

ARIZONA DEPARTMENT OF REAL ESTATE (ADRE)

100 N. 15th Avenue, Suite 201, Phoenix AZ 85007

www.azre.gov

**DETAILED INSTRUCTOR OUTLINE
PRESCRIBED CURRICULUM
ARIZONA REAL ESTATE BROKER'S LICENSE
Minimum 90 hours**

This detailed outline of the prescribed curriculum is for the Arizona Real Estate Broker's Pre-license course. Any school licensed by ADRE or exempt from licensure under A.A.C. R4-28-404 must present to the ADRE for approval, all ADRE Pre Licensing courses offering credit toward an Arizona real estate license. Only ADRE approved School Administrators of an ADRE approved school may submit a request for course and/or instructor approvals. All ADRE approved course content must be directly related to the professional Arizona real estate practice and adhere to all specific guidelines, as stated in the current A.R.S. 32-2124, 32-2135, the applicable Pre Licensing Broker Certificate of Course Approval Application Form ED-112-PE and/or Form ED-113-OPE requirements, as well as, the content of this document. The course must also serve to protect the public interest by providing relevant education to students in their professional practice of Arizona real estate.

The course is comprised of a minimum of 90 hours of the student's attendance and participation. The school must document student attendance at all classroom sessions, or completion of all online sessions of the entire Broker Pre License course. Upon completion of the entire course, the student must successfully pass the school's comprehensive final examination on the curriculum, with a minimum passing score of 75%, before receiving the ADRE required education completion certificate. Prior to taking the Arizona Pearson VUE Broker Licensing Exam, candidates must provide documentation to satisfy the prior experience requirement per A.R.S. 32-2124 (A) (1), (2) (3), as applicable. All specific information and forms are included in the Candidate Information Bulletin (click).

Arizona Broker Pre-license Curriculum

1. Sources of Real Estate Law & Policy

Arizona Constitution

Arizona Revised Statutes (e.g., ARS 32-2101)

Federal Statutes

Commissioner's Rules (Arizona Administrative Code e.g., R4-28-1101A)

ADRE Substantive Policy Statements (SPS)

Court Cases (Case Law) *Summaries attached, are part of this curriculum and may be used in course.*

1.1. Article 26, Arizona Constitution

1.1.1. Case Law: State Bar of Arizona v Arizona Land Title & Trust Co.

1.2. Arizona Real Estate Statutes (Title 32, Chapter 20)

1.2.1. Article 1: Real Estate Department

1.2.1.1. Definitions

1.2.1.1.1. Real Estate Broker

1.2.1.1.2. Real Estate Salesperson

1.2.1.2. Real Estate Commissioner

1.2.1.2.1. Powers/Duties of the Commissioner

1.2.2 Article 2: Licensing

1.2.2.1. Exemptions to Licensing (ARS 32-2121)

1.2.2.2. Broker and Salesperson requirements (ARS 32-2123, ARS 32-2124, ARS 32-2125, ARS 32-2125.01, 32-2125.02)

1.2.2.3. Place of business required (ARS 32-2126)

1.2.2.4. Branch office requirements (ARS 32-2127)

1.2.2.5. Broker's temporary absence (ARS 32-2127D)

- 1.2.2.6. Active v. inactive status
- 1.2.2.7. Display of license (ARS 32-2128)
- 1.2.2.8. Multiple licenses (ARS 32-2125.01)
- 1.2.2.9. Renewal of License (ARS 32-2130)
- 1.2.2.10. Temporary Broker's license (ARS 32-2133)

1.2.3. Article 3: Regulation

- 1.2.3.1. Disposition of funds (ARS 32-2151)
- 1.2.3.2. Broker requirements; Record keeping (ARS 32-2151.01, SPS 2005.06, 2010.01)
- 1.2.3.3 Real Estate Employment Agreements (ARS 32-2151.02)
- 1.2.3.4. Action to collect compensation (ARS 32-2152)
- 1.2.3.5. Grounds for denial, suspension or revocation of licenses (ARS 32-2153)
- 1.2.3.6. Consent Orders, Cease & Desist Orders (ARS 32-2153.01 & 32-2154)
- 1.2.3.7. Restriction on employment or compensation (ARS 32-2155)
 - 1.2.3.7.1. Broker to employ and pay only active licensees
 - 1.2.3.7.2. Unlawful to pay unlicensed person
 - 1.2.3.7.3. No compensation for negotiating loans
 - 1.2.3.7.4. Paying commission after license expiration or transfer of employment (SPS 2005.08)
- 1.2.3.8. Real Estate sales and lease disclosure law (Stigmatized property law ARS 32-2156)
 - 1.2.3.8.1. **Case Law: Lerner v DMB Realty**
- 1.2.3.9. Out-of-state broker, cooperation agreement (ARS 32-2163)
- 1.2.3.10. Unlicensed activities (ARS 32-2165)
- 1.2.3.11. Real Estate Teams/Groups
 - 1.2.3.11.1. Employee(s) of Broker or Salesperson (ARS 32-2121(A)9)
 - 1.2.3.11.2. Unlicensed Assistants (SPS 2017.01)

1.2.4 Article 3.1 Property Management

- 1.2.4.1. Property Management Agreements (ARS 32-2173)
- 1.2.4.2. Licensees acting as a property manager outside of brokerage company
- 1.2.4.3. Unlicensed persons performing property management
- 1.2.4.4. Property Management Accounts (ARS 32-2174)
- 1.2.4.5 Property management Records; Requirements; Audits (ARS 32-2175, SPS 2013.01)

1.2.4.6. Finder fees to unlicensed tenants (ARS 32-2176)

1.2.4.7. Property manager's duties and responsibilities

1.2.5. Article 4: Sale of Subdivided Lands

1.2.5.1. Definition (ARS 32-2101)

1.2.5.2. Notice to Commissioner of Intent to Subdivide (ARS 32-2181)

1.2.5.2.1. Public Report Requirements (ARS 32-2181A)

1.2.5.2.2. Requirements in AMA (ARS 32-2181C)

1.2.5.2.3. Unlawful to Act in Concert (ARS 32-2181D)

1.2.5.2.4. Acquisition of 6 or more parcels in existing subdivision through foreclosure not exempt from public report requirement (ARS 32-2181 E2)

1.2.5.2.5 Exemptions (ARS 32-2181.02)

1.2.5.2.5.1. Bulk Sales

1.2.5.2.5.2. 160 Acres or more

1.2.5.2.5.3. Commercial/Industrial

1.2.5.2.5.4. Subsequent owner exemption

1.2.5.2.6. Lot Reservations (ARS 32-2181.03)

1.2.5.3. Rescindable Sales: (ARS 32-2183I)

1.2.5.3.1. Public Report Receipt from buyer

1.2.5.4. Amended Public Report (ARS 32-2184)

1.2.5.5. Sale of Unimproved Parcels (ARS 32-2185.01)

1.2.5.5.1. Definition (ARS 32-2101)

1.2.5.5.2. Rights to Rescind (ARS 32-2185.01 D & E)

1.2.5.6. Affidavit of Disclosure (ARS 33-422)

1.2.5.6.1. Applicable properties & requirements

1.2.5.6.2. Time frames for delivery and right to rescind

1.2.5.6.3. **Case Law: Verma v Stuhr**

1.2.6 Article 5: Real Estate Recovery Fund

1.2.5.1. Definition

1.2.5.2. Process and procedures

1.2.5.3. Fund liability

1.2.5.4. Eligible parties

1.2.5.5. Funding

1.2.7. Article 7: Sale of Unsubdivided Land

1.2.7.1. Definition (ARS 32-2101)

1.2.8. Article 9: Real Estate Timeshares

- 1.2.8.1. Definition (ARS 32-2101)
- 1.2.8.2. Timeshare public report requirements
- 1.2.8.3. Rescission of contract or agreement
- 1.2.8.4. Advertising and promotional requirements

2. Commissioner's Rules

2.1. Article 1: General license requirements

- 2.1.1. Department notification
- 2.1.2. Employing Broker, Sole proprietors,
- 2.1.3. Corporations, Limited Liability Companies
- 2.1.4. Renewal, reinstatement, changes
- 2.1.5. Professional Corporations, Professional
- 2.1.6. Limited Liability Companies
- 2.1.7. Branch offices, managers
- 2.1.8. Unlawful license activity

2.2. Article 4: Education

- 2.2.1. Continuing Education Requirements (R4-28-402A)
- 2.2.2. Broker management Clinics (ARS 32-2136)

2.3. Article 5: Advertising

- 2.3.1. Advertising by Licensee (R4-28-502 as defined in ARS 32-2101(2))
 - 2.3.1.1. No blind ads (R4-28-502A)
 - 2.3.1.2. "Owner Agent" requirement (R4-28-502B)
 - 2.3.1.3. Accurate Claims (R4-28-502C)
 - 2.3.1.3.1. . Case Law: Barnes v Lopez**
 - 2.3.1.4. Broker's name in clear and prominent manner (R4-28-502E, SPS 2007.18)
 - 2.3.1.5. Advertising another broker's listing (R4-28-502F)
 - 2.3.1.6. Designated Broker shall supervise all advertising(R4-28-502G)
 - 2.3.1.7. Advertising the term "acre" (R4-28-502H)
 - 2.3.1.8. Written consent to place sign (R4-28-502I)
 - 2.3.1.9. Trade Names (R4-28-502K)
 - 2.3.1.10. Internet Advertising (R4-28-502L)

- 2.3.2. Promotional Activities (R4-28-503)
 - 2.3.2.1. Premiums to clients not “award” or “prize”
 - 2.3.2.2. Disclosure of terms for premiums
 - 2.3.2.3. Lotteries, drawings or games of chance prohibited
 - 2.3.2.4. Exception for subdividers and timeshare developers

2.4. Article 7 : Compensation Sharing Disclosure

2.5. Article 8: Documents

- 2.5.1. Conveyance Documents (R4-28-802)
 - 2.5.1.1. Copies to signers as soon as practical
 - 2.5.1.2. Submission of offers
 - 2.5.1.3. Broker to retain copies of escrow closing statements

2.6. Professional Conduct – Article 11

- 2.6.1. Duties to Client (R4-28-1101A)
- 2.6.2. Disclosure of Material Facts (R4-28-1101B)
 - 2.6.2.1. **Case Law:**
 - 2.6.2.1.1. ***Lombardo v Albu***
 - 2.6.2.1.2. ***Development Corporation v Pima Capital Management***
 - 2.6.2.1.3. ***Mammas v Oro Valley Townhouses***
 - 2.6.2.1.4. ***Aranki v RKP Realty***
 - 2.6.2.1.5. ***Easton v Strassburger***
 - 2.6.2.1.6. ***Hill v Jones***
- 2.6.3. Perform acts expeditiously (R4-28-1101C)
- 2.6.4. Controversies between licensees (R4-28-1101D)
- 2.6.5. Disclosure of Conflicts of Interest (R4-28-1101E)
- 2.6.6. Dual Compensation (R4-28-1101F)
- 2.6.7. Accepting Additional Compensation (R4-28-1101G)
- 2.6.8 Areas of Expertise (R4-28-1101H)

2.6.9 Exercising reasonable care: R4-28-1101I

2.6.10 Prohibition against Permitting Occupancy without Permission & Delivering Possession Prior to Closing (R4-28-1101J)

2.6.11. Recommending Professional Assistance to Clients re Pre & Post Possession(R4-28-1101K)

2.6.12. Property Negotiation (R4-28-1102)

2.6.12. Broker Supervision & Control (R4-28-1103 A-G)

2.6.12.1. Establishment of Written Policies & Procedures

2.6.12.2. Monitoring Compliance

2.6.12.3. Designated Broker to Exercise Reasonable Supervision over All Activities

2.6.12.4. Employing Broker Responsible for All Acts

2.6.12.5. Designated Broker May Not Relinquish Control

2.6.12.6. No Disciplinary Action if Licensees' Violations Reported

2.6.12.7. Policy Manual Exception

3. Agency Relationships and Managerial Duties

3.1. Law of Agency

3.1.1. Types of agents

3.1.1.1. Special

3.1.1.2. General

3.1.1.3. Power of Attorney and Attorney in Fact

3.1.1.4. Durable power of attorney

3.2. Agency Relationships

3.2.1. Dual Agency

3.2.1.1. Disclosure & Consent to Limited Representation

3.2.1.2. Owner/agent & self-dealing conflicts of interest

3.2.2. Single Agency

3.2.3. Sub-Agency

3.2.3.1. Scenarios

3.2.3.1.1. Delegation of authority to other designated broker during temporary absence

3.2.3.1.2. Vacationing salesperson authorizes licensee from other company handle transactions

3.2.3.1.3. Licensee changes brokerages but continues to service former company's transactions

3.2.4. Agency principles

3.2.4.1. Vicarious liability (Respondeat Superior)

3.2.4.2. Imputed notice

3.3. Fiduciary Duties

3.3.1. Definitions

3.3.2. Obligations

3.3.3. Requirements

3.3.4. Breach of Fiduciary Duty Examples

3.3.5. **Case Law: Horiike v Coldwell Banker**

3.4. Misrepresentation and Fraud

3.4.1. Definitions

3.4.2. Duty to disclose

3.4.3. Puffing

3.5. Creating an Agency Relationship

3.5.1. Expressed

3.5.1.1. Written

3.5.1.2. Oral

- 3.5.2. Implied
- 3.6. Terminating an Agency Relationship
 - 3.6.1. Conditional release
 - 3.6.2. Unconditional release
- 3.7. Real Estate Employment Agreements
 - 3.7.1. Statutory Definition (A.R.S. 32-2151.02(E), ARS 44-101)
 - 3.7.2. Statutory Requirements (A.R.S. 32-2151.02(A))
 - 3.7.3. Listings
 - 3.7.3.1. Open Listing
 - 3.7.3.2. Exclusive Agency Listing
 - 3.7.3.3. Exclusive Right to Sell Listing
 - 3.7.3.4. Multiple Listing Services
 - 3.7.3.4.1. Full Service
 - 3.7.3.4.2. Limited services
 - 3.7.3.5. Net listings
 - 3.7.3.6. Pocket Listings
 - 3.7.3.7. "Coming Soon" Listing
 - 3.7.3.7.1. Duties of Seller's Agent
 - 3.7.3.7.2. Buyer's offer on a Coming Soon Listing
 - 3.7.3.8. "Exclusive" Listing
 - 3.7.3.8.1. No broker cooperation
 - 3.7.3.8.2. Duties of seller's agent
 - 3.7.3.8.3. Compensation to buyer's agent
 - 3.7.3.9. Working with a For Sale by Owner
 - 3.7.3.9.1. Listing v. Unrepresented Compensation Agreement
 - 3.7.4. Buyer Broker Agreements
 - 3.7.4.1. Importance of broker record keeping
 - 3.7.4.2. **Case Law: Young v Rose**
 - 3.7.5. Compensation and Co-brokerage
 - 3.7.5.1. Retainer fees
 - 3.7.6. Prohibition against assignment (A.R.S. 32-2151.029(B))

3.7.7. Prohibition against additional agreements without consent (A.R.S. 32-2151.02(C))

3.8. Brokerage Business

3.8.1. Cyber Crime

3.8.2.1. Wire Fraud

3.8.2.2. Identity Theft

3.8.2.3. Cyber Insurance

3.8.2.4. Protective procedures

3.8.2.5. **Case Law: Bain v Platinum Realty, LLC**

4. Contracts and Contract Law

4.1. Elements of a valid contract

4.1.1. Competent parties

4.1.2. Offer and acceptance (and proper communication of acceptance)

4.1.3. Lawful purpose

4.1.4. Consideration

4.1.5. Adequate description of the property/legal description

4.1.6. Smart Contracts (ARS. 44-7061)

4.1.6.1. Definition

4.1.6.2. Application

4.1.6.3. Legal effect

4.2. Statue of Frauds (A.R.S. 44-101)

4.2.1. Subsections 5, 6 & 7 only

4.3. Electronic Transactions (A.R.S. 44-7007, ARS 44-7031, SPS 2005.10)

4.4. Bankruptcy

4.4.1. Impact on contracts/transactions and foreclosure

4.4.2. Chapter 7, 11 & 13 basics

4.5. Purchase Contracts

4.5.1. Letter of Intent

4.5.2. Offer, acceptance and communication

- 4.5.3. Earnest money
- 4.5.4. Close of escrow – actual occurrence
- 4.5.5. Risk of loss before C.O.E.
- 4.5.6. Marketable title
- 4.5.7. “Time is of the Essence”
- 4.5.8. Contingencies
- 4.5.8. Contract termination
- 4.5.9. Presenting offers
- 4.5.10. Withdrawing offers
- 4.5.11. Counter offers
- 4.5.12. Multiple counter offers
- 4.5.13. Multiple offers on one property
- 4.5.14. Multiple offers on different properties
- 4.5.15. Back-up Contracts

- 4.6. Contract Interests
 - 4.6.1. Equitable interest
 - 4.6.2. Nominee
 - 4.6.3. Assignability
 - 4.6.3.1. Restrictions
 - 4.6.3.2. Liability

- 4.7. Options
 - 4.7.1. Memorandum of Option & recordation
 - 4.7.2. Option money
 - 4.7.2.1. Taxability
 - 4.7.3. Exercising an option

 - 4.7.4. Expiration
 - 4.7.5. Rolling options
 - 4.7.6. Termination of lease-option upon default (Tie-in)

4.8. Right of First Refusal

4.8.1. Memorandum of Right of First Refusal & recordation

4.9. Covenant not to compete

4.10. Dispute resolution

4.10.1. Mediation

4.10.2. Arbitration

5. Property Interests, Estates and Tenancies

5.1. Real Property

5.1.1. Land

5.1.1.1. Surface rights

5.1.1.2. Subsurface rights

5.1.1.3. Air rights

5.1.2. Appurtenances

5.1.2.1. Improvements

5.1.2.2. Fixtures

5.1.2.2.1. Legal Tests

5.1.2.2.2. Owned v. Leased (Solar Systems)

5.1.2.3. Bundle of rights

5.2. Personal Property

5.2.1. Bill of sale

5.2.2. Trade fixtures

5.2.3. Security agreements and Uniform Commercial Code (U.C.C.)

5.2.4. Manufactured Home Sales (new and resale) (A.R.S. 41-4028)

5.2.4.1. Listing and selling unaffixed manufactured homes

5.2.4.2. Affidavit of Affixture (ARS 42-15203)

5.3. Real Estate Interests and Ownership

5.3.1. Classification of Estates

5.3.1.1. Freehold

5.3.1.2. Leasehold

- 5.3.2. Fee Simple Estates
- 5.3.3. Life Estates
 - 5.3.3.1. Reversion
 - 5.3.3.2. Remainder
- 5.4. Easements
 - 5.4.1. Definition
 - 5.4.2. Appurtenant
 - 5.4.3. In Gross
 - 5.4.4. Prescriptive
 - 5.4.5. Personal (license)
 - 5.4.6. By Necessity
 - 5.4.7. Conservation Easement
 - 5.4.8. View Easement
- 5.5. Types of Tenancies
 - 5.5.1. Sole and Separate
 - 5.5.2. Community Property
 - 5.5.3. Community Property with Rights of Survivorship
 - 5.5.4. Tenancy in Common
 - 5.5.5. Joint Tenancy with Rights of Survivorship
- 5.6. Ownership Entities
 - 5.6.1. Limited Liability Companies (LLC)
 - 5.6.2. Corporations
 - 5.6.3. Trusts
 - 5.6.4. Real Estate Investment Trusts (REITS)
 - 5.6.5. Partnerships
 - 5.6.5.1. General partnership
 - 5.6.5.2. Limited partnership
 - 5.6.6. Authorized signatories for entities
- 5.7. Types of common ownership
 - 5.7.1. Cooperative
 - 5.7.2. Condominium
 - 5.7.2.1. Condominium Termination Act (ARS 33-1228)
 - 5.7.2.1.1. Application
 - 5.7.2.1.2. Percentage of ownership required

5.7.2.1.3. Termination of association

5.7.2.1.4. Owner's rights

5.7.3. Planned Unit Development (aka: Townhouse)

6. Government Rights in Real Property

6.1. Eminent Domain

6.1.1. **Case Law:**

6.1.1.1. **Bailey v City of Mesa**

6.1.1.2. **Kelo v New London**

6.2. Police Power

6.3. Escheat

6.4. Real Property Taxation

6.4.1. Full Cash Value

6.4.2. Limited Property Value

6.4.3. Assessed Value

6.4.3.1. Existing Property

6.4.3.2. New Homes & other property under development

6.4.4. Assessed Value Ratios (Assessment rates)

6.4.4.1. Residential property (Class 3 and Class 4)

6.4.4.1.1. Tax reduction for State Aid to Education (Class 3 Property)

6.4.4.1.2. Residential rental property registration (A.R.S. 33-1902)

6.4.4.2. Vacant Land (Class 2)

6.4.4.2.1. Agricultural exemption & requirements

6.4.4.3. Commercial (Class 1)

6.4.5. Calculating taxes

6.4.6. Appealing FCV

6.4.7. Property tax lien date and priority

6.4.8. Tax Bill and Payments

6.4.9. Community Facilities Districts (A.R.S 48-701)

6.4.10. Delinquent Taxes

6.4.10.1. Penalty Interest

6.4.11. Tax Lien Auction (Treasurer's Sale)

6.4.11.1. Bidding Process and Certificate of Purchase (CP)

- 6.4.11.1.1. Live Auction
- 6.4.11.1.2. On-Line Auction
- 6.4.11.2. Redemption Period
- 6.4.11.3. Foreclosure and Treasurer's Deed
- 6.4.12. Special Assessments
 - 6.4.12.1. Government/Municipal and Priority
 - 6.4.12.2. Home Owners Association (HOA) Assessment
 - 6.4.12.2.1. Lien priority
 - 6.4.12.2.2. Minimum requirements to foreclose

7. Income Tax Aspects of Real Estate

- 7.1. Types of Income
 - 7.1.1. Ordinary Income
 - 7.1.2. Capital Gain Income
 - 7.1.3. Passive Income
 - 7.1.4. Income treatment for pass through entities
- 7.2. Deduction of Taxes and Interest on Principal Residence
 - 7.2.1. Limitations
- 7.3. Sale of Principal Residence
 - 7.3.1. Capital Gain Exclusion
 - 7.3.2. Qualifying Parties
 - 7.3.3. Requirements
- 7.4. Investment Real Estate
 - 7.4.1. Deductibility of Expenses & Interest
 - 7.4.2. Depreciation (Cost Recovery)
 - 7.4.2.1. Allocating basis for depreciation
 - 7.4.2.2. Recapture of depreciation upon sale
 - 7.4.3. Investment real estate math
 - 7.4.3.1. Basis calculation
 - 7.4.3.2. Capital gain calculation
 - 7.4.4. Tax Deferred Exchanges – Basic Concepts

- 7.4.5. Capital losses
 - 7.4.5.1. Offset provisions & carry forward
- 7.5. Other income tax concepts
 - 7.5.1. Installment sales
 - 7.5.2. Taxation of mortgage over basis
 - 7.5.3. Taxation of debt relief in short sales
 - 7.5.4. Step-up in basis upon death
 - 7.5.4.1. JTWRS v Community Property
 - 7.5.5. Opportunity Zones
- 7.6. Employee v. Independent Contractor
 - 7.6.1. Federal & Arizona requirements
 - 7.6.1.1. Withholding
 - 7.6.1.2. FICA
 - 7.6.1.3. Workman's compensation
 - 7.6.1.4. Unemployment insurance
 - 7.6.1.5. Reporting income (W2 v. 1099)

8. Water Law

- 8.1. Doctrine of water law applicable to Arizona
 - 8.1.1. Riparian Doctrine
 - 8.1.2. Doctrine of Prior Appropriation
 - 8.1.2.1. First in time, first in right
- 8.2. Water Sources
 - 8.2.1. Surface Water
 - 8.2.2. Ground Water
 - 8.2.3. Renewable Sources
 - 8.2.3.1. Central Arizona Project (CAP)
 - 8.2.3.2. Central Arizona Groundwater Replenishment District (CAGRD)
 - 8.2.3.3. Effluent
- 8.3. Water Users
 - 8.3.1. Agriculture
 - 8.3.2. Industrial
 - 8.3.3. Domestic

- 8.3.4. Municipal (cities, towns, water districts)
- 8.3.5. Private water companies
- 8.3.6. Special users (golf courses, lake developments, recreational)
- 8.4. Arizona Groundwater Act of 1980
 - 8.4.1. Reasons for the Act
 - 8.4.1.1. Overdraft
 - 8.4.1.2. Subsidence
 - 8.4.2. Arizona Department of Water Resources
 - 8.4.3. Active Management Areas
 - 8.4.4. Irrigation Non-Expansion Areas
 - 8.4.5. Grandfathered rights
 - 8.4.5.1. Irrigation
 - 8.4.5.2. Type I Non-irrigation
 - 8.4.5.3. Type II Non-irrigation
 - 8.4.6. Assured Water Supply versus Adequate Water Supply
 - 8.4.7. Transfer of Well Rights
 - 8.4.7.1. Requirements
 - 8.4.7.2. Transfer request
 - 8.4.7.3. Exempt Wells
 - 8.4.7.3.1. Adjudication of Indian Tribe claims
 - 8.4.7.4. Well registration & research
 - 8.4.7.5. Well share agreements
- 8.5. Wetlands
 - 8.5.1. Definition

9. Environmental Law

- 9.1. Regulators
 - 9.1.1. Environmental Protection Agency (EPA)
 - 9.1.2. Arizona Department of Environmental Quality (ADEQ)
- 9.2. Environmental Laws and Regulations
 - 9.2.1. Federal-Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
 - 9.2.2. State – Water Quality Assurance Revolving Fund (WQARF)

9.3. Common Issues

9.3.1. Mold

9.3.2. Radon

9.3.3. Asbestos

9.3.4. Lead paint – contract requirements

9.3.5. Underground storage tanks (UST)

9.3.6. SBS (sick building syndrome)

9.3.7. Pesticides and fertilizers

9.3.8. Wood destroying insects

9.3.9. Flood hazard areas

9.3.10. Expansive soils

9.3.11. Fissures as shown on earth fissure maps issued by the Arizona Geological Survey

9.3.12. Radon gas potential zones

9.3.13. Superfund Sites and Water Quality Assurance Revolving Fund Sites

9.3.14. Brownfields

9.3.15. Airports

9.4. Due Diligence and Information Sources

9.4.1. Phase I Assessment

9.4.2. Phase II Assessment

9.4.3. Remediation (Phase III)

9.4.3.1. Abatement

9.4.3.2. Management in place/encapsulation

9.5. Strict Liabilities

9.5.1. Owner and operator

9.5.2. Brokers' and agents' disclosures

9.5.3. Mitigating liability before remediation

9.6. Environmental Building Certifications

9.6.1. LEED

9.6.2. Energy Star

9.6. Alternative Waste Water Systems

9.6.1. Conventional Septic

9.6.1.1. Requirements upon resale

9.6.2. Non-conventional systems

9.6.3. Land percolation

10. Land Descriptions

10.1. Metes and Bounds

10.1.1. Requirements

10.2. Rectangular Survey aka Government Survey aka Public Land Survey System (PLSS)

10.2.1. Baseline & Meridian

10.2.2. Townships & Ranges

10.2.3. Correction townships

10.2.4. Quadrangles/Checks

10.2.5. Sections

10.2.6. Fractional Sections

10.3. Lot and Block (recorded plat)

10.3.1. Plat of Survey

10.3.2. Assessor's Maps

10.4. Surveys

10.4.1. Boundary surveys

10.4.1.1. Flag corners

10.4.1.2. Full survey

10.4.2. ALTA Survey

10.5. Article X-Arizona Constitution: State Trust Land

10.5.1. Purpose

10.5.2. How created

11. Land Development and Zoning

11.1. Land Development

11.2. Land Planning Terminology

11.2.1. General Plan

11.2.2. Master Planned Community

11.2.2.1. Master Deed

11.2.3. Setbacks

11.2.4. Buffer Zones

11.2.5. Zoning/Changes

11.2.5.1 Downzoning issues

- 11.2.5.2. Zoning overlays
- 11.2.6. Non-Conforming Use (grandfathered rights)
- 11.2.7. Variances
- 11.2.8. Natural Area Open Space (NAOS)
- 11.2.9. Arizona 811 (Blue Stake)
- 11.2.10. Building envelope
 - 11.2.10.1. Site plans
- 11.3. Planned Communities
 - 11.3.1. Definition (ARS 33-1802.4)
 - 11.3.2. Requirements Upon Resale (ARS 33-1806)
 - 11.3.2.1. Disclosures
 - 11.3.2.2. Charges/Fees
- 11.4. New Home Sales
 - 11.4.1. Earnest Money Treatment
 - 11.4.2. Representation

12. Encumbrances

- 12.1. Deed restrictions/CC&Rs
 - 12.1.1. For sale/rent signs (ARS 33-1808(F))
 - 12.1.2. Solar Exemption (ARS 33-2816)
- 12.2. Encroachments
- 12.3. Clouds
- 12.4. Mechanic's Liens
 - 12.4.1. Justification
 - 12.4.2. Parties with lien rights
 - 12.4.2.1. Sub-Contractor exclusion on owner-occupied dwelling
 - 12.4.3. Pre-Lien Notice
 - 12.4.4. Priority
 - 12.4.5. Time Frames
 - 12.4.6. Lien Waivers
 - 12.4.7. Notice of Completion by either party
- 12.5. Judgement Liens
 - 12.5.1. Creation

- 12.5.2. Recordation
- 12.5.3. Enforcement and Renewal
- 12.6. IRS Liens
 - 12.6.1. Time frames
 - 12.6.2. Impact on closing
- 12.7. Priority of Liens
- 12.8. Arizona Homestead Exemption (ARS 33-1101)

13. Acquisition and Transfer of Title

- 13.1. Methods of Transfer
 - 13.1.1. Voluntary
 - 13.1.1.1. Dedication
 - 13.1.2. Involuntary
- 13.2. Inheritance
 - 13.2.1. Probate
 - 13.2.2. Testate and Intestate
- 13.3. Deeds of Conveyance
 - 13.3.1. Warranty
 - 13.3.2. Special Warranty
 - 13.3.3. Bargain and Sale
 - 13.3.4. Quit Claim
- 13.4. Special Purpose Deeds
 - 13.4.1. Beneficiary
 - 13.4.2. Disclaimer
 - 13.4.3. Patent
- 13.5. Deed parties
- 13.6. Requirements for validity of deeds
- 13.7. Notice
 - 13.7.1. Actual
 - 13.7.2. Constructive
- 13.8. Affidavit of Value
 - 13.8.1. Requirements
 - 13.8.2. Purpose

13.9. Adverse Possession

13.9.1. Time periods

13.9.2. Tacking concept

13.10. Title Insurance

13.10.1. Owner's Policies

13.10.1.1. Standard Policy

13.10.1.2. Extended Coverage

13.10.2. Lender's Policies (ALTA)

13.10.3. Commitment for Title Insurance (Preliminary Title Report)

13.10.3.1. Schedule A

13.10.3.2. Schedule B

13.10.4. Subrogation

13.10.5. Hold-open

13.10.6. Endorsements

13.10.7. Upon transfer to closely held entity

14. Escrow and Settlement

14.1. Definition

14.2. Parties

14.3. Purpose

14.4. Settlement Statements

14.4.1. Debits and Credits

14.4.2. Sample statement and worksheet

14.5 Requirements for disbursing commissions to salespersons and associate brokers

14.6. Double escrow/simultaneous closings

14.7. Foreign Investment Real Property Tax Act (FIRPTA) (IRS Code 4.61.12)

15. Fair Housing and Americans with Disabilities Act

15.1. Fair Housing Laws History

15.1.1. 1866 Civil Rights Act (U.S.C. 14 Stat 27-30)

15.1.2. 1968 Federal Fair Housing (42 U.S.C. 3601-3631 aka Title VIII)

15.1.3. 1988 Amendments

15.1.4. Equal Opportunity Lending – Equal Credit Opportunity (ECOA)

- 15.1.5. Steering
- 15.1.6. Blockbusting
- 15.1.7. Redlining
- 15.2. Fair Housing Enforcement
- 15.3. Advertising Requirements
 - 15.3.1. Potential discrimination
 - 15.3.1.1. " Company Exclusive" or "Pocket" listings
 - 15.3.1.2. Through social media
- 15.4. Potential Conflicts
 - 15.4.1. Arizona Residential Landlord and Tenant Act
 - 15.4.2. Deed Restrictions
 - 15.4.3. Age restricted developments
 - 15.4.4. Group homes
- 15.5. Americans with Disabilities Act (42 Chapter 26 U.S.C. Chapter 26 12101)

16. Leases and Leasehold Estates

- 16.1. Types of Leasehold Estates
 - 16.1.1. Estate for Years
 - 16.1.2. Estate from Period to Period
 - 16.1.3. Estate at Will
 - 16.1.4. Estate at Sufferance
 - 16.1.5. Holdover Tenancies
- 16.2. Types of Leases/Payment Plans
 - 16.2.1. Graduated Lease
 - 16.2.2. Lease-option
 - 16.2.3. Percentage Lease
 - 16.2.4. Net Lease (triple net)
 - 16.2.5. Gross Lease
 - 16.2.6. Ground Lease
 - 16.2.7. Sale and Leaseback
- 16.3. Assignment and Subleasing
 - 16.3.1. Definitions and parties
 - 16.3.2. Contract Rent

- 16.3.3. Positive Leasehold
- 16.3.4. Excess Rents
- 16.3.5. Economic Rent
- 16.3.6. Negative Leasehold
- 16.3.7. Liabilities
- 16.4. Lease Termination
 - 16.4.1. Actual eviction
 - 16.4.2. Constructive eviction
 - 16.4.3. Destruction of the property
 - 16.4.4. Eminent domain
 - 16.4.4.1. Condemnation clause
 - 16.4.4.2. Tenant's rights under eminent domain
 - 16.4.5. Surrender and acceptance
 - 16.4.6. Foreclosure
 - 16.4.6.1. Residential Tenants' Rights after Foreclosure (Protecting Tenants at Foreclosure Act of 2018)
 - 16.4.6.2. Effect of lease subordination on landlord's or tenant's rights
 - 16.4.7. Parties rights/obligations at termination of commercial lease vs. residential lease
- 16.5. Section 8 housing
- 16.6. Short Term/Vacation Rentals

17. Commercial Leasing & Building Terminology

- 17.1. Tenant improvements
- 17.2 Building shell
- 17.3 Certificate of Occupancy
- 17.4 Common Area Maintenance (CAM) charges
- 17.5. Expense stop
- 17.6. Turnkey project
- 17.7. Anchor tenant
- 17.8. Estoppel upon refinance or sale
- 17.9. Subordination upon refinance
- 17.10. Full-service lease
- 17.11. Load factor

- 17.12. Rentable square footage
- 17.13. Calculating free rent period
- 17.14. Force majeure
- 17.15. Commercial Real Estate Broker Liens (ARS 33-1071)
 - 17.15.1. Application
 - 17.15.2. Commission agreement requirements
 - 17.15.3. Preliminary notice recordation
 - 17.15.4. Recording Notice of Broker Lien
 - 17.15.5. Enforcement of lien
- 17.16. Building Classifications: A, B, C
- 17.17. As-Built
- 17.18. Big Box
- 17.19. Build-out
- 17.20. Concessions
- 17.21. End Cap
- 17.22. Hard corner
- 17.23. Parking ratio
- 17.23. Power Center
- 17.24. Strip center
- 17.25. Sub-Market

18. Arizona Residential Landlord and Tenant Act (A.R.S. Title 33 Chapter 10)

- 18.1. General Provisions
 - 18.1.1. Purposes and Applicability
 - 18.1.2. Exclusions
 - 18.1.3. Discrimination against tenants with children prohibited
 - 18.1.4. Early Termination for Domestic Violence
 - 18.1.5. Bedbug Control, Landlord and Tenant obligations
- 18.2. Landlord Obligations
 - 18.2.1. Security Deposits
 - 18.2.1.1. Limitations
 - 18.2.1.2 Refundable v. Non-refundable
 - 18.2.1.3. Move-in and move-out inspections

- 18.2.1.4. Application upon termination and accounting
- 18.2.1.5. Landlord's failure to comply and damages
- 18.2.2. Disclosure and Tender of written agreement
 - 18.2.2.1. Disclosure of manager and owner or owner's rep
 - 18.2.2.2. Availability of AZ Residential Landlord and Tenant Act
- 18.2.3. Maintain Fit Premises
- 18.3. Tenant Obligations
 - 18.3.1. Maintain Dwelling Unit
 - 18.3.2. Follow Rules and Regulations
 - 18.3.3. Access and notice by landlord
- 18.4. Remedies
 - 18.4.1. Non-compliance by Landlord
 - 18.4.1.1. Violation of health and safety
 - 18.4.1.2. Other violations
 - 18.4.2. Self-help for minor defects
 - 18.4.3. Non-compliance by Tenant
 - 18.4.3.1. Notice to Terminate for Health and Safety Violations
 - 18.4.3.2. Notices and timelines
 - 18.4.4. Abandonment
 - 18.4.4.1. Definition
 - 18.4.4.2. Notice and Posting
 - 18.4.4.3. Personal Property
 - 18.4.5. Distraint
 - 18.4.6. Periodic Tenancy: Notice to Terminate

19. Property Insurance and Warranties

- 189.1. Property Insurance
 - 19.1.1. Additional insured
 - 19.1.2. Loss Payee
 - 19.1.3. Claims History
- 19.2. Home Warranty
- 19.3. National Flood Insurance Program
 - 19.3.1. Elevation Certificate

- 19.4. Business Insurance
 - 19.4.1. Errors and Omissions (E&O)
 - 19.4.1.1. Coverages & exclusions
 - 19.4.2. Liability Coverage
 - 19.4.2.1. Umbrella Policy
 - 19.4.3. Broker Tail Insurance

20. Appraisal

- 20.1. Market value v. Market Price v Cost
- 20.2. Square Footage
 - 20.1.2.4.1. Livable
 - 20.1.2.4.2. Under roof
- 20.3. Appraisal Concepts and Principles of Value
 - 20.3.1. Highest and Best Use
 - 20.3.2. Substitution
 - 20.3.3. Supply and Demand
 - 20.3.4. Progression and Regression
 - 20.3.5 Plottage (Assemblage)
 - 20.3.6. Orientation
 - 20.3.7. Externalities
 - 20.3.8. Appreciation
 - 20.3.8.1. Earned Increment
 - 20.3.8.2. Unearned increment
 - 20.3.9. Depreciation
 - 20.3.10. Economic life
 - 20.3.11. Excess land
 - 20.3.12. Value-in-Use
- 20.4. Appraisal Approaches
 - 20.4.1. Sales comparison approach to value (market data)
 - 20.4.1.1. Collection and analysis of data
 - 20.4.1.2. Adjustments to comparables
 - 20.4.2. Cost Approach to Value (Appraisal by Summation)
 - 20.4.2.1. Estimation of site value (land value)

- 20.4.2.2. Estimation of construction costs (building costs)
 - 20.4.2.2.1. Replacement Cost
 - 20.4.2.2.2. Reproduction cost
- 20.4.2.3. Estimation of accrued depreciation from all sources
 - 20.4.2.3.1. Physical Depreciation
 - 20.4.2.3.2. Functional Obsolescence
 - 20.4.2.3.3. Economic Obsolescence
- 20.4.3. Income Approach to Value
 - 20.4.3.1. Gross Rent Multipliers
 - 20.4.3.2. Direct Capitalization
- 20.4.4. Reconciliation
- 20.5. Financial Analysis
 - 20.5.1. Property Income and Expense Terminology
 - 20.5.2. Capitalization Rates
 - 20.5.3. Cash-On-Cash Return
- 20.6. Competitive Market Analysis (CMA)
- 20.7. Broker Price Opinion - Exemption for Real Estate Licenses (A.R.S. 32-3602(A))
 - 20.7.1. Prohibition against use of term "appraisal"
- 20.8. Appraisal Process
 - 20.8.1 Appraisal Management Companies (AMC)
 - 20.8.2. Drive by Appraisal
 - 20.8.3. Desk Top Appraisal
 - 20.8.4. Automated Valuation Models
- 20.9. Appraisal Reports
 - 20.9.1. Uniform Residential Appraisal Report (URAR) Overview
 - 20.9.2. Narrative appraisal
 - 20.9.3. Appraisal reconsiderations

21. Primary and Secondary Markets/Financing Concepts

- 21.1. Primary Lenders
 - 21.1.1. Mortgage Bankers and Brokers

- 21.1.2. Life Insurance Companies
- 21.1.3. Credit Unions
- 21.1.4. Private Investors (Hard Money Lenders)
- 21.1.5. Portfolio Lenders
- 21.2. Secondary Mortgage Market
 - 21.2.1. Fannie Mae (FNMA)
 - 21.2.2. Freddie Mac
 - 21.2.3. Government National Mortgage Association (GNMA)
 - 21.2.4. Estoppel Certificate
 - 21.2.5. Loan Servicing
- 21.3. Loan Clauses
 - 21.3.1. Acceleration
 - 21.3.2. Alienation (Due on Sale)
 - 21.3.3. Release (Partial Release)
 - 21.3.4. Subordination
 - 21.3.5. Prepayment (Yield Maintenance)
 - 21.3.6. Non-disturbance
 - 21.3.7. Non-recourse
 - 21.3.8. Personal guarantee
 - 21.3.8.1. Carve-out
 - 21.3.9. Assignment of Rents
 - 21.4.10. Cross-collateralization

22. Residential Financing and Commercial Financing

- 22.1. FHA Financing
 - 22.1.1. Lender Requirements
 - 22.1.2. Types of Properties

- 22.1.3. Mortgage Insurance Premium (MIP)
- 22.1.4. Conditional Commitment and Amendatory Clause
- 22.1.5. Advantages and Limitations
- 22.2. VA Financing
 - 22.2.1. Lender Requirements
 - 22.2.2. Types of Properties
 - 22.2.3. Funding Fee
 - 22.2.4. Certificate of Reasonable Value
 - 22.2.5. Eligibility and Entitlement
 - 22.2.6. Advantages and Limitations
- 22.3. U.S. Department of Agriculture (USDA) Financing
- 22.4. Conventional Loans
 - 22.4.1. Types of Properties
 - 22.4.2. Advantages and limitations
 - 22.4.2.1. Conforming Loan
 - 22.4.2.2. Non-conforming / Jumbo
 - 22.4.2.3. Subprime Loan
 - 22.4.3. Private Mortgage Insurance (PMI)
- 22.5. Seller Financing
 - 22.5.1. Consumer Credit Transaction v. Non-Consumer Credit Transaction
- 22.6. Truth in Lending Act (Regulation Z)
 - 22.6.1. Purpose and Application
 - 22.6.2. Annual Percentage Rate
 - 22.6.3. Trigger Terms and Full Disclosure
- 22.7. Real Estate Settlement Procedures Act (RESPA)
 - 22.7.1. Purpose and Application
 - 22.7.2. Consumer Financial Protection Bureau (CFPB) and TILA/RESPA Integrated Disclosure (TRID) Loan Estimate and Closing Disclosure
 - 22.7.2.1. Triggers requiring new 3-day disclosure
 - 22.7.3. Affiliated Business Arrangements
 - 22.7.3.1. Disclosure requirements
 - 22.7.4. Prohibition against kickbacks and referral fees

- 22.7.5. Loan escrow impound accounting
- 22.8. Loan Fees and Interest Rates
 - 22.8.1. Discount Points/Buydown
 - 22.8.2. Origination Fee
 - 22.8.3. Floating Rate
 - 22.8.4. Rate Lock
 - 22.8.5. Tax Service
 - 22.8.6. Underwriting Fee
- 22.9. Loan Qualifications
 - 22.9.1. Pre-qualified v Pre-approval
 - 22.9.2. Uniform Residential Loan Application (URLA) Fannie Mae Form 1003
 - 22.9.3. Tri Merged Credit Report
 - 22.9.4. Credit Score
 - 22.9.5. Home Owners Association Reserve Requirement
 - 22.9.6. Loan Fraud
 - 22.9.6.1. Common red flags
 - 22.9.6.2. ADRE SPS 2008.06
- 22.10. Commercial Financing
 - 22.10.1. Types of Loans
 - 22.10.1.1. Conventional
 - 22.10.1.2. Seller Financing
 - 22.10.1.3. Small Business Administration Loans
 - 22.10.1.4. Personal guarantee
 - 22.10.1.5. Yield Maintenance – prepayment penalty
 - 22.10.1.6. Basis Points
 - 22.10.1.7. Debt Coverage Ratio
 - 22.10.1.8. Mezzanine financing
 - 22.10.2. "Crowd Funding" real estate investments (ARS 44-1844)
 - 22.10.2.1. Definition
 - 22.10.2.2. Types of properties
 - 22.10.2.3. Investment limitations

23. Financing Documents

- 23.1. Promissory Notes
- 23.2. Mortgages
 - 23.2.1. Parties
 - 23.2.2. Payoff and Satisfaction of Mortgage
- 23.3. Deeds of Trust
 - 23.3.1. Parties
 - 23.3.2. Equitable title and legal title
 - 23.3.3. Payoff and Deed of Reconveyance
- 23.4. Agreement for Sale (Land Contract)

24. Deed of Trust Foreclosure

- 24.1. Foreclosure Option #1: Non-Judicial Foreclosure
 - 24.1.1. Recordation of Notice of default and Trustee's Sale
 - 24.1.2. Parties required to be notified
 - 24.1.2.1. Request for Notice of Sale
 - 24.1.3. Trustor's right of reinstatement
 - 24.1.4. Absence of acceleration of debt
 - 24.1.5. Minimum time prior to Trustee's Sale
 - 24.1.6. Trustee's sale and bidding process
 - 24.1.7. Delivery of Trustee's Deed
 - 24.1.8. Absence of Statutory Right of Redemption
 - 24.1.9. Rights of borrower in possession
 - 24.1.10. Taking an assignment of rents
- 24.2. Foreclosure Option #2: Judicial Foreclosure
 - 24.2.1. Legal action, acceleration of debt and recording of Lis Pendens
 - 24.2.2. Sheriffs Sale and Sheriff's Certificate
 - 24.2.3. Statutory redemption period and Sheriff's Deed
- 24.3. Bidding Process
 - 24.3.1. Excess money bid
 - 24.3.2. Lender's credit bid
 - 24.3.3. Deficient bid
- 24.4. Deficiency Judgments

- 24.4.1. Arizona Anti-Deficiency Statute (A.R.S. 33-814(G))
- 24.5. Foreclosure with multiple liens on property
 - 24.5.1. Right of junior lien holder to cure default on prior liens
 - 24.5.2. Termination of junior lien by foreclosure of prior lien
- 24.6. Deed in Lieu of foreclosure
 - 24.6.1. Cancellation of debt
 - 24.6.2. Acquisition by lender subject to prior and subordinate liens
 - 24.6.3. Estoppel agreement in deed-in-lieu
- 24.7. Foreclosure of Agreement for Sale (Land Contract, Contract for Deed)
 - 24.7.1. Judicial foreclosure
 - 24.7.2. Forfeiture
- 24.8. Distressed Property Transactions
 - 24.8.1. Short Sale
 - 24.8.2. Bank Owned Property/REO (Real Estate Owned)
 - 24.8.3. Forbearance / Loan Modification

25. Disclosure/Consumer Protection

- 25.1. Consumer Privacy Act
- 25.2. Telephone Consumer Protection Act (Do Not Call)
- 25.3. Military airports and ancillary military facilities
- 25.4. Military training routes and restricted airspace
- 25.5. Public and private airports
- 25.6. Fix and Flips
 - 25.6.1. Building/fixing for sale (A.R.S. 32-1121(A)5)
 - 25.6.2. Dollar amount limit for Unlicensed Contractors (A.R.S. 32-1121(A)14)
 - 25.6.3. Buildings / Add-ons without Permit(s)
 - 25.6.4. Registrar of Contractors (A.R.S. 32-1103)
 - 25.6.4.1. Builder Requirements
- 25.7. Any other condition that affects the property

26. Math

- 26.1. Prorations
 - 26.1.1. Taxes
 - 26.1.2. Home Owners Associations Dues

- 26.1.3. Rents
- 26.2 Appreciation and Depreciation Calculations
- 26.3. Property Tax Calculations
- 26.4. Seller Net Proceeds Calculations
- 26.5. Loan Interest Calculations
- 26.6. Area and Perimeter Calculations
- 26.7. Capitalization Calculations
- 26.8. Commission Calculations
- 26.9. Closing Statement Calculations
- 26.10. LTV Ratio Calculations
 - 26.10.1. Discount Points
 - 26.10.2. Origination Fees
- 26.11. Remaining Balance Calculations
- 26.12. Gross Rent Multiplier Calculations
- 26.13. Basis and Capital Gain Calculations
- 26.14. Debt Coverage Ratio Calculations

27. Cooperative Nature of Real Estate

- 27.1. Professional Associations
- 27.2. Sherman Anti-Trust Act
 - 27.2.1. Price fixing
 - 27.2.2. Boycotts
 - 27.2.3. Tie-in agreements
 - 27.2.4. Restraint of trade
- 27.3. Parties Related to a Real Estate Transaction
 - 27.3.1. Licensed Contractors
 - 27.3.1.1. Registrar of Contractors
 - 27.3.2. Mortgage Loan Originators
 - 27.3.2.1. Arizona Department of Financial Institutions
 - 27.3.2.2. Nationwide Mortgage Licensing System
 - 27.3.3. Home Inspectors
 - 27.3.3.1. Board of Technical Registration
 - 27.3.4. Pest Control Inspectors

28. Business Accounting

28.1. Financial Statements

28.1.1. Balance sheets

28.1.1.1. Total assets

28.1.1.1.1. Current assets

28.1.1.1.2. Investments

28.1.1.1.3. Intangible assets

28.1.1.2. Total Liabilities

28.1.1.2.1. Current liabilities

28.1.1.2.2. Long term liabilities

28.1.1.3. Net worth/Book value

28.1.1.4. Shareholder's equity

28.1.1.5. Ratios

28.1.1.5.1. Quick ratio

28.1.1.5.2. Current ratio

28.1.1.5.3. Debt-to-equity ratio

28.1.2. Profit & Loss Statement

28.1.2.1. Total revenue

28.1.2.2. Cost of goods

28.1.2.3. Gross profit

28.1.2.4. Expenses

28.1.2.5. Net profit

28.1.3. Cash Flow Statement

28.1.4. Notes to financial statements

28.2. Financial Statement Example

28.3. Terminology

28.3.1. GAAP

28.3.2. EBITDA

28.3.3. Accounting methods

28.3.3.1. Cash

28.3.3.2. Accrual

28.3.4. Personal property tax

29. ADRE Audits

29.1 Basic Audit Process

29.1.1. Signage and license display (A.R.S. §32-2126.B, A.R.S. § 32-2127.B, A.R.S. § 32-2128)

29.1.2. Employee files (A.R.S. § 32-2151.01)

29.1.3. Broker's operating and/or commission account (A.R.S. §32.2155, A.R.S. § 32-2163.A & B)

29.1.4. Broker's Policy and Procedure Manual (R4-28-1103.A)

29.1.5. Delegations of Authority for Broker duties and Broker Temporary Absence (A.R.S. § 32-2151.01.G, A.R.S. § 32-2127.D, R4-28-304.B)

29.1.6. Sales, Listing, Leasing and/or Property Management Logs (A.R.S. § 32-2151.01E, A.R.S. § 32-2175E)

29.1.7. Sales files for completeness and timely documented broker review (A.R.S. § 32-2151.01)

29.1.8. Transactions in which licensees acted as a principal (R4-28-1101.E)

29.1.9. Property Management Agreements (A.R.S. § 32-2173)

29.1.10. Broker Trust bank accounts, including bank statements and monthly trust account reconciliations (A.R.S. § 32-2151)

29.1.11. Client and Tenant Ledgers, Liability Balances and Monthly Reports (A.R.S. § 32-2175.C)

29.1.12. Checkbook register (receipts and disbursement journal) (A.R.S. § 32-2151.A.2)

29.1.13. Trust Account signature cards (A.R.S. §32-2174)

29.2. Broker Supervision & Control Audit Declaration

29.2.1. Purpose & proper interpretation

29.3. ADRE Website Audit Division Demonstration

29.3.1. Documents and links review and demonstration

Case Law Summaries

These summaries are part of the 90-Hour Arizona Real Estate Broker Pre-License Curriculum and may be used as source material in a real estate broker course.

Case Law: State Bar of Arizona v Arizona Land Title & Trust

Topic: Unauthorized Practice of Law

Background & Brief Summary:

Prior to 1961 real estate agents, and title companies had prepared real estate contracts and other documents to effect and close transactions. In many states, only attorneys may prepare such contracts on behalf of clients. The State Bar of Arizona sought to stop this practice by real estate agents and title companies.

The plaintiffs, State Bar of Arizona and certain attorneys filed two complaints. One was against the defendants Ford Hoffman and C.L. Hoffman, dba Ford Hoffman Realty (Hoffmans), the other against the Arizona Land Title & Trust Company, Arizona Title Guarantee & Trust Company, Lane Title & Trust Company, Phoenix Title & Trust Co., and Tucson Title Insurance Co., (the title companies).

The complaint against the title companies was that their business practices, by and through attorneys and other persons employed by them, constituted the unauthorized practice of law.

The complaint against Hoffmans alleged that as real estate brokers and salesmen involved in the sale of certain real property, prevailed upon the sellers to permit Hoffmans to handle the escrow by advising that they were competent and qualified to handle it and that the parties to the transaction would be as fully protected from a legal standpoint as if the escrow were handled by a title company. The complaint further alleged that Hoffmans advised that they were competent and qualified to draft and prepare all the necessary contracts, deeds, bills of sale and other instruments necessary to the transaction. Plaintiffs claimed that Hoffmans were illegally engaged in the practice of law and sought an injunction restraining them from doing any further acts of the same kind or character, except preparation of the customary preliminary purchase agreement executed on printed forms prepared for such purpose.

Decisions:

The trial court basically found that the title companies and the Hoffmans were within their rights to prepare contracts and close transactions as they had done in the past, subject to certain restrictions. The plaintiffs appealed to the Arizona Supreme Court.

After a lengthy discussion the Arizona Supreme Court concluded: "*We have enunciated the general principles of the nature of the practice of law in Arizona, and that it must be and is confined to those who have been duly licensed as lawyers, and that neither a corporation nor a layman, under the guise of long-established custom or as to matters which they may claim incidental to their lawful business, may engage in the practice of law.*"

Application: This case was the impetus for a state-wide constitutional initiative (led by real estate licensees) that resulted in Arizona citizens voting for Article 26 of the Arizona Constitution which gives real estate agents the right to prepare all types of real estate contracts, without charge, when acting as agents in a transaction. *Author's note: Along with this right comes the responsibility to be knowledgeable, competent and professional when preparing such contracts.*

Case Law: Lerner v. DMB/Carrier

Topic: Stigmatized Property Law A.R.S. 32-2156. Failure of to disclose a sex offender in the neighborhood

Brief Summary:

In February 2008, Glen Lerner and his wife purchased a residential property in Scottsdale, AZ. Both the Seller (Carrier) and the Buyer (Lerner) chose to be represented by the same real estate broker, DMB Realty, LLC and executed AAR's Consent to Limited Representation and the Real Estate Agency Disclosure and Election; the Residential Resale Real Estate Purchase Agreement; and the Residential Seller's Property Disclosure Statement.

About 6 months later, the Lerner's discovered that the home was located in the vicinity of a level 1 (lowest risk) sex offender. Approximately two years later, the Lerner's filed their Complaint alleging Breach of Fiduciary Duty against DMB Realty and the Implied Covenant of Good Faith and Fair Dealing, Negligent Misrepresentation and Fraud against the Sellers. The Lerner's claimed that had they known of the sex offender they would not have purchased the house.

Decision:

The Superior Court agreed with DMB and the Sellers that the Lerner's lawsuit should be dismissed because A.R.S. §32-2156, which regulates real estate disclosures and prevents actions against real estate transferors, brokers and agents for not disclosing certain stigmatizing facts about property being transferred, including whether the property is located in the vicinity of a sex offender, does not violate the Arizona Constitution. The Lerner's appealed.

On November, 27, 2012, the Arizona Court of Appeals upheld the dismissal and upheld the constitutionality of the stigmatized property statute. The Arizona Court of Appeals specifically held A.R.S. § 32-2156 barred the Lerner's' claims against DMB and the Sellers for failing to disclose the presence of the sex offender and rejected the Lerner's contention that the statute unconstitutionally abrogated their right to sue for damages. The Court also held the representation agreement the Lerner's signed barred their claim for Breach of Fiduciary Duty against DMB.

Application:

In effect, the Arizona Court of Appeals upheld both a statutory protection for brokers, (ARS 32-2156) as well as terms limiting a broker's duties in a representation agreement. Disclosure of duties using well-crafted forms reduces a licensee's risk.

Case Law: Verma v Stuhr

Topic: Affidavit of Disclosure- Right to Rescind

Brief Summary:

Three similar cases were decided regarding A.R.S. § 33-422 (Affidavit of Disclosure) which permits a buyer to rescind a contract to purchase real property. In each case, the buyers (Verma) had actual knowledge of a federal flood easement over the subject property within the time provided for due diligence under their contracts. In each case, the buyers affirmatively elected not to terminate the contract after learning of the defect in title created by the easement. Ultimately, however, the buyers attempted to extract themselves from the transactions by invoking the statute's express disclosure requirement and its guarantee of a unilateral right of rescission.

In two of the cases, (Verma v Tilley Farms Inc. and Verma v Dougherty) the Arizona Court of Appeals concluded that the buyers (Verma) allowed their statutory rescission rights to lapse, and that they are bound by the terms of their contracts. In the third, Verma v Stuhr, the court concluded that the right was validly invoked.

The statute provides: 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.

Decisions:

First, the court held that there is **no upper limit to the size of a parcel** subject to the statute.

Second, the court held that the statute **applies to parcels located only partially within unincorporated areas.**

Third, the court held that the statute is constitutional, and that a **seller's compliance with the statute is mandatory** unless the buyer waives its rights. Compliance requires the seller to furnish an affidavit of disclosure that addresses those attributes of land identified in the statute's model affidavit of disclosure. Once an affidavit is furnished, the **buyer's absolute right to rescind pursuant to A.R.S. § 33-422(D) exists for five days. The right may not, however, be exercised after the transaction has closed.**

Finally, an affidavit that contains inaccurate statements may give rise to a claim for relief at common law (in other words, for damages), but it does not create a continuing right to rescind beyond the five days allowed by the statute.

Application:

Seller's of property that is not in a subdivision nor in a municipality must provide buyers with the Affidavit of Disclosure. To protect the seller, listing agents should have the seller complete the affidavit at time of listing the property and provide it to the buyer at the time a purchase agreement is mutually accepted.

Note: The Affidavit of Disclosure is required on all property types whether improved or unimproved. Additionally, licensees should make sure the most recent edition of the affidavit is used.

Case Law: Barnes v Lopez, 25 Ariz. App. 477 (1976)

Topic: Misrepresentation

Brief Summary:

In 1972, Barnes (seller) listed property with Soleng Realty through salesperson Cajero. The listing stated the zoning as B-2A (Business). The zoning was partially B-2A and partially R-2 (residential). A sign on the property advertised it as B-2A.

The listing salesperson, Cajero, told the buyer (Lopez) that Lopez could "build any kind of business you want on the property." The seller, Barnes, told Lopez "this is the only piece of property zoned B-2A that is left in that area." After closing, Lopez discovered the actual zoning. Lopez claimed he was damaged by misrepresentations of the seller and real estate company.

Decision:

The trial court rendered judgment against Barnes and Soleng Realty in favor of Lopez. The appeals court affirmed that judgment.

Application:

The representations of the agent and seller, in statements and advertising, as to the B-2A zoning was a misrepresentation of an existing fact. Commissioner's rules require written disclosure of material facts that adversely affect the consideration to be paid.

Case Law: Lombardo v. Albu

Topic: Disclosing Material Facts Obtained in Confidence

Brief Summary:

The Lombardo's owned a house in Fountain Hills, Arizona, but were behind in their monthly payments so they listed the house for sale. A buyer's agent (Albu) presented an offer to purchase the house. After the offer was made, the prospective buyer gave Albu information that she might be unable to fulfill her financial obligations to close the sale.

The buyer's agent obtained this information in confidence and did not inform the Lombardo's that the prospective buyer may not be an "able" buyer. The closing date for the sale was extended several times with the seller's consent, yet the buyer never was able to obtain financing. After several days, the Lombardo's ultimately lost their equity in the property at a trustee's sale.

Decision:

The Arizona Supreme Court ruled that a buyer's real estate agent may be liable for failing to inform the seller that the buyer might be unable to make all the payments because of financial difficulties. Even though the financial information was obtained in confidence, the Court held that the buyer's agent had a duty to disclose the inability of the buyer to obtain financing when that became a material fact.

Application:

The significant thing about the Lombardo case has to do with disclosing information obtained in confidence. The Supreme Court acknowledged an agent's duty not to disclose confidential information of its client but reasoned that financial information of a buyer is not confidential in a real estate transaction, thereby shifting an agent's duty from one of confidentiality to his or her client, to one of disclosure to a third party.

Case Law: Development Corporation v. Pima Capital Management

TOPIC: "As-Is" clause

Brief Summary:

The seller, Pima Capital Management, failed to disclose the extensive use of flexible polybutylene pipe within the plumbing systems of two apartment buildings. The buyer's who had retained legal counsel and other experts to assist them in the transaction sued two years after the closing, alleging fraud and negligent nondisclosure, and the seller attempted to defend based on a standard disclaimer of warranties that included an "as is" clause.

Conclusion:

The Court rejected the seller's argument that the "as is" clause relieved the seller of any duty to alert the buyers to the defective plumbing, where the plumbing defect was known to the seller, was "basic to the transaction", and was a latent defect which the buyers did not discover during the due diligence period. Under these circumstances, the Arizona Court of Appeals held that the seller was under a duty to disclose the defective plumbing, and that its breach of that duty at a minimum violated the covenant of good faith and fair dealing implied in the contract, even though the contract contained an "as-is" clause.

Application:

This case extends to commercial real estate transactions, that "as is" language will not protect a seller from claims based on nondisclosure of significant latent defects known to the seller.

Case Law: Mammias v Oro Valley Townhouses

Topic: Misrepresentation of Square Footage

Brief Summary:

In July, 1977, a sales agent, Rossi, for Realty Executives of Tucson met George Mammias, and showed him a floor plan for the Malaga Model of Oro Valley Townhouses, Inc., which showed it had 2089 sq. ft. of living area. Subsequently, Mammias contracted with Oro Valley for a Malaga Model to be constructed.

The contract provided the home would be completed on November 1. In November, Mammias contracted for certain extras, including a fireplace and purchased appliances and carpeting for the unit.

Sometime prior to August 25, 1977, the agent learned that the square footage of the Malaga Model, as it was being constructed, was not 2089 but was instead 1793 sq. ft., a difference of 296 sq. ft.

No one told Mammias of this mistake. In December Mammias learned, by measuring some of the rooms under construction, that the square footage had been misrepresented. On December 28 Rossi wrote Mammias as follows:

"This is to verify our telephone conversation that the Malaga Model you are purchasing on Lot 63 of Oro Valley Townhouses contains approximately 1793 square feet. If you do not consent to this and accept property as is, contract will be voidable at your option."

Mammias refused this offer, paid for the townhouse, including the extras, and took possession. They later sold the property at a profit but sued for damages.

The Arizona Court of Appeals cited that the Restatement of Torts, 2d, § 551(2)(c) covers this fact situation:

"One party to a business transaction is under a duty to exercise reasonable care to disclose to the other before the transaction is consummated,

(c) subsequently acquired information that he knows will make untrue or misleading a previous representation that when made was true or believed to be so;"

The comment to this section is particularly applicable:

"One who, having made a representation which when made was true or believed to be so, remains silent after he has learned that it is untrue and that the person to whom it is made is relying upon it in a transaction with him, is morally and legally in the same position as if he knew that his statement was false when made."

Oro Valley Townhouses knew by August 25, at the latest, that their promotional literature for the Malaga contained a serious misrepresentation; they knew Mammias had received that literature and had contracted for the construction of the model. It was incumbent upon them at that time to advise Mammias of their negligence. By December when they did confess their mistake, the unit was nearly completed, including the extras for which appellants were obligated; appellants had moved to Arizona and had purchased appliances and carpeting for the unit.

Decision: Oro Valley had made a misrepresentation by remaining silent after discovering the error.

Application: As soon as information is discovered to be incorrect, communicate it to all parties.

Case Law: Aranki v RKP Investments

Topic: Listing Broker's Liability & Negligent Misrepresentation

Brief Summary:

This case involved a home located in Cave Creek, Arizona, which Aranki (Buyer) purchased from Powell (Sellers). The Buyers were represented by broker, Ridgecrest Realty and salesperson Glickson (collectively, "Buyer Representatives") After the closing, the Buyers claimed they discovered many latent defects and problems with the property. The Buyers sued the listing brokerage (Realty Executives), their Buyer Representatives and the Sellers. All defendants moved for summary judgment, which the trial court granted.

The Buyers appealed to the Arizona Court of Appeals. Their claim against the listing brokerage was for negligent misrepresentation. The listing brokerage argued that as the agent of the Sellers, it did not have a duty to the Buyers to investigate representations made by the Sellers. The court explained that the duty owed by the listing brokerage to customers, such as the Buyers, was different from the duty of "full and frank disclosure" that they owed to their clients, the Sellers. Under Arizona law, a listing broker's duty to buyers is to deal with them fairly, and a listing broker is not liable to a buyer for passing along false information from a seller **unless he knew or should have known** that the information was false. There was no evidence that the listing broker knew or should have known of the defects, so the court affirmed the summary judgment for the listing brokerage.

The Buyers also claimed negligent misrepresentation by their Buyer Representatives. In particular: 1. that they failed to advise them of the defects; 2. permitted them to waive the Sellers' warranties and purchase the home "as is;" and 3. advised them that the defects merely were cosmetic, and it only would cost \$2,000 to correct any defects. The Buyer Representatives claimed that the Buyers waived any claims against them in two exculpatory clauses of the purchase contract. One clause stated that the Buyers released "all brokers...from any and all liability and responsibility regarding the condition" of the property. The other stated that the Buyers would "conduct all desired independent investigations of any and all matters concerning the purchase" prior to the closing.

The Buyers argued that these clauses were unenforceable because they were part of a pre-printed form contract and were not terms specifically negotiated between the parties. The court observed that "the law disfavors contractual provisions by which one party seeks to immunize himself against the consequences of his own torts." It pointed to the fact that the clauses were not initialed by the parties, nor was there evidence that the provisions were discussed or negotiated. Because of this, the court found that these provisions did not immunize the Buyer Representatives from liability. The court reversed the lower court's holding with respect to the Buyer Representatives and remanded that issue back to the trial court for further proceedings.

Applications:

1. A listing broker is not liable to a buyer for passing along false information from a seller **unless the broker knew or should have known** that the information was false.
2. Licensees may not rely on contract clauses that immunize the agent from liability if these clauses were not negotiated. In other words, 'boilerplate' language built into a contract is not considered 'negotiated' terms of mutual agreement.

Case Law: Easton v. Strassburger / Valley of California Inc. dba Valley Realty

Topic: Negligence & Failure to Disclose

Brief Summary:

Strassburger (seller) employed the firm of Valley Realty (defendants) as broker for the sale of their property. The property was a one-acre parcel of land in the city of Diablo, CA and was improved with a 3,000-square-foot home, a pool, and a guest house. Easton purchased the property for \$170,000 in May 1976. One of the agents observed that the floor of a guest house was uneven, an indication of soil problems. There was also a net installed to repair damage from a slide which occurred just prior to the sale. The agents conducted several inspections prior to sale and were aware of certain "red flags" which should have indicated to them that there were soils problems. Despite this, the agents did not request that the soil stability of the property be tested and did not disclose these facts to Easton (buyer).

Shortly after Easton purchased the property, there was massive earth movement on the parcel. Subsequent slides destroyed a portion of the driveway. Expert testimony indicated that the slides occurred because a portion of the property was fill that had not been properly engineered and compacted. The slides caused the foundation of the house to settle which in turn caused cracks in the walls and warped doorways. Damage to the property was so severe that although experts appraised the value of the property at \$170,000 in an undamaged condition, the value of the damaged property was estimated to be as low as \$20,000. Estimates of the cost to repair the damage caused by the slides and avoid recurrence ranged as high as \$213,000. Easton sued for fraudulent concealment and intentional and negligent misrepresentation.

Decision:

At trial, a jury found that defendants had been negligent and awarded Easton \$197,000. The Appeals Court affirmed the judgement against Valley Realty.

Application:

Real estate licensees have an affirmative duty to conduct a reasonably competent and diligent inspection of a property and to disclose to prospective purchasers all facts materially affecting the value or desirability of the property that such an investigation and attention to "red flags" would reveal.

Case Law: Hill v. Jones

TOPIC: Seller's Duty to Disclose Material Facts

Brief Summary:

Plaintiffs Warren G. Hill and Gloria R. Hill entered into an agreement with Defendants Ora G. Jones and Barbara R. Jones to purchase Defendants' home. Plaintiff sought to rescind the agreement after they learned that the home had termites. No real estate agents were involved in the transaction.

Plaintiffs purchased Defendants home for \$72,000. Plaintiffs had, on several occasions, inspected the home and twice noticed potential termite damage to the home. Although Plaintiffs, who were both familiar with termite damage, noticed holes in the wood on the patio and a ripple in the floor in the living room they never followed up to determine the cause of such damages. On one such occasion, Plaintiffs asked Defendants about a ripple on the floor in the living, Defendants responded that the ripple was caused by water damage. The house eventually passed termite inspection, and Plaintiffs closed relying on the inspection. Defendant sellers never disclosed to Plaintiff, or to the termite inspector, the fact that in the past the house had been infested by termites and that the house received treatment for such infestations. Upon moving into the house, the wood in the living room began to crumble, it was determined that such damage was caused by termites.

Does a seller have a duty to disclose to the buyer the existence of termite damage, where such damage is known by the seller, and not the buyer, and materially affects the value of the property?

Decision:

The Arizona Court of Appeals ruled that when sellers are aware of facts materially affecting the value of the property, the sellers are under a duty to disclose such facts.

Application:

Sellers, whether represented by a licensee or not, have a duty to disclose material facts. But what about real estate licensees who represent sellers who are hesitant to make such disclosures? In many transactions such as "fix & flips," bank owned or company owned properties, sellers often do not provide seller property disclosure statements and claim to have no knowledge of material defects. This is frequently the case even when the seller has repaired or remodeled the property extensively. Real estate licensees who represent these sellers have a duty to disclose these defects even if their seller-clients are unwilling to do so. If licensees know of material defects they must be disclosed.

Case Law: Horiike v. Coldwell Banker

Topic: Intentional and Negligent Misrepresentation, Breach of Fiduciary Duty (Dual Agency Representation), Unfair Business Practices and False Advertising

Brief Summary:

Listing Agent: Coldwell Banker, Chris Cortazzo

Selling Agent: Coldwell Banker, Chizuko Namba

Buyer: Hiroshé Horiike, a Chinese businessman

Hiroshé Horiike, an experienced real estate investor and businessman, was working with salesperson Chizuko Namba to find residential property in Southern California. Namba, worked in the Beverly Hills office and had limited interaction with Malibu-based Cortazzo, came across the listing for the property and arranged for Horiike to meet the selling agent in November 2007.

At the showing, Cortazzo gave Horiike a copy of a flier stating the property had 15,000 square feet of living area. Horiike agreed to purchase the home and opened escrow later that month, at which point he received a copy of the building permit and other documents.

Horiike began preparation for work on the property in 2009, at which time he said he discovered the property had less than 12,000 square feet of living area — thousands less than he thought he purchased.

In 2010, Horiike filed suit against Cortazzo and Coldwell Banker for intentional and negligent misrepresentation, breach of fiduciary duty, unfair business practices and false advertising.

Decision:

In 2012, a jury decided that Cortazzo did not intentionally fail to disclose important information that Horiike did not know and could not reasonably have discovered. It also found that Coldwell Banker, acting as the broker for both the seller and the buyer, did not breach its fiduciary duty to Horiike.

That decision, however, was ultimately reversed by the appeals court and the California Supreme Court which ruled in November 2016 that Cortazzo **(the listing agent)**, as an associate of Coldwell Banker, **owed a fiduciary duty to Horiike equivalent to the fiduciary duty owed to buyer by the firm itself.**

Application:

The Court stated:

A broker's fiduciary duty to his client requires the highest good faith and undivided service and loyalty. 'The broker as a fiduciary has a duty to learn the material facts that may affect the principal's decision. He is hired for his professional knowledge and skill; he is expected to perform the necessary research and investigation in order to know those important matters that will affect the principal's decision, and he has a duty to counsel and advise the principal regarding the propriety and ramifications of the decision. The agent's duty to disclose material information to the principal includes the duty to disclose reasonably obtainable material information.'

"A fiduciary must tell its principal of all information it possesses that is material to the principal's interests. A fiduciary's failure to share material information with the principal is constructive fraud, a term of art obviating actual fraudulent intent.

Case Law: Young v Rose

Topic: Employment Agreements must be Signed by All Parties

Brief Summary:

In January 2009, Young, an Arizona real estate licensee, emailed Rose an unsigned, exclusive buyer broker agreement (BBA) in pdf format employing Young to assist in locating and purchasing a home in the \$4,000,000 price range in zip codes 85018 or 85253. Rose printed, signed and scanned the BBA and emailed back to Young. Young did not open nor sign the BBA but simply replied to Rose with an email saying, "Thank You." During the term of the BBA, Rose purchased a home in zip code 85253 through another agent and paid that agent a commission. Young sued for breach of the BBA.

Young first argued that her email response constituted an electronic signature which is allowed under Arizona law. Young also argued that to be enforceable, the Statute of Frauds only requires the BBA to be signed by "the party to be charged" (sued) and since Rose signed the BBA the agreement was enforceable.

Rose argued that another statute (ARS 32-2151.02A which regulates real estate licensees) and Arizona Real Estate Department rules require real estate employment agreements to be signed by all parties and since Young had not signed the BBA, it was unenforceable. Young then argued that ARS 32-2151.02A was only a regulatory law and may only be used to discipline real estate licensees but has no bearing on contract enforceability.

Decisions:

The Arizona Court of Appeals held that both statutes had to be considered together and to be enforceable, the BBA had to be signed by both parties.

However, since the trial court had not considered the question of whether Young's email response constituted an electronic signature it made no decision as to the BBA having been signed by Young and remanded that discussion back to the trial court.

Application:

The moral to this story is simple. Real estate licensees should sign all employment agreements (listings, buyer broker agreements and property management agreements). If Young had simply opened the pdf, signed it, scanned it and emailed it back to Rose her commission would have been assured.

Case Law: Bain v. Platinum Realty, LLC

Topic: Wire Fraud & Negligent Misrepresentation

Brief Summary:

The case arose from a real estate transaction in which Bain (an experienced real estate investor) was the buyer and Platinum Realty represented the seller. An unknown criminal inserted himself into the transaction through emails, including the use of fake email accounts with names similar to the accounts used by participants in the transactions, with the result that Bain lost the purchase price of \$196,622.67 when he wired that amount to a bank account controlled by the criminal.

Bain alleged that Platinum Realty via their licensee Kathryn Sylvia Coleman (Ms. Sylvia), emailed the fake wiring instructions to him, thereby representing that those instructions were correct.

Decision:

The jury found against Platinum Realty assigning eighty-five percent of the fault to Platinum Realty & Ms. Sylvia and fifteen percent of the fault to Bain. Accordingly, the Court entered judgment against Platinum Realty in the amount of \$167,129.27. Subsequently, Platinum Realty asked the US District Court for the District of Kansas to enter judgment on its behalf which the court denied.

Application:

Real estate brokers may be liable for losses that client's suffer through wire fraud. Licensees must be extremely diligent when passing along wiring instructions to clients and should always have the client verify instructions directly with the closing agent.

Case Law: Bailey v. City of Mesa

Topic: Eminent Domain

Brief Summary:

Bailey's family had owned Bailey's Brake Service since the early 1970s.

The city planned to take the brake shop through eminent domain, raze it, and transfer the land to a privately-owned hardware store so that it could move to the more desirable location.

Decision:

Eminent domain projects allow the government to take land only for a "public use," such as a post office. The Arizona Constitution explicitly provides that "whether [a] contemplated use be really public shall be a judicial question and determined as such without regard to any legislative assertion that the use is public." That means that Mesa's decision to take Mr. Bailey's property only to hand it over to another private party for their use is not constitutional, on neither the federal nor state level. This Arizona Court of Appeals decision was made in 2003.

Application:

Bailey v. Mesa is important to property developers because the Arizona Court of Appeals ruled that the city had overreached its authority. The city had taken property from one private citizen in order to provide it to another for development purposes. Taking property for public use is not the same as taking property for private use-even for private commercial use from which the city receives some benefit.

Note: In the 2005 US Supreme Court Case, Kelo v City of New London, it was decided that New London could exercise eminent domain where the public purpose was to create jobs and increase tax revenue for the city.

Case Law: Kelo v. City of New London

Topic: Eminent Domain

Brief Summary:

After residing there for over sixty years, Susette Kelo was notified by the city of New London that the property was going to be taken away through the city's eminent domain powers and sold to private individuals. In response, Kelo filed a claim stating that the taking was inconsistent with the 5th Amendment to the US Constitution "taking for a public use" requirement.

Decision:

In 2005, the US Supreme Court, in a 5-4 decision, held that the public purpose stated by the Connecticut state legislature (creating jobs and raising tax revenue), was sufficient, and fulfilled the "public purpose" requirement.

Kelo v. City of New London made it easier for the government to take property for a "public purpose" without violating the Fifth Amendment. Even if the land is resold to a private individual, such action is legal so long as a public purpose is behind the legislative plan.

Application:

A government action under eminent domain may not violate the Fifth Amendment's public use requirement when it takes private property and distributes it to private developers for the purposes of creating jobs and raising tax revenue.

Note: In the specific case of Bailey v City of Mesa, AZ, the Arizona Court of Appeals found that the City of Mesa could not condemn Bailey's Brake Store property and then sell the property to a hardware store who preferred Bailey's location. However, the Bailey case was decided in 2003; before the Kelo case was decided in 2005.