

Speaking of Real Estate

By K. Michelle Lind

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Every industry has its own terminology and real estate is no different. However, some real estate terms are often misunderstood. The following are some common real estate terms and their meanings.

REALTOR: The term REALTOR® is a federally registered membership mark used by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and agree to abide by its strict Code of Ethics. Not all real estate licensees are REALTORS®.

LISTING AGREEMENT: A listing agreement is an employment contract between a seller and a listing broker. The agreement establishes the duties of the broker and the terms under which the broker will earn a commission.

BUYER-BROKER AGREEMENT: A buyer-broker employment agreement is an employment agreement between a buyer and a broker that employs the broker to locate property and negotiate terms and conditions acceptable to the buyer for the purchase of a home. The buyer usually agrees to work exclusively with the broker and the compensation that the buyer is obligated to pay is often offset by any compensation the broker receives from the listing agent.

AGENCY: Agency is the relationship that occurs when a broker represents a buyer or seller in a real estate transaction. An agent has fiduciary duties to the client, such as confidentiality, accounting, reasonable care, loyalty, obedience, advocacy, and disclosure.

DUAL AGENCY: Dual agency occurs when one broker individually, or two agents within the same brokerage firm, represent both buyer and seller in a real estate transaction. Dual agency is legal with consent.

MLS: The Multiple Listing Service ("MLS") is a repository of information on homes for sale. The MLS is also a means by which broker participants make offers of compensation to

other broker participants for bringing a ready, willing and able buyer for the property.

CONTRACT: A contract is an agreement to do or not to do something. A contract for the sale of a home must be in a signed writing to be enforceable. The Arizona Association of REALTORS® ("AAR") Residential Resale Real Estate Purchase Contract is the most common form of contract for the transfer of resale residential real property in Arizona.

CONTINGENCY: A contingency is a clause in a contract that requires the completion of a certain act before the parties are obligated to perform their contractual obligations. The most common contingencies are financing, acceptable property condition, and condition of title.

AS IS: In an "AS IS" contract the seller is saying that the property will be sold in its existing physical condition and the buyer is taking the property's condition into account when making an offer. The clause does not negate a seller's common law duty to disclose known latent material defects.

FIXTURES AND PERSONAL PROPERTY: A fixture is an item that was once personal property, but is affixed to the home in such a manner as to become a part of the home itself. A buyer purchases the fixtures affixed to the home, but personal property is not part of the transaction unless it is listed in the contract. The contract should specifically identify all items that are to be conveyed in the transaction.

RIGHT OF FIRST REFUSAL: A first right of refusal is a provision in a contract that requires the owner of a home to give another party (usually a tenant) the first opportunity to purchase or lease the property before it is offered for sale to another.

ESCROW INSTRUCTIONS: Escrow instructions are instructions to the escrow company on how to carry out the terms of a contract. The contract is often used as escrow instructions. Other times, the escrow instructions are pre-printed forms from the escrow company with any

necessary additional or supplemental instructions.

TITLE COMMITMENT: The title commitment reflects the condition of the title to the home. The commitment tells the buyer whether the taxes and assessments are paid, whether there are deed restrictions, liens and easements on the property, and what the requirements are to the issuance of title insurance on the home.

TITLE INSURANCE: There are generally two title insurance policies issued at close of escrow, the owner's policy and the lender's policy. The owner's policy is an insurance policy that protects a homeowner from defects in the title to the home, such as a forged deed. The lender's policy protects the lender against the same sort of title defects until the loan is paid.

CONDITIONS, COVENANTS & RESTRICTIONS ("CC&R'S"): CC&R's are recorded against the home and are an enforceable contract. The CC&R's empower the homeowner's association, if there is one, to control certain aspects of the home. If there is no homeowner's association, the CC&R's can be enforced by the other homeowners. A homebuyer should always carefully read the CC&R's (and any other association documents) because the buyer will be obligated to comply with all the rules and restrictions.

EASEMENT: An easement gives persons other than the owner access to or a right of way over the homeowner's property. Common easements include utility easements and roadway easements.

HOMESTEAD EXEMPTION: The homestead exempts the home in which the person resides from attachment, execution and forced sale due to a non-consensual judgment or lien, up to \$150,000 in value or equity. The homestead only prevents certain creditors, such as judgment creditors, from taking the first \$150,000 of equity in a person's home to satisfy a debt. Liens that a person allows to be recorded against the home, such as a mortgage or deed of trust are not affected by the homestead exemption. Homeowners do not need to take any action to assert the homestead exemption because the exemption attaches automatically.

Spanish version**K. Michelle Lind, Esq.**

K. Michelle Lind is General Counsel/Assistant CEO to the Arizona Association of REALTORS® (AAR). She serves as the primary legal advisor to the association. Michelle oversees AAR's Risk Management Committee, which includes professional standards administration for twenty of the state's local REALTOR® associations, and the development of standard real estate forms. She is the author of Arizona Real Estate: A Professional's Guide to Law & Practice and a regular contributor to the Arizona REALTOR® and the Arizona Journal of Real Estate & Business. Please note that this article is of a general nature and may not be updated or revised for accuracy as statutory or case law changes following the date of first publication. Further, this article reflects only the opinion of the author, is not intended as definitive legal advice and you should not act upon it without seeking independent legal counsel.