

ARIZONA REALTOR[®]

M A G A Z I N E

September 2010

E&O SERIES

Are You Covered?

What Agents Should Know about E&O

PAGE 3 →

Dodging the E&O Bullet

Ways to Reduce the Likelihood of a Claim

PAGE 5 →



Top E&O Claims

Ten Claims Trending Up in Today's Market

PAGE 6 →

ARIZONA REALTOR® MAGAZINE



In This Issue:

E&O SERIES

- PAGE 3** *Are You Covered?*
What Agents Should Know about E&O
- PAGE 5** *Dodging the E&O Bullet*
Ways to Reduce the Likelihood of a Claim
- PAGE 6** *Top E&O Claims*
Ten Claims Trending Up in Today's Market

FEATURES

- PAGE 7** *A Shifting Reality*
AMLA President Explores How Changing Industry Standards Affect Us All
Plus: *Industry Partners Conference*
 - PAGE 9** *REO Trash-Out Issues*
"One Man's Junk Is Another Man's Treasure"
 - PAGE 10** *It's Not All about You*
Understanding the Theory of Social Media
- ROOKIE SERIES**
- PAGE 11** *Five Ways AAR Helps You in Your Business*
You Pay the Dues. Make the Most of Your Membership!
 - PAGE 13** *Legal Hotline*

QUESTIONS/COMMENTS
editor@aaronline.com

ARIZONA REALTOR®
MAGAZINE
[publication information](#)

<http://www.aaronline.com/AZR/PubInfo.pdf>

Graphics & photos, with exception of authors' photos (or if indicated otherwise), are Copyright © 2010 Jupiter Images.

AAR UPDATES

PAGE 15

Risk Management Video Series: Short Sales & REOs

Northern Arizona's Wildfires and Floods Raise Contract Questions

rCRMS: Employment, Agency & the Standard of Care

Buyer Advisory Updated in August

New Forms Available in Spanish

Mediation Training Webinars

Are You Covered?

What Agents Should Know about E&O

- [Are You Covered?](#)
- [Dodging the E&O Bullet](#)
- [Top E&O Claims](#)

Errors and omissions (E&O) insurance provides agents and brokerage firms with protection from claims that “wrongful acts” were committed in the course of providing professional real estate services. The goal is to transfer as much risk as possible to the insurance carrier at a premium cost that is affordable.

This is one area that agents tend to ignore until they are forced to pay attention. And at that point, it may be too late to make much difference in the outcome. By reviewing your coverage and understanding how a claim is handled now, you may be able to minimize the legal and financial risks you’ll face later.

Evaluating Your E&O Coverage

As an agent, the first thing you’ll want to do is find out if you are covered. E&O coverage is not required for brokerages in the state of Arizona, and it may be less common than you assume. According to the [National Association of REALTORS® 2009 Member Profile](#), only 13% of REALTORS® received E&O coverage as a benefit through their firm.

<http://www.realtor.org/prodser.nsf/products/E186-12-09?OpenDocument>

After determining that you are covered by E&O insurance, you’ll want to learn more about the policy. E&O coverage is not created equal. Each policy has its own standards and guidelines. Here are three things you’ll want to review:

1. What is on the certificate of insurance?

The brokerage’s certificate of insurance supplies basic facts about the policy, such as the name of the carrier. Is the carrier a reputable firm with experience in the real estate industry? What is the carrier’s [A.M. Best](#) rating (a reflection of its financial strength)?

<http://www.ambest.com/>

The certificate should also list the effective date, deductible amounts and per-incident and annual limits. Consult with your broker or brokerage policy manual to determine how much of those costs you would be expected to pay versus what would be covered by the firm. You may want to ask about the policy’s coverage for defense (such as lawyer fees) and indemnity (damages) or about what would happen in the case of an uncovered claim.

Be aware that a broker may be protective of some E&O-related information. A broker would not want to disclose the E&O carrier to just anyone, for example, because it might put the brokerage at risk for having claims filed directly with the insurer.

2. What is covered?

“It’s important that agents know what actually is covered and is not covered under a policy,” says Trudy Moore, designated broker with HomeSmart. “Some assume coverage is basically the same for all E&O policies, which it’s not.”

Do you know if you’re covered when selling a home you own (solely or as part of an LLC)? Some policies exclude this from coverage; others allow it provided you follow certain steps, such as paying for a home warranty and/or inspection. Selling your own commercial or raw land is generally excluded—as is buying your own property (of any kind) and managing/leasing your own property.

When you act outside your regular practice area, you also risk not being covered. Say you’re primarily a residential real estate agent but a client asks you to sell a piece of commercial property they own. Or a friend asks you to manage their residential property as a rental while they wait to sell until the market recovers. Or you begin listing REO properties. “Whenever you step out of what you normally do, ask ‘Is my insurance coming with me?’” advises Lisa Robinson, an E&O insurance broker and president of Pinnacle Insurance Consultants.

E&O and Distressed Properties

“There is a challenge in today’s market with short sales and REOs encouraging agents to step beyond their normal duties,”...

says Lisa Robinson, an E&O insurance broker and president of Pinnacle Insurance Consultants. Here are some things to keep in mind when helping homeowners who are underwater:

Short Sales. Short sale transactions are generally covered by E&O provided that agents stay within their area of expertise. But if you dispense legal, tax or credit advice, you are likely on your own.

Loan Modifications.

Most policies have not yet been tested in this area. When Robinson consulted with attorneys on the issue, she was told that “negotiating the terms of an encumbrance” is probably not in the scope of what real estate agents generally do and so might be excluded from coverage.

REOs. It’s important that your broker and insurance consultant review master listing agreements and understand your REO-related activities. Maintaining the property may put you in the position of a property manager. Rehabbing a property may move you into the role of a contractor. Are you covered for those duties?



Other common exclusions include fair housing or environmental issues—two big liability areas! Every policy has exclusions, and some can be added back to a policy for a fee. Better to find out what the exclusions are now than when you discover you need the coverage.

For details on coverage for loan modifications, short sales and REOs, see the sidebar: “E&O and Distressed Properties.”

3. When does coverage begin and end?

“Time frames are critical with E&O in a way that is unlike any other insurance policy,” says Robinson. The insurance most of us are familiar with tends to be occurrence-based. That is, if you were in a car accident in 2009 that resulted in a lawsuit in 2010, the policy in effect on the date of the occurrence (accident) would be responsible for responding to the lawsuit. E&O insurance, on the other hand, is claims-made. The policy in place when the claim is made should cover it—provided that the policy’s prior acts date is before the incident in question.

What is the prior acts date? Let’s say a brokerage purchased an E&O policy in 2000 and has maintained it faithfully since. The firm’s prior acts date would extend back to 2000. However, if a policy is allowed to lapse or cancel—whether as a strategic decision, because the firm goes out of business or for failure to pay the premium on time—all prior acts coverage is lost. In fact, even if the policy lapsed or canceled but was later renewed, prior acts coverage is generally lost. When changing insurers or cancelling a policy for other reasons, a firm may be able to purchase some level of prior acts coverage (also known as a “tail”) for a certain time period. If a brokerage is known to be closing, agents may consider banding together to fund a tail on behalf of the firm. Naturally, this can be challenging as it is expensive and not all agents may agree to participate.

What if you change brokerages? “E&O coverage is for the firm and for agents doing work on behalf of the firm,” explains Robinson. “When you go to company B and are sued for work done at company A, company A’s policy should respond to that.”

What’s the Worst that Could Happen?

Don’t underestimate the trauma of a lawsuit. “Some agents think, ‘What’s the worst that could happen? Maybe I’ll have to pay the \$5,000 deductible,’” says Moore. “But the fact is that the lawsuit is going to take three to four years in most cases. And it really is painful to have people put in writing that you’re doing bad things, that you’re not honest, even when it’s not true.”

Beyond the personal impact, a seven-figure claim on a brokerage’s insurance loss run can have a real and sometimes devastating impact on the firm as a whole. As Robinson points out, there is no such thing as “insurance dollars.” The brokerage and its agents will end up paying for that claim in increased premiums and deductibles or decreased coverage over time.

E&O may not be the most entertaining topic in real estate, but in today’s litigious environment, it is too important a topic to ignore. Arm yourself with the facts—and be careful out there.

E&O Questions from AAR Members on Facebook

Why doesn’t E&O cover ethics complaints?

Coverage varies by issuer, but E&O may, in fact, respond to an ethics complaint if it involves professional services rendered for a client (as opposed to agent-to-agent disputes). Department of real estate complaints may also be covered. In fact, a policy’s disciplinary coverage may even be “first dollar,” meaning there is no deductible to meet before coverage kicks in.

I have heard that some brokers overcharge agents for E&O. Is this true?

A brokerage’s “risk management fee” may include more than just the cost of E&O. This is because a broker is dealing with the total cost of risk—not all of which can be shifted to an insurance company. Brokers are responsible for transactions excluded from E&O coverage, for situations in which the agent is no longer around to fund their share and for legal counsel on issues that haven’t risen to the level of a claim. They also handle risk with transaction management procedures and staff and by bringing in continuing education. The total cost of risk goes beyond the annual premium, so a brokerage’s fee may reflect that.

Additional Resources

[REO Business – Risk & Reward](#)

by Lisa Robinson

Arizona REALTOR® Magazine (April 2009)

<http://www.aaronline.com/documents/reo-business-risk-and-reward.aspx>

[NAR’s Field Guide to E&O Insurance](#)

<http://www.realtor.org/library/library/fg701>

[Real Estate E&O Insurance: Understanding the Basics](#)

from NAR’s Risk Management Committee

<http://www.realtor.org/letterlw.nsf/pages/0605insurancebrochure?OpenDocument&Login>

[E&O Insurance Providers](#)

AAROnline.com

www.aaronline.com/documents/eo_ins.aspx





Dodging the E&O Bullet

Ways to Reduce the Likelihood of a Claim

- [Are You Covered?](#)
- [Dodging the E&O Bullet](#)
- [Top E&O Claims](#)

E&O may seem intimidating, but the good news is that there are things you can do at each step of the transaction to minimize the chance of a claim occurring.

1. Trust your gut.

“One thing that agents do have control over—and it’s one of the beauties of real estate—is that they get to pick who they want to work for,” says Trudy Moore, designated broker for HomeSmart in Phoenix. Attorney Rick Mack of Mack, Drucker & Watson concurs. “Nine times out of ten, clients will tell me, ‘I knew this guy was trouble from the beginning, but I thought that I could make it work.’ If you think a client is going to be difficult, don’t do it,” he says.

2. Stick to your area of expertise.

Your job is to facilitate the sale or purchase of property. If questions come up outside the scope of your services—whether they concern a crack in the ceiling or lingering financial liability after a short sale—tell your clients to contact qualified experts. And do it in writing. “Agents need to understand that by not allowing themselves to be pressured into answering those questions, they are better serving their clients,” says AAR General Counsel Michelle Lind.

If you refer your client to a specific expert or provide a list of possible experts to consult, perform some due diligence to ensure that the other party is reputable. (For example, a contractor should be licensed, bonded and insured.)

3. Maintain a paper trail on all transactions.

Make it a part of your practice to take notes throughout the transaction. Send follow-up emails documenting phone or in-person conversations. Your clients will be impressed by your thoroughness—and should you ever need one, a defense attorney will be delighted at your forethought.

If you have any inkling that things are going awry and find yourself without good notes, sit down immediately and write up a detailed chronological account of the transaction to date. Memories fade quickly while lawsuits seem to last forever.

4. Get your broker involved early.

“Agents need to address issues when they come up instead of ignoring them and hoping they’ll go away,” cautions Jim Sexton, designated broker for John Hall & Associates in Phoenix. Moore agrees. “Anytime an agent is having a challenge, or someone is making a demand upon them, I want them to call me, even if it’s just verbal,” she says. Depending on the circumstances, such as the dollar amounts involved, your broker may attempt to resolve the situation or may choose to report the incident to the E&O insurer immediately.

An insurance company considers a claim “a demand for money or service” (verbal or in writing, depending on the policy.) The insurance company requires that these claims be reported as soon as practicable, or the insurer may deny coverage on the claim. “If you suspect you may have a claim, reach out to your broker,” says Dennis Galvin, an attorney with insurance provider OneBeacon. “You don’t want to jeopardize coverage by guessing wrong.”

Time frames are critical in E&O coverage. If you fail to mention a situation to your broker and then the firm changes carriers, you are unlikely to be covered for that claim because you had “prior knowledge” and failed to disclose it to either carrier.



Top E&O Claims

Ten Claims Trending Up in Today's Market

- [Are You Covered?](#)
- [Dodging the E&O Bullet](#)
- [Top E&O Claims](#)

At AAR's Broker/Manager Risk Management Conference in August, attorney Rick Mack of Mack, Drucker & Watson and AAR Legal Counsel Michelle Lind addressed the current trends in E&O claims. Here are the top ten types of claims Mack encounters in his practice:

1. Property Condition Claims

In years past, property condition claims have accounted for over 80% of cases. Currently they're running about 65-70%. The top three types of property condition claims are soil/structure, water-related (roof and plumbing issues that lead to mold problems) and termites. Many of AAR's risk management tools, such as the Seller Property Disclosure Statement (SPDS) and Buyer Advisory, help protect against these types of claims.

2. Short Sale Claims

In 2008, Mack's office had just one short-sale-related case, but the number increased significantly in 2009 and 2010. Short sales are a big part of the market today, so it's no surprise that they are becoming an important percentage of claims. There are typically nine months between the closing and the lawyer's office. Lind says that while nationally, these claims have not yet seen a jump, Arizona is likely on the leading front of this trend.

Plaintiffs generally argue that the agent either gave no advice or bad advice about lingering liability on items such as HOA fees, taxes or deficiencies. The best way to prevent these types of claims is to shift the risk by getting these clients to experts. "Tell them, 'Go and get that figured out with an attorney and CPA. When you've got that done, come back and we'll short sell your house,'" says Mack.

3. Poorly Drafted Documents

In an attempt to get deals done, agents are getting creative and drafting trickier transactions, such as lease options, wraps, lease purchases and so forth. "When agents get away from the garden-variety AAR form transaction, oftentimes they muck it up," Mack says. Why doesn't AAR produce a standard lease purchase contract? "These are high-liability transactions," cautions Lind. "AAR's Risk Management Committee doesn't want to lull members into a false sense of security with a 'standard' form."

4. Valuation Issues

"You promised me that I could sell this and make money." When the market is volatile, valuation claims arise. Agents are no better at reading the future than anyone else. AAR's Market Conditions Advisory is a simple form that basically says, "What comes up must come down." Make it a part of your buyer package.

5. Transactions with Clients

Whenever you're doing business with a client, you're stepping into a higher-risk transaction and a transaction that can often involve personal liability. "Sometimes agents think disclosure will take care of risk," Mack says. "Disclosure is important, but it does not remove risk."

6. REO Transactions

"Two years ago, I was Chicken Little talking about the risks inherent in these REO master listing agreements. And so far, I've had zero claims about this," Mack admits. "Instead, I'm getting these crazy trash-out claims!" See the related article, "REO Trash-Out Claims," for advice on avoiding these.

7. Subdivision Claims

These claims generally involve illegal lot splitting. If a person or entity owns six or more properties in a subdivision, a public report is required. Many lenders taking back properties were unaware of this requirement. "If you're doing REO work, send information on this to your asset managers and ask them to forward it on to their legal departments, so you can show that you notified your client," advises Mack.

8. Investment Advice/Securities

Want to avoid this type of claim? Don't give investment advice. Ever.

9. Utility Availability

The last thing a new homeowner wants to discover is that they aren't really on sewer. Verify with each utility (electricity, gas, water, etc.) that the service really is available—and for what price.

10. Survey/Legal Description Errors

Say your buyer client purchases a beautiful wooded lot and begins to build a home there. The land's true owner arrives and demands that the work stop. It turns out that the buyer actually bought the lot to the west instead. Uh oh. "Frankly, these are tough claims to avoid," says Mack. "All you can do is be as careful as possible."





A Shifting Reality

How Changing Industry Standards Affect Us All

BY SHERRY OLSEN, 2010 PRESIDENT OF THE ARIZONA MORTGAGE LENDERS ASSOCIATION

What should REALTORS® know about today's lending market? The pertinent concept to be aware of is CHANGE. As the lending industry is being reengineered and reexamined, the process, requirements and guidelines from the top down are changing.

Reality shift: The industry guidelines are in constant flux, and investors have raised the bar to ensure they are purchasing loans that have undergone intense scrutiny from numerous perspectives. (Who is this "investor"? When a mortgage banker closes a loan, they have a choice to retain the loan and service it or to sell the loan to an investor.) The lender processes the loan based on standard FHA, VA and conforming guidelines. In addition to meeting those guidelines, this investor may require a higher credit score, additional cash reserves or an extra comp for the appraisal. These extras guidelines are referred to as "overlays" and vary between investors. The overlays are incorporated in the underwriting evaluations, and by their very existence, they further restrict approvals.

It is important to understand why lenders keep referring to the investor. Investors are still recovering from on-going losses from the market meltdown, and they dictate under what terms they will purchase loans as well as "charge them back" for repurchase. Investors decide upfront if they will purchase a loan. After purchase, they may chose to perform a quality review to determine if they will keep the loan, request corrected deficiencies or require the loan to be re-purchased. When a lender is required to repurchase a loan, it pays back the loan and keeps the loan on its books, which reduces its cash assets. Eventually, if a pattern develops, the investor will likely stop purchasing that lender's loans, and the lender could find itself out of business.

Appraisals reflect another part of this reality shift. Say you are working on a listing. You establish a sales price after evaluating the information available and getting approval from the seller. An offer is received and accepted, but the appraisal comes

in low. Appraisals have become workups on the history of the property from a sales perspective in addition to a precise market evaluation. This evaluation includes properties currently listed that influence the appraisal determination considerably. Today's technology provides instantaneous information on properties, and Arizona still carries the declining market stigma, which leads to everyone with a financial interest/risk in this loan double-checking the integrity of the appraisal.

Additionally, with the staggering increase in foreclosures and short sales, the modules for credit reports cannot be updated fast enough. A line-by-line review of credit reports has become a time-consuming but critical piece of the process. Standards for reporting short sales are not set, and the burden falls on the lender to establish and document how applicants disposed of previously owned properties. There has been a lot of chatter suggesting that short sales will not be discovered. I suggest that no one should encourage a buyer to withhold information. Consider the financial impact of paying for a home inspection and perhaps an appraisal only to be denied later when the short sale is discovered or credit report updated.

The changes don't stop there. This summer, Fannie Mae initiated a "Loan Quality Initiative." This requires lenders to refresh credit right before closing to ensure that all debts are disclosed and also institutes additional checks and balances. Even FHA has been busy establishing new guidelines and practices to ensure that their programs do not collapse under the weight of loans in default. The newest announcement effective with FHA case numbers assigned after October 4 changes the upfront mortgage insurance premium (MIP) to 1%, and the monthly MIP will be .90% with the minimum 3.5% down and .85% with 5% or more down. Although still pending, expect seller contribution limits to be lowered later this year.

In February of this year, FHA allowed a waiver to the 90-day holding time frame, but even lenders struggle with the details, which require an arms-length transaction among other things. Our local HUD office has emphasized that the seller cannot also be the REALTOR®/listor or representative for the buyer.

Industry Partners Conference

September 22 | Chaparral Resort (Scottsdale)

\$89 | [Event Flyer](#) | [Register Online](#)

<http://www.aaronline.com/HostedDocuments/IPC2010publication.pdf>

<http://www.azmortgagelenders.com/index.php/events-calendar.html>

Getting a deal done today requires close coordination between REALTORS®, mortgage lenders and title companies. At this annual conference, all parties sit down together to hash out challenging scenarios plucked directly from today's transactions. Topics include short sales, cancellation disputes, foreclosures, E&O, GFE/HUD, contract/LSR and more.

Don't miss it!

This event is sponsored by the Arizona Association of REALTORS®, Arizona Mortgage Lenders Association and the Arizona State Escrow Association.

This can require reviewing an LLC to verify relationships and insure that all the other players in the transaction are wearing only one hat.

We are all adjusting to the new risk reality. Real estate brokers are concerned with E&O coverage. In many cases, title companies will not accept escrows or will not close an existing escrow upon discovery of issues that carry risk for them. Whatever role you play—REALTOR®, escrow officer, loan officer—how you conduct your business does impact the success and even survival of everyone else. I see this as an old-time version of a Pacman game. We professionals are just gobbling it up one bite at a time so that we can take care of the client. For me as a loan officer, that “client” is the REALTOR®, title company and consumer. We are all in this together.

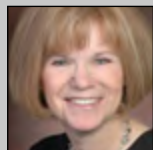
Our industries currently exist in a fluid, changing environment. Often we have buyers in the process for a few months before closing on a home for any number of reasons. Yesterday's approval does not guarantee next month's closing. No matter how I try to explain this, someone will reply, “I can get it done! Just use my title company or my lender.” For that one transaction, they might actually be correct, but that is not the point. I am referring to the big picture. Consumers buying a home in this new environment deserve to understand the process and have the opportunity to discuss potential consequences.

On one hand, we can communicate instantly regarding the availability of properties. But breaking the process down to timeframes for inspections, disclosures (every interested entity has disclosures with different timeframe requirements), appraisals and documentation leads us back to all the details

I mentioned earlier. As a 20+ year veteran in lending, I fondly remember the good old days and acknowledge that one of the most difficult concepts to accept is that while a lender may have approved the file, it is not a done deal. I realize how harsh that sounds, but a new guideline or overlay could have been implemented since approval, the credit report may have changed, an addendum to the contract can add a new layer of issues, title might discover that the seller does not own the property—a number of issues can arise.

The bar for professionalism and accountability certainly has been raised. Loan officers like me who work for non-institutional lenders were required to be licensed as of July 1, 2010, which includes on-going education requirements that should benefit the industry. It is in your best interest to remain pro-actively plugged into reputable lending updates since the information you just learned can become outdated quickly. Continue to take classes, spend some time at www.Hud.gov where you can learn about FHA in depth and visit www.AARonline.com as the association is an excellent resource for webinars, articles, etc.

And I have not even mentioned the federal financial reform bill that has passed but is not yet implemented! For those who ask when the changes will end, I would have to answer “Never!” Part of what drew us to these exciting industries was a new story each day. It is certainly never boring. Now we have many stories each day that must be fully developed. Each of our industries has input in the final chapter.



Sherry Olsen is a mortgage originator with [Wallick & Volk](#) and is the 2010 president of the [Arizona Mortgage Lenders Association](#). For over 20 years, Sherry has been passionate about

helping people achieve homeownership. She has used her background in real estate sales to develop a foundation to guide people through the lending process. Sherry is an instructor for the Arizona

Association of REALTORS® and an instructor and contributing writer for the [Arizona School of Real Estate Business Journal](#). She has achieved trainer certification from the Mortgage Bankers

Association and has earned the CMPS designation. Sherry will gladly take your call at 480-813-1777.

<http://www.wvmb.com/sherryolsen/>
<http://www.azmortgagelenders.com/>

REO Trash-Out Issues

With all the potential legal issues that surround REO transactions—from the liability-shifting master listing agreements to the lack of SPDS on these “as is” properties—attorney Rick Mack of Mack, Drucker & Watson in Phoenix didn’t expect to have “trash outs” become the top REO-related claim facing agents.

What is a trash out?

“Oftentimes after a bank forecloses, the former occupants will vacate the house but leave some of their personal property behind,” explains Mack. “REO listing agents show up and have trash-out companies remove the personal property. Typically, they’ll throw it away.”

That’s when the trouble starts. The former occupant may return and claim that amongst the trash remaining in the home was a stamp collection, box of comic books or other item worth significant money.

What should agents do to protect themselves from these claims?


“If there are items in the property that look remotely like anything other than trash, document them,” Mack says. “I recommend you take photographs and inventory what’s there. If possible, have a third-party, independent witness there with you when you do.”

If you document it well enough, you can probably throw the stuff away, says Mack. But if the economics and your broker permit—or if you suspect the property is, in fact, valuable—you may choose to store the materials until you hear from the former owner.

Occupants can feel rushed to get out of a property that has gone into foreclosure, and they are generally not in a good state of mind about the process. An increasing number of claims is the result. When agents find themselves facing a pile of junk in an REO property, they are wise to imagine what evidence they’ll want to have on hand to prove to a judge that the junk was truly trash, not treasure.

*“One Man’s
Junk Is
Another Man’s
Treasure”*





It's Not All about You

Understanding the Theory of Social Media

BY AMY CHOREW

The entire concept of social media confuses people. As the percentage of people participating through various online services grows every day, participants in social media are an attractive target for almost every type of business, organization or service.

Sadly, in the head-long land rush that is social media, there are a lot of people who are rushing to participate using the “ready, fire, aim” method of engaging. And in their rush to leap into the action, they often leap right over the edge of a cliff into a free fall without redemption. A little over a year ago, *The Economist* said, “Social networking will become a ubiquitous feature of online life. That does not mean it is a business.”

That doesn't mean that one cannot derive business benefits from their social media interaction, but it stresses the importance of effective engagement with your community. The key is to remember that what your community wants and needs is more important to them than your product or service.

They Just Aren't That into You

In fact, no one cares about your product. Well, that may not be strictly true—you might care about your product. But I can assure you that it is not the focus of interest to your potential customer that you think it is.

People are, by necessity, the stars of their own movies. They are interested in their needs and the needs of their communities. It is only by establishing that you are interested in their needs as well, that people may return your interest.

Think about your own reactions when you meet people face to face:

- Someone who starts the conversation by showing you baby pictures is looked at as a bore.
- Someone who asks to see photos of your child is probably a really nice person.
- The person who asks what you do for a living is engaged.
- The person who starts the conversation by telling you what they do is bragging.
- The person who meets you and tries to sell you something when you're in a social situation is just an aggressive brute!

We tend to feel kindly towards people who take the time to show interest in our lives, our families and our interests. We are not as well disposed towards people who seem only interested in what's good for them. And yet when we put on our “business hats,” we forget our own honest reactions and assume that others do not have those same honest reactions to being solicited without invitation.

Turn the Bullhorn Around

In her book “The Whuffie Factor,” Tara Hunt suggests that you start building your business with social capital when you “turn the bullhorn around” and start listening to the community you want to work with. It sounds so simple, but it is many times the exact opposite of the training that made many small business people and professionals successful in the off-line world. They have become so accustomed to selling their product that the relationship-building part of their business strategy has become less important.

It's really very simple. If you get people to care about you, they may then care about your product or service to some degree. If you are a trusted member of a community, the other community members will want to do things to help you because you have done things to help them.

Perhaps the hardest part of the concept for people to grasp is that the community's desire or pre-disposition to help and support you is not a “you scratch my back; I scratch yours” action/reaction. It is more the growth of a relationship that is nurtured by your actions and the respect and trust that are built as a result of the body of those actions, not by a single speech or article.

If you make genuine contributions of value to others without regard to your own needs, you will become an integral part of the community and therefore an integral part of their product and service infrastructure, called upon to supply your product or service when its needed by the members of the group.



Amy Chorew is the director of training for SMMI and owner of TheTechByte. She is a nationally acclaimed instructor highly experienced at helping managers and real estate agents maximize the infinite opportunities that technology offers them. You can find her at www.amychorew.com.



ROOKIE SERIES

Five Ways AAR Helps You in Your Business

**You Pay the Dues.
Make the Most of
Your Membership!**

You're a member of the Arizona Association of REALTORS® (AAR). But what does that get you? Let's take a look.

MYTH: I pay my AAR dues, and all I get is this MLS system.

FACT: The money you pay AAR nets you a lot of useful things, but MLS is not one of them. (MLS access may be coordinated through your local association.)

MYTH: AAR requires a bunch of C/E hours to renew my license and could take away my license if I misbehave.

FACT: That's actually the Arizona Department of Real Estate — a part of our state government, not a trade association like AAR.

MYTH: AAR makes a bunch of decisions that affect me, but they're not in the trenches day in and day out like I am.

FACT: AAR is driven by REALTOR® members just like you. Those members volunteer their time on boards, committees and task forces. They decide what AAR does. Staff takes those decisions and makes them reality.

*So what is it that you get for your dues dollars?
We're so glad you asked!*

1. AAR helps you manage risk.

Risk can't be avoided—but it can be managed.

Standardized Forms. You could write a contract on the back of a napkin. If all parties agree and sign it, you've got a valid contract. But don't you feel more confident using AAR's [standard forms](#)? Experienced REALTORS® distill their acquired wisdom into forms that are fair, effective and enforceable.

<http://www.aaronline.com/ForRealtors/Forms/>

Legal Hotline. You wonder if you have to disclose the presence of ghosts in the home you're listing. Who you gonna call? No, not Ghostbusters. First, call your broker. If your broker needs more input, s/he can call AAR's Legal Hotline—at no cost! AAR broker members call the Legal Hotline for answers to specific legal issues. And yes, the ghost question is an actual Legal Hotline call. For the answer, visit the [Legal Hotline](#) page.

<http://www.aaronline.com/documents/LH.aspx>

Legal Information. AAR has built up quite a [library of articles](#) on real estate legal matters, not to mention [podcasts](#), [videos](#), a [short-sale game](#) and other resources. Browse when you have a free moment—or come back when you have a specific question that needs answering.

<http://www.aaronline.com/ForRealtors/LegalInformation/Articles.aspx>

<http://www.aaronline.com/PodCast/Default.aspx>

<http://www.aaronline.com/rmseries/>

<http://www.aaronline.com/short-sale-seller-advisory/game.aspx>

2. AAR helps you become wiser and more confident.

You got through real estate school, but your first contract had you shaking in your boots. To become an expert REALTOR®, you need more experience and more focused training. AAR offers great classes to expand your mind and your business.

GRI. Want to really understand the how-tos of being a REALTOR®? This is the designation you need. And there's no annual membership fee! Once a GRI, always a GRI. [Learn more.](#)

<http://www.azgri.com/>

rCRMS®. In today's litigious society, good REALTORS® need to anticipate the pitfalls in a real estate transaction for their clients and themselves and be well prepared to avoid them.

[Get the details.](#)

<http://www.aaronline.com/documents/CRMS.aspx>

Webinars. Get updated information to help you succeed in this market delivered to you in the comfort of your home or office. Go ahead—wear your pajamas! No one will know.

[View the offerings.](#)

<http://www.aaronline.com/Webinars/Recorded.aspx>

Plus, there's a handy [monthly magazine](#) delivered to your email inbox once a month. Look at that! You're reading it right now.

<http://www.aaronline.com/AZR/>

3. AAR helps you make connections.

If you only meet other REALTORS® over contracts, you're missing out on a lot: mentors, friends, advisors, sympathizers, challengers, heroes, confidants. AAR events bring real estate professionals together.

Young Professionals Network (YPN). Connect with young — or young at heart — REALTORS® for fun and learning. Arizona's YPN chapter is in its early stages, so now is a great time to get involved. Membership is free! Contact Brittini Matt (602-248-7787 | brittnimatt@aaronline.com) for more information.

Industry Partners Conference. Escrow agents and mortgage lenders join REALTORS® for roundtable discussions on challenging scenarios. This annual event is just around the corner: September 22. [Learn more!](#)

<http://www.aaronline.com/HostedDocuments/IPC2010publication.pdf>

Winter Conference. The smartest REALTORS® in Arizona get together and address timely topics affecting their businesses. The conference takes place March 10-11, 2011 in Prescott. Stay tuned!

Online. AAR connects you with an online network too. Follow AAR on [Facebook](#) and [Twitter](#) and join in the conversation.

<http://www.facebook.com/realtorsuccess>

<http://www.twitter.com/aarsuccess>

4. AAR helps you tame technology.

No more writing contracts on the hood of your car. Dazzle clients with your professionalism! Your online document storage! Your typing skills! (Well, maybe not the last one.)

zipForm®. Access electronic forms from your desktop or online, use templates to feed transaction data to multiple

documents and save forms online for easy access.

[Free training is available.](#)

<http://www.aaronline.com/ZipForm/signup/index.html>

MongoFax®. Instantly fax paper-based documents (disclosure packages, signed contracts, etc.) directly to any email address in the world with [MongoFax](#).

<http://www.aaronline.com/documents/MongoFax.aspx>

Transaction Management. Brokers can sign up for a [robust system](#) that helps track transactions, establish consistency, minimize risk and run a paperless office.

<http://www.aaronline.com/TM/>

AAR is always looking to add new services, such as a password manager or e-signature capability.

5. AAR helps you prove your professionalism.

“Under all is the land...” So begins the REALTOR® Code of Ethics. Doesn't it give you a little tingle? A commitment to the Code is what makes you a REALTOR®, not just an agent. When things go wrong, as they sometimes will, AAR is there.

Ombudsman Program. A team of REALTOR® volunteers responds to complaints and tries to resolve them quickly, by phone. Learn more about the [program](#).

<http://www.aaronline.com/documents/OmbudsmanProgram.aspx>

Mediation. Professional standards folks help parties avoid a hearing or a court battle with [mediation](#).

<http://www.aaronline.com/Disputes/Mediation.aspx>

Ethics Hearings and Arbitrations. When all else fails, a committee of REALTORS® listens to both sides and arrives at a decision in [arbitration](#).

<http://www.aaronline.com/Disputes/Arbitration.aspx>

BONUS ITEM!

6. AAR helps you be heard at the Capitol.

You can't scrutinize every bill that comes before the legislature to see how it will affect your business. Don't worry. We do that. AAR is one of the most [effective advocates](#) at the state capital.

<http://www.aaronline.com/ForRealtors/GovernmentAffairs/>

- Stopped tax on real property transfers
- Defeated onerous water legislation
- Protected ADRE licensee email addresses
- Defended for-sale, for-lease and open-house sign rights
- Battle additional regulatory paperwork
- Continue to fight sales tax on services

And through [RAPAC](#), AAR members support candidates who protect our industry.

<http://www.aaronline.com/GovernmentAffairs/rapac.aspx>

The bottom line? AAR helps you.

It's the whole reason we exist. That said, there is always room for improvement. Help us help you better! Share your feedback with editor@aaronline.com.



Legal Hotline



BY CHRISTOPHER A. COMBS

The following is for informational purposes only...

and is not intended as definitive legal or tax advice. You should not act upon this information without seeking independent legal counsel. If you desire legal, tax or other professional advice, please contact your attorney, tax advisor or other professional consultant.


Q&As are not "black and white," so experienced attorneys and brokers may disagree. Agents are advised to talk to their brokers/managers when they have questions.


*Legal Hotline
Copyright © 2010, all rights reserved.*

CONTRACTS: GENERAL →

<http://www.aaronline.com/documents/HLContGen.aspx>

Seller Has to Replace the Septic Tank


 Under the AAR On-Site Wastewater Treatment Facility Addendum ("Addendum"), the seller agreed to pay for repairs up to 1% of the purchase price to correct any deficiencies in the septic tank. The septic tank inspection report says that due to massive leakage, the septic tank cannot be repaired but must be replaced. The cost of replacing the septic tank is less than 1% of the purchase price. The seller contends that under the Addendum, the seller is only required to "repair" the septic tank, not "replace" the septic tank. Does the seller have to replace the septic tank?


 Probably. If repairs will not correct the massive leakage in the septic tank, and the cost to replace the septic tank is less than 1% of the purchase price, the seller probably has to replace the septic tank.

LISTINGS →

http://www.aaronline.com/documents/HL_List.aspx

Seller Can Refuse to Sell to a Particular Buyer

 The buyer made an offer to purchase the seller's home, which the seller accepted. The buyer cancelled during the inspection period. The seller did not believe that the buyer was acting in good faith canceling the contract. One month later, the buyer is making another offer on the home. Not only does the seller not want to accept this offer, the seller does not want to have any negotiations with this buyer. Can the seller and the listing broker amend the listing agreement to provide that the seller will not sell the home to this buyer?

 Yes. Unless the seller is discriminating against a member of a protected class, such as race or religion, the seller can refuse to sell the home to any particular buyer or to any particular group of buyers, *e.g.*, lawyers. The listing broker in the MLS should note in the appropriate "remarks" section that


the home will not be sold to this buyer to avoid the potential problem that the listing broker may owe a commission to the co-broker representing this buyer.


Note: If the seller has had bad experience with a particular brokerage firm, the seller can also refuse to negotiate with any buyer represented by this particular brokerage firm. Again, this refusal should be noted in the appropriate "remarks" section.

LANDLORD/TENANT →

http://www.aaronline.com/documents/HL_L.T.aspx

Landlord Must Repair Plumbing Problems


 The dishwasher is leaking, and the refrigerator ice machine is not working. The landlord is refusing to repair these problems. Does the landlord have to repair a leaking dishwasher and a refrigerator ice machine that is not working?


 Probably. Under A.R.S. § 33-1324 (A)(4), the landlord is required to repair and maintain all "plumbing" appliances in a rental property, unless there is a bona fide provision in the agreement requiring the tenant to make those repairs.

LANDLORD/TENANT →

http://www.aaronline.com/documents/HL_L.T.aspx

Landlord Has Duty to Mitigate Damages If Tenant Breaches the Lease

 The tenant unexpectedly moved out with four months remaining on the lease. Does the landlord have a claim against the tenant for the four months rent?

 Yes, subject to the landlord's duty to mitigate damages. If a tenant breaches a lease agreement, the landlord has a claim for any lost rent. The landlord, however, is required to mitigate damages due to the lost rent. In other words, the landlord must make reasonable efforts to find a replacement tenant. If the landlord finds a replacement tenant, the landlord's claim against the tenant for lost rent will be limited to any lost rent until the replacement tenant begins paying rent. If the landlord makes reasonable efforts to find a replacement tenant but fails to find a replacement tenant, the landlord will be entitled to a claim against the tenant for the four months of lost rent. Reasonable efforts to find a new tenant would include newspaper advertising, "for rent" signs and contacting leasing brokers.

HAVE YOU SIGNED UP FOR THE LEGAL HOTLINE?

The Legal Hotline provides all AAR broker members (designated REALTORS® - DRs) free access to a qualified attorney who can provide information on real estate law and related matters.

[Find out how brokers can access the Legal Hotline.](#)


http://www.aaronline.com/documents/hotline_access.pdf


<http://www.aaronline.com/documents/LH.aspx>

FAIR HOUSING →

http://www.aaronline.com/documents/HL_FairHous.aspx

Landlord Can Refuse to Rent to Illegal Aliens

 The prospective tenant has admitted to being an illegal alien. Can the landlord refuse to rent to this illegal alien?


 Yes. Illegal aliens are not a protected class under Fair Housing law.

Note: A landlord can request proof of legal residency from prospective tenants, providing that such requests are not limited to a particular race or nationality.

AGENCY →

http://www.aaronline.com/documents/HL_Agency.aspx

Buyer's Broker Has Right to Contact Seller's Lender in Short Sale

 The listing broker is refusing to furnish loan approval status updates to the buyer's broker. Can the buyer's broker contact the seller's lender directly for loan approval status updates?


 Yes. Under the AAR Short Sale Addendum, line 20, the seller authorizes the buyer and the buyer's broker to contact the seller's lender for loan approval status updates.

Note: Inasmuch as the seller's lender is not a party to the short sale addendum, however, the seller's lender is not required to respond to any request for the limited purpose of obtaining approval status updates.


CONTRACTS: GENERAL →

<http://www.aaronline.com/documents/HLContGen.aspx>

If Seller's Bank Approves the Short Sale with No Conditions, the Seller Must Complete the Short Sale

 The seller's lender has approved a short sale with no conditions. The seller no longer wants to sell the home and has instructed the listing broker not to deliver any agreement notice to the buyer. Is the seller required to deliver

the agreement notice to the buyer? If so, and the seller will not deliver the agreement notice, can the listing broker notify the buyer's broker that the seller's lender has approved the short sale with no conditions?

 First, every contract has an implied covenant of good faith. In other words, both the seller and the buyer in good faith must do every reasonable act to complete the transaction. If the seller's lender has approved the short sale with no conditions, the seller in good faith is required to send the agreement notice to the buyer and complete the short sale because "changing my mind" about selling the home is not acting in good faith. Second, the listing broker has a duty to deal fairly with all parties in the transaction. *A.A.C. R4-28-1101(A)*. Therefore, if the seller refuses to deliver the agreement notice, the listing broker acting fairly should notify the buyer's broker that the seller's lender has approved the short sale with no conditions.



Christopher A. Combs, Phoenix attorney, is a partner with the firm of [Combs Law Group, P.C.](#), and is on the AAR Legal Hotline team.

<http://www.combslawgroup.com>

AAR UPDATES

Risk Management Video Series: Short Sales & REOs

<http://www.aaronline.com/rmseries/>

AAR's Risk Management Committee has put together a valuable series of videos on short sales and REOs. In these short videos (just two to three minutes long), respected voices in Arizona real estate provide insight into reducing risk and improving your service to your client when handling these types of transactions. The topics include:

Short Sale Negotiation Fee

Consider the issues before charging a short-sale fee under an LLC of which you are the sole member. (Martha Appel)

Short Sale Expert?

Why you may want to position yourself as a short sale "resource" rather than an "expert." (John Foltz)

Short Sale Confidentiality

Handle short sale client's confidential information wisely. (Jerome King)

REO Transactions

Tips for representing your buyers well in these tricky transactions. (Jan Leighton)

REO Addenda

Carefully review the impact of an REO addendum with your buyer clients. (Paula Serven)

Source of the Source

Steer clear of offering legal advice to your client—for their sake and yours. (Jim Sexton)

Northern Arizona's Wildfires and Floods Raise Contract Questions

[Part One](#) | [Part Two](#)

<http://www.aaronline.com/documents/northern-arizona-wildfires-and-floods-raise-contract-questions.aspx>

<http://www.aaronline.com/documents/northern-arizona-wildfires-and-floods-raise-contract-questions-part-2.aspx>

Arizona's devastating wildfires and floods have raised questions about real estate transactions in escrow when the fire or flood began. These articles address transactions in which AAR's Residential Resale Real Estate Purchase Contract was executed, but escrow has not closed.

rCRMS: Employment, Agency & the Standard of Care

Monday, November 15

Phoenix Association of REALTORS® Classroom \$99 (by November 5)

[Event Flyer](#) | [Register Online](#)

<http://www.aaronline.com/HostedDocuments/rcrmsagency-flyer.pdf>

<http://www.regonline.com/AESC>

C/E: 3-agency, 3-contract law

Many disputes arise as a result of the parties' failure to understand the terms of employment agreements and what constitutes an appropriate standard of care agency relationship. In this course, instructors Michelle Lind and Robert Zelms help brokers and agents reduce their risks related to agency and employment agreements in Arizona.

Buyer Advisory Updated in August

http://www.aaronline.com/documents/buyer_advisory.aspx

The following updates were made to the Buyer Advisory for August 2010:

Page 2: Homeowner's Association (HOA) Governing Documents

Removed the Department of Fire, Building and Life Safety link to HOA complaint packet (no longer available on website)
Added links to the Arizona Revised Statute - Title 33 chapters 16 and 18

Page 6: Flood Plain Status

Added new links for Phoenix, Tucson and Flagstaff

Insurance (Claims History)

Added new link for C.L.U.E. Reports:
<https://personalreports.lexisnexis.com/index.jsp>

Environmental Concerns

Updated the Arizona Department of Environmental Quality links

Superfund Sites

Updated the Arizona Department of Environmental Quality link

Page 7: Crime Statistics

Added Tucson Police Department link:

<http://tpdinternet.tucsonaz.gov/Stats/>

Added League of Arizona link:

<http://www.azleague.org/index.cfm?fuseaction=about.cities>

Page 8: Fair Housing and Disability Laws

Updated HUD link

New Forms Available in Spanish

<http://www.aaronline.com/ForRealtors/Forms/Spanish.aspx>

AAR has three newly translated forms available on our website:

- Buyer-Broker Exclusive Employment Agreement
- Short Sale Addendum to Listing Contract
- Residential SPDS

Mediation Training Webinars

AAR is pleased to make available three mediation webinars to the membership. The webinars are taught by Bruce Meyerson, a former appellate judge, litigation attorney, university general counsel and public interest lawyer. Bruce is recognized as one of the best mediators in Arizona in the "Best Lawyers in America," is former chair of the American Bar Association Section of Dispute Resolution and is an adjunct professor at Arizona State University College of Law teaching courses in mediation and arbitration.

Legal Issues in Mediation

<http://www.aaronline.com/video/Bruce-Meyerson-1.wmv>

Ethical Issues in Mediation

<http://www.aaronline.com/video/Bruce-Meyerson-2.wmv>

Keys to a Successful Mediation

<http://www.aaronline.com/video/Bruce-Meyerson-3.wmv>

AAR Updates



ARIZONA REALTOR®

MAGAZINE

WISDOM BEYOND

You stay on top of the changing real estate landscape.

You invest in education to improve your service to clients.

You raise the bar for our industry.

Take your business to the next level and join the Master of Real Estate Society

Go ahead — show off!
Call 602.248.7787

To learn more about the advantages of this exclusive membership, visit www.aaronline.com or email Brittni Matt, AAR Education & Designation Manager at brittnimatt@aaronline.com.

Applications will be accepted from January 1 to March 1, 2010 for the 2010 - 2011 term.



ARIZONA ASSOCIATION OF REALTORS®
MASTER OF REAL ESTATE
S O C I E T Y



ARIZONA
association of
REALTORS®



THE ELITE REALTOR® MEMBERSHIP



ARIZONA
association of
REALTORS®

255 East Osborn Road, Suite 200
Phoenix, Arizona 85012
602-248-7787 | www.aaronline.com