

DISCLOSURE REQUIREMENTS

3.0 HOURS D

Objective: A comprehensive look at the most common items impacting residential real estate in the current market.

I. COMMON DISCLOSURE CONCERNS

- A. No SPDS available
- B. Selling As-Is
- C. Buying sight unseen
- D. Fix & Flip Disclosures
- E. Handyman laws
- F. Past Inspections
- G. Updating SPDS

II. SELLER DISCLOSURES

- A. Roof concerns
- B. Termite Damage
- C. Issues with HVAC
- D. FHA/VA Issues
- E. Selling a Smart Home
- F. Warranty Information
- G. Flood Area
- H. Neighborhood Concerns

III. BUYER DISCLOSURES

- A. Financial Ability
- B. Cash Sales
- C. Buyer Assigning the Contract to an unknown party
- D. Divorce Issues

IV. DISCLOSURE COURT CASES

- A. Seller Failure to Disclose
- B. Buyer Failure to Disclose
- C. Agent Failure to Disclose
- D. Agent's Level of Knowledge
- E. Agent's Duty to Investigate
- F. Red Flags

V. LEGAL ISSUES IMPACTING THE PROPERTY

- A. Easements
- B. Preliminary Title Report
- C. Short Term Rentals
- D. Condominium Laws
- E. Homeowner Association Regulations
- F. Rental Registration
- G. Community Facility Districts
- H. Sex Offenders
- I. Affidavit of Disclosure

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.”

USING THE AFFIDAVIT OF DISCLOSURE

ISSUE:

The seller owns a home on several acres of land in an unincorporated area of Pinal County. The home is not in a subdivision. If the seller sells the home will the seller be required to execute an Affidavit of Disclosure?

ANSWER:

Yes. The Affidavit of Disclosure required by A.R.S. §33-422 applies to all “parcels of land” in an unincorporated area of a county, unless the parcel of land has been subdivided. This Affidavit of Disclosure requires the disclosure of factors such as the availability of utilities and access to the parcel of land, and applies to residential, commercial, and industrial real property, whether improved or unimproved.

[33-422. Land divisions; recording; disclosure affidavit](#)

- A. A seller of five or fewer parcels of land, other than subdivided land, in an unincorporated area of a county and any subsequent seller of such a parcel shall furnish a written affidavit of disclosure to the buyer at least seven days before the transfer of the property and the buyer shall acknowledge receipt of the affidavit.
- B. The affidavit must be written in twelve-point type.
- C. A release or waiver of a seller's liability arising out of any omission or misrepresentation contained in an affidavit of disclosure is not valid or binding on the buyer.
- D. The buyer has the right to rescind the sales transaction for a period of five days after the affidavit of disclosure is furnished to the buyer.
- E. The seller shall record the executed affidavit of disclosure at the same time that the deed is recorded. The county recorder is not required to verify the accuracy of any statement in the affidavit of disclosure. A subsequently recorded affidavit supersedes any previous affidavit.
- F. The affidavit of disclosure shall meet the requirements of section 11-480 and follow substantially the following form:

When recorded mail to:

Affidavit of Disclosure

Pursuant to A.R.S. § 33-422

I, _____ (seller(s)) being duly sworn, hereby make this affidavit of disclosure relating to the real property situated in the unincorporated area of:

_____, County, State of Arizona, located at:

and legally described as:

(Legal description attached hereto as exhibit "A")

(property).

1. There is is not legal access to the property, as defined in A.R.S. § 11-831 unknown

Explain: _____

2. There is is not physical access to the property. unknown

Explain: _____

3. There is is not a statement from a licensed surveyor or engineer available stating whether the property has physical access that is traversable by a two-wheel drive passenger motor vehicle.

4. The legal and physical access to the property is is not the same.... unknown not applicable.

Explain: _____

If access to the parcel is not traversable by emergency vehicles, the county and emergency service providers may not be held liable for any damages resulting from the inability to traverse the access to provide needed services.

5. The road(s) is/are publicly maintained privately maintained not maintained not applicable. If applicable, there is is not a recorded road maintenance agreement.

If the roads are not publicly maintained, it is the responsibility of the property owner(s) to maintain the roads and roads that are not improved to county standards and accepted for maintenance are not the county's responsibility.

6. A portion or all of the property is is not located in a FEMA designated regulatory floodplain. If the property is in a floodplain, it may be subject to floodplain regulation.

7. The property is is not subject to fissures or expansive soils. unknown

Explain: _____

8. The following services are currently provided to the property: water sewer electric natural gas single party telephone cable television services.

9. The property is is not served by a water supply that requires the transportation of water to the property.

10. The property is served by a private water company a municipal water provider a private well a shared well no well. If served by a shared well, the shared well is is not a public water system, as defined by the safe drinking water act (42 United States Code § 300f).

Notice to buyer: If the property is served by a well, a private water company or a municipal water provider the Arizona department of water resources may not have made a water supply determination. For more information about water supply, contact the water provider.

11. The property or the water used on the property is is not the subject of a statement of claimant for the use of water in a general adjudication of water rights. unknown.

This is a lawsuit to determine the use of and relative priority of water rights. A map of adjudicated areas is available at the website of the department of water resources.

12. The property does have does not have an on-site wastewater treatment facility (i.e., standard septic or alternative system to treat and dispose of wastewater). unknown. If applicable: a) The property will will not require installation of an on-site wastewater treatment facility; b) The on-site wastewater treatment facility has has not been inspected.

13. The property has been has not been subject to a percolation test. unknown.

14. The property does have does not have one or more solar energy devices that are leased owned.

Notice to buyer: If the property contains solar energy devices, it is the responsibility of the buyer to verify the proper replacement and disposal method for the devices, as applicable. If the solar energy devices are leased, the seller or property owner shall disclose the name and contact information of the leasing company.

Leasing company name: _____ Phone: _____

15. The property does does not meet the minimum applicable county zoning requirements of the applicable zoning designation.

16. The sale of the property does does not . . . meet the requirements of A.R.S. § 11-831 regarding land divisions. If those requirements are not met, the property owner may not be able to obtain a building permit. The seller or property owner shall disclose each of the deficiencies to the buyer.

Explain: _____

17. The property is is not located in the clear zone of a military airport or ancillary military facility, as defined in A.R.S. § 28-8461. (Maps are available at the state real estate department's website.)

18. The property is is not located in the high noise or accident potential zone of a military airport or ancillary military facility, as defined in A.R.S. § 28-8461. (Maps are available at the state real estate department's website.)

19. Notice: If the property is located within the territory in the vicinity of a military airport or ancillary military facility, the property is required to comply with sound attenuation standards as prescribed by A.R.S. § 28-8482. (Maps are available at the state real estate department's website.)

20. The property is is not located under military restricted airspace. unknown. (Maps are available at the state real estate department's website.)

21. The property is is not located in a military electronics range as defined in A.R.S. § 9-500.28 and § 11-818. unknown. (Maps are available at the state real estate department's website.)

22. Use of the property is is not limited in any way relating to an encumbrance of title due to a lis pendens, a court order or a state real estate department order or a pending legal action. If the use of the property is limited due to an encumbrance of title, the seller or property owner shall disclose the limitations to the buyer.

Explain: _____

This affidavit of disclosure supersedes any previously recorded affidavit of disclosure.

I certify under penalty of perjury that the information contained in this affidavit is true, complete and correct according to my best belief and knowledge.

Dated this (date) __ day of (year) by:

Seller's name (print): _____ Signature: _____

Seller's name (print): _____ Signature: _____

State of Arizona)

) ss.

County of _____)

Subscribed and sworn before me this _ (date) __ day of (year) , by

_____.

Notary public

My commission expires:

(date)

Buyer(s) hereby acknowledges receipt of a copy of this affidavit of disclosure this (date) day of (year)

Buyer's name (print): _____ Signature: _____

Buyer's name (print): _____ Signature: _____

G. For the purposes of this section, seller and subsequent seller do not include a trustee of a deed of trust who is selling property by a trustee's sale pursuant to chapter 6.1 of this title or any officer who is selling property by execution sale pursuant to title 12, chapter 9 and chapter 6 of this title. If the seller is a trustee of a subdivision trust as defined in section 6-801, the disclosure affidavit required by this section shall be provided by the beneficiary of the subdivision trust.