

Michael Denious, Esq.
MICHAEL T DENIOUS PLC

WHOLESALE BUYER & SELLER DISCLOSURE REQUIREMENT

A.R.S. § 44-5101 applies to wholesale buyers and wholesale sellers, requiring them to provide specific written disclosure to the other party of its status as a wholesale buyer or seller, before entering into any binding agreement.

A “wholesale buyer” means a person or entity that enters into a purchase contract for residential real property as the buyer, and assigns that same contract to another person or entity. A.R.S. § 44-5101(D)(2). A “wholesale seller” means a person or entity that enters into a purchase contract for residential real property as the seller, that does not hold legal title to that real property, and that assigns that same contract to another person or entity. A.R.S. § 44-5101(D)(3). Under the statute, “residential real property” means real property with fewer than five dwelling units. Id. at (D)(1).

A wholesale buyer of residential real property shall disclose in writing to the seller that the buyer is a wholesale buyer. A.R.S. § 44-5101(A)(1). And, a wholesale seller of residential real property shall disclose in writing to the buyer that the seller is a wholesale seller that holds an equitable interest in the real property and that the wholesale seller may not be able to convey title to the property. Id. at (A)(2).

The statutes imposes a significant penalty upon a wholesale buyer or seller who fails to provide the required disclosure to the other party prior to entering into any binding agreement. In the case of a wholesale buyer who does not comply, the other party seller “may cancel the contract for sale at any time prior to the close of escrow without penalty and may retain any earnest money paid by the wholesale buyer.” A.R.S. § 44-5101(B). In the case of a wholesale seller who does not comply, the other party buyer may cancel the contract for sale at any time prior to the close of escrow without penalty and shall be refunded all earnest money paid by the buyer. Id. at (C).

On the following pages are a sample form wholesale seller disclosure, and a sample form wholesale buyer disclosure.

WHOLESALE SELLER DISCLOSURE

1. This disclosure is given pursuant to A.R.S. § 44-5101 by _____ (“Seller”), to _____ (“Buyer”), prior to entering into a contract and/or assignment of contract pertaining to real property located at _____ (the “Property”).

2. Seller is a “Wholesale Seller” as defined under A.R.S. § 44-5101(D)(3) that does not hold legal title to the Property, holds an equitable interest in the Property and may not be able to convey title to the Property. Seller holds its equitable interest in the Property under a separate contract as buyer, which Seller will assign to Buyer as part of the contract and/or assignment of contract to be entered between Seller and Buyer. Seller intends to make a profit from the transaction. Of the total funds paid by Buyer, part shall be paid to Seller and part shall be paid to the underlying owner of the Property.

3. By its signature below, Buyer acknowledges the foregoing disclosure.

BUYER:

SELLER:

WHOLESALE BUYER DISCLOSURE

1. This disclosure is given pursuant to A.R.S. § 44-5101 by _____ (“Buyer”), to _____ (“Seller”), prior to entering into a contract (the “Contract”) pertaining to real property located at _____ (the “Property”).

2. Buyer is a “Wholesale Buyer” as defined under A.R.S. § 44-5101(D)(2). Buyer intends to assign its rights as buyer under the Contract to another person or entity, and to receive compensation for such assignment.

3. By its signature below, Seller acknowledges the foregoing disclosure.

BUYER:

SELLER:
