



ARIZONA CORPORATION COMMISSION

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INVESTOR ALERT:

Are Your Real Estate Investments Really Securities in Disguise?

PHOENIX, AZ—The Arizona Corporation Commission is alerting investors that the current real estate market is ripe for a variety of investment opportunities that may trick unwary investors into buying into unregistered securities or worse yet—scams.

Even when selling a legitimate product, some promoters do not recognize the investment program they have created is a security. Whether a real estate investment is a security is not always easy to determine and depends upon the unique facts and circumstances of the transaction and not on what a promoter calls the investment product. Here are some basic guidelines to consider before promoting an investment opportunity or signing on the dotted line:

Are you buying an interest in real estate or in an entity that is buying or financing real estate? A promoter may form a corporation, a limited liability company or a limited partnership that will purchase real estate or make loans to other purchasers of real estate. The promoter raises money for the entity to purchase or finance the real estate by selling equity interests in the entity. What the promoter is selling to investors are ownership interests in the entity. Those equity interests are securities. A promoter may also borrow money from investors to raise capital for the entity. In that case, the promoter is selling promissory notes, which are securities.

Are you buying real estate that you can control? A promoter may “package” real property or loans on real property with service agreements—property management, rent or debt collection, foreclosure services—that the promoter will provide you. The promoter, not the investor, will make decisions regarding the management of the real estate or the real estate loan. If you are buying a “package” and you will not have active control over or management of the real property or the loan, then you are probably buying an “investment contract,” which is a security.

Are you investing in a deed of trust? Although commonly called a deed of trust investment, the product that the promoter is selling is a promissory note secured by a deed of trust on real estate. Under Arizona law, promissory notes are securities. The law exempts from registration requirements the sale of a note secured by a mortgage or deed of trust on real estate, but if the note and deed of trust are “packaged” with other services the promoter will provide to you, then the “package” you are buying is likely an investment contract. The investment contract would not be exempt from registration.

Although Arizona’s securities laws can be complex, they exist to protect investors. Securities and the people who sell them need to comply with registration and disclosure requirements or face sanctions by the Commission. In recent months, the Commission has taken action against multiple individuals and their affiliated companies for selling unregistered securities involving real estate.

For more detailed information about the definition of securities, go to:
[www.azcc.gov/divisions/securities/Good to know/Good to Know.asp](http://www.azcc.gov/divisions/securities/Good%20to%20know/Good%20to%20Know.asp). The Commission recommends that if you don't understand the investment, don't invest. Before buying any investment opportunity, verify the licensure status of the product and promoter by contacting the Arizona Corporation Commission's Securities Division at 602-542-4242 or toll free in Arizona at 1-866-VERIFY-9. The Division's investor education web site also has helpful information at www.azinvestor.gov.

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