

Substantive Policy Statement No. 2026.02: Duty to Mitigate Deed Fraud and Offer Information About Early Real Estate Sales Alert System (ERAS)

STATUTORY ADVISORY STATEMENT

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.

STATEMENT OF PURPOSE AND SCOPE

This Substantive Policy Statement (SPS) informs real estate licensees, designated brokers, and employing brokerages of the Arizona Department of Real Estate's (ADRE or "Department") official approach to, and opinion of, licensee fiduciary duties, professional conduct standards, and risk management practices related to property-related deed fraud. Specifically, this statement clarifies:

1. The fundamental fiduciary duty owed by real estate licensees to their clients, as well as licensees' responsibilities to protect and promote their client's interests and deal fairly with all parties in a transaction pursuant to Arizona Administrative Code (A.A.C.) R4-28-1101(A).
2. The continuing education requirement in A.R.S. § 32-2130 and the identification of required content, including deed fraud awareness and red flag identification, in A.A.C. R4-28-402(A)(5) and (A)(6).
3. The deployment of the Early Real Estate Sales Alert System (ERAS) and the corresponding transaction opt-in / opt-out form distributed directly to all active licensees on August 27, 2026.
4. The licensee's professional duty of competence includes requirements to be informed about new methods to detect and prevent deed fraud, and to present relevant information to their clients, including the opportunity to elect whether to use the ERAS system. This requirement may be satisfied using the Department's

official ERAS transaction form or any other form or disclosure that achieves the same outcome. A.R.S. § 32-2153(B)(7) defines incompetence, which is one of the grounds for suspension, revocation, or denial of renewal of a license, or for civil penalties pursuant to A.R.S. § 32-2160.01.

5. The civil liability and regulatory risk licensees face under the Arizona Consumer Fraud Act (A.R.S. § 44-1522 et seq.) and real estate statutes and rules when participating in or facilitating transactions that may involve fraudulent real property conveyances.
6. The supervisory and recordkeeping obligations of designated brokers under A.R.S. § 32-2151.01 and A.A.C. R4-28-1103 to ensure that agents document communications to their clients, which may include offering the ERAS form, in every transaction file.

SECTION 1: LICENSEE FIDUCIARY DUTIES AND THE DUTY OF FAIR DEALING

Under Arizona law, the relationship between a real estate licensee and a client is governed by fiduciary standards established by administrative rule and common-law doctrines.

Pursuant to A.A.C. R4-28-1101(A), a licensee owes a fiduciary duty to the client and is required to protect and promote the client's interests. Simultaneously, the rule requires a licensee to deal fairly with all other parties to a real estate transaction.

Furthermore, A.A.C. R4-28-1101(I) requires a licensee to exercise reasonable care in ensuring that the licensee obtains information material to a client's interests and relevant to the contemplated transaction, accurately communicates that information to the client, and takes reasonable steps to assist the client in confirming the accuracy of information relevant to the transaction.

Deed fraud represents a severe and growing threat¹ to property rights in Arizona, often causing catastrophic financial and emotional harm to buyers who unwittingly purchase stolen property. To fulfill the fiduciary duty to "protect and promote the client's interests" and "exercise reasonable care" in obtaining material information, licensees have an affirmative obligation to ensure that clients can make an informed decision to use or decline deed fraud prevention methods, including the ERAS system, during the escrow process.

¹ See for example

<https://www.alta.org/news-and-publications/press-release/ALTA-Study-Finds-Seller-Impersonation-Fraud-Attempts-More-Than-Double>.

SECTION 2: MANDATORY CONTINUING EDUCATION ON DEED FRAUD

To combat the proliferation of identity theft used to transfer ownership of real property, Arizona law allows the Commissioner to incorporate mandatory targeted education into the real estate licensing renewal process.

Pursuant to A.R.S. § 32-2130(A) and A.A.C. R4-28-402(A), real estate salespersons and brokers are required to complete prescribed credit hours of approved continuing education during each 24-month licensure period in order to renew an active license. Under the current rule and pursuant to the Department's current written notice² published pursuant to A.A.C. R4-28-402(A)(6), the Commissioner requires licensees to attend 1 credit hour of continuing education specifically dedicated to the subject of deed fraud.

SECTION 3: EARLY REAL ESTATE SALES ALERT SYSTEM (ERAS) AND AUGUST 27, 2026 FORM DISTRIBUTION

On August 27, 2026, the Arizona Department of Real Estate formally launched the Early Real Estate Sales Alert System (ERAS) to create a proactive, early-warning barrier against deed fraud prior to document recordation.

1. System Mechanism

ERAS functions as a state-administered alert network available at earlyalert.azre.gov. Property owners can register their real property holdings for free. When an escrow officer receives an executed ERAS transaction form in a pending sale, the required transaction details are transmitted to ERAS, triggering an automated email or text alert if the property is registered. If an unauthorized party attempts to sell the property, the registered party receives immediate notification and can intervene or contact law enforcement before closing and title conveyance occur.

2. Direct Form Distribution to Licensees

Simultaneous with the public launch on August 27, 2026, the Department directly emailed the "Deed Fraud Prevention EARLY REAL ESTATE SALES ALERT transaction form" to the email addresses of record for all real estate licensees in Arizona.

Fiduciary and professional duties require real estate licensees to be informed about the incidence and risks of deed fraud as well as methods for preventing deed fraud, and to

² Notice sent by email to licensees on July 12, 2024; also stated on the Department's website at <https://azre.gov/divisions/education>.

educate their clients about these risks and ways to reduce them. This includes informing clients about available prevention tools such as the ERAS system.

To satisfy this requirement, licensees and brokerages are provided flexibility in execution:

- Department ERAS Form: Licensees may fulfill this duty by using the official ERAS transaction form provided by the Department, which can be found under Forms and Resources on the ADRE website at <https://azre.gov>.
- Alternative Form or Disclosure: Licensees may also fulfill this duty by using any other form, disclosure, contract addendum, or written document created or adopted by the brokerage that achieves the same outcome - namely, presenting the client with clear information about the ERAS and obtaining the client's documented election to either participate or decline participation.

Regardless of which type of election form is selected, the document should capture the client's instruction regarding whether or not transaction data should be transmitted to earlyalert.azre.gov.

SECTION 4: EXPOSURE AND LIABILITY UNDER THE ARIZONA CONSUMER FRAUD ACT

Licensees who facilitate, participate in, or fail to exercise reasonable care in transactions involving deed fraud can face substantial regulatory sanctions and severe statutory liability under Arizona law. The Department forwards all deed fraud and potential deed fraud cases to the Attorney General's office, which enforces:

1. The Arizona Consumer Fraud Act (ACFA)

Under A.R.S. § 44-1522(A), the act, use, or employment of any deception, deceptive or unfair act or practice, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of real estate is declared an unlawful practice.

2. The "Should Have Known" Standard for Willful Violation and Civil Penalties

Under A.R.S. § 44-1531, if a professional knew or should have known that their conduct was unfair or deceptive, the Attorney General may seek civil penalties of up to \$10,000 per violation based on a finding of willful violation of A.R.S. § 44-1522.

The Department of Real Estate can review transactions based on complaints or as part of agency-initiated investigations, and pursuant to A.R.S. § 32-2153(A)(1), (A)(3),

(A)(21), (A)(22) and (B)(7), the Commissioner may suspend, revoke, or deny renewal of a license if a licensee:

- Pursues a course of misrepresentation or makes false promises.
- Disregards or violates real estate statutes or administrative rules.
- As a broker, fails to exercise reasonable supervision over transactions or licensed activities of salespersons, associate brokers, or others under the broker's employ.
- Demonstrates negligence in performing acts requiring a license.
- Demonstrates incompetence in performing any duty or requirement of a licensee.

Licensees who ignore or fail to recognize obvious transaction red flags, fail to inform their clients about the risks of deed fraud and ways to reduce risk, or facilitate transactions involving fraudulent sellers expose themselves and their designated broker and employing brokerage to civil suits and disciplinary actions.

SECTION 5: BROKER SUPERVISORY OBLIGATIONS AND TRANSACTION RECORDKEEPING

Designated brokers and employing brokerages hold statutory responsibility for supervising all licensed activities conducted by their associate brokers and salespersons.

1. Broker Supervision Standards

Pursuant to A.A.C. R4-28-1103(A), an employing broker and designated broker are required to exercise reasonable supervision and control over the licensed activities of all employees. This rule explicitly requires brokers to establish and enforce policies, procedures, and systems to review and manage transactions, review disclosure forms and contracts, and familiarize licensees with federal, state, and local laws. If an employing broker maintains more than one office or employs more than two licensees or two licensees and one unlicensed person, the employing broker and designated broker are required to maintain these policies, procedures, and systems in writing.

2. Mandatory Transaction Recordkeeping

Pursuant to A.R.S. § 32-2151.01(A), each licensed employing broker must maintain complete records of all real estate transactions handled through the brokerage for a period of at least five years from the date of transaction termination or closing. Under A.A.C. R4-28-802(C), transaction records must include all receipts, closing statements, contracts, signed disclosures, and other transaction-related documents.

3. Record of the offering to utilize the ERAS

To ensure full compliance with fiduciary duties and broker supervisory standards, the Department strongly encourages all employing brokers to maintain a record in the transaction folder showing that their agents presented the opportunity to their client to elect to use or not use the ERAS platform for every transaction.

Compliance with this requirement can be established when the transaction folder contains either:

1. Department Form: The fully executed ADRE ERAS transaction form signed or initialed by the client, indicating either participation or declination; or
2. Alternative Equivalent Form: Any other written form, disclosure, or contract addendum authorized by the brokerage that achieves the same outcome by recording the client's explicit election to use or decline the ERAS platform.

Maintaining written evidence in the 5-year transaction file that agents presented the ERAS election opportunity reflects best practices for reasonable supervision and control under A.A.C. R4-28-1103(A), significantly reducing regulatory and compliance risk for the brokerage.

AUTHORITY: A.R.S. §§ 32-2102, 32-2107, 32-2108, 32-2130, 32-2151.01, 32-2153, 32-2160.01, 44-1522, 44-1531; A.A.C. R4-28-402, R4-28-802(C), R4-28-1101, R4-28-1103.

POLICY PROGRAM: Licensing / Regulation / Professional Conduct

EFFECTIVE DATE: November 1, 2026

ISSUED BY: Arizona Department of Real Estate