

UPDATED 6/02

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Buyer ADVISORY

ARIZONA DEPARTMENT OF REAL ESTATE

A real estate agent is vital to the home buying process and can provide a variety of services in locating a property, negotiating the sale, and advising the buyer. A real estate agent is generally not qualified to discover defects or evaluate the physical condition of property; however, a real estate agent can assist a buyer in finding qualified inspectors and provide the buyer with documents and other resources that contain vital information about a prospective new home.

This advisory is designed to make a buyer's home purchase as smooth as possible. Some of the more common issues that a buyer may decide to investigate or verify concerning a home purchase are summarized in this Advisory. Included in this Advisory are: (1) common documents a buyer should review; (2) physical conditions in the property the buyer should investigate; and (3) conditions affecting the surrounding area that the buyer should investigate. In addition, a buyer must communicate to the real estate agents in the transaction any special concerns the buyer may have about the property or surrounding area, whether or not those issues are addressed in this Advisory.

REMEMBER: This Advisory is supplemental to obtaining professional home inspections. Professional home inspections are absolutely essential: there is no practical substitute for a professional inspection as a measure to discover and investigate defects or shortcomings in a home.

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- Common documents a buyer should review
- Common physical conditions in the property a buyer should investigate
- Conditions affecting the area surrounding the home the buyer should investigate
- Other methods to obtain information about a property

SECTIONS



Common documents a buyer should review

The documents listed below may not be relevant in every transaction, nor is the list exhaustive. Unless otherwise stated, the information contained in these documents has not been independently verified by the real estate agent.

MLS Printout

A listing is an agreement between the seller and the listing agent and authorizes the listing agent to submit information to the Multiple Listing Service (“MLS”). The MLS printout is similar to an advertisement and contains various abbreviations and symbols. Neither the listing agreement nor the printout is a part of the purchase contract between the buyer and seller. The printout contains a limited description of a property, such as its size, encumbrances, utilities, amenities, etc. The information was probably secured from the seller, the builder, or a governmental agency, and could be inaccurate, incomplete or an approximation. Therefore, the buyer should verify any important information contained in the MLS. For more information, visit <http://www.armls.com/> or <http://www.tarmls.com/>.

The Public Report

This report is required to be given to buyers by developers in a new home subdivision. The purpose of this document is to point out material information about the development that a buyer might want to know when making a decision to purchase. For example, the section of the Public Report entitled “Nuisances and Hazards” will disclose adjacent land uses that may be of concern. The Public Report is prepared by the seller/builder, could be inaccurate, and should be verified. Additional information about the Public Report may be found on the Arizona Department of Real Estate (“ADRE”) website at <http://www.re.state.az.us/checklist.html>.

Seller’s Property Disclosure Statement (“SPDS”)

Most sellers provide a SPDS. This document poses a variety of questions for the seller to answer about the property and its condition. A buyer should carefully review the SPDS and verify those statements of concern. A sample of the Arizona Association of REALTORS® (“AAR”) SPDS may be found at http://www.aaronline.com/docs/spds_samp.pdf.

The ADRE advises: “Read the seller’s property disclosure report, and check every item on it. Ask to see receipts for repairs to the home. Look behind large pictures on the wall and behind anything on the floor that conceals large areas of the wall. Look for stains on the ceilings or carpets that might indicate water damage. Read the purchase contract carefully to determine if there are any deadlines for challenging the seller’s disclosure report or for having your own inspections conducted.” (<http://www.re.state.az.us/checklist.html>) Remember, your review of the SPDS is not a substitute for professional inspections.

Covenants, Conditions and Restrictions (“CC&Rs”)

The CC&Rs are recorded against the property and generally empower a homeowners’ association to control certain aspects of property use within the development. By purchasing a home in such a development, the buyer agrees to be bound by the CC&Rs. Thus, the CC&Rs form an enforceable contract. The association, the homeowners as a whole, and individual homeowners can enforce the contract. It is essential

that the buyer review and agree to these restrictions prior to purchasing a home.

The ADRE advises: “Read the deed restrictions, also called CC&Rs (covenants, conditions and restrictions). You might find some of the CC&Rs are very strict, especially those addressing landscaping, RV parking, play equipment, satellite antennas, and other common amenities — particularly if the subdivision is governed by a homeowner’s association.” (<http://www.re.state.az.us/checklist.html>) A short but informative document on the purpose and effect of CC&Rs may be read at <http://www.realtor.com/BASICS/condos/ccr.asp>. Buyers should consult legal counsel if uncertain of the application of particular provisions in the CC&Rs.

Homeowners’ Association (“HOA”) Governing Documents

In addition to CC&Rs, HOA’s may be governed by Articles of Incorporation, Bylaws, Rules and Regulations, and often architectural control standards. The HOA is in place to enforce these rules and to preserve the value of homes in the condominium or planned community. Condominium and planned community HOA’s are also regulated by Arizona statutes. What makes a development a condominium or planned community? Common area, that is, community ownership of real estate for use by community residents, is the common denominator. In a condominium, the common property is actually deeded as undivided interests to the condominium owners. In a planned community, the ownership of the common property vests in the homeowners’ association. If you have questions about your rights and remedies regarding home owner associations or community associations, please read the information provided at <http://www.re.state.az.us/communityassoc.html>.

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HOA Disclosures

If purchasing a resale home in a condominium or planned community, the seller (if fewer than 50 units in the community) or the HOA (if there are 50 or more units) must provide the buyer with a disclosure containing a variety of information. The disclosure should contain information regarding the principal contact for the association, assessments, the money held by the association as reserves and, if the statement is being furnished by the association, a statement as to whether the records of the association reflect any alterations or improvements to the unit that violate the declaration. See <http://www.azleg.state.az.us/ars/33/01260.htm> and <http://www.azleg.state.az.us/ars/33/01806.htm> for the laws detailing this requirement.

Title Report or Title Commitment

The title report or commitment contains important information and is provided to the buyer by the Title/Escrow Company or Agent. This report or commitment lists documents that are exceptions to the title insurance (Schedule B Exceptions). Schedule B Exceptions may include encumbrances, easements, and liens against the property, some of which may affect the use of the property, such as a future addition or swimming pool.

Make sure you receive and review all of the listed documents. Questions about the title commitment and Schedule B documents may be answered by the title or escrow officer, legal counsel, or a surveyor. General information regarding title issues may be found at <http://www.titlelawannotated.com/> or obtained from the title/escrow company employed in the transaction.

Home Warranty Policy

A home warranty may be part of the sale of the home. Buyers should read the home warranty document for coverage and limitation information. Be aware that

pre-existing property conditions are generally not covered under these policies.

Affidavit of Disclosure

If the buyer is purchasing five or fewer parcels of land (whether improved or vacant), other than subdivided land, in an unincorporated area of a county, the seller must furnish the buyer with an Affidavit of Disclosure. A sample form is located at <http://www.aaronline.com/docs/affidavit2.pdf>.

Lead-Based Paint Disclosure Form

If the home was built prior to 1978, the seller must provide the buyer with a lead-based paint disclosure form. A sample form is located at http://www.aaronline.com/docs/02_02LBP_sales.pdf. More information about lead-based paint may be obtained at <http://www.re.state.az.us/leadfacts.html>.

County Assessor's/Tax Records

The county assessor's records contain a variety of valuable information including the assessed value of the property for tax purposes and some of the physical aspects of the property, such as the reported square footage (which should always be verified for accuracy).

Coconino: <http://co.coconino.az.us/assessor/>

Maricopa: http://www.maricopa.gov/assessor/homeowner_guide.asp and <http://treasurer.maricopa.gov/parcels/>

Pima: <http://www.dot.co.pima.az.us/assessor/arm/> and <http://co.pinal.az.us/treasurer/>

Yavapai: <http://www.co.yavapai.az.us/departments/-assessor/assessormain.asp>

For other counties, see Counties listing:

<http://www.az.gov/webapp/portal/>

Professional Home Inspection Report

For the buyer's protection, the importance of having a home inspected by a professional home inspector

cannot be over-emphasized. A home inspection is a visual physical examination, performed for a fee, designed to identify material defects in the home. The home inspector will generally provide the buyer with a report detailing information about the home's condition. The inspector and the report will point out existing problems and possible potential problems. The buyer should carefully review this report with the inspector and ask the inspector about any item of concern. Pay attention to the scope of the inspection and any portions of the property excluded from the inspection.

Information on home inspectors can be found on the following websites:

American Society of Home Inspectors,

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

Arizona ASHI,

<http://www.arizona-ashi-home-inspection.com/>

American Home Inspectors,

<http://homeinspectortraining.com/>

Board of Technical Registration,

<http://www.btr.state.az.us/>

Guidance on hiring a home inspector,

<http://www.realtor.com/basics/buy/inspnegot/hire.asp?gate=realtor&poe=homestore>

Termites and Other Wood Destroying Organisms

Termites are commonly found in some parts of Arizona. Investigating evidence of termites or other wood infestation is the job of the pest inspector. The Structural Pest Control Commission (SPCC) regulates these inspectors and can provide the buyer with information regarding past termite treatments on a property. The SPCC publication, *What You Should Know About Wood Infestation Reports*, can be found at <http://www.sb.state.az.us/wir.htm>. Additional information may be obtained at the Structural Pest Control Commission website at <http://www.sb.state.az.us/>.

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Common physical conditions in the property a buyer should investigate

Every buyer and every home is different, so the physical property conditions requiring investigation will vary.

Repairs and New Construction

The seller may have made repairs or added a room to the property. For example, the property may have an obvious improvement, covered patio, or garage, or may have been remodeled. The buyer should feel comfortable that the work was properly done or have an expert evaluate the work. Request copies of any invoices or other documentation regarding the work performed.

The Registrar of Contractors' publication, *Hiring a Licensed Contractor*, is available online at http://www.rc.state.az.us/Consumer_menu.html. The Registrar of Contractors may be contacted at <http://www.rc.state.az.us/>. For information regarding permits, contact the city or county building department.

Roof

The inspector might recommend that you have the roof further inspected by a licensed roofer. If the roof is 10 years old or older, a roof inspection by a licensed roofer is highly recommended. See the Registrar of Contractors information on hiring a licensed contractor or online at http://www.rc.state.az.us/Consumer_menu.html

Swimming Pools and Spas

If the home has a pool or a spa, the home inspector might determine that the cleaning system is not working properly or may exclude the pool or spa from the general inspection. It would then be necessary to have

a pool or spa company inspect the pool or spa and/or evaluate any problem. For a partial list of Arizona pool and spa contractors, see <http://www.builderszone.com/swimming.htm> and <http://www.arizona-contractors.com/directory/-pools/pools.htm>.

Swimming Pool Barriers

Each city and county has its own swimming pool barrier ordinance. Pool barrier contact information for each Arizona city and county may be found at http://www.aaronline.com/docs/pool_contacts.asp. The Arizona Department of Health Services *Private Pool Safety notice* may be found at http://www.hs.state.az.us/diro/admin_rules/pool_rules.htm. The state law on swimming pools is located at <http://www.azleg.state.az.us/ars/36/01681.htm>.

Square Footage

Square footage on the MLS printout or as listed by the county assessor's records is often only an estimate and generally should not be relied upon for the exact square footage in a home. An appraiser or architect can measure the home's size to verify the square footage. A list of appraisers may be found at the Arizona Board of Appraisal, <http://www.appraisal.state.az.us/Directory/directory.html>. A list of architects may be found at the Board of Technical Registration, <http://www.btr.state.az.us/>.

Sewer

Even if the listing or SPDS indicates that the home is connected to the city sewer, it should be verified by a plumber, home inspector, or other professional. Some cities can perform this test as well.

Septic Systems and Other On-Site Wastewater Treatment Facilities

If the property has a septic tank or other on-site wastewater treatment facility, that was approved by a certain date, it must be inspected by a qualified inspector prior to transfer. Contact the Arizona Department of Environmental Quality ("ADEQ") for more information at <http://www.adeq.state.az.us/>.

For specific information on the pre-transfer inspection requirements, see <http://www.adeq.state.az.us/environ/water/permits/new>.

Expansive Soil

The soil in some areas of Arizona has "clay-like" tendencies, sometimes referred to as "expansive soil." Although it is not very common for homes built on expansive soils to experience significant movement, it can be a major problem if it does occur. If it has been disclosed that the home has expansive soil or if the buyer has any concerns about evidence of cracking, the buyer should secure an independent assessment of the home and its structural integrity by a licensed, bonded, and insured professional engineer.

To investigate areas in Arizona where expansive soils exist, go to <http://www.az.nrcs.usda.gov/soils/shrinkswell.html>. A list of state certified professional engineers and firms can be found at <http://www.btr.state.az.us>.

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Previous Fire/Flood

If it is disclosed there has been a fire or flood in the property, a qualified inspector should be hired to advise you regarding any possible future problems as a result of the fire or flood damage and/or any subsequent repairs. For example, if the property was not properly cleaned after a flood, mold issues may result. Your homeowners' insurance agent may be able to assist you in obtaining information regarding fire, flood, or other past damage to the property.

Pests

Cockroaches, rattlesnakes, black widow spiders, scorpions, termites and other pests are common in parts of Arizona. Fortunately, most pests can be controlled with pesticides. Scorpions, on the other hand, may be difficult to eliminate. If the buyer has any concerns or if the SPDS indicates the seller has seen scorpions or other pests on the property, you should seek the advice of a pest control company. A source of information on scorpions may be found at

http://www.desertusa.com/oct96/du_scorpion.html.

For information on roof rats, which have been reported in some areas, search "roof rats" at:

<http://www.maricopa.gov/envsvc>. For information on termites see <http://www.sb.state.az.us/>.

Deaths and Felonies on the Property

An Arizona law states that sellers and real estate licensees have no liability for failure to disclose to a buyer that the property was ever the site of a natural death, suicide, murder or felony:

<http://www.azleg.state.az.us/ars/32/02156.htm>. This information is often difficult to uncover; however, the local law enforcement agency may be able to identify calls made to the property address.

Mold

Mold has always been with us, and it is a rare home that does not have some mold. However, over the past few years a certain kind of mold has been identified as a possible contributor to illnesses. Allergic individuals may experience symptoms related to mold. Mold growth is found underneath materials where water has damaged surfaces, or behind walls.

A pamphlet, *Mold in my Home: What Do I Do?*, prepared by the Arizona Department of Health Services, Office of Environmental Health, at <http://www.hs.state.az.us/edc/oe/moldfact.pdf>, states: "If you can see mold, or if there is an earthy or musty odor, you can assume you have a mold problem." See, http://www.hs.state.az.us/phs/oe/invsvr/air_qual/-moldinfo.htm. The EPA website also contains valuable information at <http://www.epa.gov/iaq/pubs/mold-resources.html>. Additional sources may be found on the ADRE website at <http://www.re.state.az.us/consumer.html>. Good information about mold, the problems it may cause, and how it may be removed can be found at <http://www.cdc.gov/nceh/airpollution/mold/moldfacts.htm>.

Other Indoor Air Quality Concerns

There are many concerns with indoor air quality ("IAQ"). Radon gas and carbon monoxide poisoning are two of the more common and potentially serious IAQ concerns. Both of these concerns can be addressed by the home inspector, usually for an additional fee. As for the many other IAQ concerns, the EPA has a host of resource materials and pamphlets available at <http://www.epa.gov/iaq/iaqinfo.html> and <http://www.epa.gov/iaq/pubs/index.html>.

Property Boundaries

If the property boundaries are of concern, a survey may be warranted. For example, a survey may be advisable if there is an obvious use of property by others (i.e., a well-worn path across a property and/or parked cars on the property) or fences or structures of adjacent property owners that appear to be built on the property. A list of surveyors may be obtained from the Board of Technical Registration at <http://www.btr.state.az.us/>.

Flood Plain Status

If the property is in a flood zone, an additional annual insurance premium of several hundred dollars may be required. If the property is in an area deemed high risk, the buyer may be required by the lender to obtain flood hazard insurance through the National Flood Insurance Program. To find additional details on flood plain status in Maricopa County, call the Maricopa Flood Control District at 602/506-1501 or visit FEMA's Flood Map Service Center at <http://www.fema.gov/maps>.

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Conditions affecting the area surrounding the home the buyer should investigate

Every property is unique; therefore, important conditions vary.

Environmental Hazards

It is often very difficult to identify environmental hazards. See the Arizona Department of Environmental Quality website for environmental information at <http://www.adeq.state.az.us/>. Another source of environmental information may be found at <http://consumerlawpage.com/brochure/home-haz.shtml>. A light-weight but fun and free search of environmental hazards by zip code may be conducted at <http://www.smarthomebuy.com/>.

Superfund Sites

There are numerous sites in Arizona where the soil and groundwater have been contaminated by improper disposal of contaminants. To check if a property is in an area designated by the Arizona Department of Environmental Quality as requiring cleanup, maps are available to view at <http://www.adeq.state.az.us/environ/waste/sps/phx.html>.

Freeway Construction

Although the existence of a freeway near the property may provide highly desirable access, sometimes it contributes to undesirable noise. To start searching for roadway construction and planning, go to the Arizona Department of Transportation website at <http://www.dot.state.az.us/ROADS/rdfwvay.htm>. Check ADOTmaps to find the nearest future freeway routes and roads in the area slated for widening.

Crime Statistics

Crime statistics, while an imperfect measurement at best, nevertheless provide some indication of the level of criminal activity in an area. To check the crime statistics for the cities of Phoenix, Tempe, Glendale, Mesa, Scottsdale, Chandler, Gilbert and Peoria, go to <http://www.faxnet1.org>. A visit or phone call to other law enforcement agencies may be required. For a list of all Arizona city links, go to http://www.azleague.org/links_city_town.htm. To find crime statistics on their websites, you may need to search for "crime statistics."

Sex Offenders

Since June 1996 Arizona has had a registry and community notification program for convicted sex offenders. This information may be accessed at <http://www.azsexoffender.org>. Prior to June 1996 registration was not required, and only the higher risk sex offenders are on the website. The presence of a sex offender in the vicinity of the property is not a fact that is required to be disclosed by the seller or agent.

Military and Public Airports

The legislature has mandated the identification of areas in the immediate vicinity of military and public airports that are susceptible to a certain level of noise from aircraft. The boundaries of these areas have been plotted on maps that are useful in determining if a

property falls within one of these areas. The map for military airports may be accessed at <http://www.re.state.az.us/airport.html>; maps for many of the public airports may be viewed at <http://www.re.state.az.us/airports/airportintro.html>. These maps are intended to show the areas subject to the preponderance of airport-related noise from a given airport. Periodic over-flights that may contribute to noise cannot usually be determined from these maps.

Schools

Although there is no substitute for an on-site visit to the school to talk with principals and teachers, there is a significant amount of information about Arizona's schools on the Internet. Public and charter school information may be accessed at <http://www.ade.state.az.us/schools/> or <http://www.greatschools.net/modperl/go>. The ADRE advises: "Call the school district serving the subdivision to determine whether nearby schools are accepting new students. Some school districts, especially in the northwest part of the greater Phoenix area, have placed a cap on enrollment. You may find that your children cannot attend the school nearest you and may even be transported to another community." (<http://www.re.state.az.us/checklist.html>)

Other methods to obtain information about a property

Talk to the Neighbors

Buyers should always talk to the surrounding neighbors about the neighborhood and the history of the home the buyer is considering for purchase. Neighbors can provide a wealth of information.

Drive around the Neighborhood

Buyers should always drive around the neighborhood, preferably on different days at several different times of the day and evening, to investigate the surrounding area.

For additional information, visit:

Arizona Association of REALTORS® (“AAR”) website, <http://www.aaronline.com>

Arizona Department of Real Estate (“ADRE”) website, <http://www.re.state.az.us/>

The National Association of REALTORS® (“NAR”) website, <http://www.realtor.com>

NAR’s “Ten Steps to Homeownership” is also a useful source of information and may be found at: <http://www.homestore.com/finance/buyersguide/default.asp?lnksrc=REALR2LF2C0047&gate=realtor>

BUYER ACKNOWLEDGEMENT

Buyer acknowledges that there may be other disclosure issues of concern not listed in this Advisory. Buyer is responsible for making all necessary inquiries and consulting the appropriate persons or entities prior to the purchase of any property.

The information in this Advisory is provided with the understanding that it is not intended as legal or other professional services or advice. These materials have been prepared for general informational purposes only. The information and links contained herein may not be updated or revised for accuracy. If you have any additional questions or need advice, please contact your own lawyer or other professional representative.

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