

Underwriting Bulletin: UNAZ-2024-008

Date: **September 27, 2024** *Original date: May 13, 2024*
To: **Arizona Agents**
From: **DAVID HAYS, GENERAL COUNSEL**

RE: **NON-TITLE RECORDED AGREEMENTS FOR PERSONAL SERVICES (NTRAPS):**

Update 9.27.24

FNTI will allow transactions to close without paying the funds listed on the exclusive property engagement agreement as long as the agreement lasts longer than twelve months after the date the agreement is executed by the parties pursuant to §44-502(a)(1).

Requirement: Please have the seller sign an indemnity agreement regarding the agreement terms.

SB 1218 has been codified under A.R.S. §44-501-44-503 (see below) effective **September 14, 2024**.

A.R.S. §44-501 - Definitions

1. "Exclusive property engagement agreement" means a contract or agreement that provides an exclusive right to a person to list or sell residential real estate, including a contract or agreement to enter into any listing agreement or arrangement in the future or any memorandum recognizing the existence of an exclusive property engagement agreement.
2. "Residential real estate" means real property located in this state that is used or will be used primarily for a personal, family or household purpose and that contains fewer than five dwelling units.

A.R.S. §44-502 Unlawful practices; listing services timeline; void agreement

- A.** It is unlawful for an exclusive property engagement agreement to:
1. Last longer than twelve months after the date that the agreement is executed by the parties.
 2. Be a covenant that runs with the land.
 3. Bind a future owner of an interest in the residential real estate that is the subject of the exclusive property engagement agreement unless the future owner acquires an interest in the residential real estate after listing services have begun and a broker as defined in section 32-2101 has a ready, willing and able purchaser for the residential real estate.
 4. Be recorded in the office of a county recorder.
 5. Authorize a person to place a security interest or lien against or otherwise encumber any residential real estate or to constitute a lien, an encumbrance or a security interest in the residential real estate.
 6. Allow for the assignment of the exclusive property engagement agreement or the obligation to provide the underlying services without notice to, and agreement by, the owner of the residential real estate that is the subject of the exclusive property engagement agreement.
 7. Fail to meet the requirements prescribed in section 32-2151.02.
- B.** An exclusive property engagement agreement is void if the listing services do not begin within one year after the execution of the exclusive property engagement agreement by the parties.

A.R.S. §44-503 -Enforcement; recording prohibited; liability

- A.** A court may not enforce an exclusive property engagement agreement made or recorded in violation of this chapter and may not impose a constructive trust in the residential real estate that is the subject of the exclusive

property engagement agreement or on the proceeds of the disposition of a related residential real estate transaction.

B. A contract or agreement made or recorded with a county recorder's office in violation of this chapter is void and unenforceable.

C. Any consideration that was paid to a homeowner relating to a contract or agreement that violates this chapter must be forfeited.

D. A contract or agreement that violates this chapter and that is recorded before the effective date of this section is void. The state real estate commissioner shall execute and record in the office of the county recorder in each county in this state a document that disclaims the validity and enforceability of the contract or agreement or any related liens or assignments that violate this chapter. The state real estate department shall display on its website the documents that the state real estate commissioner has executed and recorded pursuant to this subsection.

E. An act or practice in violation of this chapter is an unlawful practice under section 44-1522 and is subject to enforcement through private action and by the attorney general. Any person who violates this chapter is also subject to liability and penalties under section 33-420. The remedies provided in this section are not the exclusive remedies for a violation of this chapter.

5.13.24

Effective April 2, 2024

Gov. Katie Hobbs signed Senate Bill (SB) 1218 into law on April 2. The law makes NTRAPS unenforceable by law; restricts and prohibits the recording of NTRAPS in property records; creates penalties if NTRAPS are recorded in property records; and provides for the removal of NTRAPS from property records and recovery of damages.

Please contact underwriting for closing if a commitment chain contains a NTRAP.

This Underwriting Bulletin becomes a part of the principles and practices with which you are to comply under the terms of your Underwriting Agreement with First National Title Insurance Company. Should the content of this bulletin address the closing and escrow function, this information should be considered a directive and part of the principles and practices if non-compliance would result in liability to FNTI under either the insured closing service letter or policy of title insurance notwithstanding that the Underwriting Agreement does not include the closing and escrow functions of your agency.