils exist, go to [www.az.nrcs.usda.gov](http://www.az.nrcs.usda.gov) (search “shrink/swell”) or [www.azgs.az.gov](http://www.azgs.az.gov) (“Geologic Hazards”). A list of state certified professional engineers and firms can be found at [www.btr.state.az.us](http://www.btr.state.az.us).

## Previous Fire/Flood

If it is disclosed there has been a fire or flood on the property, a qualified inspector should be hired to advise you regarding any possible future problems as a result of the fire or flood damage and/or any subsequent repairs. For example, if the property was not properly cleaned after a flood, mold issues may result. Your insurance agent may be able to assist you in obtaining information regarding fire, flood, or other past damage to the property.

## Pests

Cockroaches, rattlesnakes, black widow spiders, scorpions, termites and other pests are common in parts of Arizona. Fortunately, most pests can be controlled with pesticides. Scorpions, on the other hand, may be difficult to eliminate. If the buyer has any concerns or if the SPDS indicates the seller has seen scorpions or other pests on the property, you should seek the advice of a pest control company.

A source of information on scorpions may be found at [www.desertusa.com/oct96/du\\_scorpion.html](http://www.desertusa.com/oct96/du_scorpion.html).

For information on roof rats, which have been reported in some areas, go to [www.maricopa.gov/envsvc/WATER/VECTOR/roofrats.asp](http://www.maricopa.gov/envsvc/WATER/VECTOR/roofrats.asp).

For information on termites or bark beetles, which have been reported in some forested areas, see [www.sb.state.az.us/](http://www.sb.state.az.us/).

## Endangered and Threatened Species

Certain areas in the state may have issues related to federally listed endangered or threatened species that may affect land uses. Further information may be obtained by going to the U.S. Fish and Wildlife website, [www.fws.gov/southwest/es/arizona/](http://www.fws.gov/southwest/es/arizona/), or contact the appropriate planning/development service department.

## Deaths and Felonies on the Property

An Arizona law states that sellers and real estate licensees have no liability for failure to disclose to a buyer that the property was ever the site of a natural death, suicide, murder or felony; see [www.azleg.state.az.us/ars/32/02156.htm](http://www.azleg.state.az.us/ars/32/02156.htm). This information is often difficult to uncover; however, the local law enforcement agency may be able to identify calls made to the property address.

## Mold

Mold has always been with us, and it is a rare property that does not have some mold. However, over the past few years a certain kind of mold has been identified as a possible contributor to illnesses. Allergic individuals may experience symptoms related to mold. Mold growth is found underneath materials where water has damaged surfaces, or behind walls. A pamphlet, *Mold in my Home: What Do I Do?*, prepared by the Arizona Department of Health Services, Office of Environmental Health, states: "If you can see mold, or if there is an earthy or musty odor, you can assume you have a mold problem." [www.hs.state.az.us/phs/oeht/invsturv/air\\_qual/mold\\_contents.htm](http://www.hs.state.az.us/phs/oeht/invsturv/air_qual/mold_contents.htm) The Environmental Protection Agency (EPA) and Centers for Disease Control and Prevention websites also contain valuable information: [www.epa.gov/iaq/molds/moldresources.html](http://www.epa.gov/iaq/molds/moldresources.html) and [www.cdc.gov/mold/default.htm](http://www.cdc.gov/mold/default.htm).

## Other Indoor Air Quality Concerns

Radon gas and carbon monoxide poisoning are two of the more common and potentially serious indoor air quality ("IAQ") concerns. Both of these concerns can be addressed by the home inspector, usually for an additional fee. As for the many other IAQ concerns, the EPA has a host of resource materials and pamphlets available at [www.epa.gov/iaq/iaqinfo.html](http://www.epa.gov/iaq/iaqinfo.html) and [www.epa.gov/iaq/pubs/index.html](http://www.epa.gov/iaq/pubs/index.html). For information on radon levels in the state go to [www.arra.state.az.us/radon.htm](http://www.arra.state.az.us/radon.htm).

## Property Boundaries

If the property boundaries are of concern, a survey may be warranted. For example, a survey may be advisable if there is an obvious use of property by others (i.e., a well-worn path across a property and/or parked cars on the property) or fences or structures of adjacent property owners that appear to be built on the property. For more information, visit the Arizona Professional

Land Surveyors website at [www.azpls.org](http://www.azpls.org). A list of surveyors may be obtained from the Board of Technical Registration at [www.btr.state.az.us](http://www.btr.state.az.us).

## Flood Plain Status

If the property is in a flood zone, an additional annual insurance premium of several hundred dollars may be required (check with your insurance agent about cost and coverage). If the property is in an area deemed high risk, the buyer may be required by the lender to obtain flood hazard insurance through the National Flood Insurance Program. Find details on flood plain status at:

Maricopa County: [www.fcd.maricopa.gov/Maps/](http://www.fcd.maricopa.gov/Maps/)

Pima County: [www.rfcd.pima.gov](http://www.rfcd.pima.gov)

Other parts of the state: [www.azgs.state.az.us/flood\\_links.htm](http://www.azgs.state.az.us/flood_links.htm)

FEMA's Flood Map Service Center: [www.fema.gov/hazard/flood/index.shtml](http://www.fema.gov/hazard/flood/index.shtml)

## Insurance (Claims History)

Many factors affect the availability and cost of homeowner's insurance. Depending on the insurance company, these factors may include past insurance claims filed on the property being purchased, past insurance claims filed by the buyer on previous properties, and the buyer's credit score. Some insurance companies use a database known as the Comprehensive Loss Underwriting Exchange ("C.L.U.E.") in their underwriting practices to track the insurance claim history of a property and of the person applying for insurance coverage.

To reduce the risk of insurance cancellation, a buyer should ask their insurance agent about the company's underwriting practices and request that their insurance agent confirm in writing the availability and cost of insurance early in any real estate transaction. Although a buyer cannot directly obtain the claims history of a property, a buyer may ask the seller to provide a copy. However, be aware that obtaining a claims history or C.L.U.E. report on a property will not give a buyer all the necessary information to determine insurability, since not all insurance companies use this information or use it in the same manner.

Property owners may request a five year claims history from their insurance agent or purchase a C.L.U.E. report online at [www.choicetrust.com](http://www.choicetrust.com) or by calling 866-527-2600. For more detailed information on homeowner's



insurance, please read "*The New Reality of Property Insurance - What You Should Know*" at [www.aaronline.com/documents/insurance.pdf](http://www.aaronline.com/documents/insurance.pdf).

For additional insurance information or to file a complaint against an insurance company, visit the Arizona Department of Insurance website at [www.id.state.az.us/](http://www.id.state.az.us/)

### **Other Property Conditions**

**Plumbing:** Check functionality. Also, a national class action suit has been settled, providing relief for qualifying leaks in polybutylene pipes (PB). For more information, see [www.pbpipe.com](http://www.pbpipe.com) or [www.aaronline.com/documents/polyb.aspx](http://www.aaronline.com/documents/polyb.aspx).

**Cooling/Heating:** Make sure the cooling and heating systems are adequate. As of 1/23/06, manufacturers that produce residential air conditioners and heat pumps must meet the new government minimum standard of 13 seasonal energy efficiency rating or "SEER" standard for residential central air conditioners. Check with a licensed contractor and your home warranty company about the implications of this requirement. Arizona State Chapter affiliate of the Air Conditioning Contractors of America: [www.acca-az.org/](http://www.acca-az.org/).

**Electrical Systems:** Check for function and safety.

### **CONDITIONS AFFECTING THE AREA SURROUNDING THE PROPERTY THE BUYER SHOULD INVESTIGATE**

*Every property is unique; therefore, important conditions vary.*

#### **Environmental Concerns**

It is often very difficult to identify environmental hazards. For environmental information, search the ADEQ website at [www.adeq.state.az.us](http://www.adeq.state.az.us). The ADEQ website contains information regarding the locations of open and closed landfills (Solid Waste Facilities) at [www.adeq.state.az.us/environ/waste/solid/other.html](http://www.adeq.state.az.us/environ/waste/solid/other.html) and wildfire information at [www.adeq.state.az.us/function/about/wildfire.html](http://www.adeq.state.az.us/function/about/wildfire.html), as well as air quality information, water quality information and more.

### **Electromagnetic Fields**

For information on electromagnetic fields and whether they pose a health risk to you or your family, visit the following websites: [www.niehs.nih.gov/emfrapid/booklet/home.htm](http://www.niehs.nih.gov/emfrapid/booklet/home.htm) [www.cancer.org/docroot/NWS/content/NWS\\_1\\_1x\\_Electromagnetic\\_Fields\\_and\\_Cancer\\_Risk.asp](http://www.cancer.org/docroot/NWS/content/NWS_1_1x_Electromagnetic_Fields_and_Cancer_Risk.asp) <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=31421>

### **Superfund Sites**

There are numerous sites in Arizona where the soil and groundwater have been contaminated by improper disposal of contaminants. To check if a property is in an area designated by the ADEQ as requiring cleanup, see [www.adeq.state.az.us/environ/waste/sps/phx.html](http://www.adeq.state.az.us/environ/waste/sps/phx.html) for available maps to view. The EPA also has information on Federal sites at [www.epa.gov/superfund/spanish/index.htm](http://www.epa.gov/superfund/spanish/index.htm) (Spanish).

### **Freeway Construction and Traffic Conditions**

Although the existence of a freeway near the property may provide highly desirable access, sometimes it contributes to undesirable noise. To search for roadway construction and planning, go to the Arizona Department of Transportation ("ADOT") website at [www.azdot.gov/Highways/](http://www.azdot.gov/Highways/). Check ADOT maps to find the nearest future freeway routes and roads in the area slated for widening. For traffic conditions, visit [www.az511.com/](http://www.az511.com/).

### **Crime Statistics**

Crime statistics, while an imperfect measurement at best, nevertheless provide some indication of the level of criminal activity in an area. To check the crime statistics for the cities of Phoenix, Tempe, Glendale, Mesa, Scottsdale, Chandler, Gilbert and Peoria, go to [www.faxnet1.org](http://www.faxnet1.org). A visit or phone call to other law enforcement agencies may be required. For a list of all Arizona city links, go to [www.azleague.org](http://www.azleague.org). To find crime statistics on their websites, you may need to search for "crime statistics."

### **Sex Offenders**

Since June 1996, Arizona has had a registry and community notification program for convicted sex offenders. This information may be accessed at [www.azsexoffender.org](http://www.azsexoffender.org). Prior to June 1996, registration was not required, and only the higher-risk sex offenders are on the website. The presence of a

sex offender in the vicinity of the property is not a fact that the seller or real estate agent is required to disclose. The city of Glendale has a new website to update residents on sex offenders in the city; go to [www.glendaleaz.com/police/sexoffenderinfocenter.cfm](http://www.glendaleaz.com/police/sexoffenderinfocenter.cfm) for more information.

### **Military and Public Airports**

The legislature has mandated the identification of areas in the immediate vicinity of military and public airports that are susceptible to a certain level of noise from aircraft. The boundaries of these areas have been plotted on maps that are useful in determining if a property falls within one of these areas. The map for military airports may be accessed at [www.azre.gov/PUBLIC\\_INFO/Airport\\_Maps/Territory in the Vicinity of a Military Airport.html](http://www.azre.gov/PUBLIC_INFO/Airport_Maps/Territory_in_the_Vicinity_of_a_Military_Airport.html).

View maps for many of the public airports at [www.azre.gov/PUBLIC\\_INFO/Airport\\_Maps/Territory in the Vicinity of a Public Airport.html](http://www.azre.gov/PUBLIC_INFO/Airport_Maps/Territory_in_the_Vicinity_of_a_Public_Airport.html). These maps are intended to show the areas subject to the preponderance of airport-related noise from a given airport. Periodic over-flights that may contribute to noise cannot usually be determined from these maps.

### **Forested Areas**

Life in a forested area has unique benefits and concerns. For information on protecting your property from wildfire, go to [www.firewise.org](http://www.firewise.org), or [www.land.state.az.us/divisions/fire.htm](http://www.land.state.az.us/divisions/fire.htm). See also Arizona Firewise Communities, <http://cals.arizona.edu/firewise/>. Contact county/city fire authority for information on issues particular to your community.

### **Zoning/Planning/Neighborhood Services**

Phoenix: [www.phoenix.gov/PLANNING/index.html](http://www.phoenix.gov/PLANNING/index.html)  
Scottsdale: [www.scottsdaleaz.gov/Topic.asp?catID=1](http://www.scottsdaleaz.gov/Topic.asp?catID=1)  
Tucson: [www.ci.tucson.az.us/planning.html](http://www.ci.tucson.az.us/planning.html)  
Other cities and towns: [www.azleague.org](http://www.azleague.org)

### **Schools**

Although there is no substitute for an on-site visit to the school to talk with principals and teachers, there is a significant amount of information about Arizona's schools on the Internet. Public and charter school information may

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be accessed at [www.ade.state.az.us](http://www.ade.state.az.us). The ADRE advises: "Call the school district serving the subdivision to determine whether nearby schools are accepting new students. Some school districts, especially in the northwest part of the greater Phoenix area, have placed a cap on enrollment. You may find that your children cannot attend the school nearest you and may even be transported to another community."  
[www.azre.gov/PUBLIC\\_INFO/Documents/Property\\_Buyer\\_Checklist.html](http://www.azre.gov/PUBLIC_INFO/Documents/Property_Buyer_Checklist.html)

## **OTHER METHODS TO OBTAIN INFORMATION ABOUT A PROPERTY**

### **Talk to the Neighbors**

Neighbors can provide a wealth of information. Buyers should always talk to the surrounding residents about the neighborhood and the history of the property the buyer is considering for purchase.

### **Drive around the Neighborhood**

Buyers should always drive around the neighborhood, preferably on different days at several different times of the day and evening, to investigate the surrounding area.

## **FOR INFORMATION ABOUT ARIZONA GOVERNMENT**

Links to state agencies, city and county websites: [www.az.gov](http://www.az.gov)  
Maps and information based on address (Geographic Information System): [www.az.gov/webapp/govinfo/main.do](http://www.az.gov/webapp/govinfo/main.do)

## **FOR INFORMATION ABOUT FAIR HOUSING AND DISABILITY LAWS**

The Fair Housing Act prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children

under the age of 18), and handicap (disability). For more information, visit HUD's Fair Housing/Equal Opportunity website at [www.hud.gov/groups/fairhousing.cfm](http://www.hud.gov/groups/fairhousing.cfm). For information on the Americans with Disabilities Act, visit [www.usdoj.gov/crt/ada/adahom1.htm](http://www.usdoj.gov/crt/ada/adahom1.htm). For the Arizona Office for Americans with Disabilities, visit [www.azada.gov](http://www.azada.gov).

#### **FOR ADDITIONAL INFORMATION**

Arizona Association of REALTORS® ("AAR"): [www.aaronline.com](http://www.aaronline.com)  
(Consumer Assistance)

Arizona Department of Real Estate ("ADRE"): [www.azre.gov/](http://www.azre.gov/) (Consumer Information)

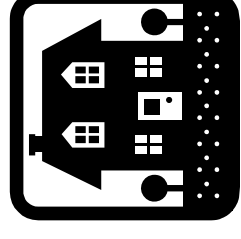
NATIONAL ASSOCIATION OF REALTORS® ("NAR"):

[www.realtor.com](http://www.realtor.com)

NAR's Ten Steps to Homeownership:

<http://finance.move.com/homefinance/guides/buyers/default.asp?lnksrc=FIN>

[HPGDS002&poe=move&tran=vud](http://PGDS002&poe=move&tran=vud)



*Arizona Department of Real Estate*

## **BUYER ADVISORY**

*Provided by the Arizona Association of REALTORS®*

### **BUYER ACKNOWLEDGMENT**

Buyer acknowledges receipt of all nine pages of this Advisory. Buyer further acknowledges that there may be other disclosure issues of concern not listed in this Advisory. Buyer is responsible for making all necessary inquiries and consulting the appropriate persons or entities prior to the purchase of any property.

The information in this Advisory is provided with the understanding that it is not intended as legal or other professional services or advice. These materials have been prepared for general informational purposes only. The information and links contained herein may not be updated or revised for accuracy. If you have any additional questions or need advice, please contact your own lawyer or other professional representative.

Buyer's Signature

MO/DA/YR

Buyer's Signature

MO/DA/YR



Did you know that Builders could be held responsible for their construction for up to 8 years?


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## Frequently Asked Questions



### OUR MOST OFTEN-ASKED QUESTION FROM CLIENTS:

Is it a fact that the builder owes warranties to me against construction defects or failure even if these are NOT stated in the contract I have with him?

**ANSWER:** Yes. The builder owes you a lot more than is stated in the contract.

### DISCUSSION:

In Arizona, the builder is both "seller" and "builder" in the sale of a new home. As such, his exposure to liability must be measured from both perspectives.

1. **SELLER'S LIABILITY:** Arizona law requires sellers of homes to tell potential purchasers about any material defects they are aware of. *Hill v. Jones*, 151 Ariz. 81, 85, 725 P.2d 1119 (Ct. App. 1986).

Even if there was a mistake as to the defects, a case where neither buyer or seller knew of the defects, the buyer may seek a rescission of the entire agreement and a return to the status quo ante. *Renner v. Kehl*, 150 Ariz. 94, 722 P.2d 262 (1986). See more on rescission, "G," below.

2. **BUILDER'S LIABILITY**

A. **GENERALLY:** It is also well settled in Arizona that the builder owes an implied warranty of workmanship and materials and habitability with respect to the home. *Kubby v. Crescent Steel*, 105 Ariz. 459, 466 P.2d 753 (1970), (habitability) *Nastri v. Wood Brothers Homes, Inc.* 142 Ariz. 439, 690 P.2d 158 (1984), and cannot even be disclaimed by the builder even in writing, *Hembree v. Broadway Realty & Trust Co.*, 151 Ariz. 418, 729 P.2d 288 (1986) and applies even if the builder was not building the house originally for resale, such as a model or for himself, *Dilling v. Fisher*, 142 Ariz. 47, 688 P.2d 693 (1984), as the purpose of the warranty is strictly to protect ALL home purchasers by holding home builders accountable for their work, *Richards v. Powercraft Homes, Inc.*, 139 Ariz. 242, 678 P.2d 427 (1984). Even a disclaimer against the very item that is defective contained in the original builder's agreement with the first buyer will not affect a successor buyer's rights against the builder, *Nastri, id.*.

Such warranties run with the property such that direct contractual privity is not required to maintain

an action against a builder vendor of a home for a breach of implied warranty of workmanship and habitability in a claim for a defective, latent conditions Richards, id. Accord: Donnelly Construction Co. v. Oberg/Hunt/Gilleland, 139 Ariz. 184, 677 P.2d 1292 (1984). Richards held that homeowners, whether or not they were in privity with the builder were entitled to recover damages for breach of implied warranty that the home was habitable and constructed in a workmanlike manner, in that there was no indication that the original owner substantially changed the structure of the home where the defective workmanship could not have been determined from reasonable inspection prior to purchase.

**OUR NEXT MOST-ASKED QUESTION:**

Is it true that the builder who builds a new home or remodels or repairs a home only has to stand behind his or her work for two years in Arizona?

**ANSWER:** No. The builder in Arizona must stand behind his or her product for a minimum of 6 years, but no more than 8 years if first discovered after the 6th year, or else he or she is in breach of the implied warranties in contract set forth, above. He or she is also liable in a joint claim of negligence for 2 years AFTER DISCOVERY.

**DISCUSSION:**

There are probably three relevant statutes of limitations.

The first, torts, like negligence, is governed by ARS 12-542, and is a two year statute.

The second, contract, is six years pursuant to ARS 12-548, but subject to discovery and the ultimate repose statutes above, which has yet to be totally tested.

The third is ARS 12-552, which provides a limitation of eight years after substantial completion of improvement to real property. However, if the injury occurs in the eighth year (or was not discovered until then), an action may be brought within one year after the date of the injury or discovery of the latent defect. The cases above seem to extend that to be from the time the cause of action accrued by the failure of the component, though this is still not entirely clear in Arizona. This section covers implied warranties in contract.

**THE THIRD MOST-ASKED QUESTION: IT'S A BUILDER/INSPECTOR ISSUE:** In summary and stated simply:**QUESTION:**

Can a Builder, after entering into a sale contract by which he agrees to build and deliver a specific home to a Buyer (for which the Buyer is bound by the contract to pay) bar a registered Home Inspector engaged by the Buyer to inspect the property from coming upon the property unless the Home Inspector provides financial assurances to the Builder in excess in amount of coverage of that required of the Inspector by state law under the BOTR or can the Homebuilder bar the Home Inspector by the by use of the threat to void warranties otherwise protecting the Buyer or a threat to suspend performance upon or terminate the construction contract or any warranty on it, implied by law or express, owed to the Buyer?

**ANSWER:** No.

**Here's the problem:**

Builders are telling Homebuyers and Home Inspectors: (1) that neither the Homebuyer nor his Inspector may examine a home already sold to the Buyer and at that time under construction for that Buyer; or, (2) that the inspection may only be done if the Home Inspector provides extensive financial guarantees and relationships directly to the Builder that exceed those required by state law for Home Inspectors; and/or, (3) that the Builder's warranties of workmanship owed to the homebuyer are void or avoidable as to any component the Home Inspector might access inspect; and/or (4) the Builder will refuse to perform his warranties or terminate the contract or construction progress if the Homebuyer or Home Inspector contests any of the foregoing.

Part or all of these contentions and acts are wrong in whole or part. I will address that here only as a matter of licensure law.

The Builder, in addition to the authority set forth, below owes the Homebuyer certain performances as set forth under the licensure laws and rules of the Registrar of Contractors. The Builder owes the Buyer a workmanshiplike product under R4-9-108, owes the implied warranty of workmanship and habitability under the caselaw interpreting "sound workmanship" as set forth in *Kubby v. Crescent Steel*, 105 Ariz. 459, 466 P.2d 753 (1970), *Nastri v. Wood Brothers Homes, Inc.* 142 Ariz. 439, 690 P.2d 158 (1984), *Richards v. Powercraft Homes, Inc.*, 139 Ariz. 242, 678 P.2d 427 (1984), and the implied covenant of good faith and fair dealing (the consumer's unharassed right to assure receipt of comporting product and to receive lawful treatment) as set forth in *Wagonseller v. Scottsdale Mem. Hosp.*, 147 Ariz. 370, 383, 710 P.2d 1025 (1985). In addition, the law and rules of the Arizona Board of Technical Registration ("BOTR") regulating home inspection have the status of law and are "codes of the state." The BOTR rules regulate what a Home Inspector is required to have for proof of financial responsibility to inspect in the state of Arizona, mandates loyalty to the customer and prohibits financial or business connections with the party whose work is to be inspected (the Builder) which would impair the impartiality of the Home Inspector inspecting him. *Lombardo v. Albu* 199 Ariz. 97, 14 P.3d 288 (2000) provides that licensure rules are standards of care and that violations of rules are "failures per se." *Arizona State Real Estate Department v. American Standard Gas & Oil Leasing Service*, 580 P.2d 15, 119 Ariz. 183 (Ariz.App., 1978) holds the same for violations of licensure statutes.

The long and short of it is that there is a good argument that the Builder cannot make the above demands under his own licensure and to do so is a licensure violation. The Builder is bound to obey his contract, the licensure law and regulations and cannot threaten to breach his contract with the Buyer through contract suspension, performance suspension, warranty termination or avoidance that is prohibited. I will briefly discuss this:

**From the ROC perspective:**

ARS 32-1154 states that a construction licensee "shall not commit" any of an enumerated series of acts or omissions. One enumerated "act or omissions" is at "1. Abandonment of a contract or refusal to perform after submitting a bid without legal excuse for the abandonment or refusal (see the only legal excuses set forth by statute below). Others of relevance are "7. The doing of a wrongful or fraudulent act...resulting in another person [Buyer, Home Inspector] being substantially injured.."; "12. Failure to comply with any...codes [the statutory and regulatory law of the ROC and BOTR, et al.] of the federal government, state or political

subdivisions of the state; "13. Failure...to comply with this Chapter"[see below statutes form this Chapter]; "16. False, misleading or deceptive advertising whereby any member of the public may be misled or injured"; "17. knowingly contracting beyond the scope of the license..of the licensee." In addition and as will be shown as relevant later, there is "3. Violation of any rule adopted by the registrar." [See relevant rules, below.]

ARS 32-1159 A. provides that a "covenant, clause or understanding in, collateral to or affecting a construction contract ...that purports to indemnify, to hold harmless or to defend the promisee from or against liability of loss or damage resulting from the sole negligence of the promisee or the promisee's agents, employees or indemnitees is against public policy of this state and is void. [Thus, any clause of a construction agreement or a side agreement which tries to excuse the Builder from his lawful duties is void.]

ARS 32-1129.03 A. provides those circumstances under which a Builder can interrupt his performance [fail to give warranties, discontinue with the job, the project or fulfillment of his obligations under the contract] without penalty or liability of breach of contract and it permits interruption only because of encountering hazardous material or substances. ARS 32-1129.04 allows suspension only for non-payment by the Buyer or a refusal to approve a billing or job estimate. **Nowhere does either statute provide for "ceasing performance of any obligation--a warranty for workmanship or obligation or progress on the job--because the other party in contract (the Buyer) wants to inspect, himself or through a Registered Inspector in full compliance with the BOTR and working for him, what he is buying."** If the contractor refuses warranties or to continue with the whole or any part of the job under contract for ANY OTHER REASON, he is in violation of licensure and liable for breach, damages, attorneys fees and costs both to the Buyer and the Inspector ("any person", see the regulation, below). **There is no exception allowing suspension or termination of the Builder's duties "because the other contract party wants and will pay for a home inspection by a lawfully registered and insured Inspector" or because the "other contract party wants the warranties required by law."** To do so is itself a breach of licensure regulations.

R4-9-131 especially prohibits as having special "gravity" the following acts or omissions: The Builder "2. Failed to perform work for which money was received" [terminates performance because of a home inspection or terminates a warranty he unconditionally owes by law]; "3. Executed or used any false or misleading documents for the purpose of inducing a person to enter into a contract or pay money for work to be performed" [threatening to suspend performance or void warranties that cannot lawfully suspect or void after the purchase contract is signed]; "4. Made false or misleading statements for the purpose of inducing a person to enter into a contract or to pay money for work to be performed" [ditto as to section 3., immediately foregoing]; "11. Performed work that has caused loss or damage to the structure, its appurtenances or property being worked upon or which has caused loss or injury to any person" [unlawful voiding of warranties or termination or slow down of performance--here there would be damages and liability to the Buyer and the Home Inspector].

In sum, a contractor owes the warranties and contract performance as agreed to and as required by law to the consumer, whether or not expressly set forth by the contractor and even if the contract contains a disclaimer against it. To threaten to void warranties (or voiding them) or

to threaten to suspend or terminate performance (or to do so) for any reason OTHER than encountering dangerous substances or materials at the site or by reason of non-payment by the Buyer is a violation of regulation and law. An agreement even contending it can be done is a violation of regulation and law and a regulatory misrepresentation.

Not discussed here but certainly an issue are the Builder's liabilities for intentional or negligent interference with the Inspector/client contract; regulatory and common law trade liability for restraint of the Inspector's registered trade; anti-trust; liability for fraudulent schemes under ARS 13-2310, et. seq., and 44-1522(A), et. seq., all of which have applicability. No Builder can attempt on a broad spectrum to actively restrict or interfere with the Home Inspection trade and void a consumer's right in violation of it's own licensure without violating the other public and common laws regarding unlawful schemes or restraints of trade.

Notably, all Builder contracts state in them "this is the final agreement and supersedes all others and the only terms between Builder and Homebuyer are those contained in this agreement" and none of them contain any clauses in which the consumer has agreed to void warranties or inhibit the home inspector as in the above. The Builder drafted his own contract and omitted any such terms. It therefore cannot be argued that the Homebuyer somehow agreed to this (assuming any buyer can be asked to agree to anything that violates the Builder's licensure in the first place).

There is more. If the Inspector has to provide all of these huge financial assurances to the Builder (some even asking that the Inspector co-insure the Builder for \$1 million on his AUTO INSURANCE!), why is the Realtor, appraiser, bank-loan construction progress inspector, city inspectors and owner not also asked to do so? Why just the private home inspector? In addition, through thousands of litigations, this office has learned that the Builder is NOT ASKING FOR THESE FROM HIS SUBS, either! Thus, this is targeted strictly at Home Inspectors and for very obvious reasons. Last year they did thousands more inspections than any other vendor, including city and county, and found thousands more defects than all of the foregoing other inspectors put together! It's all about the Builder wanting to hide his sins. It's all about getting his hands on the money.

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## LEGAL

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## POST POSSESSION ADDENDUM SELLER TO OCCUPY PREMISES AFTER CLOSE OF ESCROW

This is an Addendum to the Residential Resale Real Estate Purchase Contract ("Contract") dated \_\_\_\_\_, 20\_\_\_\_ between the following parties:

SELLER: \_\_\_\_\_ BUYER: \_\_\_\_\_

PREMISES: \_\_\_\_\_

The following additional terms and conditions are hereby included as part of the Contract described above. This Addendum is intended to grant continued or ongoing possession of the Premises described herein after the close of escrow.

**Buyer and Seller understand that this Addendum DOES create a Landlord/Tenant relationship and they hereby acknowledge that a free copy of the Arizona Residential Landlord and Tenant Act is available through the Arizona Secretary of State's Office, per A.R.S. §33-1322.B.**

**1. OCCUPANCY PERIOD AND COMPENSATION:** Upon execution of this Addendum by the parties, Buyer hereby grants Seller permission to retain possession of said Premises from the date of close of escrow of the Contract to \_\_\_\_\_, 20\_\_\_\_. Prior to the close of escrow, Seller shall pay Buyer, as compensation for the use of said Premises, \$ \_\_\_\_\_ per day for \_\_\_\_\_ days, from the close of escrow date up through and including the date specified herein, for a total payment of \$ \_\_\_\_\_. All payments shall be payable to ☐ Buyer ☐ or \_\_\_\_\_. None of the sums paid under this Addendum will be applied toward the purchase price.

If Seller fails to vacate the Premises by the agreed upon date, Seller agrees to pay Buyer \$ \_\_\_\_\_ per day for each day Seller remains in possession of the Premises. If necessary, Buyer may pursue legal remedies prescribed by law in order to obtain possession of the Premises under the Arizona Residential Landlord and Tenant Act.

**2. SECURITY DEPOSIT:** Seller shall deposit \$ \_\_\_\_\_ into Escrow # \_\_\_\_\_ of \_\_\_\_\_ Title Co., as a damage and security deposit. Seller agrees to surrender possession of the Premises to Buyer in substantially the same condition as at close of escrow. If Seller surrenders possession of the Premises in an unclean or damaged condition not acceptable to Buyer, Buyer may, at Buyer's option, retain all or a portion of the security deposit, and may hold Seller liable for any additional charges and obligations incurred by Buyer or caused to be incurred by Buyer that arose out of Seller's use and occupancy under the terms of this Addendum. Buyer shall return any unused portion of said deposit to Seller within 14 business days after Seller vacates the Premises with an itemization of any monies reasonably withheld. If escrow fails to close, the security deposit shall be returned to Seller.

**3. USE OF PREMISES:** Seller shall use the Premises as a personal residence only. Seller agrees to comply with applicable laws, ordinances, regulations, Covenants, Conditions and Restrictions, and Homeowner's Association rules and regulations concerning the Premises.

**4. UTILITIES/SERVICES:** Seller shall have all utilities and services remain in Seller's name and shall pay charges for all user costs during the term of this Addendum.

**5. MAINTENANCE:** Seller shall maintain the Premises so that all 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 normal working condition, to keep the roof water tight and to maintain the grounds during the term of this Addendum.

**6. REPAIRS:** Seller shall be responsible for the first \$50 of any repair, or any home warranty deductible, whichever is less. Buyer shall be responsible for any amount that exceeds \$50. If any damage is due to Seller's negligence, Seller will be fully responsible for said damage.

**7. HOLD HARMLESS:** Seller shall hold Buyer and all Real Estate Brokers and Agents in this transaction harmless from any claims, liability, damages or injury to Seller, or any other person or to any property, which occurs on the Premises or arises out of Seller's occupancy and use of the Premises, or under the terms and conditions of this Addendum. Buyer shall hold harmless all real estate Brokers and agents from any damage or loss occurring as a result of Seller's occupancy of said Premises. Buyer acknowledges that he has not relied on any recommendation or representation made by any agent of Brokers concerning Seller.

**8. INSURANCE:** Seller shall secure and maintain insurance for personal property and public liability on the Premises during the term of this Addendum, naming Buyer as co-insured. Buyer shall secure and maintain adequate hazard insurance to cover the change in occupancy status of the Premises.

**9. IMPROVEMENTS:** Seller shall not perform any alterations or improvements to the Premises in any way without Buyer's prior written consent. Any improvements or alterations made to the Premises by Seller shall become the property of Buyer without any compensation to Seller.

**10. LIENS, JUDGMENTS AND ENCUMBRANCES:** Seller shall not allow any liens, judgments, or other encumbrances to be placed against the Premises during the term of this Addendum.

**11. ASSIGNMENT:** Seller shall not assign this Addendum nor sublet any portion of the Premises without the prior written consent of Buyer.

**12. BUYER'S RIGHT TO ENTER PREMISES:** Buyer or Buyer's authorized representative shall have the right to enter the Premises in case of emergency, or for the purpose of inspection, performing necessary repairs or alterations, or to supply necessary or agreed upon service. Except in the case of an emergency, Buyer shall enter the Premises only during reasonable hours and only after 2 days notice. Seller shall deliver to Buyer a full set of keys and, if applicable, any alarm codes to the Premises upon close of escrow.

**13. C. C. & R.'S:** Seller shall be responsible to pay all fines or assessments levied against Buyer or the Premises due to Seller's actions or conduct in violation of the C. C. & R.'s and Rules and Regulations of the Homeowners Association.

**14. ENTIRE AGREEMENT:** This Addendum contains the entire agreement between Seller and Buyer with regard to Seller's possession of the subject Premises after the close of escrow. No other agreement, or statement of promise made by any party not contained herein shall be binding or valid.

**15. OTHER TERMS AND CONDITIONS:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SELLER AND BUYER ACKNOWLEDGE THEY HAVE BEEN ADVISED TO SEEK APPROPRIATE COUNSEL FROM INSURANCE, LEGAL, TAX, AND ACCOUNTING PROFESSIONALS REGARDING THE RISKS OF POST-POSSESSION OF A PROPERTY.**

\_\_\_\_\_  
SELLER DATE

\_\_\_\_\_  
SELLER DATE

\_\_\_\_\_  
BUYER DATE

\_\_\_\_\_  
BUYER DATE



## Legend

- LUKE AFB BOUNDARY
- MAJOR FLIGHT TRACKS
- TERRITORY IN THE VICINITY OF A MILITARY AIRPORT
- HIGH NOISE OR ACCIDENT POTENTIAL ZONE
- NOISE CONTOURS
- CLEAR ZONE
- ACCIDENT POTENTIAL ZONE 1
- ACCIDENT POTENTIAL ZONE 2

\* LINE WIDTHS ARE GRAPHIC REPRESENTATIONS ONLY

## AIRPORT VICINITY MAP FOR LUKE AIR FORCE BASE

THIS MAP FULFILLS THE STATUTORY REQUIREMENTS UNDER ARIZONA REVISED STATUTE 28-8482 AND 8483

AS OF 20020620






# City of Surprise Zoning and Noise Contour Map



# Surprise Zoning Classification



 1988 Noise Contours  
 1995 Luke A.F.B. Noise Contours  
 Cities Boundary



## Notice:

**As a proud neighbor of Luke Air Force Base, the City of Surprise would like all residents to know that this community is in the proximity of Luke Air Force Base, therefore all homes in this area are subject to military overflights from Luke Air Force Base**