

COMMISSIONERS' STANDARDS

"Professional Conduct"

3.0 hrs. Commissioners' Standards

Objective: Disclosures and ethical conduct required for today's agent.

I. Current Issues

- a. Coming Soon
- b. Selling Fix & Flip Properties
- c. Investor Disclosures
- d. Rules and Teams
- e. Working with Co-operating Brokers

II. Agent to Agent Conduct

- a. Responding to agent's inquiry
- b. Leaving a business card
- c. Calling agent on a listed property
- d. Calling the seller of a listed property
- e. "Those are my clients"
- f. Paying a referral fee
- g. Working outside of your MLS
- h. To tier pricing policy
- i. Relaying property defects
- j. Presenting all offers

III. Working with Buyers

- a. Selling a for sale by owner
- b. Preparing documents
- c. One party listing
- d. Referring vendors receiving a referral fee
- e. Who lives in the neighborhood

- f. Disclosure of material facts
- g. Responding to questions
- h. Walkthrough
- i. Social Media
- j. Home inspector role

IV. Working with Sellers

- a. Disclosure of material facts
- b. What is required to be disclosed
- c. Pricing the property
- d. Excluding other brokers
- e. Automatic listing renewal clause
- f. Difference in square footage
- g. Confidential information

V. Agent Duties

- a. Standard of care
- b. Working outside an area of expertise
- c. Record Keeping
- d. Stigmatized property disclosure
- e. Avoiding other agents

FIX & FLIP LAWS & RULES

The Use of Licensed Contractors

REALTORS® should be mindful of the fact that there are statutory requirements in place that apply when an owner attempts to sell their own property after improving it. A.R.S. § 32-1121(A) (5) allows an owner of real property, with their own employees or with duly licensed contractors, to build or improve the property themselves without being licensed with the Arizona Registrar of Contractors. However, this applies only if the property is not intended to be placed for sale or for rent. According to the statute, prima facie evidence that the project was undertaken for the purposes of sale or rent is “proof of the sale or rent or the offering for sale or rent of any such structure by the owner-builder within one year after completion or issuance of a certificate of occupancy.” In other words, if a property is sold or offered for sale within one year of completion of the repairs, the court will presume that the work was performed for that purpose. This restriction obviously impacts REALTORS® pursuing their own fix and flips as most have no intention of living in the property or holding on to it for a period of one year following the completion of improvements. Fortunately, A.R.S. § 32-1121(A) (6) exempts developers who build structures or appurtenances to structures on their property for purposes of resale provided that they contract with a licensed general contractor or licensed specialty contractor. To qualify for this exemption, the licensed contractors’ names and license numbers must be included in all sales documents.

REALTOR® OWNED FIX AND FLIPS

REALTOR® as Principal

When personally investing in real estate, REALTORS® typically act either in their individual capacity or through a corporate entity in which they hold a stake. In both cases, the REALTOR® maintains an ownership interest which must always be disclosed. A.A.C. R4-28-1101(E) prohibits a real estate salesperson from acting directly or indirectly in a transaction without informing the other parties to the transaction in writing before the parties enter into a binding agreement. Similarly, Article 4 of the REALTOR® Code of Ethics states that “REALTORS® shall reveal their ownership or interest in writing to the purchaser or purchaser’s representative.”

COMMISSIONER'S RULES

"What Do You Do?"

1. An Arizona agent is paying a referral fee to an out of state agent. Does the referral fee need to appear on the closing documents?
2. An agent is listing a property; however, the house won't be ready for showing for two weeks, can the agent list the house using "Coming Soon"?
3. An agent is listing a house that is a "fix and flip." The agent recommends the seller list the property "as-is" with no Seller Property Disclosure. Was the agent protecting the seller?
4. An investor buys an old house as an investment. The house is gutted and completely remodeled. What questions and cautions should the agent have before listing the house?
5. The buyer receives notice from a lender that they may not be able to qualify for the loan. Is the buyer's agent required to disclose the information to the seller's agent?
6. After conducting the home inspection, the buyer cancels the contract. The property is re-sold and the second buyer is asking to see the first home inspection. How should the listing agent respond?
7. A buyer is asking his agent for a portion of the commission. How should the agent respond?
8. A salesperson has a seller that refuses to pay the commission. Can the salesperson take legal action against the seller to obtain the commission?
9. An i-buyer company owns multiple homes in a specific neighborhood. An agent has a buyer for one of the properties, what documents should the buyer's agent request from the seller?

10. A buyer has the home inspected, and the inspector says that the roof needs to be replaced. The seller hires a roofing company that states the roof does not need to be replaced. The buyer cancels the contract. How does the listing agent respond to future buyers regarding the roof inspections?

11. The seller tells the listing not to disclose the mold in the attic of the house. The agent will not obey the seller's instructions and cancels the listing. The seller hires a new agent but does not tell the agent about the mold problem. Is the first listing agent required to disclose the mold problem to the second listing agent?

12. An agent opens escrow on a home where the buyer is paying cash. Ten days into the escrow the buyer calls the agent stating now he would like to obtain a new loan instead of paying cash. How should the buyer's agent respond?

13. An agent lists an older property that has polybutylene pipe. The agent lists the house "as-is" no warranties "expressed or implied". A buyer buys the property and has multiple inspections. No inspectors discovered the polybutylene pipe. After the escrow closes, the buyer has problems with the piping. The buyer files legal action against the seller and agent. What was the outcome?

14. An agent lists a home that recently had a small addition. The agent asks the seller if the addition was permitted. The seller tells the agent that he obtained a permit for the addition. How should the agent respond?

15. A buyer is buying a house for cash and would now like to assign the contract. Is the buyer allowed to assign the purchase contract? 16. An agent writes a lease on a house. The tenant and landlord agree that the tenant will have the option to buy the property in 12 months. The agent writes the option to buy. What are the concerns regarding this transaction?

17. An Arizona agent receives a call from an agent in New York that would like to make an offer on a property the agent has listed. Must the Arizona agent co-operate with the New York agent?

18. An Arizona real estate agent uses a nickname when advertising her listings. Is the use of a nickname allowed under the current Rules and Regulations?

19. An agent has a buyer for a property that is located next a home to that houses people with memory problems. Should the agent disclose the home to the potential buyers?

20. An agent takes a buyer to a house that was designated as a former "meth lab." The listing agent does not disclose this to the buyer or did it appear on the SPDS. Are the seller an agent liable for failing to disclose a material fact?

21. An agent listed a property for sale and within a few days the listing agent received two full-price offers. One offer is from the listing agent's company, and the other offer was from a competitors company. The listing agent told the seller that he would be advised to take the offer from his company since he could vouch for the agents from his company. Taking the offer from the other company would be riskier. Was the listing agent advice to the seller correct?