



NMAR Legal Update February 10, 2025

PRESENTED BY:
ASHLEY STRAUSS-MARTIN, GENERAL COUNSEL



Regulatory Update

- Fin Cen
- Telephone Consumer Protection Act



Who is FinCEN?

- FinCEN stands for the Financial Crimes Enforcement Network
- FinCEN is a bureau of the U.S. Department of the Treasury
- Mission is to collect and analyze information about financial transactions to combat money laundering, terrorist financing, and other financial crimes.



What information must be reported?

- Beneficial ownership information (BOI) and company applicants.
 - A beneficial owner is an individual who owns or controls at least 25 percent of a company *or* has substantial control over the company
 - A company applicant is an individual who directly files or is primarily responsible for the filing of the document that creates or registers the company.



FinCen – Deadlines?

On January 23, 2025, the Supreme Court granted the government’s motion to stay a nationwide injunction issued by a federal judge in Texas (*Texas Top Cop Shop, Inc. v. McHenry*—formerly, *Texas Top Cop Shop v. Garland*). As a separate nationwide order issued by a different federal judge in Texas (*Smith v. U.S. Department of the Treasury*) still remains in place, reporting companies are not currently required to file beneficial ownership information with FinCEN despite the Supreme Court’s action in *Texas Top Cop Shop*. Reporting companies also are not subject to liability if they fail to file this information while the *Smith* order remains in force. However, reporting companies may continue to voluntarily submit beneficial ownership information reports.

Beware of scams

- Fraudulent Correspondence may include:
 - Payment requests. There is NO fee to file BOI directly with FinCEN.
 - Correspondence that asks the recipient to click on a URL or to scan a QR code.
 - Correspondence that references a “Form 4022,” or an “Important Compliance Notice.” This correspondence is fraudulent. FinCEN does not have a “Form 4022.” Do not send BOI to anyone by completing these forms.
- Correspondence or other documents referencing a “US Business Regulations Dept.”



Telephone Consumer Protection Act (“TCPA”) Update

- New Rules that went into effect January 27, 2025
 - One-to-one consent rule
 - Consent revocation

TCPA Updates

- One-to-One Consent Rule
 - Businesses must clearly and conspicuously request and obtain written consumer consent for robocalls and robotexts from each individual company.
 - If you want to call, text, or drop a prerecorded message using an auto-dialer, you must get specific consent from that person for your business only.



TCPA Updates

- Consent Revocation
 - These rules allow consumers to revoke prior consent through any reasonable method
 - Marketers must honor revocation requests within a reasonable timeframe, not exceeding 10 business days.
- Do Not Call Registry
 - Stricter enforcement.



Case Updates

State Level Cases

- 3-Way Agreement

Federal

- Designworks Homes, Inc. et al v. Jackie Bulgin & Associates et al.

New Mexico

- Stodgell v. Weissman
- Salas v. Guadalupe Credit Union

Three-way Agreement lawsuits

Michigan

- Dylan Tent, et al. v. National Association of Realtors, et al., No. 2:24-cv-12102-JJCG-DRG (E.D. Mich. filed Aug. 12, 2024).

Pennsylvania

- Maurice Muhammad v National Association of Realtors, et al., No. 5:24-cv-05543 (E.D. Penn. Filed Oct. 16, 2024)
- W. Preston Moore v. National Association of Realtors, et al., No. 2:24-cv-01607-NR (W. D. Penn. filed Nov. 25, 2024)

Texas

- Luz de Amor Eytalis v. National Association of Realtors, et al., No. 7:24-cv-00147 (N.D. Texas, filed Nov. 25, 2024)

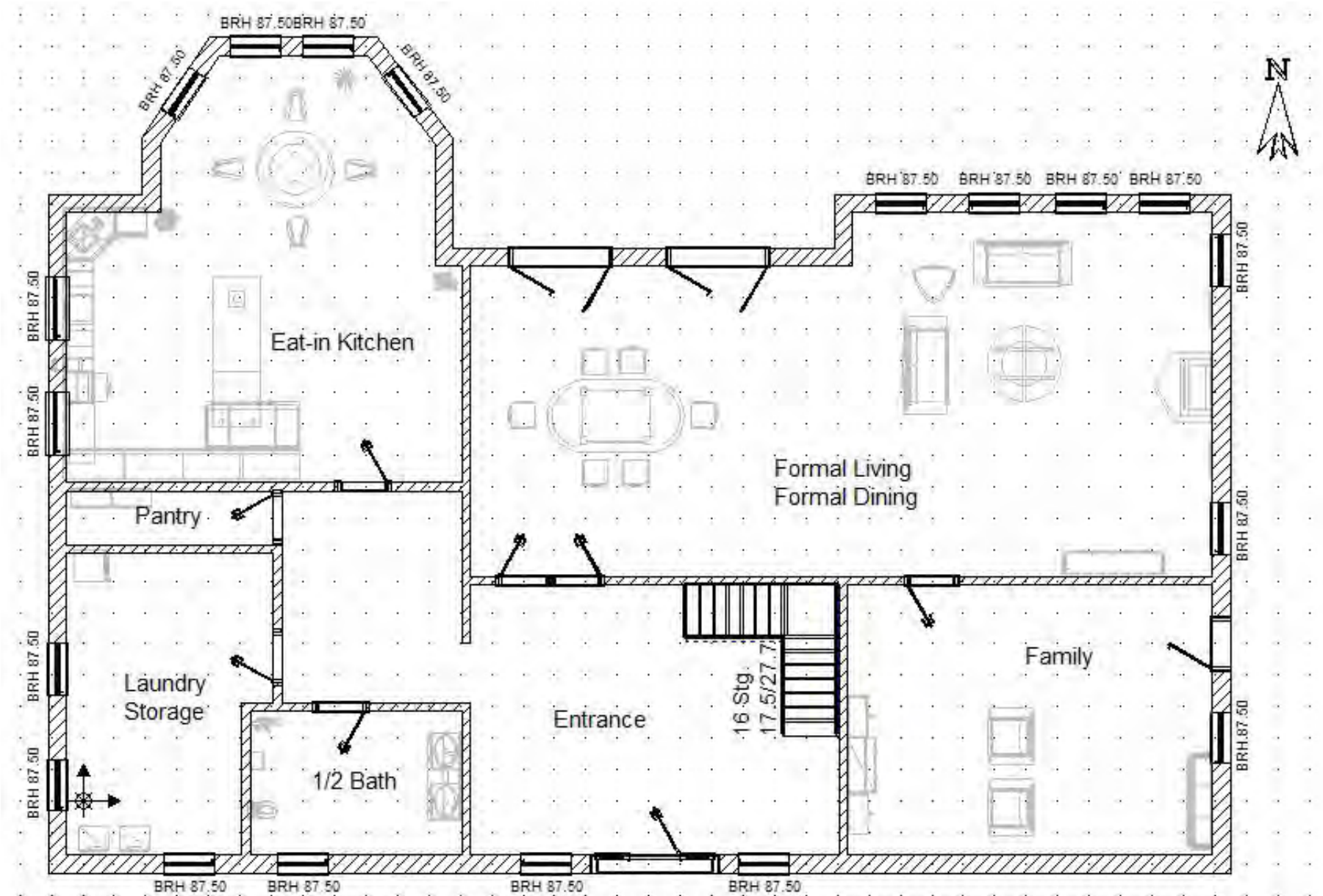
Louisiana

- DeYoung et al v. National Association of Realtors, et al., No. 3:25-cv-00001 (M.D. Lou., filed Jan. 2, 2025)

Three-way agreement lawsuits

- The U.S. Supreme Court has not considered this issue, however four Federal Circuit Courts of Appeal (the 1st, 5th, 6th, and 7th) have ruled in favor of REALTOR® association MLS's.
- Only the 11th Federal Circuit Court of Appeal, and California, has ruled against REALTOR® association MLS's.
 - 3 states in the 11th circuit jurisdiction (Florida, Georgia and Alabama) and California do not require membership to access MLS.

Designworks
Homes, Inc. et al
v. Jackie Bulgin &
Associates et al.
No. 23-3402,
8th cir. Court of
Appeals



The background of the slide is a photograph of architectural blueprints spread on a wooden surface. A magnifying glass is positioned over the plans, and a black pen lies in the lower-left corner. The blueprints show various room layouts, dimensions, and labels such as 'MEN WASHROOM' and '1st floor'.

Designworks
Homes, Inc. et al v.
Jackie Bulgin &
Associates et al.
No. 23-3402
8th cir.


Facts:

- Charles James created and copyrighted a home design featuring a triangular atrium and stairs, building six homes based on this design and registering them with detailed plans.
- In 2010, real estate agent Susan Horak listed one of James's homes for resale, using a hand-drawn floorplan in her listing. The home sold, but the listing remained online.

Designworks
Homes, Inc.
et al v. Jackie
Bulgin &
Assoc. et al.
No. 23-3402,
8th cir.

In 2017, agent Jackie Bulgin listed another of James's homes for resale, using a contractor-made floorplan similar to Horak's. The home did not sell.

James discovered both listings online in 2017 and, according to him, someone could build homes from floorplans like the ones used in their listings.



**Designworks Homes,
Inc. et al v. Jackie
Bulgin & Associates et
al.
No. 23-3402, 8th cir.**

Issue:

Whether the use of floor plans by brokers infringed upon the home designer's copyright of the designs

Holding:

The court held that using the copyrighted floorplans was fair use because they were used in a different way (to show potential buyers the home's layout), only included what was needed for that purpose, and didn't harm the market for the original floorplans.

Stodgell v.
Weissman
No. A-1-CA-41416
NM Ct. of Appeals



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Stodgell v. Weissman

No. A-1-CA-41416

NM Ct. of Appeals

- Facts
 - Tenants entered into a lease with their landlord. Before the lease ended, the parties agreed to terminate it early.
 - Within 10 days of the tenants leaving, the landlord sent an accounting of deductions from their damage deposit.
 - The tenants disputed part of the refund, fearing that cashing the check, which stated, "By cashing [the] check . . . you acknowledge all monies due have been satisfied," would waive their right to contest the deductions.



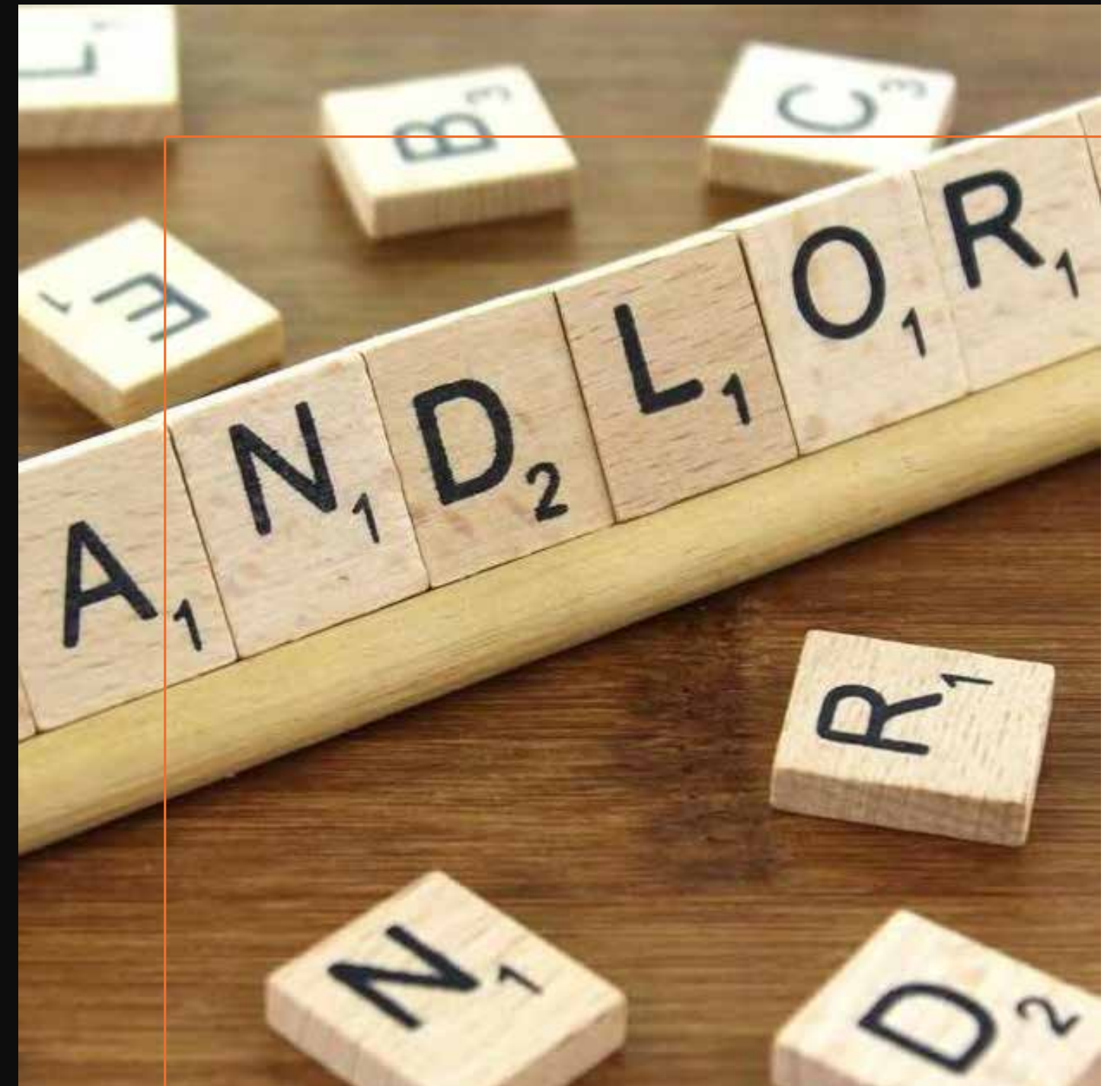
Stodgell v. Weissman, No. A-1-CA-41416, NM Ct. of Appeals

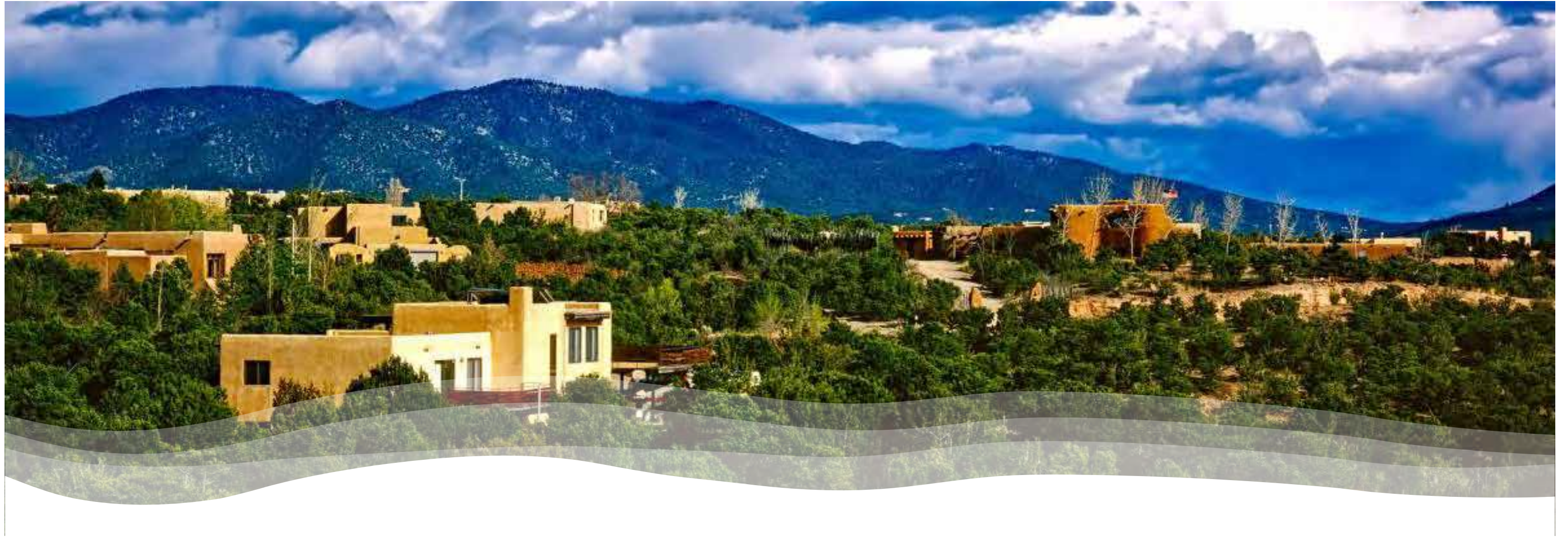
- Facts (cont.)
 - The landlord notified the tenants in writing that she would issue a "stop payment" on the refund check after August 1, 2022, and then did so.
 - The tenants filed a magistrate court action contesting the deductions, and the landlord filed a cross-claim seeking additional damages.
-



Stodgell v. Weissman, NM Ct. of Appeals

- Issue
 - Can a landlord who complies with NMSA 1978, 47-8-18 (1989) (governing damage deposits) later file a suit for damages to the rented property that were not identified and deducted from the initial damage deposit within the statute's thirty-day window?
- Court Holding and History
 - District Court – The district court held that if a Landlord timely complies with Section 47-8-18 they may not be prohibited from filing a subsequent counterclaim for previously unidentified damages to the rental property.
 - Court of Appeals – Affirmed the district court decision
 - Supreme Court – writ of certiorari denied





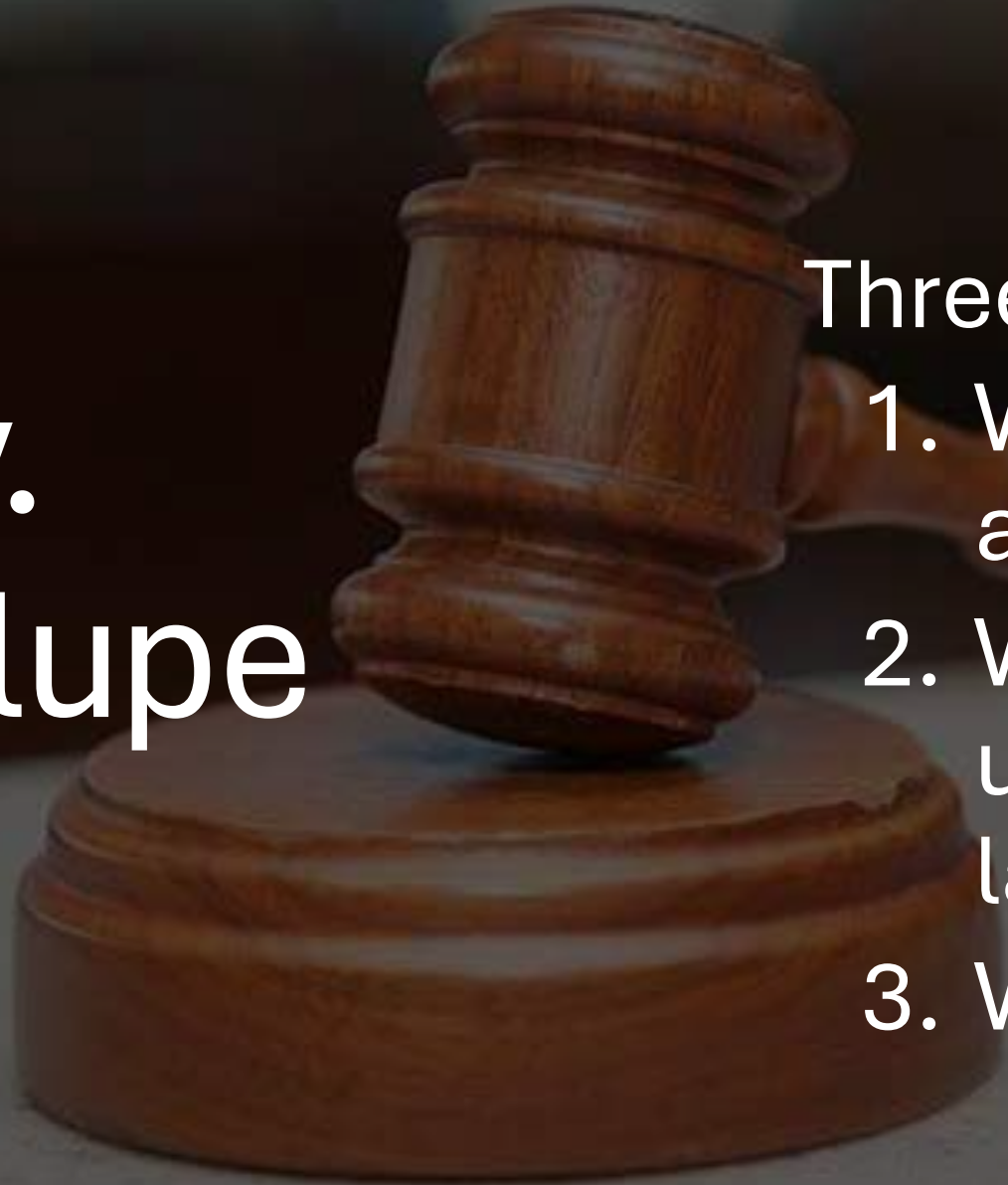
Salas v. Guadalupe
No. A-1-CA-39021,
2024 N.M. LEXIS 244



Salas v. Guadalupe

Facts

- The plaintiffs, Kyle Salas and others, brought claims against Guadalupe Credit Union (GCU), alleging that its employees engaged in the unauthorized practice of law.
- The dispute centered around GCU employees entering appearances in magistrate court, preparing court filings, entering into settlement agreements, and enforcing judgments by garnishment or otherwise through the process of the Court.



Salas v. Guadalupe

Three Issues Addressed

1. What nonattorneys can appear in court;
2. What is the unauthorized practice of law; and
3. Who can bring a claim.

Salas v. Guadalupe

Non-Attorney Court Appearances

- NMRA 2-107 (B)(3)
 - **Other authorized non-attorney appearances.** A party to any civil action may appear, prosecute, and defend any proceeding... if the party is a corporation or limited liability company,
 - whose voting shares or memberships are held by a single shareholder or member or closely knit group of shareholders or members,
 - all of whom are natural persons active in the conduct of the business, **and**
 - the appearance is by one such shareholder or member who has been authorized to appear on behalf of the corporation or limited liability company;



Salas v. Guadalupe

Unauthorized Practice of Law

The court declined to define what constitutes the practice of law, it did identify the following "indicia of the practice of law, insofar as **court proceedings are concerned**":

1. representation of parties before judicial or administrative bodies,
2. preparation of pleadings and other papers incident to actions and special proceedings,
3. management of such action and proceeding, and non-court related activities such as
4. giving legal advice and counsel,
5. rendering a service that requires the use of legal knowledge or skill, [and]
6. preparing instruments and contracts by which legal rights are secured.



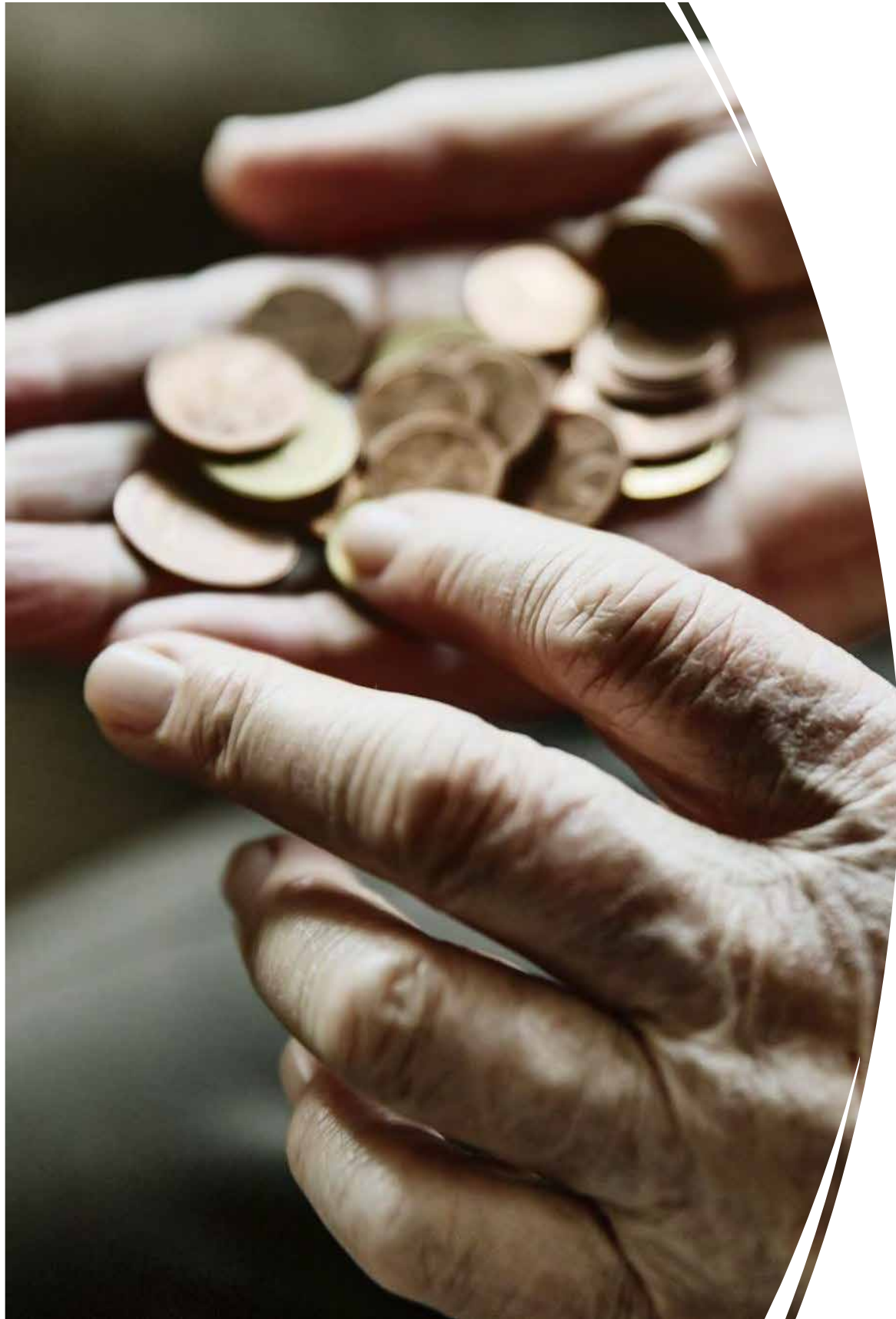
Salas v. Guadalupe unauthorized practice of law

What is allowed?

The Court clarified and referenced a separate case that stated title companies did not engage in the unauthorized practice of law by using nonattorneys to fill in the blanks in legal instruments drafted by attorneys "where filling in the blanks requires only the use of common knowledge regarding the information to be inserted."



However, a licensed attorney is required "when the filling in of the blanks affects substantial legal rights, and if the reasonable protection of such rights requires legal skill and knowledge greater than that possessed by the average citizen."



Salas v. Guadalupe claims for unauthorized practice of law

- Who Can bring a claim?
 - NMSA 36-2-28.1(B). "A person who suffers a loss of money or other property as a result of an unauthorized practice of law . . . may bring an action."
 - By its plain terms, the statute requires only that a plaintiff incurred damages as a result of the defendant's unauthorized practice of law to support a claim. The statute does not limit the remedy to the client or recipient of the unauthorized legal services. "

How does
this apply to
brokers?

Filling in attorney drafted forms *is permitted*

Unauthorized Practice of Law (Disclaimer: This list is non-exhaustive)

- Making modifications to the forms beyond factual information or when filling in the blanks of the form affects substantial legal rights,
- Answering questions about specific terms of a contract and/or a client's legal rights; or
- Making unauthorized appearances in court

E&O insurance will not cover claims for the unauthorized practice of law.

Salas v. Guadalupe

Non-Attorney Court Appearances

NMRA 2-107(B)(2)

Other authorized non-attorney appearances. A party to any civil action may appear, prosecute, and defend any proceeding...in an action brought under the provisions of the Uniform Owner-Resident Relations Act..., or the Mobile Home Park Act..., if the appearance is by

- **(a)** the “owner,” as defined in the Uniform Owner-Resident Relations Act;
- **(b)** a “landlord,” as defined in the Mobile Home Park Act; or
- **(c)** the person authorized to manage the premises;



Salas v. Guadalupe Non-Attorney Court Appearances

- Considerations:
 - Who is the property management agreement with?
 - If an individual, NMRA 2-107(B)(2)
 - If a brokerage, NMRA 2-107 (B)(3)



Salas v. Guadalupe Non-Attorney Court Appearances

- NMRA 2-107 (B)(3)
 - **Other authorized non-attorney appearances.** A party to any civil action may appear, prosecute, and defend any proceeding... if the party is a corporation or limited liability company,
 - whose voting shares or memberships are held by a single shareholder or member or closely knit group of shareholders or members,
 - all of whom are natural persons active in the conduct of the business, **and**
 - the appearance is by one such shareholder or member who has been authorized to appear on behalf of the corporation or limited liability company;



Example 1

Susan Sunflower is a broker in Portales, NM, who works at Greyhound Property Management, a local brokerage that manages residential properties. Greyhound Property Management is an LLC where Susan and her business partner, Mark Meadows, each own 50% of the company and are both designated managers of the company, authorized to conduct business on behalf of the LLC.

The owner of 456 Yucca Dr. entered into a property management agreement with Greyhound Property Management and Susan manages the property. Time goes by and the tenant at 456 Yucca Dr has defaulted on the lease and the owner would like to have the tenant evicted.

- Who can make the appearance in court?
 - An attorney
 - Owner
 - Susan or Mark (on behalf of Greyhound Property Management)

Example 2

Susan Sunflower is a broker who works as an independent contractor for Southwest Duke Realty Co. in Albuquerque, NM. Southwest Duke Realty Co is an LLC with six members, all of whom are natural persons. However, Susan is not one of them. The owner of 456 Lobo St. signed a property management agreement with Southwest Duke Realty Co, and Susan was assigned to manage the property.

Similar to Example 1, the tenant at 456 Lobo St. has defaulted on the lease and the owner would like to have the tenant evicted.

- Who can make the appearance in court?
 - An attorney
 - Owner
 - One of the members of Southwest Duke Realty...

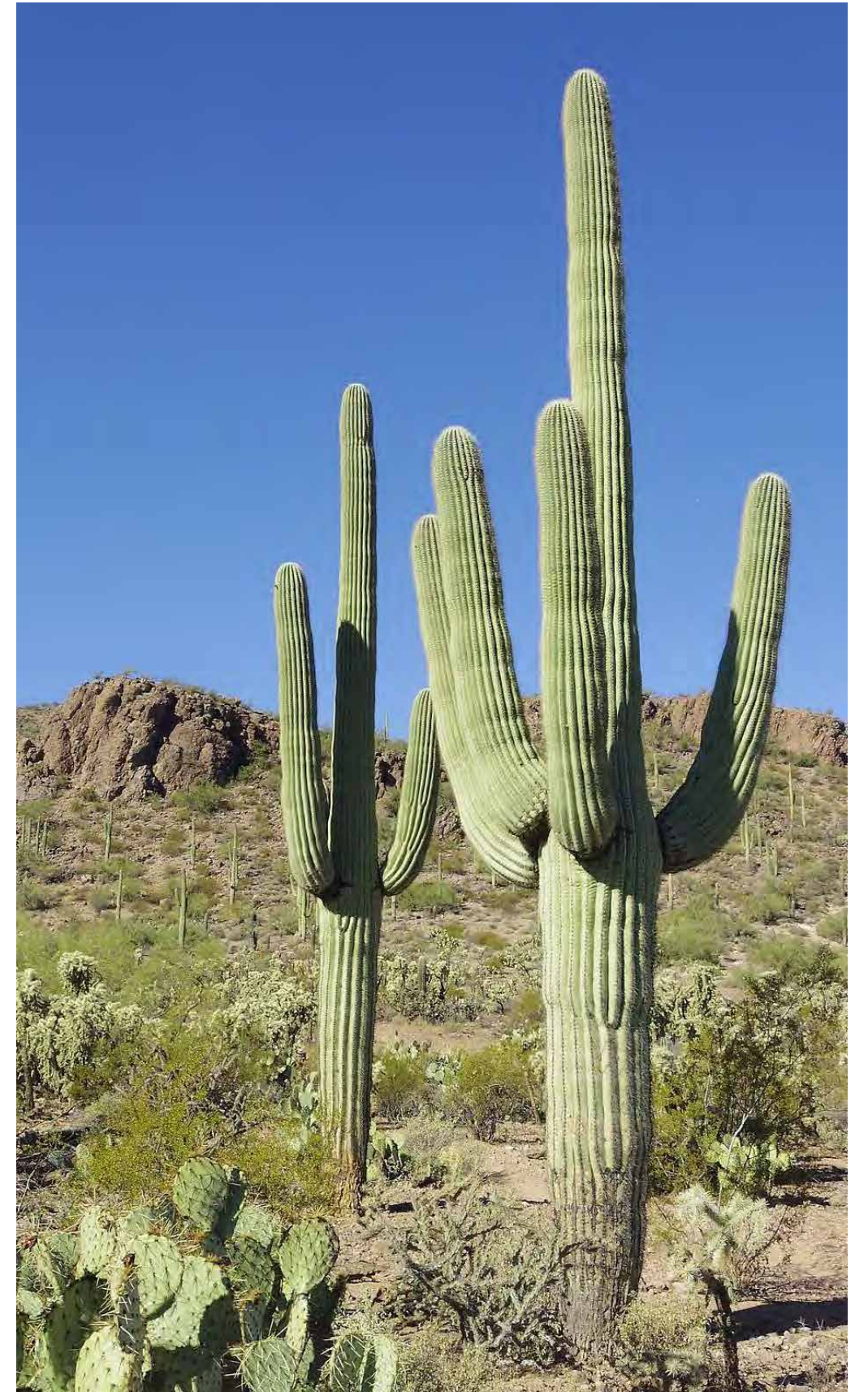
Maybe. It depends.

Phoenix Association of Realtors ("PAR")

- Starting Jan. 1, 2025, PAR introduced MLS Choice. A \$249 membership that would give agents access to state-compliant forms, legal aid and continuing education without joining NAR, the Arizona Association of Realtors, or the Phoenix Association of Realtors
- December 2024 - NAR issued a cease and desist letter to the PAR over the membership of MLS Choice.

Phoenix Association of Realtors ("PAR")

- NAR's position is that MLS Choice violates the three-way agreement by allowing non-Realtors to be members of the Phoenix Association of Realtors without joining NAR or the Arizona Association of Realtors
- NAR has initiated the process to revoke the PAR charter

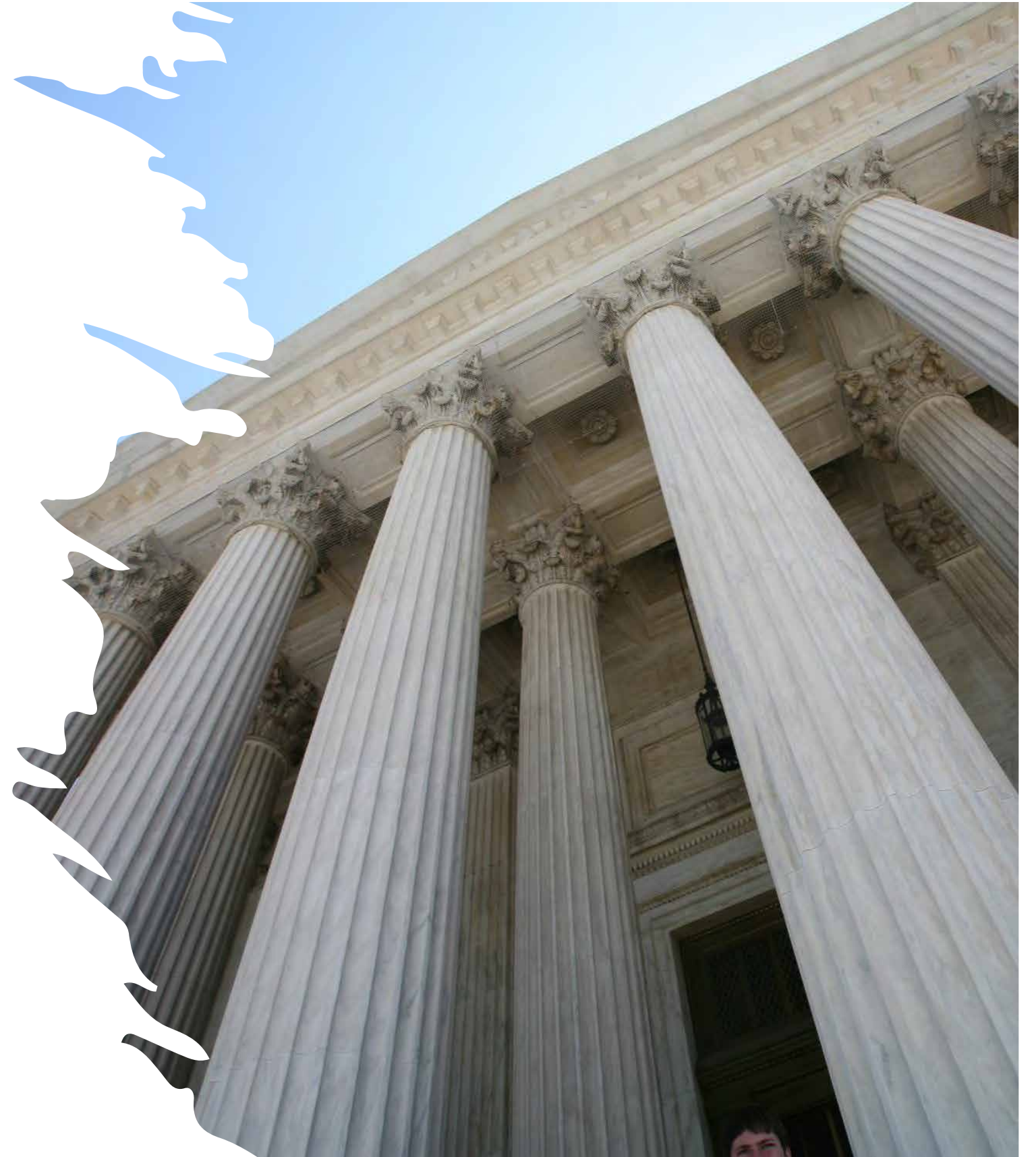


Department
of Justice
Settlement
Appeal



DOJ Settlement Appellate History

- 2018 - The Antitrust Division of the DOJ opened an investigation into potentially anti-competitive practices implemented by NAR
- 2020 – DOJ and NAR settled the case. DOJ sent a letter to NAR stating the the investigation had been closed.
- 2021 – DOJ tried to renegotiate the settlement, when that failed it withdrew the consent judgement and reopened the investigation of NAR policies



DOJ Settlement Appellate History

- 2023 - NAR petitioned the court based on the 2020 letter by DOJ. The district court agreed that the investigation was barred by the 2020 settlement agreement.
- 2024 – US Court of Appeals reversed the opinion of the lower court allowing the investigation to be reopened.
- 2025 – NAR petitioned the Supreme Court, Supreme Court denied to hear the case

NAR Policies Subject to Original DOJ Investigation

- Participation Rule of the MLS requiring brokers listing homes on an MLS to “make blanket unilateral offers of compensation to the other MLS participants.”
- Clear cooperation rule - That policy requires listing brokers to post a property on an MLS within one day of when they begin to market the property.





NAR LAWSUIT SETTLEMENT



HOW WE GOT HERE

- *Moehrl, et al. v. National Association of Realtors, et al., and Gibson, et al. v. National Association of Realtors, et al.*: two antitrust class actions that allege "longstanding anticompetitive practices in the residential real estate industry that have inflated the cost of broker commissions throughout the United States".
- NAR, multiple MLSs and multiple brokerages were named
- Jury verdict for \$1.8 Billion
- NAR vowed to appeal
- NAR SETTLED
 - \$418M Over Several Years
 - No More Co-Op Compensation in the MLS
 - Buyer Broker Agreements Required before "Touring" a Property
- Preliminarily Approved By Court last spring
- **Finalized In November 2024**

NAR MEETS WITH DOJ

- **Make sure forms put consumers first.** "The settlement empowers buyers and brokers to negotiate and mutually agree to services and compensation that work for them," Sears said. "Realtors should work with consumers to ensure they fully understand the options available to them while continuing to seek fair compensation for their services," Sears said, [sharing tips for crafting clear, transparent buyer agreements](#).
- **Don't try anything fishy.** "NAR — and I personally — oppose any attempts to circumvent the settlement," Sears said. And the DOJ is watching. "The practice changes should be implemented fully and in good faith, in the service of promoting consumer empowerment, consumer choice, and healthy competition." The [association's FAQ](#) has more information.
- **The DOJ isn't done.** Sears called the recent meeting with the DOJ "an important step forward" but added that "we expect the DOJ to continue making inquiries into industry practices," [as they have done with the California Association of Realtors](#).



Objections to Settlement

- Ultimately, the [DOJ filed a five-page statement of interest](#) that took no position on whether Judge should approve the settlement
- Balked at the practice change requiring buyers and buyer brokers to enter into written agreements before touring homes.
- Wanted Judge to clarify that the settlement does not create any immunity or defense under the antitrust laws, which he did.
- DOJ warned that the deal's practice changes wouldn't prevent further legal challenges and requested judge clarify that the settlement is not a protection against future enforcement, which he did.
- DOJ said they wouldn't "waive any right" to file lawsuits in other federal districts.

Objections to Settlement

- More than a dozen homesellers filed [objections to the NAR and HomeServices settlements](#) saying the deals seek to cover too many claims for too little money and give too many in the industry a “free pass” for participating in the alleged conspiracy.
- University of Buffalo contracts law professor Tanya Monestier filed a [136-page objection](#) to the NAR settlement, calling it “[the worst of all possible worlds](#)” for consumers, and then subsequently [challenged a court](#) order compelling objectors of the deal to appear in person at the final approval hearing, saying the order is “unconstitutional” and “a glaring appellate issue.”



NOT DONE YET

Moreover, NAR and HomeServices are still defendants in homebuyer suits with similar antitrust allegations that are not resolved by these settlements.

In addition, other NAR rules have attracted antitrust scrutiny, including NAR's Clear Cooperation Policy, its no-commingling policy, its three-way agreement, and the tying of MLS services to Realtor membership.

CLEAR COOPERATION

HANGING IN THE BALANCE



CALIFORNIA ASSOCIATION OF REALTORS®

- Revised Their Forms/Created New Forms
- DOJ sent them a letter Criticizing their Forms
- CAR Pulled 21 Forms and revamped
- Removed all reference to Co-Op Broker Commission
- DOJ looking at Association Forms



CALIFORNIA
ASSOCIATION
OF REALTORS®

NEW/REVISED NMAR FORMS

- [Form 1106 – Listing Agreement – Exclusive Right to Sell \(2024 Dec\) – REVISED](#)
- [Form 1108 – Compensation and Co-op – Broker to Broker \(2024 Dec\) – REVISED](#)
- [Form 1206 – Buyer Broker Agreement \(2024 Dec\) – REVISED](#)
- [Form 1206A – Buyer Broker Agreement – Short Form \(2024 Dec\) – REVISED](#)
- [Form 2001 – Broker Notification of Compensation \(2024 Dec\) – REVISED](#)
- [Form 2104 – Purchase Agreement – Residential \(2024 Dec\) – REVISED](#)
- [Form 4660 – Seller’s Compensation to Buyer’s Broker \(2024 Dec\) – REVISED](#)
- [Form 5102 – Counteroffer \(2024 Dec\) – REVISED](#)
- [Form 5116 – Buyer-Broker Agreement Addendum \(2024 Dec\) – REVISED](#)
- [Form 5121 – Arbitration Info Sheet \(2024 Dec\) – NEW](#)
- [Form 3101 – Purchase Agreement – Commercial \(2024 Dec\) – REVISED](#)
- [Changes to Form 3101 \(2024 Dec\)](#)

A close-up photograph of a hand holding a set of keys. The hand is positioned in the center-right of the frame, with the fingers gripping a silver keychain. The keys are silver and have a white plastic head. The background is blurred, showing a person in a dark blue shirt and a wooden surface. The lighting is warm and soft, creating a sense of a home environment.

FORM 2104
RESIDENTIAL PURCHASE
AGREEMENT

BUYER'S BROKER(S)

Buyer's Brokerage Firm Buyer's Broker's Qualifying Broker's Name and NMREC License No. Buyer's Broker's Email Address

Buyer's Broker Name Buyer's Broker's Team Name Office Phone Buyer's Broker's Cell Phone

Buyer's Brokerage Address City State Zip Code Broker is is not a REALTOR®

ADDED
TEAM NAME



SELLER'S BROKER(S)

Seller's Brokerage Firm Seller's Broker's Qualifying Broker's Name and NMREC License No. Seller's Broker's Email Address

Seller's Broker Name Seller's Broker's Team Name Office Phone Seller's Broker's Cell Phone

Seller's Brokerage Address City State Zip Code Broker is is not a REALTOR®

7. BUYER'S BROKERAGE COMPENSATION.

! ATTENTION SELLER !

As to this Paragraph/term of this Agreement, the Buyer's Brokerage identified on Cover Page 3 is an intended third-party beneficiary, which means that Seller shall be directly liable to Buyer's Brokerage under this Paragraph. The amount of compensation paid by a consumer to a Brokerage is fully negotiable and is NOT dictated by MLS rules, the local, state or National Association of Realtors® or local, state or national law.

If the Property is sold to Buyer identified in Para. 1 of this Agreement, Seller agrees pay the following, plus applicable GRT, to the Buyer's Brokerage as compensation upon Closing and Funding of the transaction. If Seller has already entered into a compensation agreement with the Buyer's Brokerage (NMAR Form 4660 or its equivalent), then any compensation Seller has agreed to pay in this Paragraph is **in addition** to the compensation that Seller has agreed to pay in Form 4660 or its equivalent.

_____% of sales price of property **OR** Flat Fee: \$ _____ **OR** Other: _____

IMPORTANT NOTE TO BUYER AND BUYER'S BROKERAGE: Buyer's Brokerage cannot receive from one source or multiple sources (Listing Brokerage, Seller and/or Buyer) more than the Brokerage Compensation set forth in the Buyer Brokerage Agreement.

8. CASH, LOAN OR SELLER FINANCING.

New Para. 7
Buyer Broker Compensation
No Need for Form 2301

8. CASH, LOAN OR SELLER FINANCING.

ATTENTION BUYER

Buyer shall not change any of the following without Seller's approval: 1) the means of payment (cash, loan or seller financing); 2) the lender identified in the Pre-Qualification Letter; or 3) the loan-program type identified in the Pre-Qualification Letter. Seller's approval SHALL NOT BE unreasonably withheld. Upon Seller's approval, the parties shall execute an addendum to this Agreement that sets forth the change and addresses the disposition of Earnest Money should Buyer be unable to close as a result of the change in payment type, lender or loan program. If Earnest Money disposition is not addressed in the addendum, the Earnest Money shall be refunded to Buyer in all circumstances except the following: Buyer changed to a loan and did not provide a Rejection Letter in accordance with this paragraph.

- A. **CASH PURCHASE** - Buyer shall purchase the subject Property for Cash and certifies that funds are:
- Readily available
 - Contingent on the Closing of a cash-out refinance ("Cash-Out Refinance Contingency"). The Cash-Out Refinance Contingency must be satisfied or waived no later than ("Refinancing Deadline"). _____
If the Cash-Out Refinancing has not been satisfied or waived by the Refinancing Deadline, this Agreement shall terminate and the Earnest Money, if delivered, shall be refunded to Buyer.

Para. 8
Cash-Out Contingency Expanded

Para. 9

Addresses Earnest Money Now

9. **BUYER'S SALE, CLOSING AND FUNDING CONTINGENCY.** This Agreement is contingent upon the Closing and Funding of Buyer's property located at _____ on or before _____, _____ (“Buyer’s SCF Contingency Deadline”), OR subject to any applicable Buyer's Contingency Addendum if attached. If this Buyer’s Sale, Closing and Funding Contingency is not satisfied or waived by the Buyer’s SCF Contingency Deadline, this Agreement shall terminate and the Earnest Money, if delivered, shall be refunded to Buyer.
- A. Buyer represents that Buyer’s property is currently under contract for sale. If checked, attach NMAR Form 2503A – Buyer's Closing and Funding Addendum; OR
- B. Buyer represents that Buyer's property is NOT yet under contract for sale. If checked, attach NMAR Form 2503 – Buyer's Sale Contingency Addendum.

10. APPRAISAL.

PARA. 15

- FIRPTA – Language has been altered slightly to emphasize the importance of buyer obtaining a Non-Seller Foreign Affidavit or QSS and giving buyer right to direct title company to withhold Seller’s taxes.

- 15. FIRPTA.** The Foreign Investment in Real Property Tax Act of 1980 (“FIRPTA”) requires buyers who purchase real property from foreign sellers to withhold a portion of the amount realized from the sale of the real property for remittance to the Internal Revenue Service (“IRS”) **and makes a buyer potentially liable for a foreign seller’s tax obligation if a buyer fails to do so.** For more information, refer to NMAR Form 2304 – Information Sheet – FIRPTA & Taxation of Foreign Persons Receiving Rental Income from U.S. Property.
- A. **FIRPTA EXCEPTION APPLIES.** Buyer is relieved from obligation and liability under FIRPTA if **BOTH of the following apply:** 1) The sales price of the property is \$300,000 or less; **AND** 2) Buyer will be using the property as Buyer’s primary residence (“Exception”). *By selecting this section, Buyer Warrants the Exception Applies.*
- B. **FIRPTA EXCEPTION DOES NOT APPLY.** If the above Exception DOES NOT apply, and Seller is **NOT** a foreign person, then prior to or at Closing, Seller(s) shall provide to Buyer or to a Qualified Substitute (generally, the Title Company) either a Non-Foreign Seller Affidavit(s) (NMAR Form 2303) **OR** a letter from the IRS indicating Seller(s) is exempt from withholding.

Read The Box!



NEW MEXICO ASSOCIATION OF REALTORS® — 2024
PURCHASE AGREEMENT – RESIDENTIAL RESALE



⚠ ATTENTION BUYER, SELLER AND TITLE COMPANY ⚠

In the event Buyer does not obtain at Closing evidence excluding Seller from withholding, then Buyer shall have the right to direct the title company to withhold the applicable percentage of the amount realized from the sale of the Property. The title company shall remit the amount withheld either directly to the IRS or to the Buyer. The entity and/or person remitting the amount withheld to the IRS shall do so in accordance with IRS requirements. The brokers in this transaction shall not be liable for either party’s failure to comply with FIRPTA requirements.

16. COSTS TO BE PAID. Buyer or Seller, as applicable, shall pay the following marked items: **DO NOT USE THIS**

Para. 22

No Right to Inspect or to Enter Property IF Buyer Waives Inspections

satisfied with the neighborhood and surrounding areas and agrees that any issue regarding the surrounding area will NOT serve as grounds for termination of this Agreement.

22. INSPECTION CONTINGENCY. The parties are encouraged to employ competent and, where appropriate, licensed professionals to perform all agreed upon inspections of the property. Notwithstanding, if Buyer waives the Inspection Contingency, either by addendum or by failing to object or terminate by the Objection Deadline, then Buyer is NOT entitled to conduct inspections of the Property and Seller is NOT required to allow Buyer entry to the Property for purposes of conducting inspections, making observations or for any reason covered by this Paragraph. This waiver does not impact Buyer's rights under the Appraisal Contingency or the Walk-Through provisions of this Agreement.

A. BUYER DUTIES AND RIGHTS.

- i. BUYER'S DILIGENCE, ATTENTION AND OBSERVATION.** Buyer has the following affirmative duties, which may be exercised through the Objection Deadline set forth below:
 - a.** To conduct all due diligence necessary to confirm all material facts relevant to Buyer's purchase;
 - b.** To assure themselves that the Property is exactly what Buyer is intending to purchase;
 - c.** To become aware of the physical condition of the Property through their own investigation and observation;
 - d.** To investigate the legal, practical and technical implications of all disclosed, known or discovered facts regarding the Property; and
 - e.** To thoroughly review all written reports provided by professionals and discuss the results of such reports and

Para. 22 (C)
Buyer's Right to
Entry Through
Objection Deadline

BUYER'S ENTRY. Seller shall provide reasonable access to Buyer and Buyer's inspectors **through the Objection Deadline**. Buyer shall return the Property to the condition it was in prior to any entry, test and/or inspection by Buyer. Buyer shall be liable to Seller for any damages that occur to the Property as a result of any inspection conducted by Buyer, their agents, inspectors, contractors and/or employees (collectively "Buyer's Agents") and Buyer agrees to hold Seller harmless, indemnify and defend Seller from any and all claims, liabilities, liens, losses, expenses (including reasonable attorneys' fees and costs), and/or damages arising out of or related to any entry, inspections and/or tests conducted by Buyer or Buyer's Agents. **BUYER AND BUYER'S AGENTS ARE NOT PERMITTED ON THE PROPERTY WITHOUT PRIOR NOTIFICATION TO AND APPROVAL BY SELLER OR SELLER'S BROKER.**

PARA. 22 –
DON'T LIST
Repairs In
Objection Form
If Just Asking
For Money

Date of Acceptance.

H. OBJECTIONS/RESPONSE/RESOLUTION/TERMINATION. If Buyer has objections to any issue or condition discovered by Buyer's own observations and/or investigation of the Property or disclosed by any survey or ILR, document, and/or inspection, then no later than the applicable Objection Deadline, Buyer may OBJECT and request that Seller cure the issue/condition or Buyer may TERMINATE this Agreement. Buyer's objections or termination must be in writing. Buyer's failure to timely object or terminate shall be deemed a waiver of Buyer's right to object or terminate and of the applicable contingency; it shall not be considered a Default. If Buyer is responsible for ordering an inspection, survey or document and fails to do so in time to object or terminate by the Objection Deadline, Buyer's failure to receive the report, survey or document may not be used as rationale for not timely terminating or objecting.

i. OBJECTIONS. NMAR Form 5141 – Notice of Objection

- a. Making Objections to Document/Survey.** If Buyer OBJECTS to an item on a document, video or survey/ILR, Buyer shall produce with his objection(s) a copy of the ENTIRE document, video or survey/ILR on which Buyer's objection(s) is based.
- b. Making Objections to Inspections:** If Buyer OBJECTS to an item on an inspection report, Buyer shall produce with his objection(s) ONLY the SECTION(S) of the report on which Buyer's objection(s) is based and AGREES NOT TO SEND Seller the entire inspection report, unless requested by Seller in writing.
- c. If Buyer is making a request only for a monetary concession (price modification or seller concession), Buyer shall not list the items/deficiencies for which Buyer is requesting the monetary concession or include a copy of the report or any portion thereof unless requested by Seller in writing.**
- d. Provided Buyer has received an inspection report, then upon Seller's written request for the entire inspection report, Buyer shall provide said inspection report(s) within three (3) days from Seller's written request. Buyer shall provide said inspection report to Seller without payment or other compensation.**
- e. Once Buyer makes objections, Buyer may NOT withdraw their objections for the purpose of terminating this Agreement until Seller has responded.** Once Seller responds, Buyer may terminate the Agreement UNLESS Seller has agreed to cure all the Buyer's objections in the manner requested by Buyer. If in Seller's response, Seller agrees to cure all of the Buyer's objections in the manner requested by Buyer, the parties are

PARA. 22

Buyer ONLY Has To Provide Report IF Termination is Based On Inspections

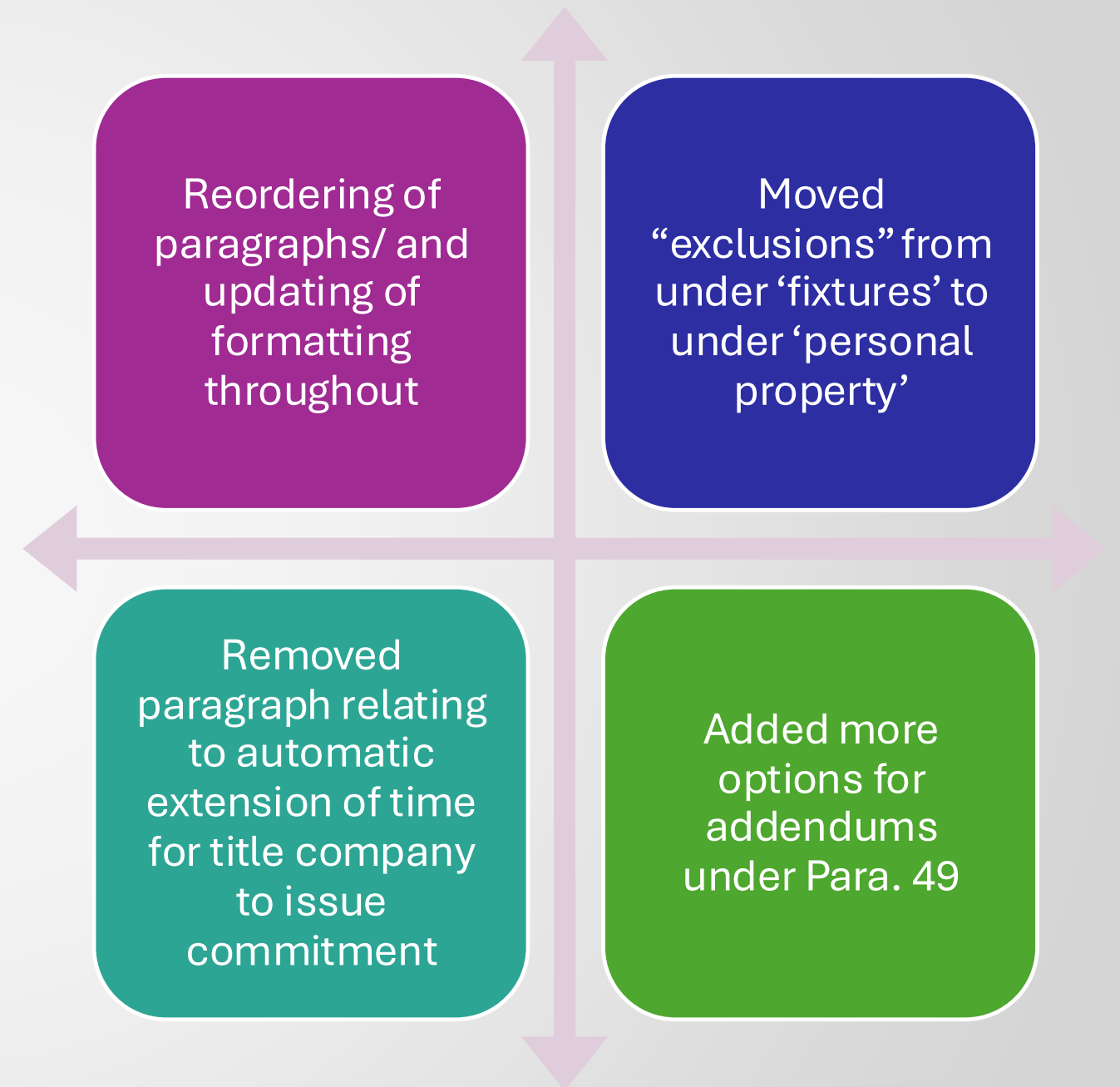
iii. RESOLUTION.

- a. Once the parties have negotiated an agreement to Buyer's objections, the parties shall complete a Resolution Addendum, which Resolution Addendum shall set forth the parties agreement - **NMAR Form 5143 - Resolution Addendum**. **If Buyer is obtaining a loan, Buyer is advised to discuss terms of the Resolution Addendum with their lender BEFORE executing the Resolution Addendum, as changes to the Purchase Agreement as set forth in the Resolution Addendum may impact Buyer's loan.**
- b. In the event Seller agrees to complete any repairs prior to Closing, Seller shall complete the repairs no later than _____ days prior to Settlement/Signing Date ("Repair Completion Deadline"). **Unless otherwise noted by Buyer in their objections, all repairs to be completed by the appropriately licensed professional and copies of all repair invoices, which shall include vendor contact information and license number, shall be provided to Buyer on or before the Pre-Closing Walk-Through.**
- c. If the parties are unable to reach a Resolution by the Resolution Deadline, then Buyer shall have two (2) days from the Resolution Deadline to provide written notification to Seller that Buyer is withdrawing all objections on which the parties have not come to Resolution (NMAR Form 5144 – Notice of Buyer's Withdrawal of Unresolved Objections). If Buyer does NOT withdraw unresolved objections within two (2) days from the Resolution Deadline, then **THIS AGREEMENT SHALL TERMINATE** and Earnest Money, if delivered, shall be refunded to Buyer. Notwithstanding the foregoing, Buyer's withdrawal of all unresolved objections prior to the Resolution Deadline or within the two (2) days following the Resolution Deadline constitutes Resolution. **NMAR Form 5144 - Notice of Buyer's Withdrawal of Unresolved Objections.**

- iv. **TERMINATION. NMAR Form 5105 – Termination Agreement. If Buyer elects to TERMINATE this Agreement without requesting Seller to cure any objections, Buyer AGREES THAT THEY WILL NOT SEND a copy of the document, survey and/or inspection report on which Buyer's Termination Agreement is based unless requested by Seller in writing. Provided Buyer has received an inspection report, then upon Seller's written request for a copy of the document, survey and/or inspection report, Buyer shall provide said document, survey or report within three (3) days from Seller's written request. Buyer shall provide said inspection report to Seller without payment or other compensation. If Buyer timely elects to terminate, Earnest Money, if delivered, shall be refunded to Buyer. Notwithstanding the foregoing, Buyer is only obligated to provide the inspection report upon written request of the Seller if the termination is based on inspections.**

23. **TERMINATION AND DISTRIBUTION OF EARNEST MONEY.** If this Agreement terminates in accordance with the terms of this Agreement, the parties shall execute a NMAR Form – 5105 - Termination Agreement, and in the event Earnest Money has been delivered to a Title Company/Escrow Agent, the parties shall execute a NMAR Form 5105B - Earnest Money Consent to Distribution that provides for distribution of the Earnest Money in accordance with the terms of this Agreement.

2104 Other Changes





Form 1106 LISTING AGREEMENT

1106

- General re-formatting throughout
- Reordered Paragraphs 1-5
- And....

Formerly:	New:
<ol style="list-style-type: none">1. Exclusive Services2. Dual Representation3. Term4. Property5. Listing Price10. Unrepresented Buyers	<ol style="list-style-type: none">1. Exclusive Services2. Property3. Term4. Listing Price5. Dual Representation and Unrepresented Buyers

FORM 1106

Moved
Unrepresented
Buyer Under
Para. 5.



NEW MEXICO ASSOCIATION OF REALTORS® — 2024 LISTING AGREEMENT — EXCLUSIVE RIGHT TO SELL



3. **TERM.** The term of this Agreement shall begin on _____ and terminate at 11:59 p.m. Mountain Time on _____. If a property is under contract or the Seller is negotiating a written offer with a Buyer on the date this Agreement would otherwise terminate, the term shall automatically be extended through closing or other final disposition of the Property. The word "Term" as used in this Agreement shall include all extensions.
4. **LISTING PRICE.** The listing price shall be \$ _____
Other terms and conditions: _____
5. **DUAL REPRESENTATION AND UNREPRESENTED BUYERS.**
- A. **DUAL REPRESENTATION.** For purposes of this Agreement, the term Dual Representation and Unrepresented Buyer have the following meanings: *Dual Representation* means Broker is directly providing real estate services to Seller and to the buyer in the transaction equally and owes both Seller and the buyer all the Broker Duties on Cover Page 1. *Unrepresented Buyer* means a buyer in the transaction who is not working with Broker or with any other buyer's broker in the transaction.
- i. **Broker.** Broker **WILL** or **WILL NOT** provide Dual Representation in a transaction. If Broker is willing to provide Dual Representation, then in order for Broker to provide Dual Representation, Seller would have to consent to Dual Representation below. If Broker will not provide Dual Representation, then Broker will inform a buyer who is not working with a buyer's broker that either the buyer will need to obtain their own buyer's broker to assist them in the transaction or the buyer will need to proceed as an Unrepresented Buyer in the transaction.
- ii. **Seller.** Seller **DOES** or **DOES NOT** or **NOT APPLICABLE** consent to Dual Representation in a transaction. **IMPORTANT NOTE TO SELLER:** If both Seller and Broker agree to Dual Representation, Broker may learn of adverse material facts related to the Property in the course of representing the buyer in the transaction. In this event, if that transaction should terminate, Broker is required by law to disclose those adverse material facts to subsequent potential buyers.
- B. **UNREPRESENTED BUYERS.** An *Unrepresented Buyer* is a buyer in the transaction who is not working with Broker or with any other buyer's broker in the transaction.
- i. Listing Broker **WILL** or **WILL NOT** show/open the Property to Unrepresented Buyers. Per MLS Rules, if Broker is strictly working **on behalf of Seller when showing the Property**; Broker is **not** required to have a Buyer Broker Agreement with the buyer; however, if Broker is also representing the Buyer, Broker is required to have a Buyer Broker Agreement with the buyer. **IMPORTANT NOTE TO SELLER:** If Broker is **not** willing to open/show the Property for/to an Unrepresented Buyer, Seller understands that the Unrepresented Buyer will have **no** access to the Property. **By selecting "WILL NOT" and signing this Agreement, Seller is agreeing that Broker is NOT obligated to open/show the Property for/to an Unrepresented Buyer.**
- ii. Listing Broker **WILL** or **WILL NOT** provide NMAR Forms to an Unrepresented Buyer. **IMPORTANT NOTE TO SELLER:** If Broker is **not** willing to provide NMAR forms to an Unrepresented Buyer, Broker will likely not be familiar with the forms used by the buyer, including, but not limited to, the offer to purchase; and unless Broker is also a licensed New Mexico attorney, Broker is prohibited by New Mexico law from providing Seller with legal advice regarding the offer/forms buyer presents. Seller will need to seek legal advice on such forms from a licensed New Mexico real estate attorney. **By selecting "WILL NOT" and signing this Agreement, Seller warrants they agree that Broker is NOT obligated to provide NMAR forms to an Unrepresented Buyer.** If Broker is willing to provide NMAR forms for use by a buyer who would not otherwise have access to NMAR forms, See – NMAR Form 1208 – Notice to Unrepresented Buyer; and NMAR Form 1208A – Use of NMAR Forms by Unrepresented Party

FORM 1106 – Para. 6

B. TO BUYER'S BROKERAGE IN THE EVENT OF SALE. Seller is under **NO** obligation to compensate the buyer's brokerage that represents the buyer in the sale of the Property.

Seller IS willing IS NOT willing to compensate the buyer's brokerage.

If Seller is willing to compensate a buyer's brokerage, Seller IS willing IS NOT willing to commit to an amount of compensation before receiving/reviewing the offer. If Seller is willing to commit to paying a buyer's brokerage prior to receiving/reviewing an offer, then Seller and the buyer's brokerage would execute NMAR Form 4660 – Seller's Compensation to Buyer Brokerage – PRIOR to the buyer submitting an offer. Listing Broker is authorized to disclose Seller's directive to the Buyer's Brokers/Brokerages in accordance with this Paragraph.

IMPORTANT NOTE: A buyer's brokerage may not receive from an individual source or multiple sources (Listing Broker, Seller and/or Buyer) more than the amount the buyer agreed to pay the buyer's brokerage in the Buyer Brokerage Agreement.


**ARBITRATION
REQUIREMENT
added to all broker/
consumer contracts.
NOT to Purchase
Agreements.**

1106

Added requirement for
brokerage and seller to
arbitrate (instead of litigate)
disputes.

See **NEW Arbitration
Information Sheet**

- 24. PUBLIC IMPROVEMENT DISTRICT:** Is the Property located in a Public Improvement District ("PID")?
 YES NO. If yes, per New Mexico law, Seller is prohibited from accepting an offer to purchase until Seller has provided specific PID disclosures to the Buyer.
- 25. HOMEOWNERS'/CONDOMINIUM UNIT OWNERS' ASSOCIATION ("HOA/CUOA"):** Is Property located in an HOA OR CUOA? YES NO If yes, Per New Mexico law, Seller is required to provide specific HOA/CUOA disclosures to the buyer. For HOAs, see NMAR Form 4600 — Information Sheet - Homeowners' Association, NMAR Form 4650 — Seller's Disclosure of Homeowners' Association Documents and NMAR Form 4700 — Homeowners' Association Document and Disclosure Certificate. For CUOAs, see NMAR — Form 2356 — Condominium Association Information Sheet and NMAR Form 2302, Residential Re-Sale Condominium Addendum.
- 26. MEDIATION AND ARBITRATION.** If a dispute arises between the parties relating to this Agreement, the parties shall submit the dispute to mediation, jointly appoint a mediator and share equally in the costs of the mediation. NMAR Form 5118 — Information Sheet — Mediation Information for Clients and Customers. **If any dispute arising between parties relating to this Agreement cannot be resolved by mediation, the dispute, controversy or claim arising out of or relating to this Agreement shall be settled by arbitration and shall be referred to the American Arbitration Association ("AAA") for arbitration in accordance with AAA Rules of Arbitration. NMAR Form 5121 - Information Sheet - Arbitration. Judgment upon the award rendered may be entered and enforced in any court of competent jurisdiction. The prevailing party of such action shall be entitled to an award of reasonable attorneys' fees and court costs.**
- 27. EXPERT ASSISTANCE.** Broker advises Seller to obtain expert assistance regarding legal, tax and accounting matters or matters relating to zoning, surveying, inspections, construction, hazardous materials, engineering or other matters which are not within the expertise of Broker. **Broker shall have no liability with respect to such matters, provided Broker does not render advice on such matters.**
- 28. CONSENT TO THE ELECTRONIC TRANSMISSION OF DOCUMENTS AND TO THE USE OF ELECTRONIC SIGNATURES.** The parties DO DO NOT consent to conduct any business related to and/or required under this Agreement by electronic means, including, but not limited to the receipt of electronic records and the use of electronic signatures. Subject to applicable law, electronic signatures shall have the same legal validity and effect as original hand-written signatures. Nothing herein prohibits the parties from conducting business by non-electronic means. If a party has consented to receive records electronically and/or to the use of electronic signatures, that party may withdraw consent at any point in the transaction by delivering written notice to the other party.

Form 1108
BROKERAGE TO BROKERAGE
COMPENSATION
AGREEMENT

FORM 1108

Brokerage to Brokerage Compensation Agreement

*Read Language
Removed!*



NEW MEXICO ASSOCIATION OF REALTORS® — 2024 COMPENSATION AND COOPERATION AGREEMENT BROKERAGE TO BROKERAGE



The undersigned Cooperating Brokerage and the undersigned Listing Brokerage agree to cooperate in connection with the sale or lease of the following Property:

Address (Street, City, State, Zip Code) _____

Legal Description

or see metes and bounds description attached as Exhibit _____ County, New Mexico.

1. **APPLICATION OF AGREEMENT.** This Agreement applies to the following type(s) of transaction:
(check all that apply)

- THE SALE, CLOSING AND FUNDING OF THE PROPERTY
 THE LEASING OF THE PROPERTY

2. **IDENTITY OF BUYER AND/OR TENANT, AS APPLICABLE.** This Agreement applies to the following the Buyer and/or Tenant: _____

3. **COOPERATION.** Listing Brokerage and Cooperating Brokerage shall share all known material facts about the Property and Listing Brokerage shall provide Cooperating Brokerage with reasonable access to the Property. Cooperating Brokerage shall submit all offers for the Property through the Listing Brokerage. Listing Brokerage shall present all offers submitted by the Cooperating Brokerage in accordance with any applicable rules or regulations, including the REALTOR® Code of Ethics. If Cooperating Brokerage has an exclusive relationship with a potential Buyer and/or Tenant, Listing Brokerage shall not communicate directly with that potential Buyer and/or Tenant, except with Cooperating Brokerage's prior approval; however, nothing herein precludes a Listing Brokerage acting in the capacity of a Property Manager from communicating directly with a Tenant once the Tenant enters into a Lease Agreement. Cooperating Brokerage shall not communicate directly with Seller/Owner, except with Listing Brokerage's prior approval.

4. **COMPENSATION.** If the Property is sold or leased to a Buyer and/or Tenant identified in Paragraph 1 of this Agreement during the term of this Agreement, Listing Brokerage shall pay the following plus applicable gross receipts tax to the Cooperating Brokerage as compensation upon Closing and Funding of the transaction, provided said Buyer is represented by Buyer's Brokerage at the time of Closing and Funding, or upon signing of the Lease Agreement, as applicable.

For Purchase

- \$ _____
 _____ % of sales price of Property

For Lease

- \$ _____
 _____ % of lease rate for Property for the
duration of the lease and any extensions

Notwithstanding the foregoing, if the Listing Brokerage does not receive compensation from the Seller/Owner for any reason, then the Listing Brokerage is relieved from payment of compensation due hereunder to the Cooperating Brokerage.

Form 1206 AND 1206A BUYER BROKER AGREEMENTS



OTHER POTENTIAL BUYERS. Buyer acknowledges that Broker may make known to other buyer clients or customers the same or similar properties as Buyer is seeking to acquire. Further, another buyer that Broker represents may wish to make an offer on the same property that Buyer intends to make an offer. Buyer consents to this activity and understands that Broker will not share details of Buyer's offer with the other buyer or the details of the other buyer's offer with Buyer.



ADDED

FORM 1206 – PARA. 10

FORM 1206

Arbitration Added

management with any such person or entity recommended by Broker shall be based solely upon such independent investigation and evaluation.

- 16. MEDIATION AND ARBITRATION.** If a dispute arises between the parties relating to this Agreement, the parties shall submit the dispute to mediation, jointly appoint a mediator and share equally in the costs of the mediation. NMAR Form 5118 - Information Sheet - Mediation Information for Clients and Customers. If any dispute arising between parties relating to this Agreement cannot be resolved by mediation, the dispute, controversy or claim arising out of or relating to this Agreement shall be settled by arbitration and shall be referred to the American Arbitration Association (“AAA”) for arbitration in accordance with AAA Rules of Arbitration. NMAR Form 5121 - Information Sheet – Arbitration. Judgment upon the award rendered may be entered and enforced in any court of competent jurisdiction. The prevailing party of such action shall be entitled to an award of reasonable attorneys’ fees and court costs.
- 17. GOVERNING LAW AND VENUE.** This Agreement is to be construed in accordance with and governed by the internal laws of the State of New Mexico without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New Mexico to the rights and duties of the parties. Each party hereby irrevocably consents to the jurisdiction and venue of the state and federal courts located in the county

1206A – Changes and Additions

ii. **Compensation.** Buyer shall compensate Broker as follows, plus applicable New Mexico Gross Receipts Tax (“NMGRT”). Check ALL that apply.

- \$ _____ (Flat Fee) \$ _____ / Per Property Shown
 \$ _____ / Per Hour or Portion Thereof Other: _____
 \$ _____ RETAINER – A flat fee amount to be billed against hourly or per showing, as indicated in this paragraph. Remainder of Retainer to be refunded to Buyer, along with a statement of deductions, within ten (10) business days of the end of the Term.

NO Fee For Showing Services.

Compensation Credit. Compensation paid to Broker per this Paragraph **WILL NOT** be applied to the Compensation paid to Broker under Paragraph 4(B), if any, **UNLESS** the this box is checked.

iii. **Compensation Earned/Due.** Compensation to Brokerage due under this Paragraph 4(A) shall be earned and due:

- Upon Full Execution of this Agreement**
 Following either Each Hour Worked or the Showing of Each Property, as applicable.
 At the End of the Term
 Retainer: Due upon full execution of this Agreement; earned per hour or per showing, as applicable.
 Other: _____

B. **Broker Representation.** In the event Buyer makes an offer to purchase or lease a Property during the Term of this Agreement, Buyer and Broker agree as follows:

i. **Services.** Broker shall represent Buyer exclusively in the purchase or lease of the Property.

ii. **Compensation.** Buyer shall compensate Broker as follows, plus NMGRT.

For Purchase

- \$ _____
 _____ % of sales price of Property
 Other: _____

For Lease

- \$ _____ **Other:** _____
 _____ % of lease rate for Property for the duration of the lease and any extensions.

iii. **Amount and Payment of Compensation.** Brokerage will attempt to collect the Compensation from the Listing Brokerage and/or seller. **Buyer shall be responsible for paying Brokerage any amount of Compensation that Brokerage is unable to collect from the Listing Brokerage or seller.**

1206A: Changes and Additions

into another exclusive agreement with another licensed real estate Brokerage covering the same property or type of property covered by this Agreement. This paragraph shall survive termination.

6. **OTHER POTENTIAL BUYERS.** Buyer acknowledges that Broker may make known to other buyer clients or customers the same or similar properties as Buyer is seeking to acquire. Further, another buyer that Broker represents may wish to make an offer on the same property that Buyer intends to make an offer. Buyer consents to this activity and understands that Broker will not share details of Buyer's offer with the other buyer or the details of the other buyer's offer with Buyer.
7. **MEDIATION AND ARBITRATION.** If a dispute arises between the parties relating to this Agreement, the parties shall submit the dispute to mediation, jointly appoint a mediator and share equally in the costs of the mediation. NMAR Form 5118 - Information Sheet - Mediation Information for Clients and Customers. If any dispute arising between parties relating to this Agreement cannot be resolved by mediation, the dispute, controversy or claim arising out of or relating to this Agreement shall be settled by arbitration and shall be referred to the American Arbitration Association (“AAA”) for arbitration in accordance with AAA Rules of Arbitration. NMAR Form 5121 - Information Sheet – Arbitration. Judgment upon the award rendered may be entered and enforced in any court of competent jurisdiction. The prevailing party of such action shall be entitled to an award of reasonable attorneys’ fees and court costs.
8. **GOVERNING LAW AND VENUE.** This Agreement is to be construed in accordance with and governed by the internal laws of the State of New Mexico. Each party hereby irrevocably consents to the jurisdiction and venue of the state and federal courts located in the county in which the Brokerage is located and agrees that all suits or proceedings relating to this Agreement shall be brought only in such courts.

A blurred background of an office interior with a silver bell in the foreground. The bell is highly reflective and sits on a surface. The background shows office desks, chairs, and windows with soft lighting.

2001
BROKER COMPENSATION
NOTIFICATION

FORM
2001
Rearranged
and Seller
Concession
Language
Added

- Seller has agreed to pay **Buyer's Brokerage** compensation in the amount of:
- \$ _____ plus applicable New Mexico Gross Receipts Tax ("NMGR"); OR
 - _____ % of sales price of property plus NMGR.
 - Other:** _____

If the payment to the Buyer's Brokerage as stated above is less than the amount of compensation that Buyer has agreed to pay the Buyer's Brokerage per the Buyer Brokerage Agreement, then Buyer shall pay the remaining amount due to Buyer's Brokerage.

BUYER/BUYER'S BROKERAGE NOTICE TO TITLE COMPANY AND/OR LENDER

If the Listing Brokerage or Seller or has agreed to compensate the Buyer's Brokerage, then the amount of that compensation shall be deducted from the amount that Buyer agreed to pay the Buyer's Brokerage as set forth above.

- Buyer has agreed to pay Buyer's Brokerage compensation in the amount of:
- \$ _____ plus applicable New Mexico Gross Receipts Tax ("NMGR"); OR
 - _____ % of sales price of property plus NMGR.

ATTENTION BUYER BROKERS:

Compensation Reminder: The Buyer Brokerage may not receive compensation from any source or sources (Buyer, Seller and/or Listing Brokerage) that exceeds the amount or rate the Buyer has agreed to pay the Buyer's Brokerage in the Buyer Broker Agreement.

Submission of Buyer Broker Agreement: As evidence of the Buyer Broker compensation, some loan programs or lenders may require the submission of the entire Buyer Broker Agreement; this form may not be sufficient.

Seller Concessions shall be used as follows: **Buyer's Brokerage Compensation** **Buyer's Closing Costs**
 Other: _____

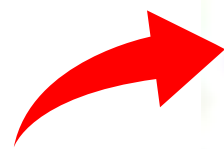
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**FORM 4660
SELLER
COMPENSATION
TO BUYER'S
BROKERAGE**

4660 New Language

*Be Aware of This!
For more information
on this form, listen
to the audio on slide 18.*



 **NEW MEXICO ASSOCIATION OF REALTORS® — 2024** 
SELLER'S COMPENSATION TO BUYER'S BROKERAGE

While this form may be initiated by either the Buyer's Broker or the Seller, in the event the Seller initiates the use of this form to the Buyer's Broker, the Buyer's Broker must ensure that they provide to the Seller NMAR Form 1401 – Broker Duties prior to accepting this from the Seller.

This Agreement is made by and between _____
("Buyer's Brokerage") and _____ ("Seller").

1. PROPERTY.
Address _____ City _____ State _____ Zip _____
Legal Description
or see metes & bounds description attached as Exhibit _____ County, New Mexico.

2. IDENTIFICATION OF BUYER(S). This Agreement applies to:
Only the following Specific Buyer (s) represented by Buyer's Brokerage: _____

3. COMPENSATION. Seller shall pay applicable New Mexico Gross Receipts Tax on all Compensation.
A. Sale. If during the term of this Agreement, the Property is sold to a/the Buyer identified in Para. 2, Seller shall pay Buyer's Brokerage compensation of _____ % of Purchase Price; \$ _____; or Other: _____
("Compensation"), provided said buyer is represented by Buyer's Brokerage at the time of the Closing. **Notwithstanding the foregoing, Buyer's Brokerage cannot receive from one source or multiple sources (Seller, Listing Brokerage and/or Buyer) more than the total amount of compensation the buyer agreed to pay the Buyer's Brokerage under the Buyer Brokerage Agreement.**
B. No Sale Due to Seller's Breach. If Property does not Close and Fund due to Seller's breach of the Purchase Agreement, Seller shall pay Buyer's Brokerage _____ % of Purchase Price or \$ _____.

4. TIMING OF PAYMENT AND AUTHORIZATION TO TITLE COMPANY. Compensation shall be due at time of Closing of sale of Property and Seller hereby authorizes title company/agent to disburse Compensation directly to Buyer's Brokerage upon Closing of Property.

5. TERM. The Term of this Agreement shall begin on _____ and terminate at 11:59 pm Mountain Time on _____. If the Property is under Contract or Seller is negotiating the sale or exchange of the Property with a/the Buyer identified in Para. 2 on the date this Agreement would otherwise terminate, the term shall automatically be extended through the Closing of the sale of the Property. The word "Term" as used in this Agreement shall include all extensions.

6. MEDIATION AND ARBITRATION. If a dispute arises between the parties relating to this Agreement, the parties shall submit the dispute to mediation, jointly appoint a mediator and share equally the costs of the mediation. NMAR Form 5118 - Information Sheet - Mediation Information for Clients and Customers. If any dispute arising between parties relating to this Agreement cannot be resolved by mediation, the dispute, controversy or claim arising out of or relating to this Agreement shall be settled by arbitration and shall be referred to the American Arbitration Association ("AAA") for arbitration in accordance with AAA Rules of Arbitration. NMAR Form 5121 - Information Sheet - Arbitration. Judgment upon the award rendered may be entered and enforced in any court of competent jurisdiction. The prevailing party of such action shall be entitled to an award of reasonable attorneys' fees and court costs.

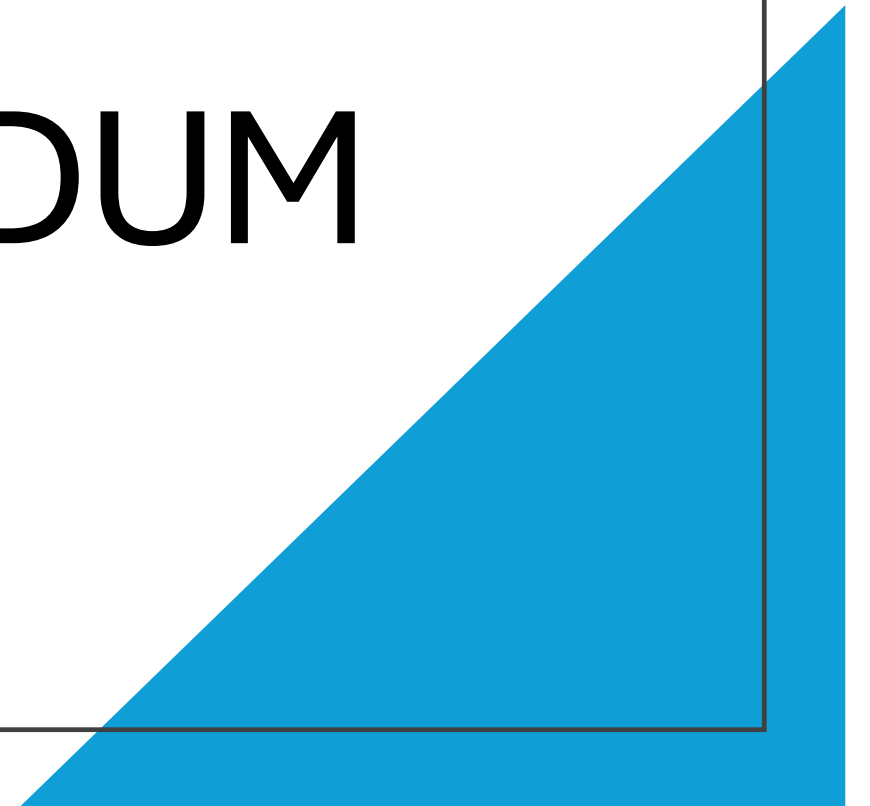


*Only For
One
Property
Now!*

5116

BUYER BROKERAGE

AGREEMENT ADDENDUM



5116 – Page 1

All Potential Changes on One Addendum

- Changing the level of Commitment
- Extending the Term
- Changing the Brokerage Compensation

REALTOR®

ADDENDUM NO. _____
BUYER BROKERAGE AGREEMENT ADDENDUM

EQUAL HOUSING
OPPORTUNITY

This Addendum is a part of the Buyer Brokerage Agreement ("Agreement") dated _____, 20____ between _____ ("Buyer") and _____ ("Buyer's Brokerage").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the Agreement as follows:

1. BUYER COMMITMENT.

- A. The Agreement applies to the PURCHASE and/or LEASE of properties. (Check Applicable)
- B. ALL INCLUSIVE COMMITMENT (COVERING ANY AND ALL PROPERTIES). Buyer grants the Brokerage the exclusive right to assist Buyer in locating and purchasing or leasing, as applicable, real property generally described below, or any other real property which is acceptable to Buyer. Buyer will not work with any other real estate brokerage or without brokerage to negotiate and purchase or lease, as applicable, any type of property described in this Paragraph.
- i. General Location: _____
- ii. Type: Check all applicable
 RESIDENTIAL COMMERCIAL VACANT LAND FARM AND RANCH
 ALL OF THE ABOVE OTHER _____
- C. LIMITED COMMITMENT (SPECIFIC IDENTIFIED PROPERTIES). Buyer grants the Brokerage the exclusive right to assist Buyer, but only with respect to the purchase or lease, as applicable, of the property (ies) described below. Buyer will not work with any other real estate brokerage or without Brokerage to view, negotiate, or Purchase (or lease, if applicable) any of the properties described in this Paragraph, but Buyer may work with any other real estate brokerage or without Brokerage to locate, view, negotiate, or purchase (or lease if applicable) any property not described in this Paragraph.

i. _____
Address (Street, City, State, Zip Code)

Legal Description
or see metes and bounds description attached as Exhibit _____, _____ County, New Mexico.

ii. _____
Address (Street, City, State, Zip Code)

Legal Description
or see metes and bounds description attached as Exhibit _____, _____ County, New Mexico.

2. TERM EXTENSION. The term of the Agreement shall be extended until _____.
3. BROKERAGE'S COMPENSATION: Brokerage's Compensation is hereby amended to the amount below ("Broker Compensation Amendment"). NMGRT shall be added to amounts below. (Check Applicable)

For Purchase:

- \$ _____; OR
 _____% of sales price of property; OR
 Other: _____

For Lease:

- \$ _____; OR
 _____% of lease rate for the duration of lease
and any extensions or options; OR
 Other: _____

IMPORTANT NOTICE TO BROKERAGE AND BUYER: Buyer's Brokerage cannot receive from one source or multiple sources (Listing Brokerage, Seller and/or Buyer) more than the Brokerage Compensation set forth in the Buyer's Brokerage Agreement or herein, as amended.

5116 –
Page 2

All Potential
Changes on One
Addendum

*Compensation change
can apply to all properties
or to one specific
property. If one specific
deal falls apart,
compensation would return
to amount in original agreement.*



NEW MEXICO ASSOCIATION OF REALTORS®– 2024
ADDENDUM NO. _____
BUYER BROKERAGE AGREEMENT ADDENDUM



▲ ATTENTION BUYERS ▲

The amount of compensation paid by a Buyer to a Brokerage is fully negotiable and is **NOT** dictated by MLS rules, the local, state or National Association of Realtors® or local, state or national law.

While a Buyer and Buyer Brokerage may agree to adjust the amount of compensation in the Buyer Brokerage Agreement at any time, neither the buyer, nor the Buyer Brokerage, is *obligated* to change the amount of compensation negotiated and agreed to once they enter into a Buyer Brokerage Agreement.

The above Brokerage Compensation amendment applies to: (Check Applicable)

- All properties covered by the Buyer Brokerage Agreement; OR
- Only the following property: In the event Buyer does close (or enter into a lease agreement, if applicable) on the below specified property, this Brokerage Compensation Amendment shall become null and void and the Brokerage Compensation set forth in the Buyer Brokerage Agreement shall control.

Address (Street, City, State, Zip Code) _____

Legal Description

or see metes and bounds description attached as Exhibit _____, _____ County, New Mexico.

4. OTHER.

5. **ADDENDUM PROVISIONS CONTROL.** If there is any conflict between the provisions of this Addendum and the provisions of the Buyer Brokerage Agreement and/or any earlier Addendum, the provisions of this Addendum shall control. The remaining, unchanged provisions of the Buyer Brokerage Agreement and/or any previously dated Addendum shall remain in effect.

BUYER(S)

Buyer Signature

Printed Name

Date

Time

Buyer Signature

Printed Name

Date

Time

BUYER'S BROKERAGE

5102

COUNTEROFFER



FORM 5102 Counteroffer



NEW MEXICO ASSOCIATION OF REALTORS® — 2024
COUNTEROFFER NO. _____



This Counteroffer is made a part of the Residential Commercial Vacant Land Farm and Ranch Purchase Agreement dated _____ between _____ ("Buyer") and _____ ("Seller") and relating to the purchase of the following Property:

Address (Street, City, State, Zip Code)

Legal Description

or see metes and bounds description attached as Exhibit _____, _____ County, New Mexico;

the above-described Purchase Agreement is hereinafter referred to as "Purchase Agreement". **The Purchase Agreement INCLUDES all addendums submitted with the Purchase Agreement/Offer that are expressly incorporated by reference into the Purchase Agreement, meaning that if a party wishes to change any term(s) of an addendum(s), that was not already changed in a prior incorporated Counteroffer, that change would need to be included in this Counteroffer.**

1. **INCORPORATED COUNTEROFFERS.** Counteroffers that are NOT expressly referenced below are NOT incorporated into the Purchase Agreement. **Counteroffers _____ are incorporated by reference into the Purchase Agreement, except as expressly modified by this Counteroffer.**

2. **CHANGES TO TERMS OF PURCHASE AGREEMENT.** The terms of the Purchase Agreement are changed as follows:

NEW FORM

ARBITRATION

- NEW ARBITRATION INFO SHEET – FORM 5121
- ADDED ARBITRATION REQUIREMENT TO ALL BROKER/CONSUMER AGREEMENTS (NOT TO PURCHASE AGREEMENT)

MEDIATION AND ARBITRATION. If a dispute arises between the parties relating to this Agreement, the parties shall submit the dispute to mediation, jointly appoint a mediator and share equally in the costs of the mediation. NOMAR Form 5118 -Information Sheet - Mediation Information for Clients and Customers. If any dispute arising between parties relating to this Agreement cannot be resolved by mediation, the dispute, controversy or claim arising out of or relating to this Agreement shall be settled by arbitration and shall be referred to the American Arbitration Association (“AAA”) for arbitration in accordance with AAA Rules of Arbitration. NMAR Form 5121 - Information Sheet – Arbitration. Judgment upon the award rendered may be entered and enforced in any court of competent jurisdiction.

CASE LAW AROUND THE NATION

**TEXAS – ORAL BROKER TO
BROKER COMPENSATION
AGREEMENT ENFORCED**

**CALIFORNIA - BROKERAGE LIABLE –
QUALIFYING BROKERS LICENSE REVOKED**

lease-to-own mobile home
contracts executed by an
unlicensed person

improperly operated a place of
business without a legally
required mobile home dealer
license.

allowed residents to occupy
several mobile homes that
lacked the requisite utility
inspections and permits in
violation of the Health and
Safety Code.

MANUFACTURED HOME SALES



MANUFACTURED HOUSING BROKERS ACT

"broker" means any person who, for a fee, commission or valuable consideration, lists, sells, offers for sale, exchanges, offers to exchange, rents or leases or offers to rent or lease pre-owned manufactured homes for another person or who negotiates, offers to negotiate, locates or brings together a buyer and a seller or offers to locate or bring together a buyer and a seller in conjunction with the sale, exchange, rental or lease of a pre-owned manufactured home. A broker may or may not be an broker of any party involved in the transaction. **No person shall be considered a broker unless engaged in brokerage activities related to the sale, exchange or lease-purchase of two or more pre-owned manufactured homes to consumers in any consecutive twelve-month period;**

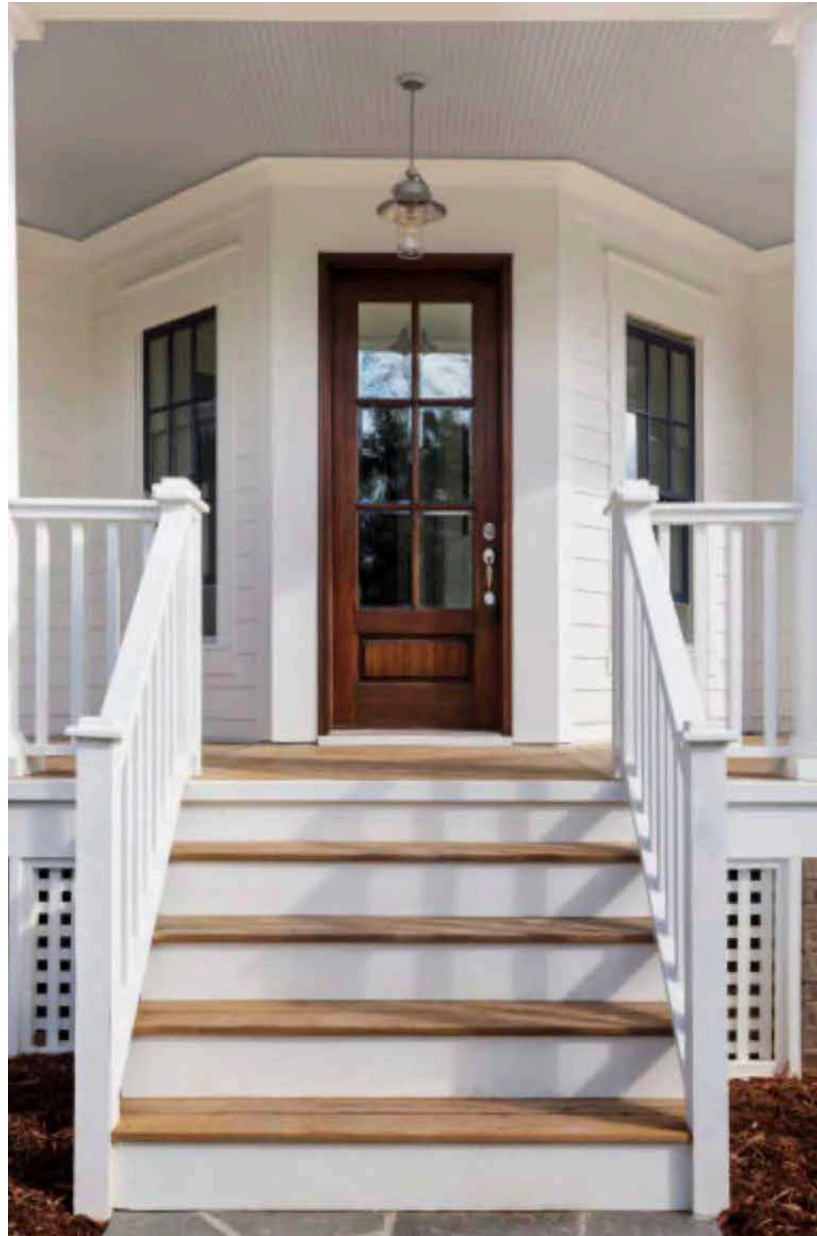
REALTORS® SELLING MANUFACTURED HOMES

*Upon thorough review by our legal department, RLD has determined that inspection of pre-owned manufactured homes prior to listing or sale, while advisable, is not required. Installation inspections **are** required when a new house is first installed or when an existing home is moved to a new location. **Thus, a pre-owned home that remains in its original location is assumed to have been inspected when it was first installed and no additional inspections are necessary. That said, to ensure safety, MHD encourages Realtors® to obtain proof that an installation inspection occurred when the home was originally installed. If the home was installed after January 2004, MHD should have record of the inspection through the Kiva Online Permit Tracking System. Realtors® can verify inspection by contacting MHD, but, again, they are not required to do so.***

- RLD Letter

E AND O INSURANCE DOES NOT COVER SALES OF MH HOMES

- **What does E&O cover?**
- Generally, real estate E&O insurance applies to claims that are made against you that allege a negligent act, error, or omission in your professional services (for real estate licensees, this would be your services as a real estate licensee).
- A written demand for money or services that seeks damages and alleges a negligent act, error, or omission in your professional services may be a claim.
- A claim may also be service of a lawsuit or notification of alternative dispute proceedings that seeks damages and alleges a negligent act, error, or omission in professional services.
- Selling MHs without real property does NOT require a real estate license; ergo, you do NOT have E and O coverage.



*Kidd v. Metro
Brokers, Inc., 905
S.E.2d 316 (Ga.
App. 2024)*

BROKER LIABILITY FOR INJURY ON
PROPERTY

FACTS

- Kidd and his wife Anna accompanied their son to tour a home for sale. The listing agent was not present during the tour.
- During the tour, Anna tripped on a step, causing a fall and head injury. At the hospital, Anna slipped into a coma and passed away days later.
- Kidd filed a lawsuit against Metro Brokers, Inc. and its agents (“Defendants”), bringing claims alleging negligence.
- At the trial court level, Defendants argued Kidd’s claims must fail as a matter of law because Defendants were not owners or occupiers of the property and therefore did not owe Anna Kidd a duty of care in keeping the premises safe.
- The trial court granted summary judgment in favor of Defendants, and Kenneth Kidd appealed.

- On appeal, Kidd argued that the brokers were not exempt from the Georgia statute assigning liability for injuries caused by unsafe premises to owners and occupiers of land.
- Reviewing the listing agreement, the court said that the agreement established that the seller, owed a duty of reasonable care to keep the property safe for visitors viewing the property.
- The agreement's provision included the duty to warn visitors of any dangerous conditions that would not be obvious.
- The listing agreement also included an indemnity clause holding Metro harmless from and against all claims and damages coming from visitor injuries occurring while on the property.
- The court concluded there was no evidence that Metro or its agents exercised control over the premises beyond that of marketing and allowing entry to potential buyers, therefore no duty of care was owed by Defendants to individuals touring the property.

OPINION OF COURT

- In the opinion, the court emphasized that its decision applied only to this set of facts, explaining that scenarios could exist where brokers and agents exert control and could therefore be considered occupiers of property for purposes of premises liability.
- The court discussed open houses and the potential of brokerage and agent liability, reasoning that during an open house, potential buyers may reasonably expect that the hosting broker or agent is familiar with the property and potentially hazardous physical defects.
- The Court of Appeals affirmed the trial court's decision to grant summary judgment in favor of Defendants.



NM CASE

- WINTER TIME
- LISTING BROKER PUT LOCK BOX ON THE WATER METER
- ADVERTISED THIS IN MLS
- BUYER BROKER NOTIFIED LISTING BROKER HE WAS COMING BY TO PREVIEW HOUSE FOR CLIENT
- LISTING BROKER WAS NOT PRESENT
- BUYER'S BROKER SLIPPED ON ICE BY WATER METER, HIT IS HEAD AND DIED

UPDATE





JURY FOUND FOR
DEFENDANT BROKER



PLAINTIFF APPEALED

TAKEAWAYS

- 
- Include provisions in representation agreements that address responsibility for hazardous conditions and liability for injuries that may occur during a property tour.
 - Consider ways to mitigate any obvious or known hazards that exist at a property with the owner prior to showings.
 - Take reasonable precautions to identify a property's hazardous conditions to protect prospective buyers and others during in-person showings.
 - Review insurance policies to ensure coverage for client injuries during showings or open houses.
- 

**FORM 1106
HOLD HARMLESS;
INDEMNIFICATION;
RELEASE
PARA. 16**

HOLD HARMLESS AND INDEMNIFICATION. Seller shall hold harmless and indemnify Brokerage and Broker from any liability or damages, including attorneys' fees, arising out of the following:

- incorrect or undisclosed information about the Property which Seller knew or should have known;
- claims for any personal injury to third-parties or damage to the personal property of third parties occurring on the Property, provided such injury and/or damage is not due to Broker or Brokerage's own negligent, reckless or intentional actions. Such damages or claims to include costs and attorney's fees;
- infringement of any copyright arising out of Brokerage's use of Seller Listing Content.



Q AND A

THANK YOU!



NMAR LEGAL HOTLINE
505-821-1583
LEGALHOTLINE@NMREALTOR.COM