

Memo

To: SAR Members

From: Brian C. Balch

Date: March 9, 2020

Re: Revisions to SAR-SA

The Association's directors recently approved changes to the SAR-SA. Most changes were made to update agency contact information or to make stylistic or grammatical changes to make the addendum clearer. One substantive addition was also made dealing with Archaeological Sites, and their regulation by Washington's Department of Archaeology and Historic Preservation ("DAHP"). Those changes have been added as new Sections 1.i. and 2.j.

Based on state law governing DAHP, the presence of an identified Archaeological Site on a property can dramatically impact the time, expense, and feasibility of improving or altering that property. As a result, it is unquestionable that the presence of an identified Archaeological Site will materially impact the Property and the purposes for which a typical buyer would want to enter a transaction.

Additionally, the act governing DAHP provides that the presence of an identified Archaeological Site is exempt from Washington's Public Disclosure Act and that DAHP will not provide information to inquiring members of the public regarding the nature or location of such sites without written permission from a property's owner. As a result, the presence of a known Archaeological Site on a property is not something a buyer could ascertain on their own. This means that the information is not readily ascertainable and constitutes a material fact for purpose of required disclosure under Washington law.

As with other material facts, disclosures should always be made through a properly completed Form 17. The changes to the SAR-SA with regard to Archaeological Sites are intended to bring this potential issue to the attention of parties with whom we deal, and to serve as a reminder to a seller that, if an Archaeological Site is present on their property, they must disclose that information to a buyer. If requested, a seller should cooperate with a buyer to complete a Prospective Purchaser Information Request Form that can be found on the DAHP website in order for a buyer to obtain disclosure of all information regarding any such site from DAHP.

In summary, when a broker provides an SAR-SA addendum to a seller, a discussion regarding the potential presence of an Archaeological Site on the property is strongly encouraged. If a seller is aware of the existence of an Archaeological Site, appropriate disclosure utilizing Form 17 must occur. If a broker is aware of the existence of an Archaeological Site on the property, the broker who takes the listing will have a non-waivable duty to assure that appropriate disclosure occurs. If a seller will not make disclosure, the broker must do so. Note that Form 17 does not have specific provisions dealing with Washington's law governing Archaeological Sites and it appears that a statewide change is not likely to occur in the near future. As a result, disclosure should be made as part of completing the final catchall provisions at the end of Form 17 disclosing other materials facts known to a seller.