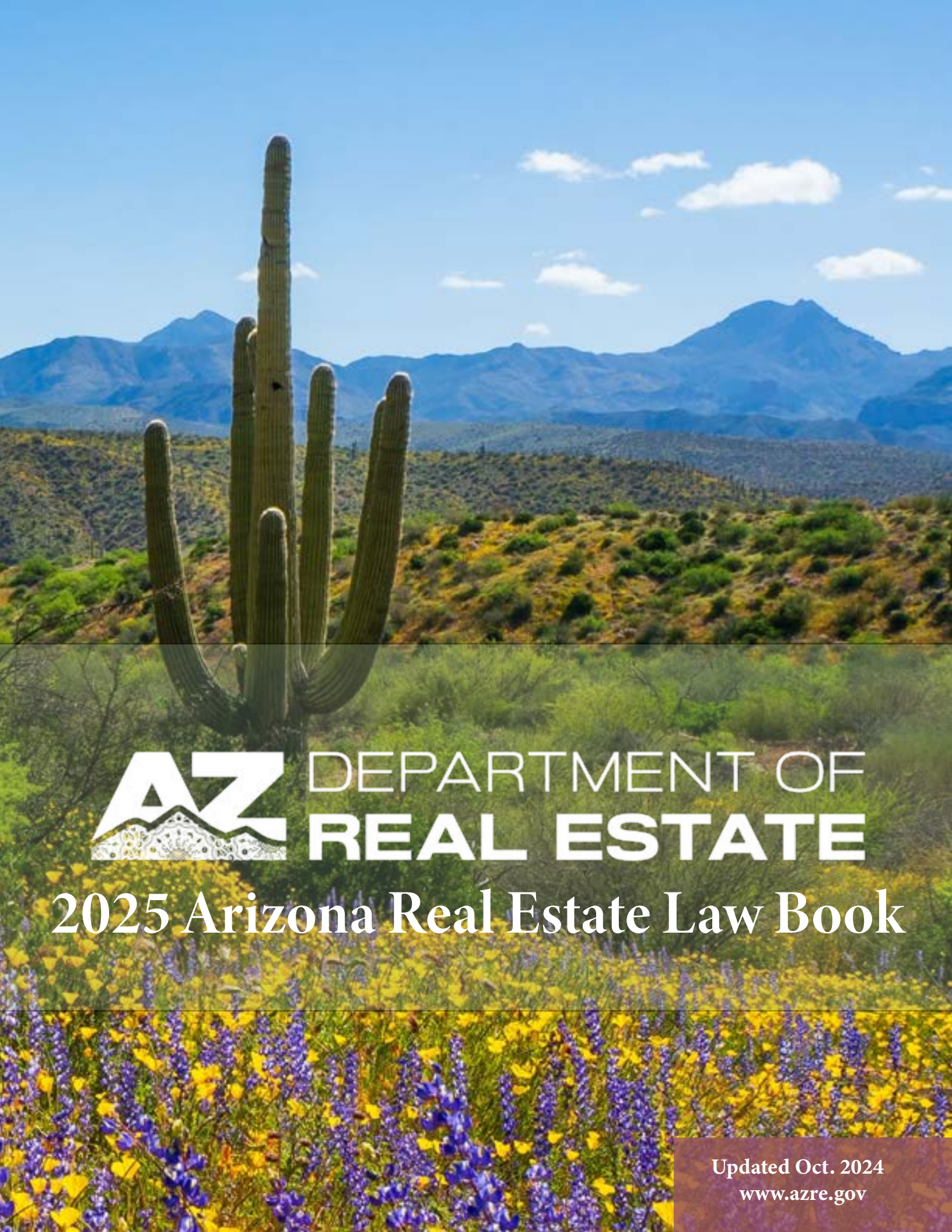

AZ DEPARTMENT OF REAL ESTATE

2025 Arizona Real Estate Law Book

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ARIZONA REAL ESTATE
LAW BOOK

2025 Edition

STATE OF ARIZONA

Department of Real Estate

AZ DEPARTMENT OF REAL ESTATE

LAW BOOK

2025 EDITION

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The Arizona Department of Real Estate Law Book is intended solely for use as a desk reference tool and should not be viewed as a substitute for the Arizona Revised Statutes.

All reasonable effort has been made to ensure the accuracy of the contents.

HIGHLIGHTED AND CAPITALIZED sections signify changes from the most recent legislative session. A highlighted bill citation at the beginning of the section of statute will identify changes were made in that section. Exceptions to highlighting and capitalization include; technical changes made by Legislative Council and renumbering are not identified and areas deleted from statute are removed without indication.

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SECTIONS IMPACTED BY ARIZONA SESSION LAWS, 2024

The Arizona Legislature adjourned Sine Die the Fifty-sixth Legislature, Second Regular Session on June 15, 2024 at 9:55 P.M.

The General Effective Date of bills passed and signed into law was Saturday, September 14, 2024.

The following list represents laws passed during the Fifty-sixth Legislature that were tracked by the Department. The list provided is intended as an educational tool only and is not intended to be comprehensive, as it may not include all bills that directly or indirectly impact the Department, administrative law, or the real estate industry.

Visit the state legislature's website at www.azleg.gov for additional information related to each new law.

Chapter Number	Bill Number and Name	ARS Section	Bill Section	Action	Effective Date
Ch. 3	SB1059 - judgements; interest rates	44-1201	1	Amend	General Effective Date
Ch. 4	SB1270 - Reciprocal deposits; escrow agents; definitions	6-834	1	Amend	General Effective Date
Ch. 10	SB1271 - Rental-purchase property; electronic disclosures	44-6801	1	Amend	General Effective Date
		44-6810	2	Amend	
Ch. 16	HB2016 - Grandfathered right; subsequent AMA; extension	N/A	1, 2, 3	New Sections	Emergency Measure with Retroactive Date of Feb. 29, 2024 and Repeal Date of Dec. 31, 2024

Ch. 27	HB2141 - Condominiums; interior improvements; approvals	33-1221	1	Amend	General Effective Date
Ch. 29	HB2191 - Property; criminal damage	13-1602	1	Amend	General Effective Date
Ch. 34	HB2408 - Property tax assessment; destroyed property	42-15157	1	Amend	General Effective Date
Ch. 52	SB1171 - Real estate department; licensing; administration	32-2101	1	Amend	General Effective Date
		32-2104	2	Amend	
		32-2106	3	Amend	
		32-2108.01	4	Amend	
		32-2116	5		
		32-2123	6		
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Ch. 52 (cont'd)	SB1171 - Real estate department; licensing; administration		24	New Section	Retention of Current Advisory Board Members related to Amending 32-2104
Ch. 58	SB1432 - Unlawful restrictive covenants; uniform act	33-531	1	New Section	General Effective Date
		33-532	1	New Section	
		33-533	1	New Section	
		33-534	1	New Section	
		33-535	1	New Section	
		33-536	1	New Section	
		33-537	1	New Section	
		33-538	1	New Section	
		33-539	1	New Section	
		N/A	2	New Section	Severability
Ch. 62	HB2055 - Underground water storage; permitting	45-871.01	1	Amend	General Effective Date
Ch. 63	HB2129 - Improved lot or parcel; definition	32-2101	1	Amend	General Effective Date
Ch. 64	HB2146 - Mobile homes; cooling; prohibition	33-1452	1	Amend	Emergency Measure, Filed on April 2, 2024

Ch. 78	SB1218 - exclusive agreements; residential property sales	44-501	1	New Section	General Effective Date
		44-502	1	New Section	
		44-503	1	New Section	
		N/A	2	New Section	Legislative Intent
		N/A	3	New Section	Severability
Ch. 83	SB1367 - Occupational license; criminal record	41-1093.04	1	Amend	General Effective Date
Ch. 89	HB2110 - Mechanics' liens; notice	33-992.01	1	Amend	General Effective Date
Ch. 91	HB2308 - Occupational licenses; criminal offense; prohibition	41-1093.04	1	Amend	General Effective Date
Ch. 91 (Cont'd)	HB2308 - Occupational licenses; criminal offense; prohibition	41-1093.08	2	New Section	General Effective Date
Ch. 103	SB1042 - ~~cremation~~ (now: title companies; recorded documents; DIFI)	20-1591	1	Amend	General Effective Date
		N/A	2	New section	Legislative Intent
Ch. 118	HB2160 - Domestic water improvement districts; reviews	48-251	1	Amend	General Effective Date
		48-252	2	Amend	
		48-253	3	Amend	

Ch. 122	HB2521 - Partition; property; inheritance	12-3401	1	New Section	General Effective Date
		12-3402	1	New Section	
		12-3403	1	New Section	
		12-3404	1	New Section	
		12-3405	1	New Section	
		12-3406	1	New Section	
		12-3407	1	New Section	
		12-3408	1	New Section	
		12-3409	1	New Section	
		12-3410	1	New Section	
		12-3411	1	New Section	
		12-3412	1	New Section	
		14-3911	2	Amend	
Ch. 124	HB2698 - ~~planned communities; declarant control~~ (now: declarant control; planned communities	33-1820	1	New Section	General Effective Date
Ch. 131	HB2119 - ~~homeowner's associations; fees; related parties (now: real property)~~ (now: homeowner's associations; fees)	33-442	1	Amend	General Effective Date

Ch. 137	HB2195 - on-site wastewater treatment facilities; permitting	49-245	1	Amend	General Effective Date
		N/A	2	New Section	Legislative Intent
Ch. 141	HB2297 - ~~adaptive reuse; commercial buildings; zoning (now: zoning; adaptive reuse; commercial buildings)~~ (now: commercial buildings; adaptive reuse)	9-462.10	1	New Section	General Effective Date
Ch. 151	HB2648 - ~~motor vehicle manufacturers; TPT; exemption~~ (now: condominiums; planned communities; lian; assessment	33-1202	1	Amend	General Effective Date
		33-1256	2	Amend	
		33-1802	3	Amend	
		33-1807	4	Amend	
Ch. 155	SB1016 - Homeowners' associations; flagpoles	33-1808	1	Amend	General Effective Date
Ch. 172	SB1162 - ~~telecommunications fund; report; posting~~ (now: residential zoning; housing; assessment; hearings	9-462.04	1	Amend	General Effective Date
		9-462.10 (filed as 9-462.11)	2	New Section	
		9-469	3	New Section	

Ch. 176	SB1431 - right to redeem; foreclosure; sale	12-1551	1	Amend	General Effective Date
		42-18152	2	Amend	
		42-18202	3	Amend	
		42-18204	4	Amend	
		42-18205	5	Amend	
		42-18206	6	Amend	
		42-18231	7	New Section	
		42-18232	7	New Section	
		42-18233	7	New Section	
		42-18234	7	New Section	
		42-18235	7	New Section	
		42-18236	7	New Section	
		N/A	8	New Section	Applicability
Ch. 180	HB2662 - homeowners' associations; meeting agendas	33-1248	1	Amend	General Effective Date
		33-1804	2	Amend	
Ch. 188	HB2243 - fingerprinting; criminal history; records checks	41-619.55	1	Amend	General Effective Date
		41-1750	2	Amend	
		41-1758	3	Amend	
		41-1758.03	4	Amend	
		41-1758.07	5	Amend	
		N/A	6	New Section	
		N/A	7	New Section	Conditional Repeal of Section 6
		N/A	8	New Section	Emergency Measure, Filed on May 17, 2024

Ch. 192	HB2325 - Backyard fowl; regulation; prohibition	9-462.10 (filed as 9-462.12)	1	New Section	General Effective Date
		11-820.04	2	New Section	
Ch. 196	HB2720 - Accessory dwelling units; requirements	9-461.18	1	New Section	General Effective Date
		9-500.39	2	Amend	
Ch. 197	HB2721 - Municipal zoning; middle housing	9-462.10 (filed as 9-462.13)	1	New Section	General Effective Date
Ch. 209	HB2897 - General appropriations act; 2024-2025	N/A	85	New Section	
		N/A	129	New Section	
Ch. 224	SB1181 - Groundwater replenishment; members lands; areas	48-3771	1	Amend	General Effective Date
		48-3775	2	Amend	
		48-3778	3	Amend	
		48-3780	4	Amend	
		48-3781	5	Amend	
		N/A	6	New Section	
Ch. 226	SB1081 - Exemption area; assured water supply	45-576.10	1	New Section	General Effective Date
Ch. 253	HB2368 - Transportation; groundwater; Douglas AMA	45-555.01	1	New Section	General Effective Date

Arizona Real Estate Laws

CONSTITUTION OF THE STATE OF ARIZONA

Article 26.
RIGHT OF LICENSED REAL ESTATE BROKERS AND SALESMEN TO PREPARE INSTRUMENTS INCIDENT TO PROPERTY TRANSACTIONS

§ Section 1. Powers of real estate broker or salesman

Section 1. Any person holding a valid license as a real estate broker or a real estate salesman regularly issued by the Arizona State Real Estate Department when acting in such capacity as broker or salesman for the parties, or agent for one of the parties to a sale, exchange, or trade, or the renting and leasing of property, shall have the right to draft or fill out and complete, without charge, any and all instruments incident thereto including, but not limited to, preliminary purchase agreements and earnest money receipts, deeds, mortgages, leases, assignments, releases, contracts for sale of realty, and bills of sale.

TITLE 32, CHAPTER 20 - REAL ESTATE

ARTICLE 1 - REAL ESTATE DEPARTMENT

32-2101. Definitions

Amended by Ariz. Sess. Laws Ch. 52, (2024)
Amended by Ariz. Sess. Laws Ch. 63, (2024)

In this chapter, unless the context otherwise requires:

1. "Acting in concert" means evidence of collaborating to pursue a concerted plan.
2. "Address of record" means any of the following:
    (a) The address where a licensee practices or is otherwise employed.
    (b) A licensee's residential address.
    (c) The address of a licensee's statutory agency who is registered as the licensee's statutory agent with the corporation commission. This subdivision applies only if notice of the statutory agent is given to the department pursuant to section 32-2126.
3. "Advertising" means attempting by publication, dissemination, exhibition, solicitation or circulation, oral or written, or for broadcast on radio or television to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in lands subject to this chapter, including the land sales contract to be used and any photographs, drawings or artist's presentations of physical conditions or facilities existing or to exist on the property. Advertising does not include:
    (a) Press releases or other communications delivered to newspapers, periodicals or other news media for general information or public relations purposes if no charge is made by the newspapers, periodicals or other news media to publish or use any part of these communications.
    (b) Communications to stockholders as follows:
        (i) Annual reports and interim financial reports.
        (ii) Proxy materials.
        (iii) Registration statements.
        (iv) Securities prospectuses.
        (v) Applications for listing of securities on stock exchanges.
        (vi) Prospectuses.
        (vii) Property reports.
        (viii) Offering statements.
4. "Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person specified.
5. "Associate broker" means a licensed broker who is employed by another broker. Unless otherwise specifically provided, an associate broker has the same license privileges as a salesperson.
6. "Barrier" means a natural or man-made geographic feature that prevents parcels of land from being practicably, reasonably and economically united or reunited and that was not caused or created by the owner of the parcels.

7. "Blanket encumbrance":

(a) Means either:

(i) Any mortgage, any deed of trust or any other encumbrance or lien that secures or evidences the payment of monies and that affects more than one lot or parcel of subdivided land.

(ii) An agreement that affects more than one lot or parcel by which the subdivider holds the subdivision under an option, contract to sell or trust agreement.

(b) Does not include taxes and assessments that are levied by public authority.

8. "Board" means the real estate advisory board.

9. "Broker", when used without modification, means a person who is licensed as a broker under this chapter or who is required to be licensed as a broker under this chapter.

10. "Business broker" means a real estate broker who acts as an intermediary or agent between sellers or buyers, or both, in the sale or purchase, or both, of businesses or business opportunities where a lease or sale of real property is either a direct or incidental part of the transaction.

11. "Camping site" means a space that is designed and promoted for the purpose of locating any trailer, tent, tent trailer, pickup camper or other similar device used for camping.

12. "Cemetery" or "cemetery property" means any one, or a combination of more than one, of the following in a place that is used, or intended to be used, and dedicated for cemetery purposes:

(a) A burial park, for earth interments.

(b) A mausoleum, for crypt or vault entombments.

(c) A crematory, or a crematory and columbarium, for cinerary interments.

(d) A cemetery plot, including interment rights, mausoleum crypts, niches and burial spaces.

13. "Cemetery broker" means a person other than a real estate broker or real estate salesperson who, for another, for compensation:

(a) Sells, leases or exchanges cemetery property or interment services of or for another, or on the person's own account.

(b) Offers for another or for the person's own account to buy, sell, lease or exchange cemetery property or interment services.

(c) Negotiates the purchase and sale, lease or exchange of cemetery property or interment services.

(d) Negotiates the purchase or sale, lease or exchange, or lists or solicits, or negotiates a loan on or leasing of cemetery property or interment services.

14. "Cemetery salesperson" means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation engaged by or on behalf of a licensed cemetery or real estate broker, or through and on behalf of a corporation, partnership or limited liability company that is licensed as a cemetery or real estate broker, to perform any act or transaction included in the definition of cemetery broker.

15. "Commissioner" means the state real estate commissioner.

16. "Common promotional plan" means a plan, undertaken by a person or a group of persons acting in concert, to offer lots for sale or lease. If the land is offered for sale by a person or group of persons acting in concert, and the land is contiguous or is known, designated or advertised as a common unit or by a common name, the land is presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan. Separate subdividers selling lots or parcels in separately platted subdivisions within a

master planned community shall not be deemed to be offering their combined lots for sale or lease as part of a common promotional plan.

17. "Compensation" means any fee, commission, salary, monies or other valuable consideration for services rendered or to be rendered as well as the promise of consideration whether contingent or not.

18. "Contiguous":

(a) Means lots, parcels or fractional interests that share a common boundary or point.

(b) Does not include lots, parcels or fractional interests that are separated by either of the following:

(i) A barrier.

(ii) A road, street or highway that has been established by this state or by any agency or political subdivision of this state, that has been designated by the federal government as an interstate highway or that has been regularly maintained by this state or by any agency or political subdivision of this state and has been used continuously by the public for at least the last five years.

19. "Control" or "controlled" means a person who, through ownership, voting rights, power of attorney, proxy, management rights, operational rights or other rights, has the right to make decisions binding on an entity, whether a corporation, a partnership or any other entity.

20. "Corporation licensee" means a lawfully organized corporation that is registered with the Arizona corporation commission and that has an officer licensed as the designated broker pursuant to section 32-2125.

21. "Department" means the state real estate department.

22. "Designated broker" means a natural person who is licensed as a broker under this chapter and who is either:

(a) Designated to act on behalf of an employing real estate, cemetery or membership camping entity.

(b) Doing business as a sole proprietor.

23. "Developer":

(a) Means a person who offers real property in a development for sale, lease or use, either immediately or in the future, on the person's own behalf or on behalf of another person, under this chapter.

(b) Does not include a person whose involvement with a development is limited to listing property within the development for sale, lease or use.

24. "Development" means any division, proposed division or use of real property that the department has authority to regulate, including subdivided and unsubdivided lands, cemeteries, condominiums, timeshares, membership campgrounds and stock cooperatives.

25. "Distance learning" means continuing education or prelicensure education that is an online, planned learning experience with a geographic separation that may be synchronous or asynchronous, that does not require real-time interaction between a student and an instructor and that uses a platform with self-paced or prerecorded lessons and materials that a student can access via the internet to proceed at the student's own pace.

26. "Employing broker" means a person who is licensed or is required to be licensed as a:

(a) Broker entity pursuant to section 32-2125, subsection A.

(b) Sole proprietorship if the sole proprietor is a broker licensed pursuant to this chapter.

27. "Fractional interest" means an undivided interest in improved or unimproved land, lots or

parcels of any size created for the purpose of sale or lease and evidenced by any receipt, certificate, deed or other document conveying the interest. Undivided interests in land, lots or parcels created in the names of a husband and wife as community property, joint tenants or tenants in common, or in the names of other persons who, acting together as part of a single transaction, acquire the interests without a purpose to divide the interests for present or future sale or lease shall be deemed to constitute only one fractional interest.

28. "Improved lot or parcel" means a lot or parcel of a subdivision on which there is a residential, commercial or industrial building or concerning which a contract has been entered into between a subdivider and a purchaser that obligates the subdivider directly, or indirectly through a building contractor, to completely construct a residential, commercial or industrial building on the lot or parcel within two years after the date on which the contract of sale for the lot is entered into, or for a condominium as defined in section 33-1202, within four years after the date on which the contract for sale is entered into.

29. "Inactive license" means a license that is issued pursuant to article 2 of this chapter to a licensee who is on inactive status during the current license period and who is not engaged by or on behalf of a broker.

30. "Lease" or "leasing" includes any lease, whether it is the sole, the principal or any incidental part of a transaction.

31. "License" means the whole or part of any agency permit, certificate, approval, registration, public report, charter or similar form of permission required by this chapter.

32. "Licensee" means a person to whom a license for the current license period has been granted under any provision of this chapter, and, for the purposes of section 32-2153, subsection A, includes original license applicants.

33. "License period" means the two-year period beginning with the date of original issue or renewal of a particular license and ending on the expiration date, if any.

34. "Limited liability company licensee" means a lawfully organized limited liability company that has a member or manager who is a natural person and who is licensed as the designated broker pursuant to section 32-2125.

35. "Live classroom course" means a course or instructional segment delivered in either an in-person classroom instructional format or a synchronous remote instructional format that allows students to observe and participate remotely in an instructional segment via livestreaming.

34. "Lot reservation" means an expression of interest by a prospective purchaser in buying at some time in the future a subdivided or unsubdivided lot, unit or parcel in this state. In all cases, a subsequent affirmative action by the prospective purchaser must be taken to create a contractual obligation to purchase.

36. "Master planned community" means a development that consists of two or more separately platted subdivisions and that is either subject to a master declaration of covenants, conditions or restrictions, is subject to restrictive covenants sufficiently uniform in character to clearly indicate a general scheme for improving or developing real property or is governed or administered by a master owner's association.

38. "Member" means a member of the real estate advisory board.

39. "Membership camping broker" means a person, other than a salesperson, who, for compensation:

(a) Sells, purchases, lists, exchanges or leases membership camping contracts.

(b) Offers to sell, purchase, exchange or lease membership camping contracts.

(c) Negotiates or offers, attempts or agrees to negotiate the sale, purchase, exchange or lease of membership camping contracts.

(d) Advertises or holds himself out as being engaged in the business of selling, buying, exchanging or leasing membership camping contracts or counseling or advising regarding membership camping contracts.

(e) Assists or directs in procuring prospects calculated or intended to result in the sale, purchase, listing, exchange or lease of membership camping contracts.

(f) Performs any of the foregoing acts as an employee or on behalf of a membership camping operator or membership contract owner.

40. "Membership camping contract" means an agreement that is offered or sold in this state evidencing a purchaser's right or license to use the camping or outdoor recreation facilities of a membership camping operator and includes a membership that provides for this use.

41. "Membership camping operator":

(a) Means an enterprise, other than one that is tax exempt under section 501(c)(3) of the internal revenue code of 1986, as amended, that solicits membership paid for by a fee or periodic payments and has as one of its purposes camping or outdoor recreation, including the use of camping sites primarily by members.

(b) Does not include camping or recreational trailer parks that are open to the general public and that contain camping sites rented for a per use fee or a mobile home park.

42. "Membership camping salesperson" means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation engaged by or on behalf of a licensed membership camping or real estate broker, or by or on behalf of a corporation, partnership or limited liability company that is licensed as a membership camping or real estate broker, to perform any act or participate in any transaction in a manner included in the definition of membership camping broker.

43. "Partnership licensee" means a partnership with a managing general partner who is licensed as the designated broker pursuant to section 32-2125.

44. "Permanent access", as required under article 4 of this chapter, means permanent access from the subdivision to any federal, state or county highway.

45. "Perpetual care" or "endowed care":

(a) Means maintaining and caring, in all places where interments have been made, for the trees, shrubs, roads, streets and other improvements and embellishments contained within or forming a part of the cemetery.

(b) Does not include maintaining or repairing monuments, tombs, copings or other man-made ornaments as associated with individual burial spaces.

46. "Perpetual or endowed-care cemetery" means a cemetery in which lots or other burial spaces are sold or transferred under the representation that the cemetery will receive perpetual care or endowed care free of further cost to the purchaser after payment of the original purchase price for the lot, burial space or interment right.

47. "Person" means any individual, corporation, partnership or company and any other form of multiple organization for carrying on business, foreign or domestic.

48. "Private cemetery" means a cemetery or place that is not licensed under article 6 of this chapter, where burials or interments of human remains are made, in which sales or transfers of interment rights or burial plots are not made to the public and in which not more than ten interments or burials occur annually.

49. "Promotion" or "promotional practice" means advertising and any other act, practice, device or scheme to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in or use of real property subject to this chapter, including meetings with prospective purchasers, arrangements for prospective purchasers to visit real property, travel allowances and discount, exchange, refund and cancellation privileges.
50. "Real estate" includes leasehold-interests and any estates in land as defined in title 33, chapter 2, articles 1 and 2, regardless of whether located in this state.
51. "Real estate broker" means a person, other than a salesperson, who, for another and for compensation:

(a) Sells, exchanges, purchases, rents or leases real estate, businesses and business opportunities or timeshare interests.
(b) Offers to sell, exchange, purchase, rent or lease real estate, businesses and business opportunities or timeshare interests.
(c) Negotiates or offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate, businesses and business opportunities or timeshare interests.
(d) Lists or offers, attempts or agrees to list real estate, businesses and business opportunities or timeshare interests for sale, lease or exchange.
(e) Auctions or offers, attempts or agrees to auction real estate, businesses and business opportunities or timeshare interests.
(f) Buys, sells, offers to buy or sell or otherwise deals in options on real estate, businesses and business opportunities or timeshare interests or improvements to real estate, businesses and business opportunities or timeshare interests.
(g) Collects or offers, attempts or agrees to collect rent for the use of real estate, businesses and business opportunities or timeshare interests. This subdivision does not apply to a person who is not a licensee, who works for a real estate broker or a real estate salesperson, who collects in-person rent and related fees on behalf of the real estate broker or real estate salesperson for the use of real estate as part of the person's clerical duties and who provides a receipt when rent is paid.
(h) Advertises or holds himself out as being engaged in the business of buying, selling, exchanging, renting or leasing real estate, businesses and business opportunities or timeshare interests or counseling or advising regarding real estate, businesses and business opportunities or timeshare interests.
(i) Assists or directs in procuring prospects that are calculated to result in the sale, exchange, leasing or rental of real estate, businesses and business opportunities or timeshare interests.
(j) Assists or directs in negotiating any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate, businesses and business opportunities or timeshare interests.
(k) Incident to the sale of real estate, businesses and business opportunities negotiates or offers, attempts or agrees to negotiate a loan secured or to be secured by any mortgage or other encumbrance on or transfer of real estate, businesses and business opportunities or timeshare interests subject to section 32-2155, subsection D. This subdivision does not apply to mortgage brokers as defined in and subject to title 6, chapter 9, article 1.
(l) Engages in the business of assisting or offering to assist another in filing an application for the purchase or lease of, or in locating or entering on, lands owned by the state or fed-

eral government.

(m) Claims, demands, charges, receives, collects or contracts to collect an advance fee in connection with any employment enumerated in this section, including employment undertaken to promote the sale or lease of real property by advance fee listing, by furnishing rental information to a prospective tenant for a fee paid by the prospective tenant, by advertising or by any other offering to sell, lease, exchange or rent real property or selling kits connected therewith. This does not include the activities of any communications media of general circulation or coverage not primarily engaged in advertising real estate or any communications media activities that are specifically exempt from applicability of this article under section 32-2121.

(n) Engages in any of the acts listed in subdivisions (a) through (m) of this paragraph for the sale or lease of other than real property if a real property sale or lease is a part of, contingent on or ancillary to the transaction.

(o) Performs any of the acts listed in subdivisions (a) through (m) of this paragraph as an employee of, or in behalf of, the owner of real estate, or interest in the real estate, or improvements affixed on the real estate, for compensation.

(p) Acts as a business broker.

52. "Real estate sales contract" means an agreement in which one party agrees to convey title to real estate to another party on the satisfaction of specified conditions set forth in the contract.

53. "Real estate salesperson" means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation engaged by or on behalf of a licensed real estate broker, or by or on behalf of a limited liability company, partnership or corporation that is licensed as a real estate broker, to perform any act or participate in any transaction in a manner included in the definition of real estate broker subject to section 32-2155.

54. "Sale" or "lease" includes every disposition, transfer, option or offer or attempt to dispose of or transfer real property, or an interest, use or estate in the real property, including offering the property as a prize or gift if a monetary charge or consideration for whatever purpose is required.

55. "Salesperson", when used without modification, means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation licensed under this chapter or any person required to be licensed as a salesperson under this chapter.

56. "School" means a person or entity that offers a course of study toward completion of the education requirements leading to licensure or renewal of licensure under this chapter.

57. "Stock cooperative" means a corporation to which all of the following apply:

(a) The corporation is formed or used to hold title to improved real property in fee simple or for a term of years.

(b) All or substantially all of the shareholders of the corporation each receive a right of exclusive occupancy in a portion of the real property to which the corporation holds title.

(c) The right of occupancy may only be transferred with the concurrent transfer of the shares of stock in the corporation held by the person having the right of occupancy.

58. "Subdivider":

(a) Means any person who offers for sale or lease six or more lots, parcels or fractional interests in a subdivision or who causes land to be subdivided into a subdivision for the subdivider or for others, or who undertakes to develop a subdivision.

(b) Does not include a public agency or officer authorized by law to create subdivisions.

59. "Subdivision" or "subdivided lands":

(a) Means improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into six or more lots, parcels or fractional interests.

(b) Includes a stock cooperative, lands divided or proposed to be divided as part of a common promotional plan and residential condominiums as defined in title 33, chapter 9.

(c) Does not include:

(i) Leasehold offerings of one year or less.

(ii) The division or proposed division of land located in this state into lots or parcels each of which is or will be thirty-six acres or more in area including to the centerline of dedicated roads or easements, if any, contiguous to the lot or parcel.

(iii) The leasing of agricultural lands or apartments, offices, stores, hotels, motels, pads or similar space within an apartment building, industrial building, rental recreational vehicle community, rental manufactured home community, rental mobile home park or commercial building.

(iv) The subdivision into or development of parcels, plots or fractional portions within the boundaries of a cemetery that has been formed and approved pursuant to this chapter.

(v) A sale or lease of a lot, parcel or fractional interest that occurs ten or more years after the sale or lease of another lot, parcel or fractional interest if the other lot, parcel or fractional interest is not subject to this article and is treated as an independent parcel unless, on investigation by the commissioner, there is evidence of intent to subdivide.

60. "Timeshare" or "timeshare property" means real property ownership or right of occupancy in real property pursuant to article 9 of this chapter. For the purposes of this chapter, a timeshare is not a security unless it meets the definition of a security under section 44-1801.

61. "Trustee":

(a) Means a person who either:

(i) Is designated under section 32-2194.27 to act as a trustee for an endowment-care cemetery fund.

(ii) Holds bare legal title to real property under a subdivision trust.

(b) Does not include a developer, subdivider, broker or salesperson within this chapter.

62. "Unimproved lot or parcel" means a lot or parcel of a subdivision that is not an improved lot or parcel.

63. "Unsubdivided lands":

(a) Means land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into six or more lots, parcels or fractional interests and the lots or parcels are thirty-six acres or more each but less than one hundred sixty acres each, or that are offered, known or advertised under a common promotional plan for sale or lease, except that agricultural leases shall not be included in this definition.

(b) Includes any land that is sold and that would otherwise constitute the sixth lot, parcel or fractional interest if the sale occurs ten or more years after the earliest of the previous five sales and if all of the sales consist of property that was originally contained within the same parcel that is thirty-six acres or more and less than one hundred sixty acres.

32-2102. Administration of chapter by real estate department; purpose

This chapter shall be administered by the state real estate department under the direction of the real estate commissioner. The purpose of the department in administering this chapter is to protect the public interest through licensure and regulation of the real estate profession in this state.

32-2103. Placement of monies collected; revision of fees

A. The department shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under the provisions of this chapter in the state general fund unless otherwise prescribed by law.

B. Each year the commissioner shall revise all fees collected under this chapter within the limits prescribed by this chapter in such a manner that the revenue derived from such fees equals at least ninety-five per cent but not more than one hundred ten per cent of the anticipated appropriated budget for the department for the succeeding fiscal year. If the revenue derived from the fees exceeds one hundred ten per cent of the anticipated appropriated budget for the department for the succeeding fiscal year, the commissioner shall lower the fees in the succeeding year in proportion to the excess.

32-2104. Real estate advisory board; members; terms; qualifications; compensation; chairman; duties

Amended by Ariz. Sess. Laws Ch. 52, (2024)

A. The real estate advisory board is established composed of ten members who are appointed by the governor. The term of office of each member is six years, and the terms of three members expire on January 31 of each odd-numbered year. Appointment to fill a vacancy occurring other than by expiration of term shall be filled by appointment for the unexpired portion of the term only.

B. The membership of the board shall consist of:

1. Two members, each of whom is a real estate broker or real estate salesperson with at least five years of residential brokerage experience in this state. Not more than one member shall be appointed from any one county.
2. One member who has been engaged in a commercial real estate brokerage for the five years immediately preceding appointment, and one of whom has been engaged in multifamily residential rental property management with a real estate broker license for the five years immediately preceding appointment.
3. One member who has been engaged in multifamily residential rental property management with a real estate broker license for the five years immediately preceding appointment.
4. One member who has been engaged in timeshare, campground or cemetery sales for the five years immediately preceding appointment.
5. One member who has been primarily engaged in subdividing real property for the five years immediately preceding appointment.
6. One member who has been an active school administrator or approved instructor for the five years immediately preceding appointment.
7. Three public members who are not related within the third degree of consanguinity or affinity to any person holding a broker's or salesperson's license from this state.

C. Members of the board shall receive no compensation but shall be reimbursed for subsistence expenses pursuant to section 38-624 and travel expenses pursuant to section 38-623.

D. The board annually shall select from its membership a chairperson for the board.

E. The board shall provide the commissioner with such recommendations as it deems necessary and beneficial to the best interests of the public. The board shall also provide recommendations on specific questions or proposals as the board deems necessary or as requested by the commissioner.
F. The board annually shall present to the governor an evaluation of the performance of the real estate commissioner and the real estate department.
G. Not more than five members of the board from any one county may serve concurrently.

32-2105. Meetings of the state real estate advisory board
A. The board shall meet for the transaction of business not less than once each quarter-year at a place within the state it designates. The board may hold other meetings it deems advisable upon five days' written notice of the time and place of the meeting, signed by the commissioner or a majority of the members of the board.
B. A majority of the board shall constitute a quorum. A vacancy on the board shall not impair the rights or powers of the remaining members.

32-2106. Real estate commissioner; appointment; qualifications
Amended by Ariz. Sess. Laws Ch. 52, (2024)
A. The real estate commissioner shall be appointed by the governor, pursuant to section 38-211. The real estate commissioner shall serve at the pleasure of the governor.
B. To be a candidate for the position of real estate commissioner a person shall have at least five years' experience in the real estate industry, title insurance industry or banking or mortgage broker industry and three years' administrative experience and shall not at the date of acceptance of appointment be financially interested in any real estate or brokerage firm or act as a broker, salesperson or agent of any real estate or brokerage firm.

32-2107. Powers and duties of commissioner; compensation; administration of department; seal; revolving fund
A. The commissioner shall have charge of the department with power to administer it in accordance with the provisions of and to carry out the purposes of this chapter. The commissioner shall adopt a seal which shall bear the words "real estate commissioner, state of Arizona", which shall be used for the authentication of proceedings of the department and the official documents thereof. The commissioner's principal office shall be at the state capitol. The commissioner may have branch offices the commissioner deems necessary in other cities.
B. The commissioner shall receive compensation as determined pursuant to section 38-611.
C. The commissioner shall prepare and cause to be produced and circulated among the licensees and the general public educational matter the commissioner deems helpful and proper for the guidance and assistance of both licensees and the public. The commissioner may assess a fee for each of these educational products that does not exceed a level reasonably estimated to be sufficient to recover production and distribution costs.

D. In cooperation with industry educators, content experts and other professionals, the commissioner may develop, sponsor or hold educational seminars and workshops for the benefit of licensees.
E. A real estate department education revolving fund is established consisting of monies received from the sale of educational matter under subsection C of this section and grants of monies to be

used in the production of educational products. Monies in the fund shall be used for the printing of a compilation of real estate laws and rules and other educational publications and for other educational efforts the commissioner deems helpful and proper for the guidance and assistance of licensees and the public, including sponsoring and holding educational seminars or workshops for educators and other licensees. The department shall establish the revolving fund as a separate account. The department shall make a full accounting of its use to the department of administration annually or as required by the department of administration. Expenditures from the fund and reimbursement to the fund shall be as prescribed by rules of the department of administration. Monies received in the real estate department education revolving fund are not subject to reversion, except that all monies in the fund in excess of twenty-five thousand dollars at the end of the fiscal year revert to the state general fund.

F. The commissioner shall adopt rules, in accord with this chapter, as the commissioner deems necessary to carry out this chapter.

G. The commissioner may approve standardized legal forms for use in the sale or lease of real estate for the purpose of recognizing compliance of the forms with this chapter and the rules adopted pursuant to this chapter.

32-2107.01. Recorded disclaimer of unlawful restrictions

A. The 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 certain restrictions and covenants. The document shall contain a disclaimer in substantially the following form:

It is the law of this state that any covenants or restrictions that are based on race, religion, color, disability status or national origin are invalid and unenforceable. If the invalid covenant or restriction is contained in a document that is recorded in this county, it is hereby declared void.

B. The document that is executed and recorded by the commissioner shall include the legal description specified by title 11, chapter 1, article 1 for the appropriate county.

C. This section does not affect any other covenant, condition or restriction.

32-2108. Powers and duties of commissioner to make investigations and require information

(Ariz. Sess. Laws Ch. 59, § 77 (2022))

A. The commissioner on the commissioner's own motion may, and on a verified complaint in writing shall, investigate the actions of any natural person or entity engaged in the business or acting in the capacity of a broker, salesperson or developer and may at any time examine the books and records used in connection with the business insofar as the commissioner reasonably believes the books or records pertain to the transfer, sale, rental, lease, use or management of real property. In connection with an investigation, the commissioner or the commissioner's representative may take testimony and may examine and copy documents and other physical evidence that relate to the investigation. If necessary, the commissioner or the commissioner's representative may issue subpoenas to compel the testimony of witnesses and the production of documents and other evidence. If a person refuses to comply with a subpoena, the commissioner or the commissioner's representative may apply to the superior court for an order to compel compliance.

B. The commissioner shall establish a certification and enforcement unit that is charged with investigative duties relevant to the rules of the commissioner and the laws of this state, including applications for certification, investigations and enforcement and other duties as the commissioner prescribes.

C. The commissioner may require any reasonably necessary additional information about an applicant for or holder of a license or public report or renewal or amendment of a license or public report. For the purposes of this subsection, "applicant" or "holder" means a person and, if an entity, any officer, director, member, manager, partner, owner, trust beneficiary holding ten percent or more beneficial interest, stockholder owning ten percent or more stock and person exercising control of the entity. The information may include:

1. Prior criminal records.
2. A valid fingerprint clearance card issued pursuant to section 41-1758.03.
3. An affidavit setting out whether the applicant or holder has:

(a) Been convicted of a felony or a misdemeanor.

(b) Had any business or professional license denied, suspended or revoked or had any other disciplinary action taken or administrative order entered against the applicant or holder by any regulatory agency.

(c) Had a public report denied or suspended.

(d) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate, cemetery property, timeshare intervals, membership camping campgrounds or contracts or securities or involving consumer fraud or the racketeering laws of this state.

(e) Had any adverse decision or judgment entered against the applicant or holder arising out of the conduct of any business in or involving a transaction in real estate, cemetery property, timeshare intervals or membership camping campgrounds or contracts involving fraud, dishonesty or moral turpitude.

(f) Filed, or is subject to, a petition under any chapter of the federal bankruptcy act.

(g) Participated in, operated or held an interest or exercised control in any entity to which subdivision (b), (c), (d), (e) or (f) of this paragraph applies.

32-2108.01. License applicants; fingerprint clearance cards; definition

Amended by Ariz. Sess. Laws Ch. 52, (2024)

A. Before receiving and holding a license issued pursuant to this chapter, each license applicant shall obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The license applicant is responsible for providing the department with a valid fingerprint clearance card.

C. The department shall not issue a license to an original license applicant before receiving a valid fingerprint clearance card pursuant to this section. The department may suspend a license if the licensee's fingerprint clearance card is suspended and either:

1. If the person was convicted of the alleged crime causing the fingerprint clearance card suspension, the commissioner could use the conviction to deny the license application pursuant to this chapter.
2. The licensee fails to submit sufficient evidence to prove the individual applied for a good cause exception pursuant to section 41-619.55 within five business days after being notified by the department.

D. This section does not affect the department's authority to otherwise issue, deny, cancel, terminate, suspend or revoke a license.

E. For the purposes of this section, "license applicant" means:

1. Each original real estate salesperson, cemetery salesperson and membership camping salesperson and each original real estate broker, cemetery broker and membership camping broker applicant pursuant to article 2 of this chapter.
2. Each natural person, or for an entity applicant, any person exercising control of the entity, who applies for an original certificate of approval to operate a real estate school, or for a renewal certificate, any natural person or person exercising control who has not previously submitted a fingerprint clearance card to the department.
3. Any natural person, or for an entity applicant, any person exercising control of the entity, for whom the department has evidence of a criminal record that has not been previously reviewed or evaluated by the department and who applies for a:
(a) License renewal pursuant to section 32-2130.
(b) Public report to:
(i) Sell or lease subdivided lands pursuant to article 4 of this chapter.
(ii) Sell or lease unsubdivided lands pursuant to article 7 of this chapter.
(iii) Sell or lease timeshare estates pursuant to article 9 of this chapter.
(iv) Sell membership camping contracts pursuant to article 10 of this chapter.
(c) Certificate of authority to sell cemetery lots pursuant to article 6 of this chapter.

32-2109. Employment; compensation
Subject to title 41, chapter 4, article 4, the commissioner shall appoint a secretary and such deputies, assistants, and clerks as are necessary. The compensation of all such employees shall be as determined pursuant to section 38-611.

32-2110. Interest of department officer or employee in real estate company prohibited
No officer or employee of the department shall be connected with or directly or indirectly interested in any real estate company or real estate brokerage firm.

32-2111. Attorney general as legal adviser and representative of commissioner
The attorney general shall act for the commissioner in all legal actions or proceedings and shall advise him upon all questions of law arising out of the administration of this chapter.

32-2112. Admissibility of certified copies of department records in evidence
Properly certified copies of records of the department or documents filed therein shall be received in evidence in all courts of the state equally and with like effect as the originals.

32-2113. Recorded disclosure for territory in the vicinity of a military airport or ancillary military facility
A. The commissioner shall execute and record in the office of the county recorder in each county in this state that includes territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461 a document, applicable to property located within territory in the vicinity of a military airport or ancillary military facility, with the following disclosure: "This property is located within territory in the vicinity of a military airport or ancillary military facility and may be subject to increased noise and accident potential."
B. The attorney general shall prepare in recordable form the document that is executed and record-

ed by the commissioner pursuant to this section.
C. The document that is executed and recorded by the commissioner shall include a legal description of the territory in the vicinity of a military airport or ancillary military facility. The military airport shall cause the legal description of territory in the vicinity of the military airport or ancillary military facility defined in section 28-8461 to be prepared and shall provide the legal description to the commissioner and the state land department in recordable form in twelve point font on eight and one-half inch by eleven inch paper.
D. The state land department shall prepare maps with the legal descriptions pursuant to section 37-102.

32-2114. Recorded disclosure for land under a military training route or restricted air space
A. The commissioner shall execute and record in the office of the county recorder in each county in this state that includes land under a military training route as defined in section 28-8461 and as delineated in the military training route map prepared by the state land department pursuant to section 37-102 a document, applicable to land under a military training route as delineated in the military training route map, disclosing that the land is under a military training route.
B. The commissioner shall execute and record in the office of the county recorder in each county in this state that includes land under restricted air space as delineated in the restricted air space map prepared by the state land department pursuant to section 37-102 a document, applicable to land under restricted air space as delineated in the restricted air space map, disclosing that the land is under restricted air space.
C. If a military training route changes and people who were notified pursuant to subsection A of this section no longer have property under a military training route as delineated in the military training route map, the commissioner shall execute and record in the office of the county recorder in the county in which the property is located a document disclosing that the land is not under a military training route.
D. If restricted air space changes and people who were notified pursuant to subsection B of this section no longer have property under restricted air space as delineated in the restricted air space map, the commissioner shall execute and record in the office of the county recorder in the county in which the property is located a document disclosing that the land is not under restricted air space.
E. The attorney general shall prepare in recordable form the documents that are executed and recorded by the commissioner pursuant to this section.
F. The documents that are executed and recorded by the commissioner pursuant to this section shall include a legal description of the military training route as delineated in the military training route map and a legal description of the restricted air space as delineated in the restricted air space map.

32-2114.01. Military electronics range
A. The commissioner shall execute and record in the office of the county recorder in each county in this state that includes a military electronics range as delineated in the military electronics range map prepared by the state land department pursuant to section 37-102 a document that applies to land contained in a military electronics range and that discloses that the land is contained in a military electronics range.
B. If a military electronics range changes and persons who were notified pursuant to subsection A of this section no longer have property contained in a military electronics range as delineated in

the military electronics range map, the commissioner shall execute and record in the office of the county recorder in the county in which the property is located a document disclosing that the land is not contained in a military electronics range.
C. The attorney general shall prepare in recordable form the documents that are executed and recorded by the commissioner pursuant to this section.
D. The documents that are executed and recorded by the commissioner pursuant to this section shall include a geospatial description of the military electronics range as delineated in the military electronics range map.

32-2115. Department's website; military training route map; restricted air space map; military electronics range map
The department shall post on its website the following maps prepared by the state land department as prescribed by law:

1. The military training route map.
2. The restricted air space map.
3. The military electronics range of a military installation.

32-2116. Military training routes; contacts
Amended by Ariz. Sess. Laws Ch. 52, (2024)
The department shall post the contact information for the Arizona Military Airspace Working Group on the department's website.

32-2117. Earth fissure maps; posting; immunity
A. On receipt of maps from the Arizona geological survey, the state real estate department shall provide any earth fissure map to any member of the public in printed or electronic format on request and provide access on its website to the earth fissure maps prepared by the Arizona geological survey pursuant to section 27-106, subsection A, paragraph 3. The following notice shall be displayed below each map:

Notice

> "The state of Arizona has made a reasonable effort to ensure the accuracy of this map when it was produced, but errors may be present and the state of Arizona does not guarantee its accuracy. The map supplements, and is not a substitute for, a professional inspection of property for defects and conditions."

B. This section does not deny a person rights guaranteed by the Arizona Constitution, and notwithstanding any other law, a subdivider, owner or licensee is not liable to any person or governmental entity for any act or failure to act in connection with:

1. The disclosure of real estate subject to earth fissures if the subdivider, owner or licensee provides a written disclosure or includes notice in a public report, issued pursuant to section 32-2183 or 32-2195.03, with respect to real estate subject to earth fissures, of the map and website described in subsection A of this section. The written disclosure or notice in a public report, issued pursuant to section 32-2183 or 32-2195.03, of the map and website

does not create an independent cause of action.

2. Any disclosure that occurred before the date the map described in subsection A of this section is posted on the website if the subdivider, owner or licensee had no actual knowledge that the land was subject to earth fissures before the map was posted.

32-2118. Competition with private enterprise; prohibition

The department shall not create, endorse or sponsor any activity that may be legally performed by a licensee in any way that constitutes competition with the private sector, unless there is no licensee that is capable and willing to create, endorse or sponsor the activity. This section does not apply to license approval processes or procedures under this chapter or to educational activities under section 32-2107.

32-2119. Consumer education; water supply definitions; map

A. The department of real estate shall post on its website information advising prospective home buyers to investigate water availability before purchasing real property and shall include a link to the website of the department of water resources for definitions of the following terms that apply in areas of the state outside active management areas, as required by section 45-108.05:

1. Adequate water supply.
2. Inadequate water supply.
3. Property served by a water provider currently designated as having an adequate water supply.
4. No water supply determination.

B. The department of real estate shall display on its website a current map of all areas in this state that are outside active management areas established pursuant to title 45, chapter 2, article 2.

ARTICLE 2 - LICENSING

32-2121. Applicability of article; exemption

(*(Ariz. Sess. Laws Ch. 298, § 1 (2022))*

A. This article does not apply to:

1. A natural person, a corporation through its officers, a partnership through its partners or a limited liability company through its members or managers that deals in selling, exchanging, purchasing, renting, leasing, managing or pledging the person's or entity's own property, including cemetery property and membership camping contracts, and that does not receive special compensation for a sales transaction or does not receive special compensation or other consideration, including property management fees or consulting fees for any property management services performed, if the majority of an officer's, partner's, member's or manager's activities do not involve the acts of a real estate broker, cemetery broker or membership camping broker as defined in section 32-2101.

2. A person holding a valid power of attorney that is being used for a specific purpose in an isolated transaction and not as a method of conducting a real estate business.

3. An attorney performing the attorney's duties as an attorney. This paragraph does not allow an attorney to otherwise engage in any acts requiring a license under this article.

4. Any receiver, a trustee in bankruptcy or any other person acting under an order of a court.

5. A trustee selling under a deed of trust.

6. Natural persons who are acting as residential leasing agents or on-site managers of residential rental property, who are performing residential leasing activities on residential income property at not more than one location during the period of the agents' or on-site managers' regular workday, who do not receive special compensation for the acts described in subdivisions (a) through (e) of this paragraph and who are employed by the owner or the owner's licensed management agent to perform the duties customarily associated with that employment. A bonus that is paid to a residential leasing agent or on-site manager working under the supervision of a licensed real estate broker and that is based on performance, that is received not more frequently than monthly and that does not exceed one-half of the agent's or on-site manager's total compensation for the time period does not constitute special compensation for the acts described in subdivisions (a) through (e) of this paragraph. For the purposes of this paragraph, "residential leasing agents or on-site managers" means natural persons who are employed by the owner or the owner's licensed management agent and whose normal duties and responsibilities include any one or a combination of the following:

(a) Preparing and presenting to any person a residential lease, application or renewal or any amendment of the lease.

(b) Collecting or receiving a security deposit, a rental payment or any related payment for delivery to and made payable to a property, a property manager, an owner or the location.

(c) Showing a residential rental unit to any prospective tenant.

(d) Executing residential leases or rental agreements adopted under title 33, chapter 10.

(e) Acting on behalf of the owner or the owner's licensed management agent to deliver notice pursuant to title 12, chapter 8 and title 33, chapters 10 and 11.

7. Any officer or employee of a governmental agency who is not a contract or temporary employee of the agency in conducting the officer's or employee's official duties.

8. One natural person who acts as a property manager for one nonresidential income property or for two or more contiguous nonresidential income properties that are under common ownership and who is employed by the owner or the owner's licensed management agent to perform the duties customarily associated with that employment.

9. Natural persons who are employed by an employing broker, a person otherwise licensed under this chapter or a person or entity exempt under this section, who are unlicensed and perform clerical, bookkeeping, accounting and other administrative and support duties, who are not engaged in any other acts requiring a license under this chapter and whose employment is not conditioned on or designed to perform duties otherwise requiring a license under this chapter.

10. Natural persons who are employed by an employing broker and who perform telemarketing services that are limited to soliciting interest in engaging the services of a licensee or broker or gathering demographic information that will be used by a licensee or broker to solicit prospective buyers, sellers, lessees and lessors.

11. Communications media or their representatives that are primarily engaged in advertising real estate and that perform no other acts requiring a real estate license, if:

(a) The communications media or their representatives do not, directly or indirectly, compile or represent that they compile information about specific prospective purchasers or tenants, except that general information about prospective purchasers or tenants, such as demographic and marketing information, may be compiled.

(b) The communications media or their representatives do not make representations to prospective real property sellers or landlords, or their representatives, concerning specific prospective purchasers or tenants or specific sales or leasing leads.

(c) The fee charged for advertising is based solely on the advertising services provided.

(d) The advertisements provide for direct contact between the seller or landlord and the prospective buyers or tenants, or for contact through a licensed real estate broker or property management firm. The communications media or their representatives shall not act as intermediaries or assist in any intermediary action between prospective parties to a real estate transaction, except that additional information about advertised properties may be provided to prospects on request.

12. Persons who perform residential property management services or marketing and promotional services solely for nursing care institutions as defined in section 36-401 or pursuant to life care contracts as defined in section 20-1801.

13. A person who offers to sell or lease property that constitutes a security as defined in section 44-1801 and that is offered, sold or leased in compliance with title 44, chapter 12 if the person is a registered securities dealer or salesperson pursuant to title 44, chapter 12, article 9.

14. A person who manages a hotel, motel or recreational vehicle park.

15. A person who, on behalf of another, solicits, arranges or accepts reservations or monies, or both, for occupancies of thirty-one or fewer days in a dwelling unit.

16. An escrow agent in performing the escrow agent's duties as an escrow agent, a title insurer in performing the title insurer's duties as a title insurer or a title insurance agent in performing the title insurance agent's duties as a title insurance agent. This paragraph does not allow an escrow agent, a title insurer or a title insurance agent to otherwise engage in acts requiring a license under this article.

17. Notwithstanding paragraph 1 of this subsection, a corporation through its officers and employees that purchases, sells, exchanges, rents, leases, manages or pledges its property if both of the following apply:

(a) The activity is only incidental to the business of the corporation.

(b) The officers and employees engaged in the activity do not receive special compensation or other consideration for the activity.

18. A trust company owned by a bank holding company regulated by the federal reserve board or a bank in exercising its fiduciary duties under the terms of a trust agreement to which real property is subject.

19. A person who receives a finder fee pursuant to section 32-2176 or 32-2197.21.

B. The commissioner may grant an exemption from the licensure requirements of this article to any corporation that applies for an exemption on a finding that both of the following apply:

1. The corporation is a nonprofit corporation that provides project-based housing services and operates solely as a charitable organization as defined in section 44-6551.

2. The corporation's sole activities related to real estate involve ownership or management of residential property owned or controlled by the corporation.

32-2122. License required of brokers and salespersons

A. This article applies to any person acting in the capacity of a:

1. Real estate broker.
2. Real estate salesperson.
3. Cemetery broker.
4. Cemetery salesperson.
5. Membership camping broker.
6. Membership camping salesperson.

B. It is unlawful for any person, corporation, partnership or limited liability company to engage in any business, occupation or activity listed in subsection A of this section without first obtaining a license as prescribed in this chapter and otherwise complying with this chapter.

C. A person, corporation, partnership or limited liability company that is licensed as a salesperson or broker pursuant to this article or that is engaging in any work for which a license is required under this article is subject to the requirements of this chapter in performing any acts included in the definition of a broker unless otherwise provided in this chapter.

D. Except as otherwise provided in this subsection, any act, in consideration or expectation of compensation, that is included in the definition of a real estate broker, cemetery broker or membership camping broker, whether the act is an incidental part of a transaction or the entire transaction, constitutes the person offering or attempting to perform the act of a real estate broker or real estate salesperson, a cemetery broker or cemetery salesperson or a membership camping broker or a membership camping salesperson within the meaning of this chapter. A person who is not a

licensee may collect in-person rent and related fees for the use of real estate as part of the person's clerical duties if the person works for a licensee, the rent collection is on behalf of the licensee and the person provides a receipt when rent is paid.

32-2123. Application for license as broker or salesperson

Amended by Ariz. Sess. Laws Ch. 52, (2024)

A. Every application for an original license shall be either submitted in writing and signed by the applicant or submitted electronically and contain an electronic or digital identifier that the commissioner deems appropriate. The application shall be accompanied by all applicable fees.

B. An application for an original license as a broker or salesperson shall set forth:

1. The applicant's address and legal name and any derivative of the applicant's first name or middle name or a nickname that the applicant regularly uses for advertising purposes.
2. Whether the applicant has ever been convicted of a felony and, if so, the nature of the felony, where and when the felony was committed and the disposition of the conviction, or whether the applicant has been disbarred or suspended from the practice of law.
3. Whether the applicant has ever been refused a broker's or salesperson's license or any other occupational license in this or any other state, whether the applicant's license as a broker or salesperson has been revoked or suspended in this or any other state or whether the applicant has had any other occupational or professional license, certificate or registration revoked or suspended in this or any other state.
4. The name of any corporation, company or partnership that is or ever has been licensed by the department in which the applicant exercised any control.
5. If the applicant is a natural person, the applicant's social security number. If the applicant, due to bona fide religious convictions or other bona fide reasons that the applicant documents on the application to the satisfaction of the commissioner, does not have a social security number, the applicant may provide the applicant's federal tax identification number with the application. The state real estate department shall use the applicant's social security number or federal tax identification number to aid the department of economic security in locating noncustodial parents or the assets of noncustodial parents, and for no other purpose.

C. An application for a license as a broker additionally shall set forth:

1. The name under which the business is to be conducted.
2. The applicant's address of record.

D. An applicant for a broker's or salesperson's license shall provide information that the commissioner determines is reasonably necessary. The information may include:

1. Prior criminal records.
2. A valid fingerprint clearance card issued pursuant to section 41-1758.03.
3. An affidavit setting out whether the applicant has participated in, operated or held an interest in any land development company that has filed, or is subject to, a petition under any chapter of the federal bankruptcy act.

32-2124. Qualifications of licensees

Amended by Ariz. Sess. Laws Ch. 52, (2024)

A. Except as otherwise provided in this chapter, the commissioner shall require proof, through the application or otherwise, as the commissioner deems advisable with due regard to the interests of

the public, as to the competency of the applicant and shall require that the applicant has:

1. If for an original real estate broker's license, been an active licensed real estate salesperson or real estate broker for at least three years during the five years immediately preceding the time of application.
2. If for an original cemetery broker's license, either a current real estate broker's license, or if the applicant does not have a current real estate broker's license, at least three years' actual experience as a cemetery salesperson or cemetery broker or as a licensed real estate salesperson or licensed real estate broker during the five years immediately preceding the time of application.
3. If for an original membership camping broker's license, either a current real estate broker's license, or if the applicant does not have a current real estate broker's license, at least three years' actual experience as a licensed membership camping salesperson or licensed membership camping broker or as a licensed real estate salesperson or licensed real estate broker during the five years immediately preceding the time of application.
4. If for any type of broker's or salesperson's license, not had a license denied within one year immediately preceding application in this state pursuant to section 32-2153 or a similar statute in any other state.
5. If for any type of broker's or salesperson's license, not had a license revoked within the two years immediately preceding application in this state pursuant to section 32-2153 or a similar statute in any other state.
6. If reapplying for a license that expired more than one year before the date of application, met all current education and experience requirements and retakes the examination the same as if the applicant were applying for the license for the first time.
7. If for a real estate broker's, cemetery broker's or membership camping broker's license, other than a renewal application, an equivalent amount of active experience within the immediately preceding five years in the field in which the applicant is applying for the broker's license, as a substitute for the licensed active experience otherwise required in paragraphs 1, 2 and 3 of this subsection. The licensed active experience required may be met if the applicant can demonstrate to the commissioner's satisfaction that the applicant has an equivalent amount of experience in the past five years that, if the applicant had held a license, would have been sufficient to fulfill the licensed experience requirement.

B. All applicants other than renewal applicants under section 32-2130 for a real estate salesperson's license shall show evidence satisfactory to the commissioner that they have completed a real estate salesperson's course that is prescribed and approved by the commissioner and that is at least ninety classroom hours, or the equivalent, of instruction in a real estate school certified by the commissioner and have satisfactorily passed an examination on the course. An applicant may complete the real estate salesperson's course prescribed by this subsection through a live classroom course or a distance learning course if the live classroom course or distance learning course is offered by a real estate school that is certified by the commissioner. The applicant must complete a proctored examination on the live classroom course or the distance learning course in person. An applicant may complete the required course or instructional segments in any combination of in-person or synchronous remote delivery methods. The real estate salesperson's course completion or its equivalent may not be more than ten years before the date of application unless, at the time of application, the commissioner determines in the commissioner's discretion that the applicant has work experience in a real estate-related field and education that together are equivalent to the pre-

licensure education requirement. Except as proviced in Section 32-4302, the commissioner may waive all or a portion of the prelicensure course requirement, other than the twenty-seven-hour Arizona-specific course, for an applicant who holds a current real estate license in another state.

C. All applicants other than renewal applicants under section 32-2130 for a real estate broker's license shall show evidence satisfactory to the commissioner that they have completed a real estate broker's course that is prescribed and approved by the commissioner and that is at least ninety classroom hours, or the equivalent, of instruction in a real estate school certified by the commissioner and have satisfactorily passed an examination on the course. An applicant may complete the real estate broker's course prescribed by this subsection through a live classroom course or a distance learning course if the live classroom course or distance learning course is offered by a real estate school that is certified by the commissioner. The applicant must complete a proctored examination on the live classroom course or distance learning course in person. An applicant may complete the required course or instructional segments in any combination of in-person or synchronous remote delivery methods. The real estate broker's course completion or its equivalent may not be more than ten years before the date of application unless, at the time of application, the commissioner determines in the commissioner's discretion that the applicant has work experience in a real estate-related field and education that together are equivalent to the prelicensure education requirement. Except as provided in Section 32-4302, the commissioner may waive all or a portion of the prelicensure course requirement, other than the twenty-seven-hour Arizona-specific course, for an applicant who holds a current real estate license in another state.

D. Before receiving any license provided for by this chapter, an applicant must be at least eighteen years of age.

E. The commissioner shall ascertain by a written, electronic or other examination method that an applicant for a real estate license has:

1. An appropriate knowledge of the English language, including reading, writing and spelling, and of arithmetical computations common to real estate practices.
2. At a minimum, an understanding of the general purpose and legal effect of any real estate practices, principles and related forms, including agency contracts, real estate contracts, deposit receipts, deeds, mortgages, deeds of trust, security agreements, bills of sale, land contracts of sale and property management, and of any other areas that the commissioner deems necessary and proper.
3. A thorough understanding of the obligations between principal and agent, the principles of real estate and business opportunity practice, the applicable canons of business ethics, this chapter and rules adopted pursuant to this chapter.
4. An appropriate knowledge of other real estate practices and principles as determined by the commissioner.

F. The commissioner shall ascertain by a written, electronic or other examination method that an applicant for a license as a cemetery broker or a cemetery salesperson has:

1. Appropriate knowledge of the English language, including reading, writing and spelling, and of elementary arithmetic.
2. A general understanding of:
   (a) Cemetery associations, cemetery corporations and duties of cemetery directors and officers.
   (b) Plot ownership, deeds, certificates of ownership, contracts of sale, liens and leases.

(c) Establishing, dedicating, maintaining, managing, operating, improving, preserving and conducting a cemetery.

(d) The provisions of this chapter and rules adopted pursuant to this chapter relating to the organization and regulation of cemeteries and the licensing and regulation of cemetery brokers and cemetery salespersons.

3. A general understanding of the obligations between principal and agent, the principles of cemetery practice and the canons of business ethics pertaining to the operation of cemeteries and the sale of cemetery property.

G. The commissioner shall ascertain by a written, electronic or other examination method that an applicant for a license as a membership camping broker or a membership camping salesperson has:

1. An appropriate knowledge of the English language, including reading, writing and spelling, and of elementary arithmetic.

2. A general understanding of:

(a) The general purposes and legal effect of contracts and agency contracts.

(b) Establishing, maintaining, managing and operating a membership campground.

(c) The provisions of this chapter and rules adopted pursuant to this chapter relating to the organization and regulation of membership campgrounds and the licensing and regulation of membership camping brokers and membership camping salespersons.

3. A general understanding of the obligations between principal and agent and the canons of business ethics pertaining to the operation and promotion of membership campgrounds.

H. A renewal applicant for a real estate broker's, cemetery broker's or membership camping broker's or real estate salesperson's, cemetery salesperson's or membership camping salesperson's license is not required to submit to an examination if the application is made within twelve months after the license expires and the license is not canceled, terminated or suspended at the time of application.

I. The examination for a broker's license shall be more exacting and stringent and of a broader scope than the examination for a salesperson's license.

J. An applicant for a real estate salesperson's or real estate broker's license who currently holds at least an equivalent license in another state IS exempt from taking the national portion of the real estate examination pursuant to Section 32-4302.

K. Identification of each applicant whose licensing requirement was allowed to be met by an equivalent alternative pursuant to this section shall be included in the annual performance evaluation presented by the board to the governor pursuant to section 32-2104.

L. An applicant for an original real estate salesperson's license, after completing the requirements of subsection B of this section, shall provide certification to the department at the time of application evidencing completion of six hours of instruction in real estate contract law and contract writing. This instruction shall include participation by the applicant in drafting contracts to purchase real property, listing agreements and lease agreements.

M. The commissioner shall not issue a license to a person who has been convicted of a felony offense and who is currently incarcerated for the conviction, paroled or under community supervision and under the supervision of a parole or community supervision officer or who is on probation as a result of the conviction.

N. The commissioner shall require an out-of-state applicant for a license that is issued pursuant to section 32-4302 to pass an examination specific to the laws of this state relating to this chapter

before the commissioner issues the license to the applicant.

32-2125. Licenses for corporations, limited liability companies or partnerships
Amended by Ariz. Sess. Laws Ch. 52, (2024)

A. A corporation, limited liability company or partnership applying for a broker's license for the entity shall designate a natural person who is licensed as a broker and who is an officer of the corporation, manager of the limited liability company if management of the limited liability company is vested in one or more managers, member of the limited liability company if management is vested in the members or partner of the partnership who shall act as designated broker. The license shall extend no authority to act as designated broker to any other person. This subsection does not apply to a corporation or limited liability company applying for a license under subsection B of this section. An entity's broker's license issued pursuant to this subsection shall run concurrently with the corporation's, limited liability company's or partnership's designated broker's license.

B. An employing broker may engage the services of salespersons and associate brokers who act through and on behalf of professional corporations or professional limited liability companies that are licensed by the department. A designated broker who acts on behalf of an employing real estate entity is allowed to become a professional corporation or a professional limited liability company. Any person so engaged shall be separately licensed. The department shall issue to or renew a license under this subsection only for a professional corporation or a professional limited liability company whose shareholders, members or managers hold active real estate licenses. A corporation licensed under this subsection shall meet the requirements of title 10, chapter 20. A limited liability company licensed under this subsection shall meet the requirements of title 29, chapter 7, article 11. A professional corporation or professional limited liability company shall not be licensed as an employing broker.

C. The license of a corporation or limited liability company licensed under subsection B of this section terminates only on the death of a shareholder, member or manager or any other change of shareholders, members or managers, except that any remaining shareholder, member or manager who was an authorized officer and shareholder BEFORE the change remains authorized to continue business under the corporation's or limited liability company's license for up to an additional ninety days pending the issuance of a new license or installation of a new designated broker. The corporation or limited liability company may not assume representation for new clients while a new license is pending or until a new designated broker is added to the entity's license.

D. The commissioner may suspend, revoke or deny renewal or the right of renewal of the license of a corporation, limited liability company or partnership licensed under this section if the corporation, limited liability company or partnership or any shareholder, officer, agent, partner or member of a corporation, limited liability company or partnership violates any of the provisions of this chapter.

E. An entity that is licensed pursuant to this chapter may not have a person named as the designated broker on the license if the person is or was named as a designated broker or the equivalent of a designated broker on any other license in this state or in another state and any of the following applies:

1. The person is under an order to cease and desist from engaging in real estate activity.
2. The person's license is under suspension.
3. The person's license was revoked in the previous two years and the revocation was for an act or omission that occurs while the person is or was named on the license.

F. This section does not enlarge the functions of salespersons, allow salespersons to assume any of the responsibilities or functions of brokers or relieve the commissioner of any regulatory power or authority over salespersons or brokers.
G. A corporation, limited liability company or partnership licensed under subsection A of this section or a professional corporation or professional limited liability company licensed under subsection B of this section is exempt from the education requirements imposed pursuant to this chapter. The commissioner shall not charge a license fee or a renewal fee pursuant to section 32-2132 to a corporation, professional corporation, limited liability company, professional limited liability company or partnership licensed or approved under this section.
H. A corporation, limited liability company or partnership licensed under this section shall report to the department within ten days:

1. Any change in officers, directors, members, managers or partners or any change of control of the entity.
2. Any amendment to its articles of incorporation or organization or to its partnership agreement.
3. If a corporation, when a person becomes an owner of ten percent or more of the stock in the corporation.
4. The dissolution of the corporation, limited liability company or partnership.

32-2125.01. Issuance of license; multiple licenses; use

A. When the requirements for application, examination and payment of fees are completed to the satisfaction of the commissioner, the commissioner shall issue the license applied for to the applicant. Any person who has passed the state examination for broker or salesperson must become licensed within one year from the date of the examination. Failure to comply with this section will necessitate the submission to and passing of another examination.
B. Not more than one license shall be issued and outstanding to or in favor of a licensee at any one time, except that a person licensed as a real estate broker or real estate salesperson may engage in cemetery or membership camping sales activities without being separately licensed to engage in these activities. A real estate licensee may have only one employing broker in each of the following categories:
1. Cemetery.
2. Membership camping.
3. Real estate.
C. A designated or employing real estate broker may engage in cemetery or membership camping sales activities and may employ cemetery and membership camping salespersons and associate brokers without being separately licensed as a cemetery or membership camping broker or salesperson.

32-2125.02. Nonresident licensees; service of process; employment
Amended by Ariz. Sess. Laws Ch. 52, (2024)

A. An application for and acceptance of a license as a nonresident salesperson or broker shall be deemed to constitute irrevocable appointment of the commissioner as the agent or attorney in fact of the licensee for the acceptance of service of process issued in this state in any action or proceeding against the licensee arising out of the licensing, out of transactions under the license or in any action that may result in payment from the real estate recovery fund.

B. Duplicate copies of any process shall be served on the commissioner. The plaintiff at the time of service shall pay the commissioner $15, taxable as costs in the action. On receiving this service the commissioner shall promptly forward a copy of the service by certified mail to the licensee at the licensee's last address of record with the commissioner. Process served on the commissioner pursuant to this subsection constitutes service of process on the licensee as though the licensee were personally served with the process in this state.
C. A nonresident licensee shall accept employment or compensation as a nonresident licensee only under section 32-2155 and only from a broker who is actively licensed in this state.
D. A nonresident broker shall maintain in this state the records required by section 32-2151.01 and shall notify the commissioner of the address where the records are kept or may use online recordkeeping if the data is backed up and the nonresident broker notifies the department of the name of and contact information for the online recordkeeping provider.
E. Pursuant to section 32-4302, a broker license or salesperson license applicant who does not reside in this state is required to successfully pass the portion of the examination that is specific to this state's real estate practice and laws.
F. The commissioner may adopt rules necessary for the regulation of nonresident licensees.

32-2125.03. Confidentiality of licensee's residential address, electronic mail address, residential telephone number and social security number
A. Notwithstanding any other law, a licensee's or applicant's residential address or residential telephone number maintained by the department shall not be available to the public unless the commissioner determines that disclosure of the residential address or residential telephone number, or both, serves the interests of justice and is in the public interest.
B. A licensee's or applicant's electronic mail address shall not be released or made available for inspection to any person other than a court or a governmental agency that will use the electronic mail address for a legitimate court or governmental purpose.
C. The residential address, electronic mail address and residential telephone number of a licensee whose license is placed on inactive status are confidential unless the commissioner determines that disclosure of the addresses and telephone number serves the interests of justice and is in the public interest.
D. The department may not release a licensee's social security number or make a licensee's social security number available for inspection by any person other than a court or a governmental agency that will use the information for a legitimate governmental purpose.

32-2126. Place of business required; notice of change in location; failure to give notice as cancellation of license; signs
Amended by Ariz. Sess. Laws Ch. 52, (2024)
A. Each employing broker shall have and maintain a definite place of business or an active and valid statutory agent on file with the Corporation Commission. The employing broker must notify the department of the definite place of business or the valid statutory agent. Notice of A change of business location or statutory agent shall be given to the commissioner in writing. Change or abandonment of a business location or statutory agent without notice shall automatically cancel the employing broker's license and shall sever the license of any salesperson or associate broker employed by the employing broker. If an employing broker's license is cancelled pursuant to this subsection and the employing broker's license is later reinstated, any salesperson or associate broker employed

by the employing broker whose license was severed pursuant to this subsection may be rehired.
B. Each designated broker and, if applicable, each employing broker shall cause a sign to be affixed at the entrance to the broker's place of business, in a place and position clearly visible to all entering the place of business, with the name of the broker, the name under which the broker is doing business if other than the broker's given name, and sufficient wording to establish that the person is a real estate broker, cemetery broker or membership camping broker. In addition to any other applicable law, the sign shall conform to rules adopted by the commissioner.
C. On removal from any location the broker shall remove the sign from the location. A broker shall not display any name at designated places of business named in the broker's license other than the name under which the broker is licensed.

32-2127. Licenses for additional places of business; branch office manager; broker's temporary absence

Amended by Ariz. Sess. Laws Ch. 52, (2024)

A. IF a broker maintains more than one place of business within the state THE BROKER shall procure an additional license for each branch office maintained.
B. Branch office licenses shall be issued in the same name as the principal office license is issued, and the license must be posted in the branch office. Branch office signs shall conform to the provisions for the principal office and shall include the designation "branch office".
C. Each branch office shall be under the management of a broker or a licensed salesman.
D. If a designated broker is unable to act within twenty-four hours, the designated broker may designate a licensee whom the designated broker employs or another designated broker to act in the designated broker's behalf. The designated broker shall make this designation in writing and shall keep the original designation at the designated broker's office for one year from its effective date. A copy of this designation must be attached to any hire, sever or renewal form submitted to the department that is signed by the designated broker's designee. This designation shall not exceed thirty days' duration and may authorize the designee to perform any and all duties the designated broker may legally perform, except that a salesperson shall not be authorized to hire or sever licensees. A written designation is required for each temporary absence.

32-2128. Display and possession of license certificate

A. The designated broker's and, if applicable, the employing broker's license certificate shall be prominently displayed in the office of the broker, and all other license certificates shall be readily available. A salesperson's or associate broker's license certificate shall remain in the possession of the employer until it is cancelled, terminated, suspended or revoked by the department or until the licensee is severed from employment, when the designated broker shall dispose of the license certificate.
B. A designated broker may comply with the possession requirements for a salesperson's or associate broker's license certificate prescribed by subsection A of this section by doing both of the following:

1. Accessing the licensee's record in the department's public database that the department posts on its website.
2. Printing a copy of the record that shows current and active licensure or having the record available electronically.

32-2129. Advance payment of license fees

A. All license fees shall be paid in advance and shall be the same regardless of the time of the year the license is issued.

B. If the license fees or other fees that relate to licensure are paid with a check that is not honored by the financial institution on which it is written, the department may deny or cancel the license.

C. An original license shall be for a period of two years up to and including the last day of the month in which the license was granted. A renewal license shall be effective as of the date of issuance, but no earlier than the first day after the expiration of the previous license. Regardless of the date of issuance, the renewed license is for a two year period beginning on the first day after the expiration of the previous license.

D. License applicants shall pay fees as specified in this chapter.

32-2130. Renewal of licenses; education requirements; broker licensee renewal as salesperson licensee

Amended by Ariz. Sess. Laws Ch. 52, (2024)

A. Except as provided in subsection K of this Section, A license may be renewed in a timely manner by filing an application for renewal in the manner prescribed by the commissioner, by paying the renewal fee specified in this chapter and by presenting evidence of attendance at a school certified by the commissioner during the preceding license period of twenty-four credit hours for salespersons and associate brokers and thirty credit hours for designated brokers or for associate brokers employed by a designated broker pursuant to section 32-2151.01, subsection G, or a lesser number of credit hours prescribed by the commissioner, of real estate oriented continuing education courses prescribed and approved by the commissioner. The total number of credit hours shall be accrued at a rate of twenty-four credit hours for salespersons and associate brokers and thirty credit hours for designated brokers or for associate brokers employed by a designated broker pursuant to section 32-2151.01, subsection G during each twenty-four-month period of licensure. The department shall maintain a current list of approved courses. The commissioner may waive all or a portion of the continuing education requirement for good cause shown. The commissioner shall determine by rule the content of the renewal credit hours. The renewal credit hours may include the commissioner's current topics, including short sales. For the purposes of this subsection, "short sales" means real estate transactions in which the sales price is insufficient to pay the loan encumbering the property in addition to the costs of sale and the seller is unable to pay the difference.

B. If an applicant is renewing a license within one year after it expired, the applicant may apply continuing education hours completed after the expiration toward the continuing education required for renewal.

C. Each renewal application shall contain, as applicable, the same information required in an original application pursuant to section 32-2123.

D. Cemetery brokers and salespersons and membership camping brokers and salespersons are exempt from the educational requirements of this section.

E. This section does not require a licensee to attend department produced or sponsored courses if approved courses are otherwise available.

F. Between the expiration date of the license and the date of renewal of the license, the rights of the licensee under the license expire. While the license is expired it is unlawful for a person to act or attempt or offer to act in a manner included in the definition of a real estate, cemetery or membership camping broker or salesperson. If the license of an employing broker expires under this sub-

section, the licenses of persons who are employed by the employing broker shall be severed from the employing broker on the license expiration date of the employing broker. These persons may be rehired on renewal of the employing broker's license. The department shall terminate a license that has been expired for more than one year.

G. Except as provided in section 32-4301, not more than one year after the license expiration date, the department shall renew a license without requiring the applicant to submit to an examination if the applicant held a license that was not canceled or suspended at the time of expiration. Except as provided in section 32-4301, the license period for a license renewed pursuant to this subsection commences the day after the expiration date of the expired license. Except as provided in section 32-2131, subsection A, paragraph 4 or 6, an applicant whose license has been terminated or revoked does not qualify for license renewal.

H. Any employee or immediate family member of any employee of this state who, pursuant to section 32-2110 or any other law, rule or requirement, is prohibited from using a license issued under this chapter shall have, on the request of the employee or family member, the license placed on inactive status, shall have the right to renew the license and shall not be required to pay further fees until the employee or family member is again eligible to use the license. Renewal fees for the license shall not be required for only as long as the employee or family member is prohibited from using the license.

I. The department shall not renew the license of a person who has been convicted of a felony offense and who is currently incarcerated for the conviction, paroled or under community supervision and under the supervision of a parole or community supervision officer or who is on probation as a result of the conviction. This subsection does not limit the commissioner's authority and discretion to deny the renewal for any other reason pursuant to this chapter.

J. A real estate broker licensee may renew as a real estate salesperson licensee without having to meet the requirements prescribed by section 32-2124, subsection B. If a person renews as a real estate salesperson pursuant to this subsection, the person shall pay the salesperson's renewal fee as prescribed in section 32-2132. If the person subsequently wants to obtain a real estate broker license, the person must meet the requirements of this chapter, including the requirements prescribed by section 32-2124, subsection C.

K. A licensee with an inactive license does not need to complete continuing education credit hours during the period that the license is inactive. If the licensee applies with the department to change the license status to active:

1. The commissioner may require the licensee to complete continuing education credit hours before activating the license.
2. In addition to the continuing education requirement described in paragraph 1 of this subsection, if the license has been inactive for more than fifteen years, the commissioner shall require that the applicant successfully pass an examination specific to the laws of this state relating to this chapter before activating the license.

L. One year before the fifteen-year period described in subsection K, paragraph 2 of this section expires, the department shall send a notice to a licensee with an inactive license. The notice shall be sent to the licensee's last known address of record maintained by the department and shall disclose the requirements of subsection K of this section.

32-2131. Reinstatement of license

A. The commissioner may reinstate a license that was issued under this article and that expired or

was canceled, terminated, suspended or revoked as follows:

1. For a license that expired pursuant to section 32-2130, subsection F, by renewal application pursuant to this article.

2. For a license canceled pursuant to section 32-2126, subsection A or section 32-2129, subsection B or any other lawful authority:

(a) If within the license period, by reapplication and payment of applicable fees.

(b) If after expiration of the license, by original or renewal application, as appropriate, pursuant to this article.

3. For a license terminated pursuant to section 32-2188, subsection I, by:

(a) Repayment in full to the real estate recovery fund.

(b) Original application pursuant to this article.

(c) Providing evidence that the judgment that caused the recovery fund payment has been fully satisfied.

4. For a license terminated pursuant to section 32-2130, subsection F, by original application pursuant to this article.

5. For a license suspended pursuant to section 32-2153, 32-2154 or 32-2157 or any other lawful authority:

(a) If suspended for failure on the part of the licensee to meet procedural or educational requirements for maintaining the license, and the requirements have subsequently been fully met, and the suspension has been vacated:

(i) If within the license period, by reapplication and payment of applicable fees.

(ii) If after expiration of the license, by original or renewal application, as appropriate, pursuant to this article.

(b) If suspended by order of the commissioner for a specified length of time, and the suspension period has ended:

(i) If within the license period, by reapplication and payment of applicable fees.

(ii) If after expiration of the license, by original or renewal application, as appropriate, pursuant to this article.

6. For a license revoked pursuant to section 32-2153 or any other lawful authority, by original application pursuant to this article.

7. For a license suspended or revoked by order of the commissioner and this order is subsequently vacated as to the licensee, by reapplication only. No fees may be assessed. The reapplication may be initiated by the department on behalf of the licensee.

B. Except for canceled licenses, reinstatement of a license pursuant to subsection A of this section shall not be made for any licensee who is the subject of a department investigation into alleged violations of this chapter or of a pending administrative proceeding pursuant to article 3 of this chapter.

C. This section shall not be interpreted to lessen or reduce the qualifications otherwise required of license applicants under this article or the department's authority to deny a person's application for license reinstatement who does not otherwise meet all of the requirements.

32-2132. Fees

Amended by Ariz. Sess. Laws Ch. 52, (2024)

A. Except as provided in subsection D of this section, the following fees shall be charged and shall not be refunded by the commissioner after issuance of a receipt for payment:

1. A broker's examination application fee of not more than $125.
2. A broker's examination fee of not more than $100.
3. A broker's license fee of not more than $250.
4. A broker's renewal fee of not more than $400.
5. A salesperson's examination application fee of not more than $75.
6. A salesperson's examination fee of not more than $50.
7. A salesperson's license fee of not more than $125.
8. A salesperson's renewal fee of not more than $200.
9. A branch office broker's license fee or renewal fee of not more than $200.
10. A fee for a change of name and address of licensee on records of the department of not more than $20.
11. A duplicate license fee of $5.
12. A fee for reinstatement of license within the license period of $5.
13. A fee for each certificate of correctness of copy of records or documents on file with the department of $1, plus the cost to the department for reproducing the records or documents.
14. A temporary broker's license fee of not more than $50.
15. A temporary cemetery salesperson's license fee of not more than $50.
16. A membership camping salesperson certificate of convenience fee of not more than $50.
17. Fees in an amount to be determined by the commissioner by rule for the following:
    (a) A certificate of approval or renewal to operate a school.
    (b) An instructor or other school official approval or renewal fee.
    (c) A continuing education live classroom course approval or renewal fee.
    (d) A prelicensure education live classroom course or prelicensure distance learning course approval or renewal fee. The prelicensure course fee imposed by this subdivision shall be the same and the renewal course fee imposed by this subdivision shall be the same regardless of the instructional format a person uses to complete a prelicensure education course or instructional segment or a renewal education course or instructional segment.
    (e) A continuing education distance learning course approval or renewal fee.

B. A corporation, partnership or limited liability company shall not be assessed a fee for the issuance of a broker's license.

C. The commissioner may contract for the processing of applications and the examination of applicants for licensure. The contract may provide for specific fees or a reasonable range for fees as determined by the commissioner for examination applications and examinations to be paid directly to the contractor by the applicant. These fees may not exceed the amounts prescribed in subsection A, paragraphs 1, 2, 5 and 6 of this section.

D. For good cause shown the commissioner may refund fees previously collected.

32-2133. Temporary broker's license

A. Notwithstanding any other law, the commissioner may issue a temporary license as a broker to a licensed or unlicensed person for the purpose of winding up the existing or pending business of a licensed broker in the following cases:

1. To the surviving spouse or next of kin or to the administrator or personal representative or the employee of the administrator or personal representative of a deceased licensed broker.
2. To the spouse, next of kin, employee, legal guardian or conservator of a licensed broker in a state of disability by sickness, injury or insanity.

B. Each temporary license is for a period of not over ninety days and shall not be extended for a longer period, except that a license issued to a personal representative or administrator or the employee of the personal representative or administrator pursuant to subsection A, paragraph 1 continues until the personal representative or administrator disposes of the deceased broker's business, but not to exceed a period of fifteen months.

C. No more than one temporary license may be issued to or with respect to the same individual within any one year period.

D. A temporary licensee has the same license powers and obligations as under a permanent license.

32-2134. Temporary cemetery salesperson's license

Notwithstanding any other provision of law to the contrary, the commissioner may issue without examination to any person who has applied and otherwise qualifies for a cemetery salesperson's license, a temporary cemetery salesperson's license good for a period not to exceed ninety days from the date of issuance. An applicant shall not be entitled to more than one temporary license without examination. An employing cemetery broker shall certify by affidavit to the commissioner that the temporary license applicant has been trained in applicable Arizona cemetery and contract law.

32-2134.01. Membership camping salesperson certificate of convenience

Notwithstanding any other licensing requirement under this chapter, the commissioner may issue a one time thirty day certificate of convenience without examination to any person who has applied and otherwise qualifies for a membership camping salesperson's license. An employing membership camping broker shall certify by affidavit to the commissioner that the salesperson applicant will be trained in applicable membership camping and contract laws before participation in any offer or sale..

32-2135. Real estate schools; courses of study; instructors; certification

Amended by Ariz. Sess. Laws Ch. 52, (2024)

A. Except as provided in section 32-4301, before offering a course of study towards completion of the education requirement for real estate licensure or renewal of licensure, a school shall obtain from the commissioner a certificate of approval or renewal to operate a school for a period of at least four years. A school shall also obtain a certificate of course approval for each course offered for credit that is not currently approved for another school. Each school is responsible for the content of any course it offers and for the professional administration and teaching of the course. Prelicensure education live classroom courses, prelicensure education distance learning course, continuing education live classroom courses, online courses and distance learning continuing education courses are subject to approval pursuant to this section.

B. Each approved school shall issue a certificate of real estate course attendance to each person who completes an approved prelicensure or continuing education course. An applicant for renewal of licensure as provided by section 32-2130 shall file evidence of the certificates issued by the school with the commissioner showing the number of credit hours and course of study required for renewal.

C. The commissioner may withdraw or deny certification or approval of real estate schools, educational courses or real estate instructors for any acts inconsistent with the requirements of this chapter, including:

1. Committing or failing to report a violation by an approved school or instructor of any provision of this chapter or rules adopted pursuant to this chapter.
2. Improperly certifying student attendance or performance.
3. Committing any act that is grounds for discipline under section 32-2153.
4. Teaching information or using course materials that have not been approved by the commissioner.
5. Failing to attend any continuing education course required by the commissioner.
6. Filing any false or misleading application, report or documentation with the department.
7. Teaching course content that is not current or that has substantially changed from the course as approved.

D. A real estate school, through any owner, director, administrator, instructor or other agent, shall not:

1. Offer a course of study for credit that is not approved by the department, except that the school may advertise a course as pending approval before its approval.
2. Promote or advertise the school using false or misleading statistics or testimonials or any other form of deceptive advertisement.

E. The commissioner may determine minimal content requirements for approving educational courses and appropriate professional qualifications for approving instructors to teach individual educational courses.

F. Except as provided in subsection G of this section, at least thirty days before holding a course of study for completion of the education requirements leading to licensure of real estate applicants or for license renewal requirements, an application for a certificate of course approval or renewal must be filed with the department. For a live classroom course, the application shall include a course outline with sufficient detail to clearly identify the scope and content of the course. The outline shall state how the course is intended to protect the public. A prelicensure education course outline that is submitted for approval shall be divided into estimated fifty-minute instructional segments. Course approval shall not be unreasonably withheld and shall not be issued later than thirty days after filing with the department for a live classroom course. A continuing education distance learning course approval shall not be issued later than ninety days after filing with the department. If the approvals under this subsection are not granted within the time frames prescribed by this subsection, the course shall be automatically approved on a provisional basis for one hundred eighty days, unless the department has otherwise notified the applicant of specific deficiencies or unfulfilled requirements for the course submission. A provisional approval may be withdrawn by the department on fifteen days' advance notice if the department's review of the course subsequently reveals course deficiencies or unfulfilled course requirements. If not withdrawn, the course approval shall remain approved for the entire course approval period. Course approval shall be for a period of at least four years if the contents of the course remain current and substantially

unchanged. The course may not be taught if the content ceases to be current or is substantially changed. The department may establish by rule additional appropriate requirements for approval of a distance learning course.

G. At least ninety days before holding a distance learning course of study for completion of the education requirements leading to licensure of real estate applicants, an application for a certificate of distance learning course approval must be filed with the department. A distance learning course outline that is submitted for approval shall be divided into estimated fifty-minute instructional segments. Distance learning course approval shall not be unreasonably withheld and shall be issued not later than ninety days after filing with the department. If the approvals under this subsection are not granted within the time frames prescribed by this subsection, the distance learning course shall be automatically approved on a provisional basis for one hundred eighty days, unless the department has otherwise notified the applicant of specific deficiencies or unfulfilled requirements for the distance learning course submission. A provisional approval may be withdrawn by the department on fifteen days' advance notice if the department's review of the distance learning course subsequently reveals course deficiencies or unfulfilled course requirements. If not withdrawn, the distance learning course approval shall remain approved for the entire distance learning course approval period. Distance learning course approval shall be for a period of at least four years if the contents of the distance learning course remain current and substantially unchanged. The distance learning course may not be taught if the content ceases to be current or is substantially changed. Approved distance learning courses must provide for student participation, feedback and remedial instruction. The department may establish by rule additional appropriate requirements for approval of a distance learning course.

H. For a currently approved course or distance learning course:

1. Unless granted an exemption by the commissioner, the school shall submit notice to the department at least fourteen days before holding the course to allow department employees to monitor the course. The notice is not otherwise subject to review and approval by the department.

2. With the permission of the school that received original approval for the course, another school that desires to offer the course is subject only to the fourteen-day notice requirement before holding the same course. No additional review and approval by the department is required.

I. The department shall approve for continuing education credit any course of study proposed by a real estate school if the course satisfies the commissioner's requirements and is held in this state.

J. The department may approve for continuing education credit any course of study proposed by a real estate school if the course satisfies the commissioner's requirements and is held outside this state. On the commissioner's request, the school shall either:

1. Provide the department with a video recording of the course.

2. Make arrangements that are approved by the department for monitoring the course.

K. An instructor shall file with the department an application for instructor approval or renewal. Instructor approval shall be for at least four years after the date of approval and is subject to amendment during the license period only if information material to the instructor's qualifications has changed. A person holding instructor approval to teach specific subject matter is not subject to additional or duplicate approval requirements during the original approval period, except that an additional instructor competency area may be added during the license period on submission by the instructor of evidence of competency in such additional competency area.

L. In the twenty-four months before application, each instructor original or renewal applicant, other than a panelist, guest speaker, attorney or out-of-state instructor, shall attend at least a three-hour professional seminar or workshop, approved by the department, emphasizing instruction methods, techniques and skills. At the discretion of the commissioner this requirement may be waived based on individual request review.
M. The course filing time frames prescribed in this section may be waived by the department for good cause shown.
N. Unless subject to a violation or suspected violation listed in subsection C of this section, the department's approval of a school, school official, instructor or course shall be processed in a time frame consistent with the time frames set forth in this section.
O. This section does not affect the department's ability to withdraw or deny certification or approval of real estate schools, education courses or real estate instructors for a violation of this chapter.

32-2136. Broker management clinics
Amended by Ariz. Sess. Laws Ch. 52, (2024)
A. The department shall determine the instructor qualifications for teaching broker management clinics and the course content of broker management clinics for persons required to attend these clinics pursuant to subsection C of this section.
B. A broker management clinic shall consist of three courses of three hours each. The course topics shall be broker statute and rule requirements, including instruction on department audits, and the legal obligations of designated brokers, broker policy development and employee supervision and broker responsibilities and related topics. A broker management clinic shall address recordkeeping requirements, trust fund accounts, advertising and promotions, employment agreements, contracts, fiduciary duties, material disclosures, department investigations and risk management. A broker management clinic may be designed to address property management activities, a specialty field of real estate or sales activities, or any combination described in this subsection. If engaging in property management activities, a broker must complete a broker management clinic that is designed to teach proficiency in property management.
C. An applicant for an original real estate broker's license shall attend a broker management clinic before activating the license. A broker shall attend a broker management clinic before becoming a designated broker, unless the broker has attended a broker management clinic during the preceding twenty-three months. All designated brokers and associate brokers employed by a designated broker pursuant to section 32-2151.01, subsection G, shall attend a broker management clinic once during each twenty-four months of licensure after their initial attendance.

32-2137. Cancellation of license
On request of a licensee, the department may cancel that person's license if both of the following are true:

1. The licensee is not presently under investigation by the department.
2. The department has not commenced any disciplinary proceeding against the licensee.

ARTICLE 3 - REGULATION

32-2151. Disposition of funds; trust money deposit requirements

Amended by Ariz. Sess. Laws Ch. 52, (2024)

A. Unless otherwise provided in writing by all parties to a transaction, any licensed real estate broker who does not immediately place all monies entrusted to the broker, in the broker's capacity as a real estate broker, in a neutral escrow depository in this state shall on receipt place all such monies in a trust fund account in a federally insured or guaranteed account in a depository located in this state. The commissioner may adopt such rules as are necessary to provide for records to be maintained and the manner in which such trust fund account deposits may be made.

B. The following minimum requirements apply to each broker's trust fund account:

1. The broker shall make deposits to trust fund accounts by deposit slips. Receipts or other documentation shall identify each transaction, the date and the amount of each deposit and the names of parties involved in the transaction represented by the deposit and monies shall be used only for the purpose for which the monies were deposited.

2. The broker shall retain a complete record of all monies received in connection with a real estate transaction electronically or in the main or branch office of the designated broker in this state or at an off-site storage location in this state if the broker provides prior written notification of the street address of the off-site storage location to the department. A broker's records shall be kept according to generally accepted accounting principles and shall include properly descriptive receipts and a disbursement journal and client ledger. The broker shall keep any computerized records in a manner allowing reconstruction in the event of destruction of electronic data.

3. On a monthly basis the broker must complete a three-way reconciliation between the trust fund account bank statements, client ledgers and trust fund account ledgers and provide an explanation for any variation.

C. A variation that is caused by any of the following acts or omissions is a violation of this chapter:

1. Failing to remove any interest that is earned on a trust fund account at least once every twelve months.

2. Allowing advance payment of monies belonging to others to be deposited in the broker's personal account or to be commingled with personal monies. For the purposes of this paragraph, it is not commingling if a broker deposits personal monies of not more than $5,000 to keep the account open or to avoid charges for an insufficient minimum balance.

3. Failing to identify monies as nonowner tenant monies in descriptive receipts.

4. Failing to maintain separate ledgers for each property.

5. Failing to regularly complete a three-way reconciliation as required by subsection B, paragraph 3 of this section.

6. Transferring monies between accounts that are owned by different persons unless each person consents in writing.

7. Failing to create checks and balances.

8. Failing to follow state or federal requirements.

D. An agreement to place monies entrusted to the broker in a depository that is located outside of this state is valid if all parties to the transaction agree in writing and either:

1. The monies are placed in a property management trust account established pursuant to section 32-2174 and:

(a) The account is federally insured or guaranteed.

(b) The property management agreement contains:

(i) Disclosure that the department's regulatory protections of the owner's monies may be significantly hampered.

(ii) Disclosure that the owner may not have access to or any control over the trust account, except to audit and review the status of the account.

(iii) An addendum that has the signed authorization by an appropriately empowered official of the depository in which the trust account is placed that the trust account and all related documentation will be open to examination by the department and the owner.

2. If the monies are not deposited in a property management trust account, the broker discloses to the parties to the transaction that potential risks may accrue as the result of depositing the monies in a depository outside this state.

E. This section does not allow a broker to commingle monies entrusted to the broker with the broker's own monies, unless the commissioner adopts rules that allow commingling.

32-2151.01. Broker requirements; record keeping requirements; definition

Amended by Ariz. Sess. Laws Ch. 52, (2024)

A. Each licensed employing broker shall keep records of all real estate, cemetery, timeshare or membership camping transactions handled by or through the broker and shall keep employment records, including copies of employment status, for all current and former employees. The records required by this section shall include copies of earnest money receipts, confirming that the earnest money has been handled in accordance with the transaction, closing statements showing all receipts, disbursements and adjustments, sales contracts and, if applicable, copies of employment agreements. The records shall be open at all reasonable times for inspection by the commissioner or the commissioner's representatives. The records of each transaction and employment records shall be kept by the broker for a period of at least five years after the date of the termination of the transaction or employment. The records shall be kept in the employing broker's principal office or licensed branch office in this state or at an off-site storage location in this state if the broker provides prior written notification of the street address of the off-site storage location to the department.

B. Except as provided by section 32-2174, subsection C, a broker shall not grant any person authority to withdraw monies from the broker's trust fund account unless that person is a licensee under that broker's license.

C. A broker shall specifically state in the real estate purchase contract, lease agreement or receipt for earnest money the type of earnest money received in any real estate transaction, whether it is cash, a check, a promissory note or any other item of value.

D. All licensees shall promptly place all cash, checks or other items of value received as payment in connection with a real estate transaction in the care of the designated broker.

E. The broker shall maintain each real estate purchase contract or lease agreement and the transaction folder in which it is kept in a chronological log or other systematic manner that is easily

accessible by the commissioner or the commissioner's representatives.
F. Sales transaction folders shall include:

1. Confirmation that the earnest monies or other monies handled by or through the broker were handled according to instructions given by or agreed to by the parties to the transaction.
2. A complete copy of the sales contract, any escrow account receipt, any closing or settlement statement and, if applicable, a copy of the escrow instructions, listing agreement, employment agreement and release of escrow monies.

G. The designated broker shall review each listing agreement, purchase or nonresidential lease agreement or similar instrument within ten business days after the date of execution by placing the broker's initials and the date of review on the instrument on the same page as the signatures of the parties. A designated broker may authorize in writing an associate broker who the designated broker employs to review and initial these instruments on the designated broker's behalf.
H. The broker shall retain all real estate purchase and nonresidential lease contracts and employment agreements, or copies of these documents, in the employing broker's principal office or licensed branch office or at an off-site storage location in this state if the broker provides prior written notification of the street address of the off-site storage location to the department.
I. The broker shall retain an original or a copy of any document evidencing a rejected offer to purchase real property as a matter of record for at least one year. In instances that result in binding contracts, the broker shall retain prior rejected offers for at least five years.
J. If real property in a development is sold or leased by a developer without the services of a listing or selling broker, the developer shall keep all records required by subsections A and C of this section.
K. For the purposes of this section, "business day" means a day that is not a Saturday, a Sunday or any other legal holiday in this state.

32-2151.02. Real estate employment agreements; definition

A. All real estate employment agreements shall:

1. Be written in clear and unambiguous language.
2. Fully set forth all material terms, including the terms of broker compensation.
3. Have a definite duration or expiration date, showing dates of inception and expiration.
4. Be signed by all parties to the agreement.

B. An employing broker shall not assign a real estate employment agreement to another broker without the express written consent of all parties to the agreement at the time of the assignment.
C. A licensee shall not procure, or attempt to procure, a real estate employment agreement from a party who is already subject to an existing exclusive real estate employment agreement unless the licensee has received written acknowledgment from the party that the execution of additional real estate employment agreements could expose the party to liability for substantial additional commissions. Nothing in this subsection shall be construed to abrogate any civil liability of a licensee arising out of this conduct.
D. A real estate employment agreement is not required for a licensee to represent a party in a transaction.
E. For the purposes of this section, "real estate employment agreement" means a written agreement by which a real estate broker is entitled to compensation for services rendered pursuant to section 44-101, paragraph 7.

32-2152. Action by broker or salesperson to collect compensation

A. An action for the collection of compensation earned may be maintained in the courts of the state by any broker or salesperson. To commence the action the complaint shall allege that the plaintiff was a qualified licensed broker or salesperson at the time the claim arose. Prior to hearing the action the court shall require the plaintiff to prove the alleged qualifications.

B. The commissioner shall not entertain complaints regarding purely civil disputes between licensees concerning the earning, splitting or nonpayment of compensation.

C. Nothing in this section shall be construed to permit the payment or receipt of compensation in violation of sections 32-2155 or 32-2163.

32-2153. Grounds for denial, suspension or revocation of licenses; letters of concern; provisional license; retention of jurisdiction by commissioner; definitions

Amended by Ariz. Sess. Laws Ch. 52, (2024)

A. The commissioner may suspend or revoke a license, deny the issuance of a license, issue a letter of concern to a licensee, issue a provisional license or deny the renewal or the right of renewal of a license issued under this chapter if it appears that the holder or applicant, within five years immediately preceding, in performing or attempting to perform any acts authorized by the license or by this chapter, has:

1. Pursued a course of misrepresentation or made false promises, either directly or through others, whether acting in the role of a licensee or a principal in a transaction.
2. Acted for more than one party in a transaction without the knowledge or written consent of all parties to the transaction.
3. Disregarded or violated any of the provisions of this chapter or any rules adopted by the commissioner.
4. Knowingly authorized, directed, connived at or aided in the publication, advertisement, distribution or circulation of any material false or misleading statement or representation concerning the licensee's business or any land, cemetery property, subdivision or membership campground or camping contract offered for sale in this or any other state.
5. Knowingly used the term "real estate broker", "cemetery broker" or "membership camping broker" without the legal right to do so.
6. Employed any unlicensed salesperson or unlicensed associate broker.
7. Accepted compensation as a licensee for performing any of the acts specified in this chapter from any person who is not authorized to provide compensation pursuant to section 32-2155.
8. Represented or attempted to represent a broker other than the broker to whom the salesperson or associate broker is licensed.
9. Failed, within a reasonable time, to account for or to remit any monies, to surrender to the rightful owner any documents or other valuable property that comes into the licensee's possession and that belongs to others, or to issue an appraisal report on real property or cemetery property in which the licensee has an interest, unless the nature and extent of the interest are fully disclosed in the report.
10. Paid or received any rebate, profit, compensation or commission in violation of this chapter.
11. Induced any party to a contract to break the contract for the purpose of substituting a

new contract with the same or a different principal, if the substitution is motivated by the personal gain of the licensee.

12. Placed a sign on any property offering it for sale or for rent without the written authority of the owner or the owner's authorized agent.

13. Solicited, either directly or indirectly, prospects for the sale, lease or use of real property, cemetery property or membership camping contracts through a promotion of a speculative nature involving a game of chance or risk or through conducting lotteries or contests that are not specifically authorized under this chapter.

14. Failed to pay to the commissioner the renewal fee as specified in this chapter promptly and before the time specified.

15. Failed to keep an escrow or trust account or other record of monies deposited with the licensee relating to a real estate transaction.

16. Commingled the monies or other property of the licensee's principal or client with the licensee's own or converted these monies or property to the licensee or another.

17. Failed or refused on demand to produce any document, contract, book, record, information, compilation or report that is in the licensee's possession or that the licensee is required by law to maintain concerning any real estate, cemetery or membership camping business, services, activities or transactions involving or conducted by the licensee for inspection by the commissioner or the commissioner's representative.

18. Failed to maintain a complete record of each transaction that comes within this chapter.

19. Violated the federal fair housing law, the Arizona civil rights law or any local ordinance of a similar nature.

20. Tendered to a buyer a wood infestation report in connection with the transfer of residential real property or an interest in residential real property knowing that wood infestation exists or that the wood infestation report was inaccurate or false as of the date of the tender or that an inspection was not done in conjunction with the preparation of the wood infestation report.

21. As a licensed broker, failed to exercise reasonable supervision over the activities of salespersons, associate brokers or others under the broker's employ or failed to exercise reasonable supervision and control over the activities for which a license is required of a corporation, limited liability company or partnership on behalf of which the broker acts as designated broker under section 32-2125.

22. Demonstrated negligence in performing any act for which a license is required.

23. Sold or leased a property to a buyer or lessee that was not the property represented to the buyer or lessee.

24. Violated any condition or term of a commissioner's order.

25. Signed the name of another person on any document or form without the express written consent of the person.

26. As a licensed school, failed to exercise reasonable supervision over the activities for which a license is required for an owner, director, administrator or instructor in the school's employ.

B. The commissioner may suspend or revoke a license, deny the issuance of a license, issue a letter of concern to a licensee, issue a provisional license or deny the renewal or the right of renewal of a license issued under this chapter if it appears that the holder or applicant has:

1. Procured or attempted to procure a license under this chapter for the holder or applicant

or another by fraud, misrepresentation or deceit or by filing an original or renewal application that is false or misleading.

2. Been convicted in a court of competent jurisdiction in this or any other state of a felony or of any crime of forgery, theft, extortion, conspiracy to defraud, a crime of moral turpitude or any other like offense.

3. Made any substantial misrepresentation.

4. Made any false promises of a character likely to influence, persuade or induce.

5. Been guilty of any conduct, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealings.

6. Engaged in the business of a real estate broker, cemetery broker or membership camping broker or real estate salesperson, cemetery salesperson or membership camping salesperson without holding a license as prescribed in this chapter.

7. Demonstrated incompetence to perform any duty or requirement of a licensee under or arising from this chapter. For the purposes of this paragraph, "incompetence" means a lack of basic knowledge or skill appropriate to the type of license the person holds or a failure to appreciate the probable consequences of the licensee's action or inaction.

8. Violated the terms of any criminal or administrative order, decree or sentence.

9. Violated any federal or state law, regulation or rule that relates to real estate or securities or that involves forgery, theft, extortion, fraud, substantial misrepresentation, dishonest dealings or violence against another person or failure to deal fairly with any party to a transaction that materially and adversely affected the transaction. This paragraph applies equally to violations of which the licensee was convicted in any lawful federal or state tribunal and to any admissions made in any settlement agreement by the licensee to violations.

10. Failed to respond in the course of an investigation or audit by providing documents or written statements.

C. A judgment based on a court's finding or stipulation of fraud by a licensee following a trial on the merits or a criminal conviction of a licensee that results in a payment from the real estate recovery fund is prima facie evidence of a violation and grounds for discipline under this section.

D. The commissioner may deny, suspend or revoke the issuance of a license on application by a corporation, a limited liability company or a partnership if it appears that an owner, officer, director, member, manager, partner, stockholder owning ten percent or more of the stock in the corporation or limited liability company or person exercising control of the entity is a current or former licensee whose license as a broker or a salesperson has been denied, suspended or revoked.

E. The lapsing or suspension of a license by operation of law or by order or decision of the commissioner or a court of law or the voluntary surrender of a license by a licensee does not deprive the commissioner of jurisdiction to do any of the following:

1. Proceed with any investigation of or action or disciplinary proceeding against the licensee.

2. Render a decision suspending or revoking the license or denying the renewal or right of renewal of the license.

3. Assess a civil penalty pursuant to section 32-2160.01.

F. For the purposes of this section:

1. "Letter of concern" means an advisory letter to notify a licensee that, while the conduct or evidence does not warrant disciplinary action, the commissioner believes that the licensee should modify or eliminate certain practices and that continuation of the activities may

result in further disciplinary action against the licensee.

2. "Provisional license" means a license that the department issues and that allows a licensee to practice subject to either a consent order as prescribed in section 32-2153.01 or the commissioner's terms, conditions and restrictions.

32-2153.01. Consent order; terms

In addition to any other authority granted to the commissioner in this chapter to issue orders, the commissioner may issue a consent order on the agreement of both parties to an appealable agency action or a contested case. The order shall include terms that the parties agree on and that the commissioner, in the commissioner's discretion, believes are appropriate.

32-2154. Cease and desist orders; hearing

A. If it appears to the commissioner that any person has engaged, is engaging or is preparing to engage in any act, practice or transaction that constitutes a violation of this chapter or any rule adopted or order issued by the commissioner, the commissioner may issue an order directing any person to cease and desist from engaging in the act, practice or transaction or doing any act in furtherance of the act, practice or transaction, to make restitution or to take appropriate affirmative action, within a reasonable period of time as prescribed by the commissioner, to correct the conditions resulting from the act, practice or transaction.

B. A person aggrieved by a cease and desist order issued by the commissioner pursuant to this section may request a hearing pursuant to title 41, chapter 6, article 10 and the commissioner may issue the order or orders as the commissioner deems necessary to protect the public interest. The commissioner may also bring an action in any court of competent jurisdiction against the person to enjoin the person from continuing in violation of this chapter. These proceedings shall be promptly instituted and determined.

32-2155. Restriction on employment or compensation of person as broker or salesperson

(Ariz. Sess. Laws Ch. 126, § 3 (2022))

A. A broker shall employ and pay only active licensees, and a licensee shall accept employment and compensation as a licensee only from either or both of the following:

1. The legally licensed broker to whom the licensee is licensed.

2. An employer other than the legally licensed broker as described in paragraph 1 of this subsection if the all of the following apply:

(a) The employer holds a license.

(b) The licensee is the employer's employee and receives a federal form W-2 wage and tax statement.

(c) The employer has the same employing broker as the licensee.

(d) The employer obtains written permission from the employing broker to pay the licensee.

B. If the licensee is licensed through a professional corporation or a professional limited liability company, the employing broker may pay and the licensee may receive compensation only through the licensed professional corporation of which the licensee is an officer and shareholder or the licensed professional limited liability company of which the licensee is a member or manager.

C. It is unlawful for a person, firm or corporation, whether an obligor, escrow holder or otherwise, to pay or deliver to anyone compensation for performing any of the acts specified by this chapter, as

a broker, who is not licensed at the time the service is rendered. An identification card or certificate of license issued by the state real estate department showing that the person, firm or corporation holds a license for the year in which the payment is made or earned is sufficient proof to relieve from any penalty for a violation of this section the obligor, escrow holder or other person who relied in good faith on the card or certificate.

D. A real estate broker or real estate salesperson shall not collect compensation for rendering services in negotiating loans secured by real property unless all of the following apply:

1. The broker or salesperson is licensed pursuant to title 6, chapter 9 or is an employee, officer or partner of a corporation or partnership licensed pursuant to title 6, chapter 9.
2. The broker or salesperson has disclosed to the person from whom the compensation is collected that the broker or salesperson is receiving compensation both for real estate brokerage, when applicable, and for mortgage broker services.
3. The compensation does not violate any other state or federal law.

E. Notwithstanding subsection A or B of this section, brokers licensed under this chapter may employ residential leasing agents or managers of residential rental properties, as prescribed by section 32-2121, subsection A, paragraph 6. The exemption of residential leasing agents or managers of residential rental property under article 2 of this chapter does not exempt the designated broker from the responsibility to exercise reasonable supervision over these leasing agents or managers.

32-2156. Real estate sales and leases; disclosure

A. No criminal, civil or administrative action may be brought against a transferor or lessor of real property or a licensee for failing to disclose that the property being transferred or leased is or has been:

1. The site of a natural death, suicide or homicide or any other crime classified as a felony
2. Owned or occupied by a person exposed to the human immunodeficiency virus or diagnosed as having the acquired immune deficiency syndrome or any other disease that is not known to be transmitted through common occupancy of real estate.
3. Located in the vicinity of a sex offender.

B. Failing to disclose any fact or suspicion as set forth in subsection A shall not be grounds for termination or rescission of any transaction in which real property has been or will be transferred or leased.

32-2157 Written notice of changes; summary suspensions; hearing; voluntary surrender of license

A. Except as provided in subsections B and C of this section, before suspending, revoking or denying the renewal or the right of renewal of any license, or issuing any order prohibiting the sale or lease of property or the sale of cemetery lots or membership camping contracts as provided by this chapter, the commissioner shall present the licensee, owner, including the current owner of the property, operator, agent or developer with written notice of the charges filed against the person, or reasons for prohibiting the sale or lease, and shall afford the person an opportunity for a hearing pursuant to title 41, chapter 6, article 10. Within twenty days after service of a notice of hearing, the respondent shall appear by filing a written answer to the complaint. A licensee against whom the department has commenced a disciplinary proceeding under this chapter may voluntarily surrender to the department the license if the surrender of the license occurs not less than ten days prior to a hearing under this section. After the acceptance of a voluntary surrender of a license un-

der this section the department shall not thereafter issue a license under this chapter to the licensee.
B. If the commissioner finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in the commissioner's order, summary suspension of a license or sales may be ordered. Grounds for issuance of an order of summary suspension include the violation of any of the provisions of section 32-2153 and the termination of a license pursuant to section 32-2188, subsection I. A licensee, owner, including the current owner of the property, operator, agent or developer may request a hearing pursuant to title 41, chapter 6, article 10. A summary suspension shall be deemed to be final if a request for a hearing is not received within thirty days as provided by section 41-1092.03.
C. The department may issue a summary suspension when the department receives notice that a person licensed pursuant to this chapter has been convicted of a felony offense and is currently incarcerated for the conviction, paroled or under the supervision of a parole or community supervision officer or is on probation as a result of the conviction. This subsection does not limit the commissioner's authority to seek revocation of a license or other disciplinary action pursuant to this chapter.

32-2158. Hearing; witnesses; deposition; service of process
A. Any party to a hearing shall have the right to the attendance of witnesses in the party's behalf, in person or by deposition, upon making a request therefor to the commissioner and designating the person or persons requested to be subpoenaed. For the purpose of investigation or hearing the commissioner shall have the powers vested in public officers by section 12-2212.
B. Process issued by the commissioner may be served by any person authorized to serve process of courts of record or by any person designated for that purpose by the commissioner. The person serving process shall receive compensation allowed by the commissioner, not to exceed the fees prescribed by law for similar service. Any witness who appears by order of the commissioner shall receive the same fees and mileage allowed by law to a witness in civil cases, which shall be paid by the party at whose request the witness is subpoenaed. Fees for serving process and of witnesses subpoenaed by the commissioner not upon the request of any other person shall be paid as other expenses of the department are paid.

32-2159. Judicial review; costs; transcript
A. Except as provided in section 41-1092.08, subsection H, a final decision of the commissioner may be appealed to the superior court in Maricopa county pursuant to title 12, chapter 7, article 6.
B. If the superior court declares an appealing party indigent, on appeal the department shall pay the costs of the reporter's transcript of proceedings and shall produce a certified copy of all documents and evidence in the administrative record at no charge.

32-2160. Filing of complaint by commissioner; prosecution
A. The commissioner may file a complaint for a violation of this chapter before a court of competent jurisdiction and may in person or by his deputies, assistants or counsel assist in the prosecution of the complaint. The county attorney of any county in which a violation occurs shall, upon the written request of the commissioner or the attorney general, prosecute the violation.
B. In addition to all other remedies, when it appears to the commissioner either upon complaint or otherwise that any person, firm, partnership, corporation, association or other organization, or a combination of any of them, has engaged or is engaging in any act, practice or transaction

which constitutes a violation of this chapter or of any rule or order of the commissioner, the commissioner may, either through the attorney general or through the county attorney of any county in which the act, practice or transaction is alleged to have been committed, apply to the superior court of that county for an injunction restraining such person, firm, partnership, corporation, association or other organization from engaging in such act, practice or transaction, or doing any act in furtherance thereof, and, upon a proper showing, a temporary restraining order, a preliminary injunction or a permanent injunction shall be granted without bond. Process in such action may be served upon the defendant in any county of this state where such defendant transacts business or is found or on the statutory agent in the case of a corporation.

C. Nothing in subsection B shall give the department jurisdiction over any landlord and tenant disputes or federal or state fair housing violations or authorize the commissioner to seek sanctions under this chapter or any rule or order of the commissioner relating to these matters.

32-2160.01. Civil penalties

A. Any licensee who is subject to the jurisdiction of the department and who has violated any provision of this chapter or any rule or order adopted or issued by the commissioner, who has deviated substantially from the provisions of a public report or who has engaged in any unlawful practices defined in section 44-1522 with respect to the sale or lease of either subdivided lands or unsubdivided lands may be assessed a civil penalty by the commissioner, after a hearing, in an amount not to exceed one thousand dollars for each infraction.

B. Actions to recover penalties assessed pursuant to this chapter shall be brought by the attorney general in the name of the state in the superior court in the county in which the violation occurred or in a county in which the commissioner maintains an office. When the commissioner has revoked a license or withdrawn certification or approval of a school, educational course or real estate instructor and assessed civil penalties that remain unpaid, if judicial review has not been sought under title 12, chapter 7, article 6, a certified copy of any such commissioner's order requiring the payment of civil penalties may be filed in the office of the clerk of the superior court. The clerk shall treat the commissioner's order in the same manner as a judgment of the superior court. A commissioner's order so filed has the same effect as a judgment of the superior court and may be recorded, enforced or satisfied in like manner. No filing fee is required under this section.

32-2161. False statements or publications concerning land, subdivision or membership camping contract for sale or lease; classification; definition

A. Every person who knowingly authorizes or directs any publication or any false statement or representation concerning any land, subdivision or membership camping contract offered for sale or lease, and every person who, with knowledge that any advertisement, pamphlet, prospectus, or letter concerning the land, subdivision or membership camping contract contains any written statement that is false or fraudulent, issues, circulates, publishes or distributes it or causes it to be issued, circulated, published or distributed, or who in any respect knowingly violates or fails to comply with any order, permit, decision, demand or requirement of the commissioner under the provisions of this chapter, is guilty of a class 6 felony and, if a licensee, shall be tried before the commissioner for suspension or revocation of his license.

B. For purposes of this section, "knowingly" or "with knowledge" includes, but is not limited to, engaging in any conduct prohibited in subsection A if such person knew or should have known of the falsity of any statement or representation.

32-2162. Sale of cemetery property for speculation unlawful

It is unlawful for any person to sell or offer for sale cemetery property under any promise that the cemetery property sold or offered for sale may be resold at a profit. The conveyance of cemetery property pursuant to a sale in violation of this section is void.

32-2163. Unlawful acts; out-of-state broker; cooperation agreement

Amended by Ariz. Sess. Laws Ch. 52, (2024)

A. It is unlawful for any licensed broker in this state to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter if the person is not also a licensed broker in this state, or a salesperson licensed under the broker employing or compensating the salesperson, except that a licensed broker in this state may pay compensation to and receive compensation from a broker who is lawfully operating in another state.

B. Notwithstanding that pursuant to subsection A of this section a licensed broker in this state may pay to and receive compensation from an out-of-state broker, this authority does not allow an out-of-state broker to conduct activity in this state that would otherwise require a broker's license issued by the department.

C. A licensed broker in this state may cooperate with an out-of-state broker who would otherwise require licensure in this state if:

1. The licensed broker and the out-of-state broker enter into a written cooperation agreement before the out-of-state broker conducts any activity otherwise requiring a broker's license pursuant to this chapter. The cooperation agreement shall include the following:
   (a) A list of the real estate activities to be conducted by the out-of-state broker.
   (b) A statement that the out-of-state broker agrees to fully comply with the laws of this state and submit to the regulatory jurisdiction of the department for activities subject to real estate broker licensure pursuant to this chapter.
   (c) A statement that the licensed broker in this state understands and accepts responsibility for the acts of the out-of-state broker.
2. All negotiations in this state or with people who own property in this state are conducted through the licensed broker in this state.
3. The licensed broker in this state assumes all responsibility for the acts of the out-of-state broker.
4. All principal funds handled by either the licensed broker in this state or the out-of-state broker are subject to the deposit and handling requirements of section 32-2151.

D. The offering of real estate brokerage services specified by section 32-2101, paragraph 51 for compensation or any other thing of value pertaining to real property located in this state through an internet website constitutes activity that requires a broker's license issued by the department.

E. This section does not allow an out-of-state broker who is not licensed in this state to list, market or advertise in this state real property located in this state for sale, lease or exchange.

F. Signs shall not be placed on real property in this state by an out-of-state broker. An out-of-state broker shall not use a cooperation agreement as authority to sell, lease, rent, exchange or attempt to sell, lease, rent or exchange real property to a resident of this state.

32-2164. Unlawful subdivision lot sales

It is unlawful for a licensed real estate broker or salesperson to assist a subdivider or agent of such

subdivider in the offer, sale or lease of a subdivision lot or parcel in violation of any provision of this chapter or any rule adopted or order issued by the commissioner if the licensee knew or should have known of the violation.

32-2165. Unlicensed activities; violation; classification

A. A person who acts as a broker or salesperson within the meaning of this chapter, or who advertises in a manner that indicates that the person is licensed as a broker or salesperson, without being licensed as prescribed by this chapter is guilty of a class 6 felony.

B. A person who performs acts that require a license under this chapter, other than a broker's or salesperson's license, without being licensed as prescribed by this chapter is guilty of a class 5 felony.

C. The penalties prescribed by this section do not apply to:

1. A broker or salesperson within a year of the expiration of the broker's or salesperson's license, if the failure to timely renew the license was due to unintentional neglect by the licensee or administrative untimeliness by the department.

2. The activities of a licensee, while acting in a capacity for which the person's license was issued, that otherwise violate any provision of this chapter.

3. Any person who, on discovering that a license is required to carry on the person's present or planned activities, and before the issuance of a cease and desist order pursuant to section 32-2154, notifies the department of the person's intent to immediately comply with this chapter, applies for the required license and ceases the prohibited activities pending issuance of a license. Nothing in this paragraph shall be construed to lessen or reduce the qualifications otherwise required of license applicants under this chapter or to diminish the authority of the department to deny a license to a person who does not meet all of the requirements for licensure.

32-2166. Activities while incarcerated; violation; classification

A. While incarcerated a person who is licensed pursuant to this chapter shall not perform acts that require a license under this chapter.

B. A person who violates this section is guilty of a class 6 felony.

ARTICLE 3.1 - PROPERTY MANAGEMENT

32-2171. Definitions

In this article, unless the context otherwise requires:

1. "Property management firm" means any corporation, partnership or limited liability company licensed pursuant to section 32-2125, subsection A or a designated broker that by written agreement, manages rental property or properties for compensation.
2. "Rental agreement" means a lease or leasing agreement.

32-2172. Scope of article

This article supersedes all provisions of law and rules that relate to property management.

32-2173. Property management agreements; contents, termination

A. A property management firm shall write property management agreements in clear, unambiguous language, and the property management agreements:

1. Shall:

(a) State all material terms and conditions of the property management firm's services, obligations, duties and responsibilities to the property owner.

(b) Be signed by the property owner or his agent and the property management firm's designated broker or the broker's authorized real estate licensee.

(c) Specify a beginning and an ending date.

(d) Contain cancellation provisions that are agreeable to both parties.

(e) Provide for the manner of disposition of all monies collected by the property management firm, including any tenant deposits.

(f) Specify the type and frequency of status reports to the owner.

(g) State the amount and purpose of monies the property management firm holds as an operating reserve for emergency and other purposes.

(h) Provide for the disposition and allocation of interest earned on trust account monies.

(i) State the terms and conditions of compensation the property owner pays for services pursuant to the property management agreement.

(j) Not be assigned to another licensee or licensed entity without the express written consent of the property owner.

2. May:

(a) Contain an automatic renewal provision, if the property management firm sends the owner a reminder notice at least thirty days before the renewal date. The notice does not negate any other cancellation term otherwise agreed to.

(b) Provide for reasonable liquidated damages or cancellation fees for early termination of the agreement.

(c) Allow the property management firm's broker to authorize a licensed or unlicensed person in the direct employment of the broker, pursuant to section 32-2174,

subsection C, to transfer monies from or to be a signatory on a property management trust account to which the property management firm deposits the owner's monies.

(d) Require more than one signature on checks written from a property management account.

(e) Contain any other provisions that are agreed to between the property management firm and the owner and that are not in conflict with the requirements of this chapter.

B. Immediately on termination of a property management agreement, the property management firm shall provide the owner with:

1. All originals or other copies of all rental agreements or related documents in the property management firm's possession for current and previous tenants. These documents shall include any applications, property inventories, leases, pet permits, default notices, lease amendments or addenda in the property management firm's possession. The broker is not required to keep copies of residential rental lease agreements or related rental lease documents after termination of the property management agreement.

2. All building plans, environmental studies, conditions, covenants and restrictions, inspection reports, contracts, keys, warranties, personal property or other documents in the possession of the property management firm.

C. On termination of the property management agreement the property management firm shall provide the owner with a final accounting of the property's financial status that includes at a minimum:

1. Within five days, a list of all tenant security obligations.

2. Within thirty-five days, reimbursement for all monies remaining in the property accounts maintained by the property management firm, except for monies needed for unpaid obligations incurred during the term of the property management agreement.

3. Within seventy-five days, a final accounts receivable and payable list.

4. Within seventy-five days, a final bank account reconciliation.

D. If there is an on-site management office and any of the records or documents described in subsection B of this section are located on site, the property management firm may leave the items there for the benefit of the owner on termination of the property management agreement. The property management firm shall inform the owner in writing immediately as to the location of these records.

32-2174. Property management accounts

Amended by Ariz. Sess. Laws Ch. 52, (2024)

A. All property management accounts shall be designated as trust accounts on the broker's records.

B. A broker's trust account is required for all of the owner's monies, except if the owner directs the broker to deposit the monies directly into the owner's account. The broker shall not have access to the owner's account. Trust accounts may be interest bearing.

C. The designated broker for a property management firm may authorize either a licensee or an unlicensed natural person in the direct employ of the broker to transfer monies or to be a signatory on the property management firm's trust accounts. If the person who is designated to sign on behalf of the designated property management broker is an unlicensed person, that person shall be

a bona fide officer, member, principal or employee of the property management firm. The broker may require dual signatures on checks and may use a facsimile signature according to the broker's business policies and procedures. The designation of a licensed or unlicensed person to transfer monies or to be a signatory on trust accounts does not lessen the broker's responsibility or liability for any monies handled.

D. Within three banking days after receiving monies that are not subject to dispute or contingency, the property management firm shall deposit the monies in either the owner's direct account or the property management firm's trust account for the benefit of the owner. A property management firm may remit an owner's monies under its control to or for the owner by any lawful means available.

E. Each rental agreement executed by a property manager shall include a provision that clearly states the disposition of any tenant deposits.

32-2175. Property management records; requirements; audits

A. Property management firms shall keep a residential rental agreement, including any lease amendments and addenda, and related residential rental agreement documents for one year after the expiration of the rental agreement or until the rental agreement and related documents are given to the owner at the termination of any property management agreement. For the purposes of this subsection, related documents may include copies of any of the following:

1. Rental applications with tenant-identifying information.
2. Move-in forms.
3. Default notices.

B. Property management firms shall keep records of all finder fees that are paid to tenants for three years after the payment is made or until the records are given to the owner at the termination of the property management agreement.

C. Property management firms shall keep all financial records pertaining to clients for at least three years from the date each document was executed, including bank statements, canceled checks or bank generated check images, deposit slips, bank receipts, receipts and disbursement journals, owner statements, client ledgers and applicable bills, invoices and statements.

D. Only the designated broker or the broker's authorized real estate licensee, on behalf of the broker, may sign nonresidential rental agreements. The broker shall execute in writing and shall file any delegation of authority in the broker's employee file. Fully executed residential lease agreements are not required to be reviewed and initialed.

E. The property management firms shall consecutively number or file all signed property management agreements in compliance with a system that is orderly, easily accessible by the commissioner or the commissioner's representative and consistent with generally accepted professional standards of the industry for that type of real estate.

F. Property management firms shall maintain each nonresidential real estate lease agreement and the transaction folder in which it is kept in a chronological log or other systematic manner that is easily accessible by the commissioner or the commissioner's representatives. For nonresidential lease transactions, transaction folders shall contain:

1. Confirmation that the deposits or other monies that were handled by or through the broker were handled according to instructions given by or agreed on by the parties to the transaction.
2. A complete copy of the nonresidential lease or rental agreement.
3. If applicable, a copy of the listing agreement.

G. Property management firms shall number on-site residential rental transaction folders according to dwelling unit number or other systematic manner that is easily accessible by the commissioner or the commissioner's representative. A broker is not required to maintain duplicate residential rental transaction folders.
H. All records required under this section shall be kept at the broker's main office or branch office, electronically or at an off-site storage location in this state if the broker provides to the department prior written notification and a street address of the off-site storage location. Trust account records shall be kept pursuant to section 32-2151. For the purposes of this subsection, "off-site storage location" includes a multifamily leasing office.
I. On request by the commissioner or the commissioner's representatives for routine audit purposes the broker shall make available within a reasonable amount of time all records relative to property management accounts, including lease agreements, lease related documents and trust account records. The department is limited to auditing those areas that are related to the business activities of a broker and that have a material bearing on the accuracy of the audit. This subsection does not limit the immediacy or scope of an audit if a violation of real estate statutes or rules is suspected.

32-2176. Payment of finder fees to apartment tenants; limits; prohibited activities; civil penalty; definitions

A. Notwithstanding sections 32-2155, 32-2163 and 32-2165 or any other provision of this chapter, a property management firm or a property owner may:

1. Pay a finder fee to an unlicensed person who is a tenant in an apartment complex managed by the firm or owned by the owner.
2. Authorize a residential leasing agent or manager to deliver a finder fee to an unlicensed person who is a tenant in an apartment complex managed by the residential leasing agent or manager. A residential leasing agent or manager may not receive a finder fee. This prohibition does not affect the ability of a residential leasing agent or manager to receive a bonus pursuant to section 32-2121, subsection A, paragraph 6.

B. A finder fee paid pursuant to this section shall be a credit toward or reduction in the tenant's monthly rent. A tenant may receive multiple finder fees.
C. A tenant shall limit the tenant's activities pursuant to this section to referring prospective lessees to the owner or the owner's agent and shall not do any of the following:

1. Show a residential dwelling unit to a prospective lessee.
2. Discuss terms or conditions of leasing a dwelling unit with a prospective lessee.
3. Participate in the negotiation of the leasing of a dwelling unit.

D. This section does not allow an unlicensed person to advertise or otherwise promote the person's services in procuring or assisting to procure prospective lessors or tenants of apartment units.
E. For a licensee who pays a finder fee in violation of this section, for each violation the department may suspend or revoke the licensee's license or impose a civil penalty pursuant to section 32-2153.
F. For the purposes of this section:

1. "Finder fee" means a fee paid to a person for introducing or arranging an introduction between the parties to a transaction involving the rental of an apartment unit.
2. "Property owner" means a person who is exempt from the licensing requirements of this chapter pursuant to section 32-2121, subsection A, paragraph 1.
3. "Residential leasing agent or manager" has the same meaning prescribed in section 32-2121, subsection A, paragraph 6.

ARTICLE 4 - SALE OF SUBDIVIDED LANDS

32-2181; Notice to commissioner of intention to subdivide lands; unlawful acting in concert; exceptions; deed restrictions; definition

A. Before offering subdivided lands for sale or lease, the subdivider shall notify the commissioner in writing of the subdivider's intention. The notice shall contain:

1. The name and address of the owner. If the holder of any ownership interest in the land is other than an individual, such as a corporation, partnership or trust, a statement naming the type of legal entity and listing the interest and the extent of any interest of each principal in the entity. For the purposes of this section, "principal" means any person or entity having a ten per cent or more financial interest or, if the legal entity is a trust, each beneficiary of the trust holding a ten per cent or more beneficial interest.
2. The name and address of the subdivider.
3. The legal description and area of the land.
4. A true statement of the condition of the title to the land, including all encumbrances on the land, and a statement of the provisions agreed to by the holder of any blanket encumbrance enabling a purchaser to acquire title to a lot or parcel free of the lien of the blanket encumbrance on completion of all payments and performance of all of the terms and provisions required to be made or performed by the purchaser under the real estate sales contract by which the purchaser has acquired the lot or parcel. The subdivider shall file copies of documents acceptable to the department containing these provisions with the commissioner before the sale of any subdivision lot or parcel subject to a blanket encumbrance.
5. The terms and conditions on which it is intended to dispose of the land, together with copies of any real estate sales contract, conveyance, lease, assignment or other instrument intended to be used, and any other information the owner or the owner's agent or subdivider desires to present.
6. A map of the subdivision that has been filed in the office of the county recorder in the county in which the subdivision is located.
7. A brief but comprehensive statement describing the land on and the locality in which the subdivision is located.
8. A statement of the provisions that have been made for permanent access and provisions, if any, for health department approved sewage and solid waste collection and disposal and public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities.
9. A statement as to the location of the nearest public common and high schools available for the attendance of school age pupils residing on the subdivision property.
10. A statement of the use or uses for which the proposed subdivision will be offered.
11. A statement of the provisions, if any, limiting the use or occupancy of the parcels in the subdivision, together with copies of any restrictive covenants affecting all or part of the subdivision.
12. The name and business address of the principal broker selling or leasing, within this

state, lots or parcels in the subdivision.

13. A true statement of the approximate amount of indebtedness that is a lien on the subdivision or any part of the subdivision and that was incurred to pay for the construction of any on-site or off-site improvement, or any community or recreational facility.

14. A true statement or reasonable estimate, if applicable, of the amount of any indebtedness that has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area or assessment district, within the boundaries of which the subdivision, or any part of the subdivision, is located, and that is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to the subdivision, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax upon the subdivision or any part of the subdivision.

15. A true statement as to the approximate amount of annual taxes, special assessments or fees to be paid by the buyer for the proposed annual maintenance of common facilities in the subdivision.

16. A statement of the provisions for easements for permanent access for irrigation water where applicable.

17. A true statement of assurances for the completion of off-site improvements, such as roads, utilities, community or recreational facilities and other improvements to be included in the offering or represented as being in the offering, and approval of the offering by the political subdivision with authority. This statement shall include a trust agreement or any other evidence of assurances for delivery of the improvements and a statement of the provisions, if any, for the continued maintenance of the improvements.

18. A true statement of the nature of any improvements to be installed by the subdivider, the estimated schedule for completion and the estimated costs related to the improvements that will be borne by purchasers of lots in the subdivision.

19. A true statement of the availability of sewage disposal facilities and other public utilities, including water, electricity, gas and telephone facilities in the subdivision, the estimated schedule for their installation, and the estimated costs related to the facilities and utilities that will be borne by purchasers of lots in the subdivision.

20. A true statement as to whether all or any portion of the subdivision is located in an open range or area in which livestock may roam at large under the laws of this state and what provisions, if any, have been made for the fencing of the subdivision to preclude livestock from roaming within the subdivided lands.

21. If the subdivider is a subsidiary corporation, a true statement identifying the parent corporation and any of the following in which the parent or any of its subsidiaries is or has been involved within the past five years:

(a) Any subdivision in this state.

(b) Any subdivision, wherever located, for which registration is required pursuant to the federal interstate land sales full disclosure act.

(c) Any subdivision, wherever located, for which registration would have been required pursuant to the federal interstate land sales full disclosure act but for the exemption for subdivisions whose lots are all twenty acres or more in size.

22. A true statement identifying all other subdivisions, designated in paragraph 21 of this subsection, in which any of the following is or, within the last five years, has been directly or indirectly involved:

(a) The holder of any ownership interest in the land.

(b) The subdivider.

(c) Any principal or officer in the holder or subdivider.

23. A true statement as to whether all or any portion of the subdivision is located in territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, in territory in the vicinity of a public airport as defined in section 28-8486, on or after July 1, 2001, in a high noise or accident potential zone as defined in section 28-8461 or on or after July 1 of the year in which the subdivision becomes located in a high noise or accident potential zone. The statement required pursuant to this paragraph does not require the amendment or refiling of any notice filed before July 1, 2001 or before July 1 of the year in which the subdivision becomes located in a high noise or accident potential zone.

24. If the subdivision is a conversion from multifamily rental to condominiums as defined in section 33-1202, a true statement as to the following:

(a) That the property is a conversion from multifamily rental to condominiums.

(b) The date original construction was completed.

25. Other information and documents and certifications as the commissioner may reasonably require provided that the subdivider shall not be required to disclose any critical infrastructure information as defined in section 41-1801 or any information contained in a report issued pursuant to section 41-4273.

B. The commissioner, on application, may grant a subdivider of lots or parcels within a subdivision for which a public report was previously issued by the commissioner an exemption from all or part of the notification requirements of subsection A of this section. The subdivider shall file a statement with the commissioner indicating the change of ownership in the lots or parcels together with any material changes occurring subsequent to the original approval of the subdivision within which the lots or parcels are located. The statement shall further refer to the original approval by the commissioner.

C. If the subdivision is within an active management area, as defined in section 45-402, the subdivider shall accompany the notice with a certificate of assured water supply issued by the director of water resources along with proof that all applicable fees have been paid pursuant to sections 48-3772 and 48-3774.01, unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576. If the subdivider has submitted a certificate of assured water supply to a city, town or county prior to approval of the plat by the city, town or county and this has been noted on the face of the plat, the submission constitutes compliance with this subsection if the subdivider provides proof to the commissioner that all applicable fees have been paid pursuant to sections 48-3772 and 48-3774.01.

D. It is unlawful for a person or group of persons acting in concert to attempt to avoid this article by acting in concert to divide a parcel of land or sell subdivision lots by using a series of owners or conveyances or by any other method that ultimately results in the division of the lands into a subdivision or the sale of subdivided land. The plan or offering is subject to this article. Unlawful acting in concert pursuant to this subsection with respect to the sale or lease of subdivision lots requires proof that the real estate licensee or other licensed professional knew or with the exercise of reasonable diligence should have known that property which the licensee listed or for which the licensee acted in any capacity as agent was subdivided land subject to this article. A familial rela-

tionship alone is not sufficient to constitute unlawful acting in concert.

E. A creation of six or more lots, parcels or fractional interests in improved or unimproved land, lots or parcels of any size is subject to this article except when:

1. Each of the lots, parcels or fractional interests represents, on a partition basis, thirty-six acres or more in area of land located in this state, including to the centerline of dedicated roads or easements, if any, contiguous to the land in which the interests are held.

2. The lots, parcels or fractional interests are the result of a foreclosure sale, the exercise by a trustee under a deed of trust of a power of sale or the grant of a deed in lieu of foreclosure. This paragraph does not allow circumvention of the requirements of this article.

3. The lots, parcels or fractional interests are created by a valid order or decree of a court pursuant to and through compliance with title 12, chapter 8, article 7 or by operation of law. This paragraph does not allow circumvention of the requirements of this article.

4. The lots, parcels or fractional interests consist of interests in any oil, gas or mineral lease, permit, claim or right therein and such interests are regulated as securities by the United States or by this state.

5. The lots, parcels or fractional interests are registered as securities under the laws of the United States or the laws of this state or are exempt transactions under section 44-1844, 44-1845 or 44-1846.

6. The commissioner by special order exempts offerings or dispositions of any lots, parcels or fractional interests from compliance with this article on written petition and on a showing satisfactory to the commissioner that compliance is not essential to the public interest or for the protection of buyers.

7. A sale or lease of a lot, parcel or fractional interest occurs ten or more years after the sale or lease of another lot, parcel or fractional interest and the other lot, parcel or fractional interest is not subject to this article and is treated as an independent parcel unless, upon investigation by the commissioner, there is evidence of intent to subdivide.

F. In areas outside of active management areas established pursuant to title 45, chapter 2, article 2:

1. If the subdivision is located in a county that has adopted the provision authorized by section 11-823, subsection A, or in a city or town that has enacted an ordinance pursuant to section 9-463.01, subsection O, the subdivider shall accompany the notice with a report issued by the director of water resources pursuant to section 45-108 stating that the subdivision has an adequate water supply, unless one of the following applies:

(a) The subdivider submitted the report to a city, town or county before approval of the plat by the city, town or county and this has been noted on the face of the plat.

(b) The subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108.

(c) The plat was approved pursuant to an exemption authorized by section 9-463.01, subsection K, pursuant to an exemption authorized by section 11-823, subsection B, paragraph 1, pursuant to an exemption granted by the director of water resources under section 45-108.02 and the exemption has not expired or pursuant to an exemption granted by the director under section 45-108.03. If the plat was approved pursuant to an authorized exemption, the state real estate commissioner shall require that all promotional material and contracts for the sale of lots in the subdivision adequately display the following:

(i) The director of water resources' report or the developer's brief summary of the report as approved by the commissioner on the proposed water supply for the subdivision.

(ii) A statement describing the exemption under which the subdivision was approved, including the specific conditions of the exemption that were met. If the plat was approved by the legislative body of a city or town pursuant to an exemption authorized by section 9-463.01, subsection K or by the board of supervisors of a county pursuant to an exemption authorized by section 11-823, subsection B, paragraph 1, the subdivider shall record the document required by section 33-406.

(d) The subdivision received final plat approval from the city, town or county before the requirement for an adequate water supply became effective in the city, town or county, and there have been no material changes to the plat since the final plat approval. If changes were made to the plat after the final plat approval, the director of water resources shall determine whether the changes are material pursuant to the rules adopted by the director to implement section 45-108. If this subdivision applies, the state real estate commissioner shall require that all promotional materials and contracts for the sale of lots in the subdivision adequately display the director of water resources' report or the developer's brief summary of the report as approved by the commissioner on the proposed water supply for the subdivision.

2. If the subdivision is not located in a county that has adopted the provision authorized by section 11-823, subsection A or in a city or town that has enacted an ordinance pursuant to section 9-463.01, subsection O, and if the director of water resources, pursuant to section 45-108, reports an inadequate on-site supply of water to meet the needs projected by the developer or if no water is available, the state real estate commissioner shall require that all promotional material and contracts for the sale of lots in subdivisions approved by the commissioner adequately display the director of water resources' report or the developer's brief summary of the report as approved by the commissioner on the proposed water supply for the subdivision.

G. The commissioner may require the subdivider to supplement the notice of intention to subdivide lands and may require the filing of periodic reports to update the information contained in the original notice of intention to subdivide lands.

H. The commissioner may authorize the subdivider to file as the notice of intention to subdivide lands, in lieu of some or all of the requirements of subsection A of this section, a copy of the statement of record filed with respect to the subdivision pursuant to the federal interstate land sales full disclosure act if the statement complies with the requirements of the act and the regulations pertinent to the act.

I. Neither a real estate sales contract, conveyance, lease, assignment or other instrument to transfer any interest in subdivided land nor any covenant or restriction affecting real property shall contain any provision limiting the right of any party to appear or testify in support of or opposition to zoning changes, building permits or any other official acts affecting real property before a governmental body or official considering zoning changes, building permits or any other official acts affecting real property, whether the property is located within or outside of the boundaries of the subdivision. All contractual provisions that conflict with this subsection are declared to be contrary to public policy. Nothing contained in this subsection shall prohibit private restrictions on the use

of any real property.
J. Before offering subdivided lands for lease or sale, the subdivider who makes any promises through any form of advertising media that the subdivided lands will be exclusively a retirement community or one that is limited to the residency of adults or senior citizens shall include the promises in the deed restrictions affecting any interest in real property within the subdivided lands.
K. Except as otherwise provided in this section, a subdivider shall not be required to disclose items that are over one mile from the subdivision boundaries. The existence of foreign nations or tribal lands shall also be disclosed if located within the one mile radius of the subdivision boundaries.

32-2181.01. Power of commissioner to exempt certain subdivisions or fractional interests by special order

A. The commissioner may in his discretion by special order exempt from any one or all of the provisions of this article certain subdivided lands or fractional interests therein upon written petition and upon a showing by the petitioner, satisfactory to the commissioner, that compliance with the provisions of this article is not essential to the public interest or for the protection of buyers by reason of the special characteristics of the subdivided lands or fractional interests therein or the limited character and duration of the offer for sale, lease or financing or the special characteristics or limited number of fractional interests.
B. Special orders issued pursuant to this section shall relate to specific lands or specific fractional interests.
C. A petition filed under this section shall be accompanied by an initial fee of one hundred dollars. No fees shall be returnable irrespective of the nature of the action upon the petition.

32-2181.02. Exempt sales and leases

A. The following are exempt under this article:

1. The sale or lease in bulk of six or more lots, parcels or fractional interests to one buyer in one transaction.
2. The sale or lease of lots or parcels of one hundred sixty acres or more.

B. The following are exempt from section 32-2181, subsection A and section 32-2183, subsection A:

1. The sale or lease of parcels, lots, units or spaces that are zoned and restricted to commercial or industrial uses.
2. The sale or lease of lots or parcels located in a single platted subdivision by a subdivider if:

(a) A public report has been issued within the past five years pursuant to this article on the subdivision lots or parcels.
(b) The subdivision meets all current requirements otherwise required of a subdivision under this article.
(c) The method of sale or lease of lots or parcels meets all current requirements under this article.
(d) The lots or parcels are included on a recorded subdivision plat that is approved by a municipal or county government.
(e) All roads within the subdivision, all utilities to the lots or parcels being offered for sale or lease and all other required improvements within the subdivision, other than a residence to be built, are complete, paid for and free of any blanket encum-

brances.

(f) The roads, utilities or other improvements are not complete, but the completion of all improvements is assured pursuant to section 32-2183, subsection F.

(g) Except for matters relating to ownership and financing, there have been no material changes to the information set forth in the most recent public report issued for the subdivision lots that would require an amendment to the public report.

(h) No owner of a ten per cent or greater interest, subdivider, director, partner, agent, officer or developer of the subdivision has:

(i) Been convicted of a felony or any crime involving theft, dishonesty, violence against another person, fraud or real estate, regardless of whether the convictions were subsequently expunged.

(ii) Had a civil judgment entered against the person in a case involving allegations of misrepresentation, fraud, breach of fiduciary duty, misappropriation, dishonesty or, if the subject matter involved real property, securities or investments.

(iii) Had a business or professional license, including a real estate license, denied, suspended or revoked or voluntarily surrendered a business or professional license during the course of an investigative or disciplinary proceeding or other disciplinary action taken in this state or any other state.

(i) The sale of the subdivided lands violates no laws or ordinances of any governmental authority.

(j) Before the buyer's or lessee's execution of a purchase contract or lease, the subdivider has provided the buyer or lessee with a copy of the most recent public report on the lot and has taken a receipt from the buyer for the copy.

(k) The subdivider has provided to the buyer or lessee, along with the public report, a signed statement that the subdivider has reviewed and is in compliance with the terms of the exemption provided in this paragraph.

(l) Before sale or lease, the subdivider has notified the commissioner, on a form provided by the department, of the subdivider's intent to sell or lease lots or parcels pursuant to this paragraph. The notice shall include:

(i) The name, address and telephone number of the subdivider.

(ii) The name, address and telephone number of any real estate broker retained by the subdivider to make sales or leases of the lots.

(iii) The name and location of the subdivision.

(iv) The most recent subdivision public report reference number on the lots.

(v) The completion status of subdivision improvements.

3. The conveyance to a person who previously conveyed the lot to a home builder for the purpose of constructing a dwelling for the person.

4. The sale or lease by a person of individual lots or parcels that were separately acquired by the person from different persons and that were not acquired for the purpose of development if:

(a) The lots or parcels are not located in a platted subdivision.

(b) Each lot or parcel bears the same legal description that it bore when the lot or parcel was acquired by the person.

(c) The seller or lessor is in compliance with all other applicable state and local

government requirements.

5. The sale of an improved lot in a subdivision that is located outside of this state if:

(a) The subdivision is located within the United States and the sale is exempt from the interstate land sales full disclosure act (P.L. 90-448; 82 Stat. 590; 15 United States Code sections 1701 through 1720).

(b) The subdivider is required by the state where the subdivision is located to deliver a public report or equivalent disclosure document to prospective purchasers and the subdivider delivers the report or equivalent disclosure document.

6. The sale of an improved lot in a subdivision located in this state where five or more sales were previously made by the seller if:

(a) The sale is the seller's first or second sale in the subdivision within the previous twelve month period.

(b) The subdivision is located within the corporate limits of a town or city.

(c) Electricity and telephone service are complete and available to the improved lot.

(d) Water and sewage service is complete and available to the improved lot.

(e) Streets and roads located outside of the subdivision provide permanent access to the subdivision and are complete and maintained by the county, town or city, or by a legally created and operational property owners' association.

(f) Streets within the subdivision are dedicated, provide permanent access to the lot, are complete to town or city standards and are maintained by the town or city or, in the case of private streets, a legally created and operational property owners' association accepts the responsibility of perpetual maintenance.

(g) All subdivision common area improvements, including landscaping, recreational facilities and other jointly used and maintained improvements, are complete and maintained by a legally created and operational property owners' association.

(h) The purchaser's down payment, earnest money, deposit or other advanced money is placed and held in a neutral escrow depository in this state until escrow closes and the deed is delivered to the purchaser.

(i) Within the previous twelve months the seller has not had an ownership interest in more than two lots in the subdivision, including an interest by option, an agreement for sale, a beneficial interest under a trust or a purchase contract.

C. Nothing in this section shall be construed to increase, decrease or otherwise affect any rights or powers granted the commissioner under this chapter.

D. This section does not apply to lands on which the commissioner has issued orders pursuant to sections 32-2154 and 32-2157 and section 32-2183, subsection M unless the commissioner has issued a public report on those lands subsequent to the date of the orders.

E. Nothing in this section shall be construed to increase, to decrease or to otherwise affect any rights or powers granted to political subdivisions of this state with respect to their jurisdictions.

32-2181.03. Lot reservations; expiration

A. The notice of intent required by section 32-2181, subsection A or section 32-2195, subsection B and the issuance of a public report required by section 32-2183, subsection A or section 32-2195.03, subsection A are not required for any party to enter into a lot reservation on property located in this state.

B. Before the issuance of a public report, a deposit may be accepted from a prospective buyer as a

lot reservation if all of the following requirements are met:

1. Before accepting any lot reservation, the prospective seller shall mail or deliver written notice of the seller's intention to accept lot reservations to the department. The notice shall include:

(a) The name, address and telephone number of the prospective seller.

(b) The name, address and telephone number of any real estate broker retained by the prospective seller to promote the lot reservation program.

(c) The name and location of the project for which lot reservations are to be offered.

(d) The form to be used for accepting lot reservations, subject to approval by the commissioner.

2. The reservation deposit for a single lot or parcel shall not exceed five thousand dollars.

3. Within one business day after a reservation is accepted by the prospective seller, the reservation deposit shall be delivered to an escrow agent licensed pursuant to title 6, chapter 7 and deposited by the escrow agent in a depository insured by an agency of the United States. The escrow account may be interest bearing at the direction of either the prospective seller or prospective buyer. Payment of any account fees and payment of interest monies shall be as agreed to between the prospective buyer and prospective seller. All reservation deposits shall remain in an escrow account until cancellation or termination of the lot reservation or execution of a purchase contract.

4. Within fifteen calendar days of receipt by the prospective seller of the public report issued by the commissioner relative to the reserved lot or parcel, the prospective seller shall provide the prospective buyer with a copy of the public report and a copy of the proposed purchase contract for the sale of the lot or parcel. The prospective buyer and prospective seller have seven business days after the prospective buyer's receipt of the public report and the proposed purchase contract within which to enter into a contract for the purchase of the lot or parcel. If the prospective buyer and prospective seller do not enter into a contract for the purchase of the lot or parcel within the seven business day period, the reservation automatically terminates. The prospective seller has no cancellation rights other than as provided in this paragraph.

5. A prospective buyer may cancel a lot reservation at any time before the execution of a purchase contract by delivering written notice of termination to the prospective seller.

6. Within five business days after a lot reservation has been terminated for any reason, the prospective seller shall refund to the prospective buyer all reservation deposits made by the prospective buyer including any interest monies earned less any account fees agreed upon, if applicable. The escrow agent shall refund to the prospective buyer all reservation deposits made by the prospective buyer including any interest monies earned less any account fees agreed upon if the prospective seller is not available. After this refund neither the prospective buyer nor the prospective seller has any obligation to the other arising out of the lot reservation.

7. A prospective buyer may not transfer rights under a reservation without the prior written consent of the prospective seller, and any purported transfer without the consent of the prospective seller is voidable at the sole discretion of the prospective seller.

8. If the department denies an application for a public report on the development on which lot reservations were taken, within five business days of notification by the department, the prospective seller shall notify in writing each prospective buyer who entered into a lot res-

ervation agreement. The prospective seller shall return any reservation deposits previously taken.

9. All notices required by this section to be given to the department, the prospective buyer or the prospective seller shall be in writing and either hand delivered or sent by certified mail, return receipt requested, with postage fully prepaid. Notices sent by mail are deemed delivered on the earlier of actual receipt, as evidenced by the delivery receipt, or seven calendar days after being deposited in the United States mail.

10. Each lot reservation form shall contain the following statement:

The state real estate department has not inspected or approved this project and no public report has yet been issued for the project. No offer to sell may be made and no offer to purchase may be accepted before issuance of a public report for the project.

C. The commissioner may deny authorization to accept lot reservations under this section to any person who has violated or is in violation of any provision of this chapter.

D. The authority to take lot reservations under this section expires two years after the date the commissioner receives notice of the intent to take lot reservations from a developer.

32-2182. Examination of subdivision by commissioner; fee; time limit to determine violation

A. The commissioner shall examine any subdivision offered for sale or lease and shall make public his findings. The total cost of travel and subsistence expenses incurred by the department in the examination, in addition to the initial filing fee provided for in this section, shall be borne by the subdivider on the basis of actual cost to the department. A filing fee of five hundred dollars or such lesser fee as determined by the commissioner shall accompany the written notification required in section 32-2181. The commissioner may allow the developer to outsource and pay for the cost of physical inspections so long as the department approves the inspector and the inspection for content.

B. The commissioner may, but is not required to, inspect a subdivision site if all of the following apply:

1. The commissioner has previously inspected the subdivision within the past two years.

2. All proposed improvements were complete at the time of the previous inspection.

3. The sales offering does not include any changes to the physical aspects of the subdivision, including the plat, site and locations of improvements.

C. The commissioner is not required to complete the inspection of the subdivision site before issuing a public report. Nevertheless, if the commissioner discovers anything during any subsequent inspection that would have been grounds to deny issuance of the public report or anything that would have warranted additional disclosure in the public report, the commissioner may issue a summary order as provided in section 32-2157.

D. Notwithstanding any other law, the commissioner has no more than five years after the date of an initial complaint or initiation of an investigation by the commissioner to determine if the sale or lease violated this article.

32-2183. Subdivision public reports; denial of issuance; unlawful sales; voidable sale or lease; order prohibiting sale or lease; investigations; hearings; summary orders

A. Upon examination of a subdivision, the commissioner, unless there are grounds for denial, shall issue to the subdivider a public report authorizing the sale or lease in this state of the lots, parcels or fractional interests within the subdivision. The report shall contain the data obtained in ac-

cordance with section 32-2181 and any other information which the commissioner determines is necessary to implement the purposes of this article. If any of the lots, parcels or fractional interests within the subdivision are located within territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, under a military training route as delineated in the military training route map prepared pursuant to section 37-102, under restricted air space as delineated in the restricted air space map prepared pursuant to section 37-102 or contained in the military electronics range as delineated in the military electronics range map prepared pursuant to section 37-102, the report shall include, in bold twelve point font block letters on the first page of the report, the statements required pursuant to section 28-8484, subsection A, section 32-2183.05 or section 32-2183.06 and, if the department has been provided a map prepared pursuant to section 28-8484, subsection B or section 37-102, the report shall include a copy of the map. The military airport report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2001 or on or before December 31 of the year in which the lots, parcels or fractional interests within a subdivision become territory in the vicinity of a military airport or ancillary military facility. The military training route report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2004. The restricted air space report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2006. The military electronics range report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2008. The commissioner shall require the subdivider to reproduce the report, make the report available to each initial prospective customer and furnish each initial buyer or lessee with a copy before the buyer or lessee signs any offer to purchase or lease, taking a receipt therefor.

B. This section shall not be construed to require a public report issued sixty or fewer days prior to the filing of the military electronics range map prepared pursuant to section 37-102 to meet the military electronics range notification requirements of this section.

C. A public report issued sixty-one or more days after the filing of the military electronics range map prepared pursuant to section 37-102 shall meet all of the requirements of subsection A of this section.

D. Notwithstanding subsection A of this section, a subdivider may elect to prepare a final public report for use in the sale of improved lots as defined in section 32-2101, as follows:

1. The subdivider shall prepare the public report and provide a copy of the report to the commissioner with the submission of the notification required by sections 32-2181 and 32-2184 and shall comply with all other requirements of this article.

2. An initial filing fee of five hundred dollars or an amended filing fee of two hundred fifty dollars shall accompany the notification required by paragraph 1 of this subsection.

3. The department shall assign a registration number to each notification and public report submitted pursuant to this subsection and shall maintain a database of all of these submissions. The subdivider shall place the number on each public report.

4. On receipt of the notification and public report, the department shall review and issue within ten business days either a certification that the notification and public report are administratively complete or a denial letter if it appears that the application or project is not in compliance with all legal requirements, that the applicant has a background of violations of state or federal law or that the applicant or project presents an unnecessary risk of harm to the public. If the commissioner has received the notification and public report but has not issued a certification or a denial letter within ten business days pursuant to this paragraph,

the notification and public report are administratively complete.

5. A subdivider may commence sales or leasing activities as permitted under this article after obtaining a certificate of administrative completeness from the commissioner.

6. Before or after the commissioner issues a certificate of administrative completeness or, if applicable, after the notification and public report are deemed to be administratively complete pursuant to paragraph 4 of this subsection, the department may examine any public report, subdivision or applicant that has applied for or received the certificate. If the commissioner determines that the subdivider or subdivision is not in compliance with any requirement of state law or that grounds exist under this chapter to suspend, deny or revoke a public report, the commissioner may commence an administrative action under section 32-2154 or 32-2157. If the subdivider immediately corrects the deficiency and comes into full compliance with state law, the commissioner shall vacate any action that the commissioner may have commenced pursuant to section 32-2154 or 32-2157.

7. The department shall provide forms and guidelines for the submission of the notification and public report pursuant to this section.

E. The commissioner may suspend, revoke or deny issuance of a public report on any of the following grounds:

1. Failure to comply with this article or the rules of the commissioner pertaining to this article.

2. The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.

3. Inability to deliver title or other interest contracted for.

4. Inability to demonstrate that adequate financial or other arrangements acceptable to the commissioner have been made for completion of all streets, sewers, electric, gas and water utilities, drainage and flood control facilities, community and recreational facilities and other improvements included in the offering.

5. Failure to make a showing that the lots, parcels or fractional interests can be used for the purpose for which they are offered.

6. The owner, agent, subdivider, officer, director or partner, subdivider trust beneficiary holding ten per cent or more direct or indirect beneficial interest or, if a corporation, any stockholder owning ten per cent or more of the stock in the corporation has:

(a) Been convicted of a felony or misdemeanor involving fraud or dishonesty or involving conduct of any business or a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(b) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, time-share intervals, membership camping contracts or campgrounds, or securities or involving consumer fraud or the racketeering laws of this state.

(c) Had an administrative order entered against him by a real estate regulatory agency or security regulatory agency.

(d) Had an adverse decision or judgment entered against him involving fraud or dishonesty or involving the conduct of any business or transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(e) Disregarded or violated this chapter or the rules of the commissioner pertaining to this chapter.

(f) Controlled an entity to which subdivision (b), (c), (d) or (e) applies.

7. Procurement or an attempt to procure a public report by fraud, misrepresentation or deceit or by filing an application for a public report that is materially false or misleading.

8. Failure of the declaration for a condominium created pursuant to title 33, chapter 9, article 2 to comply with the requirements of section 33-1215 or failure of the plat for the condominium to comply with the requirements of section 33-1219. The commissioner may require an applicant for a public report to submit a notarized statement signed by the subdivider or an engineer or attorney licensed to practice in this state certifying that the condominium plat and declaration of condominium are in compliance with the requirements of sections 33-1215 and 33-1219. If the notarized statement is provided, the commissioner is entitled to rely on this statement.

9. Failure of any blanket encumbrance or valid supplementary agreement executed by the holder of the blanket encumbrance to contain provisions that enable the purchaser to acquire title to a lot or parcel free of the lien of the blanket encumbrance, on completion of all payments and performance of all of the terms and provisions required to be made or performed by the purchaser under the real estate sales contract by which the purchaser has acquired the lot or parcel. The subdivider shall file copies of documents acceptable to the commissioner containing these provisions with the commissioner before the sale of any subdivision lot or parcel subject to a blanket encumbrance.

10. Failure to demonstrate permanent access to the subdivision lots or parcels.

11. The use of the lots presents an unreasonable health risk.

F. It is unlawful for a subdivider to sell any lot in a subdivision unless one of the following occurs:

1. All proposed or promised subdivision improvements are completed.

2. The completion of all proposed or promised subdivision improvements is assured by financial arrangements acceptable to the commissioner. The financial arrangements may be made in phases for common community and recreation facilities required by a municipality or county as a stipulation for approval of a plan for a master planned community.

3. The municipal or county government agrees to prohibit occupancy and the subdivider agrees not to close escrow for lots in the subdivision until all proposed or promised subdivision improvements are completed.

4. The municipal or county government enters into an assurance agreement with any trustee not to convey lots until improvements are completed within the portion of the subdivision containing these lots, if the improvements can be used and maintained separately from the improvements required for the entire subdivision plat. The agreement shall be recorded in the county in which the subdivision is located.

G. If the subdivision is within an active management area, as defined in section 45-402, the commissioner shall deny issuance of a public report or the use of any exemption pursuant to section 32-2181.02, subsection B unless the subdivider has been issued a certificate of assured water supply by the director of water resources and has paid all applicable fees pursuant to sections 48-3772 and 48-3774.01, or unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576.

H. In areas outside of active management areas, if the subdivision is located in a county that has adopted the provision authorized by section 11-823, subsection A or in a city or town that has enacted an ordinance pursuant to section 9-463.01, subsection O, the commissioner shall deny issuance of a public report or the use of any exemption pursuant to section 32-2181.02, subsection B unless one of the following applies:

1. The director of water resources has reported pursuant to section 45-108 that the subdivision has an adequate water supply.
2. The subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108.
3. The plat was approved pursuant to an exemption authorized by section 9-463.01, subsection K, pursuant to an exemption authorized by section 11-823, subsection B, paragraph 1, pursuant to an exemption granted by the director of water resources under section 45-108.02 and the exemption has not expired or pursuant to an exemption granted by the director of water resources under section 45-108.03.
4. The subdivision received final plat approval from the city, town or county before the requirement for an adequate water supply became effective in the city, town or county, and there have been no material changes to the plat since the final plat approval. If changes were made to the plat after the final plat approval, the director of water resources shall determine whether the changes are material pursuant to the rules adopted by the director to implement section 45-108.

I. A subdivider shall not sell or lease or offer for sale or lease in this state any lots, parcels or fractional interests in a subdivision without first obtaining a public report from the commissioner except as provided in section 32-2181.01 or 32-2181.02, and a certificate of administrative completeness issued pursuant to this section. Unless exempt, the sale or lease of subdivided lands prior to issuance of the public report or failure to deliver the public report to the purchaser or lessee shall render the sale or lease rescindable by the purchaser or lessee. An action by the purchaser or lessee to rescind the transaction shall be brought within three years of the date of execution of the purchase or lease agreement by the purchaser or lessee. In any rescission action, the prevailing party is entitled to reasonable attorney fees as determined by the court.

J. On a print advertisement in a magazine or newspaper or on an internet advertisement that advertises a specific lot or parcel of a subdivider, the subdivider shall include a disclosure stating that "a public report is available on the state real estate department's website".

K. Any applicant objecting to the denial of a public report, within thirty days after receipt of the order of denial, may file a written request for a hearing. The commissioner shall hold the hearing within twenty days after receipt of the request for a hearing unless the party requesting the hearing has requested a postponement. If the hearing is not held within twenty days after a request for a hearing is received, plus the period of any postponement, or if a proposed decision is not rendered within forty-five days after submission, the order of denial shall be rescinded and a public report issued.

L. On the commissioner's own motion, or when the commissioner has received a complaint and has satisfactory evidence that the subdivider or the subdivider's agent is violating this article or the rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of subdivided lands or deviated from the provisions of the public report, the commissioner may investigate the subdivision project and examine the books and records of the

subdivider. For the purpose of examination, the subdivider shall keep and maintain records of all sales transactions and funds received by the subdivider pursuant to the sales transactions and shall make them accessible to the commissioner upon reasonable notice and demand.
M. On the commissioner's own motion, or when the commissioner has received a complaint and has satisfactory evidence that any person has violated this article or the rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of subdivided lands or deviated from the provisions of the public report or special order of exemption, or has been indicted for fraud or against whom an information for fraud has been filed or has been convicted of a felony, before or after the commissioner issues the public report as provided in subsection A of this section, the commissioner may conduct an investigation of the matter, issue a summary order as provided in section 32-2157, or provide notice and hold a public hearing and, after the hearing, may issue the order or orders the commissioner deems necessary to protect the public interest and ensure compliance with the law, rules or public report or the commissioner may bring action in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging in or doing any act or acts in furtherance of the violation. The court may make orders or judgments, including the appointment of a receiver, necessary to prevent the use or employment by a person of any unlawful practices, or which may be necessary to restore to any person in interest any monies or property, real or personal, that may have been acquired by means of any practice in this article declared to be unlawful.
N. When it appears to the commissioner that a person has engaged in or is engaging in a practice declared to be unlawful by this article and that the person is concealing assets or self or has made arrangements to conceal assets or is about to leave the state, the commissioner may apply to the superior court, ex parte, for an order appointing a receiver of the assets of the person or for a writ of ne exeat, or both.
O. The court, on receipt of an application for the appointment of a receiver or for a writ of ne exeat, or both, shall examine the verified application of the commissioner and other evidence that the commissioner may present the court. If satisfied that the interests of the public require the appointment of a receiver or the issuance of a writ of ne exeat without notice, the court shall issue an order appointing the receiver or issue the writ, or both. If the court determines that the interests of the public will not be harmed by the giving of notice, the court shall set a time for a hearing and require notice be given as the court deems satisfactory.
P. If the court appoints a receiver without notice, the court shall further direct that a copy of the order appointing a receiver be served on the person engaged in or engaging in a practice declared to be unlawful under this article by delivering the order to the last address of the person that is on file with the state real estate department. The order shall inform the person that the person has the right to request a hearing within ten days of the date of the order and, if requested, the hearing shall be held within thirty days from the date of the order.

32-2183.01. Advertising material; contents; order prohibiting use; costs of investigation; drawings or contests

A. Within ten days after request by the commissioner, the subdivider shall file with the commissioner a copy of any advertising material used in connection with sales of the subdivided lands.
B. No advertising, communication or sales literature of any kind, including oral statements by salespersons or other persons, shall contain:

1. Any untrue statement of material fact or any omission of material fact which would make

such statement misleading in light of the circumstances under which such statement was made.

2. Any statement or representation that the lot or parcels are offered without risk or that loss is impossible.

3. Any statement or representation or pictorial representation of proposed improvements or nonexistent scenes without clearly indicating the improvements are proposed and the scenes do not exist.

4. Any statement or representation that the lot or parcels are suitable as homesites or building lots unless either of the following is true:

(a) Potable water is available from a certificated public utility or a municipal corporation and either an individual sewage disposal system will operate or a sewer system is available from a certified public utility or a municipal corporation.

(b) Facts to the contrary are clearly and conspicuously included in each advertisement pertaining to the property.

C. All advertising and sales literature shall be consistent with the information contained in the notice of intention pursuant to section 32-2181 and the public report pursuant to section 32-2183. The subdivider shall retain and have available for department review copies of all advertising materials used in marketing lots in the subdivision for three years after the last use of the advertising materials.

D. If it appears to the commissioner that any person is or has engaged in advertising or promotional practices in violation of this article, the commissioner may hold a hearing as a contested case under title 41, chapter 6, article 10 and issue such order or orders as he deems necessary to protect the public interest, or the commissioner may bring an action in any court of competent jurisdiction against such person to enjoin such person from continuing such violation.

E. The commissioner may adopt such rules and guidelines as the commissioner deems necessary to protect the public interest and to assure that all advertising and promotional practices with respect to land subject to the provisions of this article are not false or misleading.

F. It is unlawful for any owner, subdivider, agent or employee of any subdivision or other person with intent directly or indirectly to sell or lease lots or parcels subject to the provisions of this article to authorize, use, direct or aid in any advertising, communication, sales literature or promotional practice which violates this section.

G. Nothing contained in this section shall apply to the owner or publisher of a newspaper or magazine or to any other publication of printed matter wherein such advertisement appears or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser.

H. For any subdivision investigation made under section 32-2183 of an out-of-state subdivision or any in-state subdivision to which the commissioner issues any order necessary to protect the public interest and insure compliance with the law, rules or public report, the subdivider shall reimburse travel and subsistence expenses incurred by the department.

I. A subdivider may hold a drawing or contest to induce prospective buyers to visit a subdivision if all of the following requirements are met:

1. The subdivision has in effect a current public report.

2. The subdivider is not the subject of an ongoing investigation by the department. The department may give permission to hold a drawing or contest to a subdivider who is the subject of an ongoing investigation.

3. The details of the contest or drawing, including the method of awarding any prize, are submitted to the department for review and approval prior to holding the contest or drawing.
4. Any drawing or contest is limited in time, scope and geographic location.
5. The material terms of the drawing or contest are fully disclosed in writing to participants.
6. No fee is charged to any person who participates in a drawing or contest.
7. No participant in a drawing or contest, as a condition of participation, must attend a sales presentation or take a tour.
8. The subdivider is in compliance with all other applicable federal, state and local laws involving drawings or contests.
9. The subdivider is responsible at all times for the lawful and proper conduct of any drawing or contest.

32-2183.02. Recording of actions

A. Whenever the commissioner issues a cease and desist order, obtains a court order enjoining further sales, issues an order of prohibition or suspends approval of a subdivision, the action shall be recorded in the book of deeds in the office of the county recorder in any county in which the subdivision property is located and include the legal description of the affected land. The commissioner shall also provide notice of the order or suspension to all affected parties with an ownership interest of record in any lot, parcel or fractional interest in the subdivision property within ten business days of issuing the order of suspension.
B. In the event of revocation of any of the orders which require recording in subsection A, an order of release shall be recorded in the same manner within ten business days after the revocation.
C. The department shall record a public notice for each plat, parcel or lot in the county in which the subdivided land is located when the land has been subdivided in violation of this article. The notice shall include the legal description of the affected land and provide that a city or town pursuant to authority granted by the state under title 9 or to a county pursuant to authority granted under title 11 may decline to issue building permits for the land until the requisite state and local approval is acquired. The department shall record a release in the same manner within ten business days after the subdivision is in compliance with this article.

32-2183.03. Civil liabilities

A. When any part of the notice of intention filed pursuant to section 32-2181 contains an untrue statement of a material fact or omits a material fact required to be stated in such notice, the subdivider or agent shall be liable as provided in this section to any person who acquires a lot or parcel in the subdivision covered by such notice of intention during such period the notice of intention remained uncorrected unless at the time of such acquisition the person acquiring the lot knew of such untruth or omission.
B. Any subdivider or agent who sells or leases a lot or parcel in a subdivision in violation of section 32-2183 or by means of a public report that contains an untrue statement of a material fact or omits a material fact required to be stated in such report shall be liable to the purchaser of such lot or parcel as provided in this section unless at the time of purchase the purchaser knew of the untruth or omission.
C. It is unlawful for a subdivider or agent in selling or leasing, or offering to sell or lease, any lot or parcel in a subdivision to:

1. Employ any device, scheme or artifice to defraud.

2. Obtain money or property by means of a material misrepresentation with respect to any information included in the notice of intention or the public report or with respect to any other information pertinent to the lot, parcel or subdivision and on which the purchaser relies.

3. Engage in any transaction, practice or course of business that operates or would operate as a fraud or deceit on a purchaser.

D. Except as provided in subsection E of this section, damages in any suit brought pursuant to this section shall be the difference between the purchase price of the lot or parcel plus the cost of any improvements made to such lot or parcel and the following applicable amount:

1. The price at which such lot or parcel was sold in a bona fide market transaction prior to suit or judgment.

2. If the lot or parcel has not been sold before judgment, the current market value of the lot or parcel and any improvements as of the date the suit was filed.

E. The damages described in subsection D of this section shall not exceed the dollar amount that is the difference in price or market value that results from the untrue statement of material fact or omission of material fact that is required to be stated in the public report.

F. In any action in which a violation of this section is established the purchaser shall also be entitled to recover reasonable attorney fees as determined by the court. If a violation is not established, the court, in its discretion, may award reasonable attorney fees to the defendant.

G. Every person who becomes liable to make any payment pursuant to this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment.

H. In no case shall the amount recoverable pursuant to this section exceed the sum of the purchase price of the lot or parcel, the reasonable cost of improvements installed by the purchaser and reasonable court costs and attorneys' fees.

I. Nothing contained in this section shall be construed to preclude any other remedies that may exist at law or in equity.

J. No action shall be maintained to enforce any liability created pursuant to subsection A or B of this section unless brought within one year after the discovery of the untrue statement or the omission or after such discovery should have been made by the exercise of reasonable diligence. No action shall be maintained to enforce any liability created pursuant to subsection C of this section unless brought within two years after the violation on which it is based. In no event shall any such action be brought by a purchaser more than three years after the sale or lease to such purchaser.

32-2183.04. Surety bond requirement; form; cancellation; effective date; certificate of deposit

A. In addition to any other fees assessed under this chapter, any subdivider prior to the sale or lease of any existing unimproved lots or parcels and any subdivider who is subsequently required to give notice under section 32-2181 or 32-2195 or who petitions for exemption under section 32-2181.01 may be required to post a surety bond with the commissioner if any of the following applies:

1. The subdivider has been found in violation of any subdivision laws of this state or of any other state or any of the rules of the state real estate department.

2. The subdivider has been found in violation of the interstate land sales full disclosure act or any of the rules and regulations of the office of interstate land sales registration.

3. The subdivider has been found by a court of competent jurisdiction to be guilty of fraud

or misrepresentation in the sale of subdivided lands and the finding or determination has become a final adjudication.

4. The subdivider has been found by an administrative agency to be guilty of fraud or misrepresentation in the sale of subdivided lands and from the decision there is no appeal.

B. The bond required by subsection A of this section shall be in a form acceptable to the commissioner and shall be executed by the subdivider as principal with a corporation duly authorized to transact surety business in this state. Evidence of a surety bond shall be submitted to the commissioner in accordance with rules adopted by the commissioner. The bond shall be in favor of the state and shall be subject to claims by any person who is injured by the fraud or misrepresentation of a subdivider in the purchase or lease of a lot or parcel. One bond shall be required for each subdivision or each common plan of subdivided lands subject to the requirements of article 7 of this chapter. The principal sum of the bond shall be in an amount the commissioner deems necessary to protect purchasers when the volume of business of the subdivider and other relevant factors are taken into consideration.

C. The surety bond shall continue in effect until two years after all sales within the subdivision or common plan have been completed. No suit may be maintained on the bond after the expiration of two years following the subdivider's sale or lease of a lot or parcel to the person maintaining the action.

D. Upon receipt by the commissioner of notice to cancel a bond by any surety, the commissioner shall immediately notify the subdivider on the bond of the effective date of cancellation of the bond and the subdivider shall furnish a like bond within thirty days after mailing of notice by the commissioner or the subdivider's right to sell or lease lots or parcels in any subdivision shall be suspended. Notice to the subdivider shall be by certified mail in a sealed envelope with postage fully prepaid, addressed to the subdivider's latest address of record in the commissioner's office. The subdivider's right to sell or lease lots or parcels shall be suspended by operation of law on the date the bond is canceled, unless a replacement bond is filed with the commissioner.

E. In lieu of posting a bond as set forth in this section, the subdivider may post a certificate of deposit with the commissioner in accordance with the provisions of subsections A, B and C of this section.

32-2183.05. Military training route disclosure; military electronics range disclosure; residential property

A. Any public report that is issued after December 31, 2004 pursuant to section 32-2183 or 32-2195.03 and that is applicable to property located under a military training route, as delineated in the military training route map prepared by the state land department pursuant to section 37-102, and any public report that is issued after December 31, 2008 and that is applicable to property located in a military electronics range as delineated in the military electronics range map prepared by the state land department pursuant to section 37-102, shall include the following statements:

1. The property is located under a military training route or in a military electronics range.

2. The state land department and the state real estate department maintain military training route maps and military electronics range maps available to the public.

3. The military training route map and military electronics range map are posted on the state real estate department's website.

B. The public report prescribed by subsection A of this section may contain a disclaimer that the subdivider has no control over the military training routes as delineated in the military training

route map or the timing or frequency of flights and associated levels of noise and has no control over the military electronics range and its testing and training operations.
C. For any lot reservation or conditional sale that occurs before the issuance of a public report, the disclosure statements listed in subsection A of this section shall be included within the reservation document or conditional sales contract.
D. This section does not require the amendment or reissuance of any public report issued on or before December 31, 2004 that is applicable to property located under a military training route, as delineated in the military training route map prepared by the state land department pursuant to section 37-102 or on or before December 31, 2008 that is applicable to property located in a military electronics range, as delineated in the military electronics range map prepared by the state land department pursuant to section 37-102 or the amendment or reissuance of any reservation document or conditional sales contract accepted on or before December 31, 2004 or on or before December 31, 2008.
E. Notwithstanding any other law, if the public report complies with subsection A of this section, a subdivider is not liable to any person or governmental entity for any act or failure to act in connection with the disclosure of a military training route as delineated in the military training route map or a military electronics range as delineated in the military electronics range map.
F. This section shall not be construed to require a public report issued sixty or fewer days prior to the filing of the military electronics range map prepared pursuant to section 37-102 to meet the military electronics range notification requirements of this section.
G. A public report issued sixty-one or more days after the filing of the military electronics range map prepared pursuant to section 37-102 shall meet all of the requirements of subsection A of this section.

32-2183.06. Restricted air space disclosure; residential property
A. Any public report that is issued after December 31, 2006 pursuant to section 32-2183 or 32-2195.03 and that is applicable to property located under restricted air space, as delineated in the restricted air space map prepared by the state land department pursuant to section 37-102, shall include the following statements:

1. The property is located under restricted air space.
2. The state land department and the state real estate department maintain restricted air space maps available to the public.
3. The restricted air space map is posted on the state real estate department's web site.

B. The public report prescribed by subsection A of this section may contain a disclaimer that the subdivider has no control over the restricted air space as delineated in the restricted air space map or the timing or frequency of flights and associated levels of noise.
C. For any lot reservation or conditional sale that occurs before the issuance of a public report, the disclosure statements listed in subsection A of this section shall be included within the reservation document or conditional sales contract.
D. This section does not require the amendment or reissuance of any public report issued on or before December 31, 2006 or the amendment or reissuance of any reservation document or conditional sales contract accepted on or before December 31, 2006.
E. Notwithstanding any other law, if the public report complies with subsection A of this section, a subdivider is not liable to any person or governmental entity for any act or failure to act in the disclosure of restricted air space as delineated in the restricted air space map.

32-2184. Change of subdivision plan after approval by commissioner; notice

A. It is unlawful for any subdivider, after submitting to the commissioner the plan under which a subdivision is to be offered for sale or lease, and securing his approval, to change the plan materially or to continue to offer lots or parcels within the subdivision for sale or lease after a change has occurred that materially affects the plan without first notifying the commissioner in writing of the intended change. Material changes covered by this section shall be prescribed in the rules of the commissioner. Upon receipt of any notice of a material change, the commissioner may require the amendment of the public report and, if he determines such action to be necessary for the protection of purchasers, suspend his approval of sale or lease pending amendment of the public report in accordance with section 32-2157.

B. If there has been a material change to the plan under which a subdivision is offered for sale or lease and an amendment to the public report is required, a purchaser or lessee who has executed a real estate sales contract or lease before the occurrence of the material change but has not yet completed performance under the real estate sales contract or has not taken possession under the lease may cancel the real estate sales contract or lease within ten days after receiving written notice from the subdivider of the material change if the material change adversely impacts the purchaser or lessee and was caused by the subdivider or an entity controlled by the subdivider or if the subdivider had actual knowledge of the material change at the time the real estate sales contract or lease was executed by the purchaser or lessee. Notwithstanding that the subdivider was not aware of the material change and did not cause the change to come about, the purchaser or lessee may cancel the sales contract or lease as provided by this subsection if the material change would involve an occupant's health, safety or ability to make designated use of the lot. This subsection does not create any cause of action, for rescission or otherwise, in favor of a purchaser who has not been impacted adversely by the material change.

C. A filing fee of one-half of the amount that was charged for the initial public report pursuant to section 32-2182, but no less than two hundred fifty dollars, shall accompany an application for an amended public report. If inspection of a subdivision site is necessary, the department shall assess an inspection fee pursuant to section 32-2182, subsection A.

32-2185. Delivery of clear title by vendor on performance of contract by vendee

It is unlawful to sell to any purchaser any subdivision lot or parcel that is subject to a blanket encumbrance, unless there is a provision in the blanket encumbrance, or in a valid supplementary agreement executed by the holder of the blanket encumbrance, enabling the purchaser to acquire title to the lot or parcel free of the blanket encumbrance upon completion of all payments and performances of all the terms and provisions required to be made or performed by the purchaser under the real estate sales contract. Certified or verified copies of documents acceptable to the commissioner containing such provisions shall be filed with the commissioner prior to the sale of any subdivision lot or parcel subject to a blanket encumbrance.

32-2185.01. Sale of unimproved lots or parcels; conditions precedent; methods

A. It is unlawful for the owner, agent or subdivider of subdivided lands to sell or offer to sell unimproved lots or parcels within a subdivision unless the sale complies with one of the following:

1. Execution, delivery and recording of a deed in good and sufficient form conveying to the purchaser merchantable and marketable title to the property subject only to such ex-

ceptions as may be agreed to in writing by the purchaser. Any balance remaining unpaid by the purchaser may be evidenced by a note and mortgage or deed of trust. The deed and mortgage or deed of trust shall be recorded by the owner, agent or subdivider within sixty days of execution thereof by the purchaser.

2. Execution, delivery, recording and depositing in escrow, not later than sixty days after execution by the purchaser, with a person or firm authorized to receive escrows under the laws of this state or the state in which the subdivision is located, of a real estate sales contract pertaining to the property, which contract sets forth the full and correct legal description of the property being sold and the precise terms and conditions under which the property is being sold together with:

(a) A copy of a preliminary title report showing the conditions of title to the property on the date of the real estate sales contract or a preliminary title report showing the condition of title on an earlier date together with a copy of any document, recorded subsequent to the date of the preliminary title report, which affects the title to the property.

(b) An executed deed in good and sufficient form conveying to the purchaser merchantable and marketable title, subject only to such exceptions as may be agreed to in writing by the purchaser which deed, under the terms of the real estate sales contract, is to be delivered to the escrow agent provided for under the contract within sixty days of the purchaser's execution of the contract and is to be recorded within sixty days after purchaser's compliance with the obligations imposed on him under the contract together with any release or partial release of any blanket encumbrance pertaining to said lot.

(c) Any and all documents necessary to release or extinguish any blanket encumbrance to the extent it applies to the real property being sold, or a partial release of the lot or parcel being sold from the terms and provisions of such blanket encumbrance.

3. Execution, delivery and recording of a deed to the real property to a trustee together with a trust agreement and any and all documents necessary to release or extinguish any blanket encumbrance to the extent it applies to property being sold, or a partial release of the lot or parcel being sold from the terms and provisions of such blanket encumbrance. The trust agreement shall provide for conveyance by the trustee to a purchaser, upon purchaser's compliance with the obligations imposed on him under his real estate sales contract, by a deed in good and sufficient form conveying to the purchaser merchantable and marketable title, subject only to such exceptions as may be agreed to in writing by the purchaser. The real estate sales contract of the lot being sold shall be recorded by the owner, agent or subdivider within sixty days of execution of the real estate sales contract by the purchaser. The trustee shall execute, record and deliver the deed and record the release or partial release required by this subsection within sixty days of the purchaser's fulfillment of the terms of his real estate sales contract.

B. All documents required to be recorded under the provisions of this section shall be recorded in the county and state wherein the subdivision is located.

C. Any sale or assignment of a mortgage, deed of trust or real estate sales contract by an owner, agent, subdivider or trustee shall be recorded in the county and state where the subdivision is locat-

ed and a notice of such sale or assignment provided to the commissioner, the recording and notice thereof to be effected not later than sixty days after the execution of such assignment.
D. Any contract or agreement entered into after January 1, 1977, to purchase or lease an unimproved lot or parcel may be rescinded by the purchaser without cause of any kind by sending or delivering written notice of rescission by midnight of the seventh calendar day following the day on which the purchaser or prospective purchaser has executed such contract or agreement. The subdivider shall clearly and conspicuously disclose, in accordance with regulations adopted by the commissioner, the right to rescind provided for in this subsection and shall provide, in accordance with regulations adopted by the commissioner, an adequate opportunity to exercise the right to rescission within the time limit set forth in this subsection. The commissioner may adopt regulations to exempt commercial and industrial subdivisions from such requirements.
E. If a buyer of an unimproved lot or parcel has not inspected the lot or parcel prior to the execution of the purchase agreement, the buyer shall have a six-month period after the execution of the purchase agreement to inspect the lot or parcel and at the time of the inspection have the right to unilaterally rescind the purchase agreement. At the time of inspection the buyer must sign an affidavit stating that he has inspected the lot, and at the request of the commissioner, such affidavit may be required to be filed with the department.
F. Only a bank, savings and loan association, or title insurance company doing business under the laws of this state or the United States or the state in which the subdivision is located, or a title insurance company wholly owned subsidiary or underwriting agent qualified under section 20-1580, or persons or firms authorized to receive escrows under the laws of this state or the state in which the subdivision is located may act as trustee under paragraph 3 of subsection A of this section. Nothing in this subsection extends to a firm or individual authority to act as a trustee unless such authority is otherwise provided by law.
G. The provisions of this section shall not apply to the sale of improved lots as defined by section 32-2101.
H. The provisions of this section shall not apply to the sale of cemetery lots or parcels within a cemetery which has been formed and approved pursuant to the provisions of this chapter.

32-2185.02. Permanent access to subdivided land; rescindable sales
A. No subdivided land may be sold without provision for permanent access to the land over terrain which may be traversed by conventional motor vehicle unless such provision is waived by the commissioner.
B. Any sale of subdivided land which is without permanent access is rescindable by the purchaser. An action by the purchaser to rescind such transaction shall be brought within three years of the date of execution of the real estate sales contract by the purchaser.

32-2185.03. Deposit of fees
All fees and earned expense collected under this chapter shall be deposited in the state general fund unless otherwise prescribed by law.

32-2185.06. Contract disclosures; contract disclaimers
All agreements and contracts for the purchase or lease of subdivided land from a subdivider, owner or agent shall clearly and conspicuously disclose, in accordance with regulations adopted by the commissioner, the nature of the document, the purchaser's right to receive a copy of the public re-

port and, in the case of unimproved lots or parcels not exempted by regulation pursuant to section 32-2185.01, the purchaser's right to rescind the agreement as provided in section 32-2185.01. Any contract, agreement or lease which fails to make disclosures pursuant to this section shall not be enforceable against the purchaser. If the transaction involves a lot or parcel offered for present or future residential use, the contract, agreement or lease shall not waive or disclaim liability for prior material representations relied upon by the purchaser made by the seller and such seller's agents concerning the subdivision and lot or parcel involved, and any provision attempting to waive or disclaim liability is void.

32-2185.07. Jurisdiction

The commissioner shall not be denied jurisdiction over any person subject to the provisions of this article because of similar jurisdiction over such person by any other agency or the applicability to such person of any regulation prescribed pursuant to any other provision of law.

32-2185.08. Recordable forms of contracts

Each purchaser of subdivided land under a contract as defined in section 33-741 shall be provided with a copy in recordable form of the contract on its execution by the purchaser and seller.

32-2185.09. Civil penalties; limitation

A. A subdivider or agent who is subject to the jurisdiction of the department, who violates this chapter or any rule adopted or order issued by the commissioner or who engages in any unlawful practices defined in section 44-1522 with respect to the sale or lease of subdivided lands may be assessed a civil penalty by the commissioner, after a hearing, in an amount not to exceed $2,000 for each infraction. An infraction that concerns more than one lot in a subdivision is a single infraction for the purposes of this section.

B. A proceeding for imposition of a civil penalty or for suspension or revocation of a license for a violation of this article or any rule adopted or order issued by the commissioner must be commenced within five years of actual discovery by the department or discovery that should have occurred with the exercise of reasonable diligence by the department.

C. A subdivider who sells or leases in this state any lots, parcels or fractional interest in a subdivision without first obtaining a public report from the commissioner except as provided in section 32-2181.01 or 32-2181.02 for a lot or lots created from and after December 31, 2008 and on an order issued by the commissioner, may be assessed a civil penalty by the commissioner, after a hearing, in an amount not to exceed $5,000 for each infraction. A proceeding for the imposition of a civil penalty or suspension or revocation of a license for a violation of this subsection or any rule adopted or order issued by the commissioner must be commenced within five years after actual discovery by the department or discovery that should have occurred with the exercise of reasonable diligence by the department.

ARTICLE 5 - REAL ESTATE RECOVERY FUND

32-2186. Real estate recovery fund; liability limits; definitions

A. The commissioner shall establish and maintain a real estate recovery fund for the benefit of any person aggrieved by any act, representation, transaction or conduct of a licensed real estate or cemetery broker or real estate or cemetery salesperson that violates this chapter or the rules adopted pursuant to this chapter. The fund shall only pay for a loss that is an actual and direct out-of-pocket loss to the aggrieved person directly arising out of the real estate or cemetery transaction, including reasonable attorney fees and court costs, in which the licensee either:

1. Performed acts that required a real estate or cemetery license pursuant to this chapter.
2. Engaged in fraud or misrepresentation while acting as a principal in the purchase or sale of real property and the aggrieved person relied on the broker's or salesperson's licensed status.

B. The fund's liability shall not exceed:

1. Thirty thousand dollars for each transaction, regardless of the number of persons aggrieved or the number of licensees or parcels of real estate involved.
2. Ninety thousand dollars for each licensee.

C. The liability of the fund for the acts of a licensed real estate or cemetery broker or real estate or cemetery salesperson is terminated upon the issuance of orders authorizing payments from the fund in an aggregate amount as prescribed by subsection B of this section.

D. A licensee acting as a principal or agent in a real estate transaction has no claim against the fund, including marital communities, corporations, limited liability companies and partnerships in which the licensee is a principal, member, general partner, officer or director, or those entities in which the licensee holds a direct or indirect interest of at least ten per cent.

E. The fund is liable to pay only against the license of a natural person, not on that of a corporation, a partnership or any other fictitious entity.

F. The fund is liable to pay only for damages arising out of a transaction in which the defendant licensee performed acts for which a real estate or cemetery license was required or when the defendant licensee, while acting as principal in the purchase or sale of real property, engaged in fraud or misrepresentation and the aggrieved person was harmed due to reliance on the defendant's licensed status.

G. The fund is not liable for damages or losses resulting from or caused by:

1. Speculation, including lost profits and other unrealized losses.
2. Transactions for property that is located outside of this state.
3. Loans, notes, limited partnerships or other securities, regardless of whether the loss was caused by an investment in or was secured by real property.
4. A judgment entered against a bonding company if the bonding company is not a principal in the underlying real estate transaction.
5. A tenant's conduct or neglect.
6. Vandalism.
7. Natural causes.

8. Punitive damages.
9. Postjudgment interest.
10. Undocumented transactions or losses.

H. In this article, unless the context otherwise requires:

1. "Judgment" means either:

(a) A final judgment in a court of competent jurisdiction.

(b) A criminal restitution order issued pursuant to section 13-603 or 18 United States Code section 3663.

(c) An arbitration award that includes findings of fact and conclusions of law, that has been confirmed and reduced to judgment pursuant to section 12-133 and that was rendered according to title 12 and the rules of the American arbitration association or another recognized arbitration body.

2. "Judgment debtor" means any defendant under this article who is the subject of a judgment.

32-2187. Payments to real estate recovery fund

A. In addition to any other fees, payments shall be made to the real estate recovery fund on application by any person, as follows:

1. For an original real estate or cemetery broker's license, twenty dollars.
2. For an original real estate or cemetery salesperson's license, ten dollars.

B. If, on June 30 of any year, the balance remaining in the real estate recovery fund is less than six hundred thousand dollars, every broker when renewing a real estate or cemetery license during the following license year shall pay, in addition to the license renewal fee, a fee of twenty dollars for deposit in the real estate recovery fund, and every salesperson when renewing a real estate or cemetery license during such year shall pay, in addition to the license renewal fee, a fee of ten dollars for deposit in the real estate recovery fund.

32-2188. Statute of limitations; service of summons; application for payment; insufficient monies; definition

A. An action for a judgment that subsequently results in an order for payment from the real estate recovery fund shall not be started later than five years from the accrual of the cause of action.

B. If an aggrieved person commences an action for a judgment that may result in an order for payment from the real estate recovery fund, and the defendant licensee cannot be served process personally in this state, the summons may be served by the alternative methods of service provided for by the Arizona rules of civil procedure, including service by publication. A judgment that complies with the provisions of this section and that was obtained after service by publication only applies to and is enforceable against the real estate recovery fund. The department may intervene in and defend any such action.

C. An aggrieved person may apply to the department for payment from the real estate recovery fund after the aggrieved person obtains a judgment against a real estate or cemetery broker or salesperson based on the licensee's act, representation, transaction or conduct in violation of this chapter or the rules adopted pursuant to this chapter. The claimant must file the original application, including appendices, within two years after the termination of all proceedings, reviews and appeals connected with the judgment. The commissioner, in the commissioner's sole discretion, may waive the two-year application deadline if the commissioner determines that the waiver best

serves the public interest. Delivery of the application must be by personal service or by certified mail, return receipt requested.

D. The application must be within the limitations prescribed in section 32-2186 for the amount unpaid on the judgment that represents the claimant's actual and direct loss on the transaction.

E. The department shall prescribe and supply an application form that includes detailed instructions with respect to documentary evidence, pleadings, court rulings, the products of discovery in the underlying litigation and notice requirements to the judgment debtor under section 32-2188.01. The claimant must submit the claim on an application form supplied by the department. The application must include:

1. The claimant's name and address.

2. If the claimant is represented by an attorney, the attorney's name, business address and telephone number.

3. The judgment debtor's name and address or, if unknown, the names and addresses of persons who may know the judgment debtor's present location.

4. A detailed narrative statement of the facts explaining the allegations of the complaint on which the underlying judgment is based, with a copy of the contracts, receipts and other documents from the transaction, the last amended complaint, all existing recorded judgments, documentation of actual and direct out-of-pocket losses and any offsetting payment received and all collection efforts attempted.

5. The identification of the judgment, the amount of the claim and an explanation of its computation, including an itemized list of actual and compensatory damages awarded and claimed.

6. For the purpose of an application that is not based on a criminal restitution order, a statement by the claimant, signed under penalty of perjury, that the complaint on which the underlying judgment is based was prosecuted conscientiously and in good faith. For the purposes of this paragraph, "conscientiously and in good faith" means that all of the following apply:

(a) No party that was potentially liable to the claimant in the underlying transaction was intentionally and without good cause omitted from the complaint.

(b) No party named in the complaint who otherwise reasonably appeared capable of responding in damages was intentionally and without good cause dismissed from the complaint.

(c) The claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the recovery fund.

7. For the purpose of an application that is based on a criminal restitution order, all of the following statements by the claimant, signed under penalty of perjury:

(a) The claimant has not intentionally and without good cause failed to pursue any person potentially liable to the claimant in the underlying transaction other than a defendant who is the subject of a criminal restitution order.

(b) The claimant has not intentionally and without good cause failed to pursue in a civil action for damages all persons potentially liable to the claimant in the underlying transaction who otherwise reasonably appeared capable of responding in damages other than a defendant who is the subject of a criminal restitution order.

(c) The claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the recovery fund.

8. The following statements, signed under penalty of perjury, and information from the claimant:

(a) The claimant is not a spouse of the judgment debtor or a personal representative of the spouse.

(b) The claimant has complied with all of the requirements of this article.

(c) The judgment underlying the claim meets the requirements of this article.

(d) The claimant has recorded a certified copy of the superior court judgment or transcript of judgment pursuant to sections 33-961 and 33-962 in the county where the judgment was obtained and in the counties where all judgment debtors reside and has provided a copy of the recorded judgment to the commissioner.

(e) The claimant has caused the judgment debtor to make discovery under oath, pursuant to section 12-1631, concerning the debtor's property.

(f) The claimant has caused a writ of execution to be issued on the judgment and the officer executing the writ has made a return showing either:

(i) That no personal or real property of the judgment debtor liable to be levied on in satisfaction of the judgment could be found, sold or applied.

(ii) That the amount realized on the sale of the property, or as much of the property that was found, under the execution was insufficient to satisfy the judgment.

(g) The claimant has caused a writ of garnishment to be issued to each known employer of the judgment debtor ascertained by the claimant, that each garnishee-defendant has complied with the respective writ and any judgment or order resulting from the writ and that the amount realized from all judgments against the garnishee-defendants was insufficient to satisfy the balance due on the judgment.

(h) The claimant has deducted the following amounts from the actual or compensatory damages awarded by the court:

(i) Any amount recovered or anticipated from the judgment debtor or debtors.

(ii) Any amount recovered through collection efforts undertaken pursuant to subdivisions (d) through (g) of this paragraph and including an itemized valuation of the assets discovered and amounts applied.

(iii) Any amount recovered or anticipated from bonding, insurance or title companies, including recovery of punitive damages.

(iv) Any amount recovered or anticipated from in-court or out-of-court settlements.

(v) Any amount of tax benefits accrued or taken as deductions on federal, state or local income tax returns.

F. If the claim is based on a judgment against a salesperson or broker and the claimant has not obtained a judgment against the salesperson's or broker's employing broker, if any, or has not diligently pursued the assets of the employing broker, the department shall deny the claim for failure to diligently pursue the assets of all other persons liable to the claimant in the transaction unless the claimant demonstrates, by clear and convincing evidence, that either:

1. The salesperson or broker was not employed by a broker at the time of the transaction.

2. The salesperson's or broker's employing broker would not have been liable to the claimant because the salesperson or broker acted outside the scope of employment in the transaction.

G. The commissioner, at the commissioner's sole discretion, may waive compliance with one or more of the requirements enumerated in subsection E, paragraph 8 or subsection F of this section if the claim is based on an award pursuant to a criminal restitution order or if the commissioner is satisfied that the claimant has taken all reasonable steps to collect the amount of the judgment or the unsatisfied part of the judgment from all judgment debtors but has been unable to collect.
H. If the commissioner finds it is likely that the total remaining liability of the recovery fund is insufficient to pay in full the valid claims of all aggrieved persons who may have claims against any one licensee, the commissioner may petition the court to initiate a proration proceeding. The court shall grant the petition and order a hearing to distribute the total remaining liability of the fund among the applicants in the ratio that their respective claims bear to the aggregate of the valid claims or in such other manner as the court deems equitable. The commissioner or any party may file a proposed plan for equitable distribution of the available monies. The distribution of monies shall be among the persons entitled to share them, without regard to the order of priority in which their respective judgments may have been obtained or their respective applications may have been filed. The court may require all applicants and prospective applicants against one licensee to be joined in one action, to the end that the respective rights of all the applicants to the recovery fund may be equitably adjudicated and settled. The court shall not include in the claims for proration the claim of any person who has not, within ninety days after the court has entered the order for proration, filed a complaint with the court, served the licensee and provided written notice of the claim to the commissioner. The liability of the fund on any application affected by a proration proceeding is based on the limits in effect on the date when the last application for payment is filed. The court may refuse to consider or award prorated recovery to any person who fails to expeditiously prosecute a claim against the licensee or promptly file an application for payment and submit supporting documentation as required by this article.
I. If the commissioner pays from the real estate recovery fund any amount in settlement of an applicant's claim or toward satisfaction of a judgment against a licensed broker, designated broker for a corporation or salesperson, the license of the broker, designated broker for a corporation or salesperson shall be automatically terminated upon the issuance of an order authorizing payment from the real estate recovery fund. A broker, designated broker for a corporation or salesperson is not eligible to receive a new license until the licensee has repaid in full, plus interest at the rate provided by section 44-1201, the amount paid from the real estate recovery fund on the licensee's account and has provided evidence to the commissioner that the judgment has been fully satisfied.
J. If, at any time, the money deposited in the real estate recovery fund is insufficient to satisfy any duly authorized claim or portion of a claim, the commissioner shall, when sufficient money has been deposited in the real estate recovery fund, satisfy the unpaid claims or portions of claims, in the order that the claims or portions of claims were originally filed, plus accumulated interest at the rate of four per cent a year.
K. For the purposes of this section, "complaint" means the facts of the transaction on which the judgment is based.

32-2188.01. Notice of claim to judgment debtor; response

A. Within the same time prescribed by section 32-2188, subsection C for applying for payment from the real estate recovery fund, an aggrieved party who applies for payment shall serve notice of the claim on the judgment debtor, together with a copy of the application. The notice shall be in the following form:

Notice

Based on a judgment against you in favor of (enter name of claimant), application is being made to the Arizona state real estate department for payment from the real estate recovery fund.

If payment is made from the real estate recovery fund, all licenses and license rights that you have under the Arizona real estate law will be automatically terminated on the date of payment and may only be reinstated pursuant to section 32-2131, subsection A, paragraph 3, Arizona Revised Statutes, on a showing that 1) the real estate recovery fund has been reimbursed for the amount paid plus interest at the current legal rate, 2) the underlying judgment has been fully satisfied and 3) you have filed an original application for a license.

If you wish to contest payment from the real estate recovery fund, you must file a written response to the application. The Arizona state real estate commissioner must receive your response at (address) within 35 calendar days after the date this notice is [mailed, delivered, first published]. You must also send a copy of the response to the claimant. If you fail to respond as required, you waive your right to present your objections to payment.

B. If the judgment debtor holds a current license issued by the department, the notice and copy of the application may be served by certified mail, return receipt requested, addressed to the judgment debtor's latest business or residence address on file with the department. If the judgment debtor does not hold a current license and if personal delivery cannot be effected by exercising reasonable diligence, the claimant must publish the notice once a week for two consecutive weeks in a newspaper of general circulation in the county in which the judgment debtor was last known to reside.
C. If the judgment debtor fails to file a written response to the application with the department within thirty-five calendar days after service under subsection B of this section or after the first publication of the notice, the judgment debtor is not thereafter entitled to notice of any action taken or proposed to be taken by the commissioner with respect to the claim.

32-2188.02. Correction of deficiencies in the application
A. If the commissioner determines that a claimant's application fails to comply substantially with the requirements of section 32-2188 or rules adopted pursuant to this chapter, the commissioner, within thirty calendar days after receiving the application, shall mail an itemized list of deficiencies to the claimant. For the purposes of this subsection, "comply substantially" means filing with the department the documents that are minimally necessary to process a claim, including at least a certified copy of the judgment, legible copies of documents establishing the underlying transaction and amounts of losses suffered and a statement concerning amounts recovered from or on behalf of the judgment debtor.
B. The claimant must respond within sixty calendar days after receiving the list of deficiencies by providing the information identified by the commissioner. If the claimant fails to correct the defi-

ciencies within sixty calendar days, the department shall close the file unless the claimant requests an extension in writing. A claimant whose file has been closed may submit a new application as provided by section 32-2188.
C. The deadline prescribed by section 32-2188.04 for the commissioner to make a decision on the application is suspended from the date the commissioner mails the list of deficiencies to the applicant until the date the department receives the requested information.

32-2188.03. Investigation and discovery
In considering and investigating an application, the department may use all appropriate means of investigation and discovery that are available pursuant to this chapter.

32-2188.04. Final decision and order on claim; notice
A. The commissioner shall make a final written decision and order on a claim within ninety calendar days after receiving a completed application except in the following cases:

1. A proration hearing is pending under section 32-2188, subsection H.
2. An application is deficient or fails to comply substantially with the requirements of section 32-2188 or rules adopted pursuant to this chapter as determined pursuant to section 32-2188.02. The ninety day time period begins under this subsection when the department receives an application that is substantially complete.
3. The claimant agrees in writing to extend the time for making a decision.

B. If the commissioner fails to render a written decision and order on a claim within ninety calendar days, or within an extended period of time provided under subsection A of this section, the claim is considered to be approved on the day following the final day for rendering the decision.
C. The commissioner may approve or deny an application or may enter into a compromise with the claimant to pay less in settlement than the full amount of the claim. If the claimant refuses to accept a settlement offered by the commissioner, the commissioner shall deny the claim.
D. The commissioner shall give notice of a decision and order with respect to the claim to the claimant and to any judgment debtor who has filed a timely response to the claim pursuant to section 32-2188.01 as follows:

1. If the commissioner denies the application, the notice shall include the following:

"The claimant's application has been denied. If the claimant wishes to pursue the application in court, the claimant must file the application in the court in which the underlying judgment was entered within six months after receiving this notice, pursuant to section 32-2188.05, Arizona Revised Statutes."

2. If the commissioner's decision is to make a payment to the claimant out of the real estate recovery fund, the following notice shall be given to the judgment debtor with a copy of the decision and order of the commissioner:

"The decision of the Arizona state real estate commissioner on the claim of (name of claimant) is to pay $_____ from the real estate recovery fund. A copy of that decision and order is enclosed.

Pursuant to section 32-2188, subsection I, Arizona Revised Statutes, all of your

licenses and license rights under title 32, chapter 20, Arizona Revised Statutes, will be terminated effective on the date of the payment, and you will not be eligible to apply for reinstatement of any of those licenses until you have satisfied the underlying judgment and reimbursed the real estate recovery fund for this payment, including interest at the prevailing legal rate.

If you desire a judicial review of the commissioner's decision and order or the termination of your licenses and license rights, you may petition the superior court, in the county in which the judgment that is the basis of this claim was rendered, for a judicial review. To be timely, you must file the petition with the court within 30 calendar days after receiving this notice."

32-2188.05. Claimant's right to appeal denial of claim; service of notice of appeal; response; failure to file response

A. A claimant whose application is denied pursuant to section 32-2188.04 may file within six months after receiving notice of a denial of the claim a verified application in the court in which judgment was entered in the claimant's favor for an order directing payment out of the real estate recovery fund based on the grounds set forth in the claimant's application to the commissioner.

B. The claimant must serve a copy of the verified application on the commissioner and on the judgment debtor and file a certificate or affidavit of service with the court. Service on the commissioner shall be made by certified mail addressed to the commissioner. Service on a judgment debtor shall be made according to section 32-2188.01 and shall include the following notice:

Notice

An application has been filed with the court for a payment from the real estate recovery fund that was previously denied by the Arizona state real estate commissioner.

If the court orders a payment from the real estate recovery fund, all of your licenses and license rights under title 32, chapter 20, Arizona Revised Statutes, will be automatically terminated.

If you wish to defend in court against this claim, you must file a written response with the court within 30 calendar days after you are served with a copy of the application. If you fail to file a written response, you waive your right to defend against the claim.

C. The commissioner and the judgment debtor each must file a written response within thirty calendar days after being served with the application under subsection B of this section. The court shall thereafter set the matter for hearing on the petition of the claimant. The court shall grant a request of the commissioner for a continuance of as much as thirty calendar days and, on a showing of good cause by any party, may continue the hearing for such time as the court considers to be appropriate.

D. At the hearing, the claimant must establish compliance with the requirements of section 32-

2188.
E. If the judgment debtor fails to file a written response to the application, the commissioner may compromise or settle the claim at any time during the court proceedings and, on joint petition of the applicant and the commissioner, the court shall issue an order directing payment out of the real estate recovery fund.

32-2189. Management of fund
A. The sums received by the commissioner pursuant to any provisions of this article shall be deposited, pursuant to sections 35-146 and 35-147, in the real estate recovery fund and shall be held by the commissioner in trust for carrying out the purposes of this article.
B. On notice from the commissioner, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.
C. Notwithstanding any other law, the commissioner may expend interest monies from the fund necessary to increase public awareness of the fund, not to exceed fifty thousand dollars in any fiscal year.

32-2191. Commissioner's standing in court
The commissioner may enter an appearance, file an answer, appear at the court hearing, defend the action or take whatever other action the commissioner considers appropriate on the behalf and in the name of the real estate recovery fund and take recourse through any appropriate method of review on behalf of, and in the name of, the real estate recovery fund.

32-2192. Subrogation of rights; collection
A. Before receiving payment from the fund, a claimant must complete and execute, as judgment creditor, an assignment of judgment lien and notice of subrogation and assignment of rights to the claimant's judgment on a form provided by the department.
B. If the commissioner has paid from the real estate recovery fund any sum to the judgment creditor, the commissioner shall be subrogated to all of the rights of the judgment creditor and the judgment creditor shall assign all the right, title and interest in the judgment to the commissioner. The commissioner may record the assignment of judgment lien and notice of subrogation and assignment of rights. Any amount and interest so recovered by the commissioner on the judgment shall be deposited to the fund.
C. If the commissioner is subrogated to a claimant's rights as judgment creditor, the claimant shall not file a full or partial satisfaction of judgment without the commissioner's prior written consent.
D. The attorney general shall bring any actions to recover amounts paid from the fund including interest, attorney fees and costs of collection pursuant to this chapter in the name of this state in the superior court in the county in which the violation occurred or in a county in which the commissioner maintains an office. A certified copy of a commissioner's order requiring payment from the fund may be filed in the office of the clerk of the superior court. The clerk shall treat the commissioner's order in the same manner as a judgment of the superior court. A commissioner's order so filed has the same effect, and may be recorded, enforced or satisfied in a similar manner, as a judgment of the superior court. No filing fee is required under this subsection.

32-2193. Waiver of rights
The failure of an aggrieved person to comply with all of the provisions of this article shall constitute a waiver of any rights hereunder.

32-2193.01. Effect of article on disciplinary action

This article does not limit the authority of the commissioner to take disciplinary action against any licensee for a violation of this chapter or of the rules adopted pursuant to this chapter. The repayment in full of all obligations to the fund by any licensee does not nullify or modify the effect of any other disciplinary proceeding brought pursuant to this chapter or the rules adopted pursuant to this chapter.

32-2193.02. Surety bond requirement; form; cancellation; effective date; certificate of deposit

A. In addition to any other fees assessed under this chapter, the commissioner may require that a real estate or cemetery licensee or person applying for a license or renewal of a license issued to real estate or cemetery brokers or salespersons under this chapter post a surety bond if any of the following apply:

1. The licensee or applicant has been found in violation of any of the provisions of this chapter or the rules of the commissioner pertaining to this chapter.
2. The licensee or applicant has been convicted in a court of competent jurisdiction of a felony or misdemeanor involving a transaction in real estate, or of which fraud is an essential element, or arising out of the conduct of any business in real estate, securities or mail fraud, or securities registration violations.
3. The licensee or applicant has had an administrative order entered against him or it by a real estate regulatory agency or security regulatory agency.

B. The bond required by subsection A of this section shall be in a form acceptable to the commissioner and shall be executed by the applicant or licensee as principal with a corporation duly authorized to transact surety business in this state. Evidence of a surety bond shall be submitted to the commissioner in accordance with rules adopted by the commissioner. The bond shall be in favor of this state and is subject to claims solely for actual damages including reasonable attorney's fees suffered by persons injured as described in section 32-2186. The amount and duration of the bond shall be as the commissioner deems necessary for the protection of the public, but the principal amount of the bond shall be not more than one hundred thousand dollars and its duration shall not exceed five years.

C. On receipt by the commissioner of notice to cancel a bond by any surety, the commissioner shall immediately notify the licensee on the bond of the effective date of cancellation of the bond and the licensee shall furnish a like bond within thirty days after mailing of the notice by the commissioner or his license shall be suspended. Notice to the licensee shall be by certified mail addressed to the licensee's last address on file with the commissioner.

D. In lieu of posting a bond as set forth in this section, the applicant or licensee may post a certificate of deposit with the commissioner in accordance with the provisions of subsections A and B of this section.

ARTICLE 6 - ORGANIZATION AND REGULATION OF CEMETERIES

32-2194. Exceptions

This chapter does not apply to any of the following:

1. Any religious corporation, church, religious society or denomination, a corporation sole administering temporalities of any church or religious society or denomination, or any cemetery organized, controlled and operated by any of them.
2. A private or municipal cemetery.
3. Any fraternal burial park not exceeding ten acres in area, established before July 2, 1963, in which the sale of burial spaces is restricted exclusively to its members.
4. The superintendent of the Arizona pioneers' home and the Arizona pioneers' home cemetery.

32-2194.01. Notice to commissioner of intention to sell cemetery property; exceptions; restrictions

A. Before offering cemetery plots for sale, the owner or agent shall notify the commissioner in writing and the notice shall contain:

1. The name and address of the owner. If the holder of any ownership interest in the cemetery is other than an individual, such as a corporation, partnership or trust, a statement naming the type of legal entity and listing the interest and the extent of such interest of each principal in the entity. For the purposes of this paragraph, "principal" means any person or entity having a ten per cent or more financial interest or, if the legal entity is a trust, each beneficiary of the trust holding a ten per cent or more beneficial interest.
2. The legal description and area of the lands.
3. A true statement of the condition of the title to the land, including all encumbrances on the land.
4. The terms and conditions on which it is intended to dispose of the land, together with copies of any real estate sales contract, conveyance, lease, assignment or other instrument intended to be used, and other information the owner or agent desires to present.
5. A map of the cemetery which has been filed in the office of the county recorder in the county in which the cemetery is located.
6. A comprehensive statement describing the land on and the locality in which the cemetery is located.
7. A true statement of the use or uses for which the proposed cemetery will be offered.
8. A true statement of the provisions, if any, limiting the use of the plots in the cemetery, together with copies of any restrictive covenants affecting all or part of the cemetery.
9. The name and business address of the designated broker selling within this state plots in the cemetery. If the designated broker is changed the cemetery shall advise the department in writing without the requirement of an amended filing.
10. A true statement of the approximate amount of indebtedness which is a lien on the

cemetery or any part of the cemetery and which was or will be incurred to pay for the construction of any on-site or off-site improvement or other facilities.

11. A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area or assessment district within the boundaries of which the cemetery or any part of the cemetery is located and any amounts which are to be obtained by ad valorem tax or assessment, or by a special assessment or tax on the cemetery or any part of the cemetery.

12. Proof of financial responsibility for completing the cemetery and its related facilities for its initial development.

13. A true statement of provisions made for financing any related facilities to be included. The statement shall include evidence of assurances for delivery of such facilities and a statement of the provisions, if any, for the continued maintenance of such facilities.

14. A true statement that the cemetery is not subject to any known flooding or drainage hazards.

15. A true statement of the nature of any improvements to be installed in the developed portion of the cemetery, the estimated schedule for completion and the estimated costs related to such improvements which shall be borne by the developed portion of the cemetery.

16. A true statement of the availability of department of health services approved water and sewage disposal facilities and other public utilities including electricity, gas and telephone facilities in the cemetery, the estimated schedule for their installation and the estimated costs related to such facilities and utilities which shall be borne by the cemetery.

17. If the subdivider is a subsidiary corporation, a true statement identifying the parent corporation and any cemeteries in this state in which the parent or any of its subsidiaries are or have been involved in the last five years.

18. Such other information and such other documents as the commissioner may reasonably require.

19. If the cemetery has been previously licensed in this state and the ownership or control of the cemetery has transferred, a statement from a certified public accountant certified pursuant to chapter 6 of this title, showing that all required funds have been deposited in the irrevocable trust fund and that only lawful withdrawals were made. An audit that meets generally accepted accounting standards shall be used by the certified public accountant to prepare the statement required by this paragraph.

B. The commissioner may require the owner or agent to supplement the notice of intention to develop a cemetery and may require the filing of periodic reports to update the information contained in the original notice of intention to develop a cemetery.

C. The conveyance of a plot in a cemetery does not limit the right of the purchaser or the purchaser's representative to appear and testify before any public body regarding changes or other official acts affecting the cemetery property. All contractual provisions which conflict with this subsection are deemed to be against public policy.

D. The commissioner by special order may exempt from any one or all of the provisions of this article certain cemeteries otherwise required to comply with this article on written petition and on a showing by the petitioner, satisfactory to the commissioner, that compliance with this article is not essential to the public interest or for the protection of buyers by reason of the special characteristics of the cemetery.

32-2194.02. Examination by commissioner; fee

Before cemetery plots are offered for sale the commissioner shall examine the cemetery and shall make public his findings. The total cost of travel and subsistence expenses incurred by the department in the examination, in addition to the initial filing fee provided for in this section, shall be borne by the owner of the cemetery or his agent, on the basis of actual cost to the department. An initial filing fee of five hundred dollars or such lesser fee as determined by the commissioner shall accompany the written notification required in section 32-2194.01.

32-2194.03. Issuance or denial of certificate of authority; voidable sale; order prohibiting sale; investigations by commissioner; public hearings; summary orders

A. After examination of a cemetery application, the commissioner, unless there are grounds for denial, shall issue a certificate of authority authorizing the sale in this state of cemetery plots within the cemetery. The commissioner shall notify the state board of funeral directors and embalmers when the commissioner issues a certificate of authority pursuant to this section.

B. The commissioner may deny issuance of a certificate of authority on any of the following grounds:

1. Failure to comply with any of the provisions of this article or the rules of the commissioner pertaining to this article.

2. The sale of plots within the cemetery would constitute misrepresentation to or deceit or fraud of the purchasers.

3. The applicant has procured or attempted to procure a certificate of authority under the provisions of this chapter for itself or another by fraud, misrepresentation or deceit or by filing an original or renewal application which is false or misleading.

4. Inability to deliver title or other interest contracted for.

5. Inability to demonstrate that adequate financial or other arrangements acceptable to the commissioner have been made for installation of all off-site and other cemetery facilities.

6. Failure to make a showing that the plots can be used for the purpose for which they are offered.

7. Failure to provide in the contract or other writing the use or uses for which the plots are offered, together with any covenants or conditions relative to such plots.

8. Failure to include in the contract the disclosure provisions required as provided by section 32-2194.04.

9. The owner, agent, officer, director or partner, trust beneficiary holding ten per cent or more beneficial interest or, if a corporation, any stockholder owning ten per cent or more of the stock in such corporation has:

(a) Been convicted of a felony or misdemeanor involving fraud or dishonesty or involving conduct of any business or a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(b) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, time-share intervals, membership camping contracts or campgrounds, or securities or involving consumer fraud or the racketeering laws of this state.

(c) Had an administrative order entered against the applicant by a real estate regulatory agency or security regulatory agency.

(d) Had an adverse decision or judgment entered against the applicant involving

fraud or dishonesty or involving the conduct of any business in or a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(e) Disregarded or violated any of the provisions of this chapter or the rules of the commissioner pertaining to this chapter.

(f) Participated in, operated or held an interest in any entity to which subdivision (b), (c), (d) or (e) applies.

10. Failure to satisfy the commissioner that sufficient land has been dedicated for the operation of the cemetery to make it financially secure with respect to the trust fund requirements of this article.

C. A cemetery owner or operator shall not sell or offer for sale any plots without first obtaining a certificate of authority as provided in this section. Any sale of plots before the issuance of the certificate of authority is voidable by the purchaser. An action by the purchaser to void such transaction shall be brought within three years of the date of execution of the purchase agreement by the purchaser. In any such action, the prevailing party is entitled to reasonable attorney fees as determined by the court.

D. An applicant objecting to the denial of a certificate of authority by the commissioner, within thirty days after receipt of the order of denial, may file a written request for a hearing. The commissioner shall hold the hearing within twenty-five days after the request unless the party requesting the hearing requests a postponement. If the hearing is not held within twenty-five days after the request for a hearing is received, plus the period of any such postponement, or if a proposed decision is not rendered within forty-five days after submission, the order of denial shall be rescinded and a certificate of authority shall be issued.

E. On the commissioner's own motion or if the commissioner has received a complaint and has satisfactory evidence that the cemetery owner or agent is violating any provision of this article or the rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of cemetery plots or deviated from the conditions under which the certificate of authority was issued, the commissioner may investigate the cemetery project and examine the books and records of the cemetery owner or agent. For the purpose of examination, the cemetery owner or agent shall keep and maintain records of all sales transactions and monies the cemetery owner or agent received at the broker's main office or at an off-site storage location in this state if the owner or agent provides prior written notification of the street address of the off-site storage location to the department. The cemetery owner or agent shall make the records accessible to the commissioner on reasonable notice and demand.

F. The commissioner on the commissioner's own motion or if the commissioner has received a complaint and has satisfactory evidence that any of the grounds exist as provided in subsection B of this section or that any person has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of cemetery plots or has deviated from the conditions under which the certificate of authority was issued, before or after the commissioner issues the certificate of authority as provided in this section, may conduct an investigation of such matter, issue a summary order as provided in section 32-2157, or hold a public hearing and, after the hearing, may issue such order or orders as the commissioner deems necessary to protect the public interest and ensure compliance with the law, rules or certificate of authority, or the commissioner may bring an action in any court of competent jurisdiction against the person to enjoin the person from continuing such violation or engaging in a violation or doing any act or acts in furtherance of a violation. The court

may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by a person of any unlawful practices or which may be necessary to restore to any person in interest any monies or property, real or personal, which may have been acquired by means of any practice declared to be unlawful in this article.

G. If it appears to the commissioner that a person has engaged in or is engaging in a practice declared to be unlawful by this article and that such person is concealing assets or has made arrangements to conceal assets or is about to leave this state, the commissioner may apply to the superior court, without notice, for an order appointing a receiver of the assets of such person or for a writ of ne exeat, or both.

H. The court on receipt of an application for the appointment of a receiver or for a writ of ne exeat, or both, shall examine the verified application of the commissioner and such other evidence that the commissioner may present to the court. If satisfied that the interests of the public require the appointment of a receiver or the issuance of a writ of ne exeat without notice, the court shall issue an order appointing the receiver or issue the writ, or both. If the court determines that the interests of the public will not be harmed by the giving of notice, the court shall set a time for a hearing and require that such notice be given as the court deems satisfactory.

I. If the court appoints a receiver without notice, the court shall further direct that a copy of the order appointing a receiver be served on the person engaged in or engaging in a practice declared to be unlawful under this article by delivering such order to the last address of the person which is on file with the real estate department. The order shall inform the person that he has the right to request a hearing within ten days after the date of the order, and if requested, the hearing shall be held within thirty days after the date of the order.

32-2194.04. Contract disclosures; contract disclaimers

A. In all agreements and contracts for the sale of cemetery plots from a cemetery, a broker or agent shall clearly and conspicuously disclose the following information:

1. The nature of the document, including grave site designation.
2. The nature of the cemetery, whether endowed or not under the provisions of this article.
3. That the cemetery operator has received a certificate of authority from the department pursuant to section 32-2194.03 and that these records are available for examination at the department at the request of the purchaser.
4. A provision that all cemetery improvements for the area developed as defined in the application shall be completed by the date indicated in the application.
5. Whether the purchaser is subject to a fee for the following known services or goods associated with future plot use:
    (a) Opening or closing interment.
    (b) A marker, with or without a setting.
    (c) A vault liner purchased with the grave site.
6. Whether a marker or vault may be purchased separately from another vendor.
7. The policy of the cemetery regarding cancellations of contracts, including whether the cemetery issues refunds under canceled contracts.

B. An agreement or contract which fails to make the disclosures required in subsection A of this section is unenforceable against the purchaser.

32-2194.05. Advertising material; contents; order prohibiting use

A. Within ten days after request by the commissioner, the cemetery owner or agent shall file with the commissioner a copy of any promotional and advertising material of any kind used directly or indirectly in connection with the sale of cemetery plots or any material changes in the material.

B. No advertising, communication or sales literature of any kind, including oral statements by salespersons or other persons, may contain:

1. Any untrue statement of material fact or any omission of material fact which would make the statement misleading in light of the circumstances under which the statement was made.
2. Any statement, representation or pictorial presentation of proposed improvements or nonexistent scenes without clearly indicating that the improvements are proposed and the scenes do not exist.

C. All advertising and sales literature shall be consistent with the information contained in the notice of intention pursuant to section 32-2194.01 and shall otherwise comply with the rules of the commissioner.

D. If it appears to the commissioner that any person is or has engaged in advertising or promotional practices in violation of this article, the commissioner may hold a hearing as a contested case under the provisions of title 41, chapter 6, article 10 and issue such order or orders as he deems necessary to protect the public interest or the commissioner may bring an action in any court of competent jurisdiction against the person to enjoin the person from continuing the violation.

E. The commissioner may adopt rules and guidelines necessary to protect the public interest and to assure that all advertising and promotional practices with respect to land subject to the provisions of this article are not false or misleading.

F. It is unlawful for any owner or agent of a cemetery or other person with intent directly or indirectly to sell plots subject to the provisions of this article to authorize, use, direct or aid in any advertising, communication, sales literature or promotional practice which violates this section.

G. Nothing in this section applies to the owner or publisher of a newspaper, magazine or other publication of printed matter in which such advertisement appears or to the owner or operator of a radio or television station which disseminates such advertisement if the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser.

32-2194.06. Records of transactions

A. Cemeteries shall keep on file records of all documents in connection with all cemetery plot transactions handled by or through them. The records shall include but are not limited to:

1. All sales contracts.
2. Sales contract payment ledgers.
3. Certificates of burial rights.
4. All ledgers or books showing all receipts, disbursements or adjustments.
5. Records of plats and maps.
6. Such other information as the commissioner may reasonably require.

B. Each cemetery broker is responsible for maintenance of all documents used in connection with all cemetery plot transactions while in the employment of a cemetery. The records shall be open at all reasonable times for inspection by the commissioner or the commissioner's representatives. The records of each transaction shall be kept by the cemetery for a period of five years after payment in full of the transaction at the broker's main office or at an off-site storage location in this state if the owner or agent provides prior written notification of the street address of the off-site storage location to the department.

32-2194.07. Recording of actions

A. If the commissioner issues a cease and desist order, obtains a court order enjoining further sales, issues an order of prohibition or suspends approval of a cemetery, the action shall be recorded in the office of the county recorder in any county in which the cemetery property is located.

B. If any of the orders which require recording in subsection A are revoked, an order of release shall be recorded in the same manner.

32-2194.08. Administrative penalties

A. Any cemetery owner, operator, broker or salesman subject to the jurisdiction of the department who violates any provision of this chapter or any rule or order promulgated by the commissioner, who deviates substantially from the provisions under which a certificate of authority was issued or who engages in any unlawful practices defined in section 44-1522 with respect to the sale of cemetery plots may be assessed a civil penalty by the commissioner, after a hearing, in an amount of not to exceed one thousand dollars for each infraction.

B. Actions to recover penalties pursuant to this section shall be brought by the attorney general in the name of this state in the superior court in the county in which the violation occurred or in a county in which the commissioner maintains an office.

32-2194.09. Civil liabilities

A. If any part of the notice of intention filed pursuant to section 32-2194.01 contains an untrue statement of a material fact or omits a material fact required to be stated in such notice, the owner or agent is liable as provided in this article to any person who acquires a plot in the cemetery.

B. A cemetery owner, operator, broker or salesman who sells a cemetery plot in violation of this article is liable to the purchaser of such plot as provided in this article.

C. It is unlawful for any cemetery owner, operator, broker or salesman in selling or offering to sell any cemetery plot to:

1. Employ any device, scheme or artifice to defraud.
2. Obtain money or property by means of a material misrepresentation with respect to any information included in the notice of intention or the certificate of authority with respect to any other information pertinent to the plot on which the purchaser relies.
3. Engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit on a purchaser.

D. Damages in any suit brought pursuant to this section shall be the difference between the amount paid for the plot together with the reasonable cost of improvements to such plot and whichever of the following is the smallest:

1. The value of the plot and improvements as of the time the suit was brought.
2. The price at which the plot was disposed of in a bona fide market transaction before suit.
3. The price at which the plot was disposed of in a bona fide market transaction after suit was brought but before judgment.

E. In an action in which a violation of this section is established the purchaser is also entitled to recover reasonable attorney fees as determined by the court. If a violation is not established, the court, in its discretion, may award reasonable attorney fees to the defendant.

F. Every person who becomes liable to make any payment pursuant to this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment.

G. In no case shall the amount recoverable pursuant to this section exceed the sum of the purchase price of the plot, the reasonable cost of improvements installed by the purchaser and reasonable court costs and attorney fees.
H. Nothing contained in this section precludes any other remedies that may exist at law or in equity.
I. No action may be maintained to enforce any liability created pursuant to subsection A or B of this section unless brought within one year after the discovery of the untrue statement or the omission or after such discovery should have been made by the exercise of reasonable diligence. No action may be maintained to enforce any liability created pursuant to subsection C of this section unless brought within two years after the violation on which it is based. In no event shall any such action be brought by a purchaser more than three years after the sale to the purchaser.

32-2194.10. Change of cemetery plan after approval by commissioner; notice; fee
A. It is unlawful for any owner or agent, after submitting to the commissioner the plan under which cemetery plots are to be offered for sale and securing his approval, to change the plan materially without first notifying the commissioner in writing of the intended change. Material changes covered by this section shall be prescribed in the rules of the commissioner. On receipt of any notice of a material change, the commissioner, if he determines such action to be necessary for the protection of purchasers, may suspend his approval of sale pending amendment of the notice as required by section 32-2194.01.
B. A filing fee of one-half of the fee that was charged for the initial certificate of authority pursuant to section 32-2194.02 but not less than two hundred fifty dollars shall accompany any amendment required by subsection A of this section.

32-2194.11. Delivery of clear title by cemetery of cemetery plots
Cemetery plots shall not be sold which are subject to liens.

32-2194.12. Permanent access to cemetery land
No cemetery may be sold without provision for permanent access.

32-2194.13. Deposit of fees
All fees and earned expense collected under this chapter shall be deposited in the state general fund unless otherwise prescribed by law.

32-2194.14. Cemetery brokers; disclosures
Before offering cemetery property or interment rights for sale in a licensed cemetery, a cemetery broker who is not a designated broker for the cemetery shall obtain and comply with all of the licensed cemetery's rules and shall disclose to the purchaser all fees and time frames of transfer and recordation of interment rights or deeds on the cemetery records.

32-2194.15. Jurisdiction
The commissioner shall not be denied jurisdiction over any person subject to the provisions of this article because of similar jurisdiction over such person by any other agency or the applicability to such person of any rule prescribed pursuant to any other provision of law.

32-2194.16. Sale of undeveloped cemetery property
With regard to cemetery property which is undeveloped, development must commence for that particular section or building within five years after the date of the first sale of a plot.

32-2194.17. Transaction of cemetery business
Only a corporation or a limited liability company duly organized to conduct cemetery business may transact cemetery business pursuant to this article.

32-2194.18. Application for authority to open and operate cemeteries
Before a corporation may engage in or transact any business of a cemetery it must file an application for a certificate of authority with the commissioner. Such application must show that the corporation owns or is actively operating a cemetery in this state which is subject to the provisions of this chapter or that the applicant is in a position to commence operating a cemetery.

32-2194.19. Investigation of applicant before granting of certificate of authority where needed
Upon receipt of an application for a certificate of authority to operate a cemetery, the commissioner shall cause an investigation to be made of the physical status, plans, specifications and financing of the proposed cemetery, the character of the applicant, including its officers, directors, shareholders or members, and any other qualifications required of the applicant under this article. If the commissioner finds that the applicant has complied with all the provisions of this article and further finds that the area in which the proposed cemetery is to be located is not already adequately served, then he shall grant the certificate of authority.

32-2194.20. Right of cemetery to make rules and regulations
Any cemetery subject to the provisions of this article may make, adopt, amend, add to, revise, or modify and enforce rules and regulations for the use, care, control, restriction and protection of all or any part of its cemetery, provided these rules and regulations are not contrary to law. These rules and regulations shall be on file with the real estate commissioner and shall at all times be posted in a conspicuous place in the offices of the cemetery or at some other place within the cemetery as may be convenient for inspection.

32-2194.21. Survey of property; maps and plats
Every cemetery, from time to time as its property may be required for interment purposes, in addition to the other requirements of the article, shall:

1. In case of land, survey and subdivide it into sections, blocks, plots, avenues, walks or other subdivisions, and make a good and substantial map or plat showing the sections, plots, avenues, walks or other subdivisions, with descriptive names or numbers.
2. In case of a mausoleum, or crematory and columbarium, it shall make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevations, and other divisions, with descriptive names or numbers.

32-2194.22. Filing maps and declaration of dedication
The cemetery, in addition to filing the map or plat in the office of the county recorder as required by subdivisions, shall also file for record in the county recorder's office, a written declaration of dedication of the property delineated on the map or plat dedicating the property exclusively to

cemetery purposes.

32-2194.23. Nonapplication of law against perpetuities
Dedication to cemetery purposes pursuant to this chapter is not invalid as violating any laws against perpetuities, but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the interment of human remains, and a duty to, and for the benefit of, the general public.

32-2194.24. Trust fund to be established before certificate of authority granted
No certificate of authority shall issue to a corporation or limited liability company organized for the purpose of maintaining and operating a cemetery unless the articles of incorporation or organization certify to the establishment of an irrevocable trust fund for maintenance and operation in accordance with the provisions of this article, and there is attached to the articles of incorporation or organization the written instrument establishing the irrevocable trust fund accompanied by the receipt of the trustee designated in the written instrument for the minimum care fund hereinafter provided. Any cemetery that has been operating before January 1, 1998 and that was not previously required to establish an irrevocable trust fund shall not be required to establish an irrevocable trust fund unless a material change is made to the plan under which cemetery plots are offered for sale.

32-2194.25. Trust fund to be established before existing cemetery can advertise as endowed-care cemetery
After the effective date of this article, no owner of a cemetery in existence at the effective date of this article, who previous to such date has not sold or contracted to sell lots in such cemetery with a provision for perpetual or endowed care, shall thereafter advertise or otherwise hold out to the public that such cemetery or any individual lot therein is entitled to perpetual or endowed care unless and until the owner shall have established a trust fund for the care of the cemetery, as provided by this article.

32-2194.26. Initial deposit required in endowment-care fund
No corporation hereafter organized for the operation of a perpetual or endowed-care cemetery nor any owner of a cemetery not previously operating as a perpetual or endowed-care cemetery shall advertise or sell plots in such cemetery under the representation that the cemetery or any individual plot therein is entitled to perpetual or endowed care until there has been established an irrevocable trust fund to provide for such care in accordance with the following schedule:

1. Cemeteries located in an area having a population of less than ten thousand persons within a radius of fifteen miles from the center of such cemetery must deposit with the trustee the sum of ten thousand dollars in cash.
2. Cemeteries located in an area having a population of ten thousand or more persons but less than fifteen thousand persons within a radius of fifteen miles from the center of such cemetery must deposit with the trustee the sum of fifteen thousand dollars in cash.
3. Cemeteries located in an area having a population of fifteen thousand or more persons but less than twenty-five thousand persons within a radius of fifteen miles from the center of such cemetery must deposit with the trustee the sum of twenty thousand dollars in cash.
4. Cemeteries located in an area having a population of twenty-five thousand or more persons, but less than fifty thousand persons within a radius of fifteen miles from the center of such cemetery must deposit with the trustee the sum of thirty thousand dollars in cash.

5. Cemeteries located in an area having a population of fifty thousand or more persons within a radius of fifteen miles from the center of such cemetery must deposit with the trustee the sum of fifty thousand dollars in cash.

32-2194.27. Restrictive use of income from endowed-care fund; obligation

The irrevocable trust fund established pursuant to section 32-2194.26 shall be evidenced by an instrument in writing and shall contain the following provisions:

1. There shall be designated a trustee for the endowed-care fund that is a financial institution authorized to do business in this state and authorized to act as trustee by the laws of this state for such investments. The trustee must be one in which no officer, director or owner of the cemetery is financially interested in any way.
2. The principal of the trust fund shall remain permanently intact, and only the income or the unitrust amount specified in section 14-11014 or 14-11015 shall be expended. It is the intent of this section that the income or unitrust amount of the fund shall be used solely for the care of plots or other burial spaces sold to third persons with a provision for perpetual or endowed care and the care of such other portions of the cemetery immediately surrounding such plots as may be necessary to preserve the beauty and dignity of the plots sold. The fund or its income shall never be used for the development, improvement or embellishment of unsold portions of the cemetery so as to relieve the owner of the cemetery of the ordinary cost incurred in preparing such property for sale.
3. A financial institution acting as a trustee does not have a legal obligation to operate a cemetery other than providing trust fund income to the receiver or successor of a cemetery unable to meet its perpetual care obligations. A trustee, in its sole discretion and without the approval of the court, may convert the trust to a total return unitrust and administer the endowed-care fund as provided in section 14-11014.

32-2194.28. Deposit in endowed-care fund from sales

A. In addition to establishing a trust fund as required by this article, every perpetual or endowed-care cemetery shall deposit into its trust fund according to the following schedule for each sale within thirty days after the contract for the purchase of cemetery property is paid in full:

1. Two dollars seventy-five cents per square foot for each grave.
2. Thirty-six dollars for each niche.
3. One hundred twenty dollars for each crypt.

B. In addition to the deposits required in subsection A of this section, a cemetery may deposit in its trust fund up to fifteen per cent of the gross sales price of a grave, niche or crypt.

C. This section applies to every cemetery which in any way represents that it is a perpetual or endowed-care cemetery, regardless of whether it operated as a perpetual or endowed-care cemetery before July 2, 1963.

D. In the case of a perpetual or endowed-care cemetery which was in operation as a perpetual or endowed-care cemetery before July 2, 1963, the fund created by the deposits which subsection A of this section requires is subject to the same restrictions to which the trust funds required by sections 32-2194.24 and 32-2194.25 are subject.

32-2194.29. Posting of signs by cemeteries

Each cemetery shall post in a conspicuous place in the office or offices where sales are conducted

and in a conspicuous place at or near the entrance of the cemetery or its administration building, and readily accessible to the public, a legible sign in lettering of a size and style to be approved by the real estate commissioner indicating either the cemetery is an endowed or a nonendowed cemetery.

32-2194.30. Restriction on use of care funds

Endowed-care funds shall not be used for any purpose other than to provide for the care of burial spaces as prescribed in section 32-2194.27. In investing these funds, the trustee shall exercise the judgment and care of a prudent investor under the circumstances then prevailing, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income or unitrust amount as well as the probable safety of their capital. Within the limitations of the foregoing standard, and subject to any express provisions or limitations contained in any particular trust instrument, a trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically including corporate obligations of every kind and stocks, preferred or common, that prudent investors acquire for their own account.

32-2194.31. Crematories

Crematories which are licensed as part of a cemetery under this chapter shall comply with the requirements of chapter 12, article 6 of this title and rules adopted pursuant to that article.

32-2194.32. Opening and closing of burial places

If any grave, mausoleum, niche or other place used or intended to be used for the burial of human remains is located in a cemetery, only a person employed or designated by the cemetery may open or close the grave, mausoleum, niche or other place used or intended to be used for the burial of human remains, subject to the rules established by the cemetery.

32-2194.33. Cemetery property owners; address notification reclamation; abandoned cemetery plot

A. For the purposes of this section, an owner of cemetery property in any cemetery licensed under this chapter shall keep the cemetery informed in writing of the owner's current residence address. Before initiating a notice of abandonment, the cemetery shall notify each cemetery property owner by letter at the owner's last known address and notify all future cemetery property owners, in the contract for sale and the certificate of ownership, of the requirement to keep the cemetery informed in writing of their current residence address.

B. There is a presumption that cemetery property in any cemetery licensed under this chapter has been abandoned when an owner of unused cemetery property has failed to provide the cemetery with a current residence address for a period of fifty consecutive years and as a result the cemetery is unable to communicate by certified mail with the owner of the unused cemetery property. There is not a presumption of abandonment if either of the following occurs:

1. Cemetery property held in common ownership is adjoining whether in a grave space, plot, mausoleum, columbarium or other place of interment and is used within common ownership.
2. Any type of memorial marker has been placed on or attached to the cemetery property.

C. On the occurrence of a presumption of abandonment as prescribed by subsection B of this section, a cemetery may file with the department a certified notice attesting to the abandonment of the

cemetery property. The notice shall do the following:

1. Describe the cemetery plot certified to have been abandoned.

2. Set forth the name of the last known owner of the cemetery plot or, if the owner is known to the cemetery to be deceased, the names, if known to the cemetery, of claimants that are heirs at law, next of kin or specific devisees under the will of the owner.

3. Describe the failure of the owner or claimants as prescribed by paragraph 2 of this subsection to keep the cemetery informed of the owner's current residence address for a period of fifty consecutive years or more.

4. Certify that cemetery property has not been included that is held in common ownership with any abandoned cemetery property as prescribed by subsection B of this section and that a memorial marker has not been placed on or attached to the cemetery property.

D. Irrespective of diversity of ownership of the cemetery property, a cemetery may include in its certification cemetery properties of various types.

E. The cemetery shall publish a notice of the approved abandoned cemetery property once each week for two consecutive weeks in a newspaper of general circulation in the county in which the cemetery property is located.

F. After one hundred twenty days from the final publication of the notice as provided in subsection E of this section, if there has been no notification of the address of the current owner, the cemetery shall have the right to resell the cemetery property and transfer the ownership of the cemetery property as provided in the cemetery's certificate of authority.

G. On the sale of each lot, grave, niche or crypt reclaimed pursuant to this section, the cemetery shall contribute to the endowed-care trust fund the amount currently required by section 32-2194.28.

H. On showing of evidence of right of ownership, persons or their heirs who were owners of cemetery property that was sold under this section shall have the right at any time to obtain equivalent cemetery property in the cemetery without additional charge. If no cemetery property is desired, the persons or their heirs may obtain and recover the amount originally paid to the cemetery for the cemetery property.

I. The cemetery shall make available cemetery property equal to ten per cent of the abandoned cemetery property sold under this section for the use of persons or their heirs who were owners of cemetery property that was sold under this section and who have the right at any time to obtain cemetery property in the cemetery under this section.

J. Persons who purchase cemetery property reclaimed pursuant to this section shall have the right to sell, alienate or otherwise transfer the cemetery property subject to and in accordance with the rules of the cemetery and payment of any applicable transfer fee.

ARTICLE 7 - SALE OF UNSUBDIVIDED LANDS

32-2195. Notice to commissioner of intention before offering for sale or lease of unsubdivided land; definition

A. Prior to the offering for sale or lease of unsubdivided land the owner or agent shall notify the commissioner in writing of the owner's or agent's intention to offer such parcels for sale or lease.

B. The notice required by this section shall contain the following information:

1. The name and address of the owner. If the holder of any ownership interest in the land is other than an individual, such as a corporation, partnership or trust, a statement naming the type of legal entity and listing the interest and the extent of such interest of each principal in the entity. For the purposes of this section, "principal" means any person or entity having a ten per cent or more financial interest or, if the legal entity is a trust, each beneficiary of the trust holding a ten per cent or more beneficial interest.

2. The name and address of the agent.

3. The legal description and area of the lands.

4. A true statement of the condition of the title to the land, including all encumbrances thereon.

5. A true statement of the terms and conditions under which such lands are to be offered to the public.

6. A statement of the use or uses for which the land will be offered or a statement that it is offered for no specific use.

7. A true statement of the provisions made for permanent access.

8. A true statement setting out the availability of water or lack thereof.

9. A true statement of the availability to the land of sewage disposal facilities and other public utilities including water, electricity, gas and telephone facilities.

10. A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, taxing area or assessment district within the boundaries of which the unsubdivided lands are located, and which is to pay for the construction or installation of any improvements to that land.

11. A true statement as to whether all or any portion of the unsubdivided land is located in an open range or area in which livestock may roam at large under the laws of this state and what provisions, if any, have been made for the fencing of the unsubdivided land to preclude livestock from roaming within such land.

12. If the owner or agent is a subsidiary corporation, a true statement identifying the parent corporation and any of the following in which the parent or any of its subsidiaries are or have been involved within the past five years:

(a) Any subdivision in this state.

(b) Any subdivision, wherever located, for which registration is required pursuant to the federal interstate land sales full disclosure act.

(c) Any subdivision, wherever located, for which registration would have been re-

quired pursuant to the federal interstate land sales full disclosure act but for the exemption for subdivisions whose lots are five acres or more in size.

13. A true statement identifying all other subdivisions, designated in paragraph 12, in which any of the following are or, within the last five years, have been directly or indirectly involved:

(a) The holder of any ownership interest in the land.

(b) The agent.

(c) Any principal or officer in the holder.

14. A true statement as to whether all or any portion of the unsubdivided land is located in territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, in territory in the vicinity of a public airport as defined in section 28-8486, on or after July 1, 2001, in a high noise or accident potential zone as defined in section 28-8461 or on or after July 1 of the year in which the land becomes located in a high noise or accident potential zone. The statement required pursuant to this paragraph does not require the amendment or refiling of any notice filed before July 1, 2001 or before July 1 of the year in which the land becomes located in a high noise or accident potential zone.

15. Such other information and such other documents and certifications as the commissioner may reasonably require for the protection of the public.

C. Copies of original promotional and advertising material to be used with such offering shall be attached to the notice.

D. It shall be unlawful for any owner or agent to make any offerings regulated by this section without the written authorization of the commissioner. The commissioner shall issue a public report thereon and require a copy of the public report to be furnished to each offeree at the time of such offering.

E. It shall be unlawful to offer any lands regulated by this article without provisions having been made for permanent access over terrain on which roads could be established for conventional motor vehicles unless such provision is waived by the commissioner.

F. Satisfactory proof or evidence that access meets the requirements of subsection E of this section shall be furnished to the department in a report by a licensed engineer or land surveyor of this state.

G. The commissioner may terminate any authorization issued upon the grounds and in the manner set out in section 32-2183.

H. If the director of water resources has issued a water availability report, the state real estate commissioner shall require that all promotional material and contracts for the sale of such unsubdivided lands adequately display the director of water resources' report or a brief summary of the results prepared by the developer and approved by the real estate commissioner. If no report has been prepared by the director of water resources and the availability of water is unknown, the real estate commissioner shall require that all promotional material and contracts adequately display that no report has been prepared and that the availability of water is unknown.

I. Neither any real estate sales contract, conveyance, lease, assignment or other instrument to transfer any interest in unsubdivided land nor any covenant or restriction affecting real property shall contain any provision limiting the right of any party to appear or testify in support of or opposition to zoning changes, building permits or any other official acts affecting real property before a governmental body or official considering zoning changes, building permits or any other official acts affecting real property, whether such property is located within or outside of the boundaries of the

unsubdivided land. All contractual provisions which conflict with this subsection are declared to be contrary to public policy. Nothing contained in this subsection shall prohibit private restrictions on the use of any real property.

32-2195.01. Power of commissioner to exempt certain unsubdivided land by special order

A. In his discretion the commissioner may exempt by special order from any one or all of the provisions of this article certain unsubdivided land on written petition and on a showing by the petitioner, satisfactory to the commissioner, that compliance with this article is not essential to the public interest or for the protection of buyers by reason of the special characteristics of the unsubdivided land or the limited character and duration of the offer for sale, lease or financing.

B. The special order pursuant to this section shall relate to specific land.

C. A petition filed under this section shall be accompanied by an initial fee of one hundred dollars. The fees are not returnable irrespective of the nature of the action taken on the petition.

32-2195.02. Examination of unsubdivided land by commissioner; fee

The commissioner shall examine any unsubdivided land offered for sale or lease pursuant to this article, and shall make public his findings. The total cost of travel and subsistence expenses incurred by the department in the examination, in addition to the initial filing fee provided for in this section, shall be borne by the owner of the unsubdivided land or his agent, or the subdivider of the project, on the basis of actual cost to the department. An initial filing fee of five hundred dollars shall accompany the written notification required in sections 32-2195 and 32-2195.10.

32-2195.03. Unsubdivided land reports; denial of issuance; order prohibiting sale or lease; investigations; hearings; summary orders

A. Upon examination of unsubdivided land, the commissioner, unless there are grounds for denial, shall prepare and issue to the owner or agent a public report authorizing the sale or lease of the unsubdivided lands in this state. The report shall contain the data obtained in accordance with section 32-2195 and any other information which the commissioner determines is necessary to implement the purposes of this article. If any of the unsubdivided land is located within territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, the report shall include, in bold twelve point font block letters on the first page of the report, the statements required pursuant to section 28-8484, subsection A and, if the department has been provided a map prepared pursuant to section 28-8484, subsection B, the report shall include a copy of the map. These report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2001 or on or after December 31 of the year in which the unsubdivided land becomes territory in the vicinity of a military airport or ancillary military facility. The commissioner shall require the owner or agent to reproduce the report and furnish each prospective buyer with a copy before the buyer signs an offer to purchase, taking a receipt therefor.

B. Notwithstanding any provision of subsection A of this section, an owner may prepare a final public report for use in the sale of unsubdivided lands as defined in section 32-2101, as follows:

1. The owner shall prepare the public report and provide a copy of the report to the commissioner with the submission of the notification required by sections 32-2195 and 32-2195.10 and shall comply with all other requirements of this article.
2. An initial filing fee of five hundred dollars or an amended filing fee of two hundred fifty dollars shall accompany the notification required by paragraph 1 of this subsection.

3. The department shall assign a registration number to each notification and public report submitted pursuant to this subsection and shall maintain a database of all of these submissions. The owner shall place the number on each public report.

4. The department shall determine within fifteen business days after the receipt of the notification and public report whether the notification and public report are administratively complete. The commissioner may either issue a certification that the notification and public report are administratively complete or may deny issuance of the certification if it appears that the application or project is not in compliance with all legal requirements, that the applicant has a background of violations of state or federal law or that the applicant or project presents an unnecessary risk of harm to the public.

5. An owner may commence sales or leasing activities as permitted under this article after obtaining a certificate of administrative completeness from the commissioner.

6. Before or after the commissioner issues a certificate of administrative completeness, the department may examine any public report, development or applicant that has applied for or received the certificate. If the commissioner determines that the owner or development is not in compliance with any requirement of state law or that grounds exist under this chapter to suspend, deny or revoke a public report, the commissioner may commence an administrative action under section 32-2154 or 32-2157. If the owner immediately corrects the deficiency and comes into full compliance with state law, the commissioner shall vacate any action that he may have commenced pursuant to section 32-2154 or 32-2157.

7. The department shall provide forms and guidelines for the submission of the notification and public report pursuant to this section.

C. The commissioner may deny issuance of a public report on any of the following grounds:

1. Failure to comply with any of the provisions of this article or the rules of the commissioner pertaining to this article.

2. The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.

3. Inability to deliver title or other interest contracted for.

4. Inability to demonstrate that adequate financial or other arrangements acceptable to the commissioner have been made for installation of all streets, sewers, electric, gas and water utilities, drainage, flood control and other similar improvements included in the offering.

5. Failure to make a showing that the parcels can be used for the purpose for which they are offered.

6. Failure to provide in the contract or other writing the use or uses, if any, for which the parcels are offered, together with any covenants or conditions relative to the parcel.

7. Failure to demonstrate that adequate financial arrangements have been made for any guaranty or warranty included in the offering.

8. The owner or agent, officer, director or partner or trust beneficiary holding a ten per cent or more beneficial interest, or, if a corporation, any stockholder owning ten per cent or more of the stock in the corporation has:

(a) Been convicted of a felony or misdemeanor involving fraud or dishonesty or involving conduct of any business or a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(b) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or

purchase of real estate or cemetery property, time-share intervals, membership camping contracts or campgrounds, or securities or involving consumer fraud or the racketeering laws of this state.

(c) Had an administrative order entered against him by a real estate regulatory agency or security regulatory agency.

(d) Had an adverse decision or judgment entered against him involving fraud or dishonesty or involving the conduct of any business in or a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(e) Disregarded or violated any of the provisions of this chapter or the rules of the commissioner pertaining to this chapter.

(f) Participated in, operated or held an interest in any entity to which subdivision (b), (c), (d) or (e) applies.

D. No owner or agent may sell or lease or offer for sale or lease unsubdivided lands without first obtaining a public report and a certificate of administrative completeness from the commissioner. Any sale or lease of unsubdivided lands prior to issuance of the public report shall be voidable by the purchaser. An action by the purchaser to void the transaction shall be brought within three years of the date of execution of the purchase agreement by the purchaser. In any voidance action the prevailing party is entitled to reasonable attorney fees as determined by the court.

E. Any applicant objecting to the denial of a public report, within thirty days after receipt of the order of denial, may file a written request for a hearing. The commissioner shall hold the hearing within twenty days after receipt of the request for a hearing unless the party requesting the hearing requests a postponement. If the hearing is not held within twenty days after a request for a hearing is received plus the period of any postponement, or if a proposed decision is not rendered within forty-five days after submission, the order of denial shall be rescinded and a public report issued.

F. On the commissioner's own motion, or when the commissioner has received a complaint and has satisfactory evidence that the owner or agent is violating any provision set forth in this article or the rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of unsubdivided lands or deviated from the provisions of the public report, the commissioner may investigate the subdivision project and examine the books and records of the owner or agent. For the purpose of examination, the owner or agent shall keep and maintain records of all sales transactions and funds received by the owner or agent pursuant to the sales transactions and shall make them accessible to the commissioner upon reasonable notice and demand.

G. On the commissioner's own motion, or when the commissioner has received a complaint and has satisfactory evidence that grounds exist as provided in subsection C of this section or that any person has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of unsubdivided lands or deviated from the provisions of the public report, the commissioner may conduct an investigation of the matter, issue a summary order as provided in section 32-2157, or hold a public hearing and, after the hearing, may issue the order or orders the commissioner deems necessary to protect the public interest and ensure compliance with the law, rules or public report. If, after the hearing, the violation of the law, rules or public report continues, the commissioner may bring an action in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging in or doing any act or acts in furtherance of the violation.

32-2195.04. Sale of lots or parcels of unsubdivided lands; conditions precedent; methods

A. It is unlawful for the owner or agent of unsubdivided lands subject to the provisions of this article to sell or offer to sell lots or parcels of such land unless the sale complies with one of the following:

1. Execution, delivery and recording of a deed in good and sufficient form conveying to the purchaser merchantable and marketable title to the property subject only to such exceptions as may be agreed to in writing by the purchaser. Any balance remaining unpaid by the purchaser may be evidenced by a note and mortgage or deed of trust. The deed and mortgage or deed of trust shall be recorded by the owner or agent within sixty days of execution thereof by the purchaser.

2. Execution, delivery, recording and depositing in escrow, not later than sixty days after execution by the purchaser, with a person or firm authorized to receive escrows under the laws of this state or the state in which the unsubdivided lands are located, of a real estate sales contract pertaining to the property, which contract sets forth the full and correct legal description of the property being sold and the precise terms and conditions under which the property is being sold together with:

(a) A copy of a preliminary title report showing the condition of title to the property on the date of the real estate sales contract or a preliminary title report showing the condition of title on an earlier date together with a copy of any document, recorded subsequent to the date of the preliminary title report, which affects the title to the property.

(b) An executed deed in good and sufficient form conveying to the purchaser merchantable and marketable title, subject only to such exceptions as may be agreed to in writing by the purchaser which deed, under the terms of the real estate sales contract, is to be delivered to the escrow agent provided for under the contract within sixty days of the purchaser's execution of the contract and is to be recorded within sixty days after purchaser's compliance with the obligations imposed on him under the contract together with any release or partial release of any blanket encumbrance pertaining to said real property being sold.

(c) Any and all documents necessary to release or extinguish any blanket encumbrance to the extent it applies to the real property being sold, or a partial release of the parcel being sold from the terms and provisions of such blanket encumbrance.

3. Execution, delivery and recording of a deed to the real property to a trustee together with a trust agreement and any and all documents necessary to release or extinguish any blanket encumbrance to the extent it applies to property being sold, or a partial release of the lot or parcel being sold from the terms and provisions of such blanket encumbrance. The trust agreement shall provide for conveyance by the trustee to a purchaser, upon purchaser's compliance with the obligations imposed on him under his real estate sales contract, by a deed in good and sufficient form conveying to the purchaser merchantable and marketable title, subject only to such exceptions as may be agreed to in writing by the purchaser. The real estate sales contract of the real property being sold shall be recorded by the owner or agent of unsubdivided lands within sixty days of execution of the real estate sales contract by the purchaser. The trustee shall execute, record and deliver the deed and record the release or partial release required by this subsection within sixty days of the purchaser's fulfillment of the terms of his real estate sales contract.

B. All documents required to be recorded under the provisions of this section shall be recorded in

the county and state wherein the unsubdivided land is located.
C. Any sale or assignment of a mortgage, deed of trust or real estate sales contract by an owner or agent of unsubdivided lands or trustee shall be recorded in the county and state where the unsubdivided land is located and a notice of such sale or assignment provided to the commissioner, the recording and notice thereof to be effected not later than sixty days after the execution of such assignment.
D. Any contract or agreement entered into after January 1, 1977, to purchase or lease a parcel in unsubdivided lands subject to this article may be rescinded by the purchaser without cause of any kind by sending or delivering written notice of rescission by midnight of the seventh calendar day following the day on which the purchaser or prospective purchaser has executed such contract or agreement. The owner or agent shall clearly and conspicuously disclose, in accordance with the regulations adopted by the commissioner, the right to rescind provided for in this section and shall provide, in accordance with regulations adopted by the commissioner, an adequate opportunity to exercise the right to rescission within the time limit set in this section. The commissioner may adopt regulations to exempt commercial and industrial developments from such requirement.
E. If a buyer of a lot or parcel of unsubdivided land has not inspected the lot or parcel prior to the execution of the purchase agreement, the buyer shall have a six-month period after the execution of the purchase agreement to inspect the lot or parcel and at the time of the inspection have the right to unilaterally rescind the purchase agreement. At the time of inspection, the buyer must sign an affidavit stating that he has inspected the real property and at the request of the commissioner such affidavit may be required to be filed with the department.
F. Only a bank, savings and loan association or title insurance company doing business under the laws of this state or the United States or the state in which the unsubdivided land is located, or a title insurance company wholly-owned subsidiary or underwriting agent qualified under section 20-1580, or persons or firms authorized to receive escrows under the laws of this state or the state in which the unsubdivided land is located may act as trustee under paragraph 3 of subsection A of this section. Nothing in this subsection extends to a firm or individual authority to act as a trustee unless such authority is otherwise provided by law.

32-2195.05. Advertising material; contents; order prohibiting use; costs of investigation
A. The owner or agent shall file with the commissioner a copy of any original promotional and advertising material used in connection with sales of unsubdivided lands and copies of any material changes therein. The owner or agent shall file with the commissioner, within twenty-one days of use, a copy of any subsequent advertising of any kind, used directly or indirectly in connection with the purchase, sale or lease of any lot or parcel subject to the provisions of this article. It shall not be necessary to make repetitive filings of material which is the same as or varies only in minor details from material which has previously been filed with the commissioner for the unsubdivided lands.
B. No advertising, communication or sales literature of any kind, including oral statements by salespersons or other persons, shall contain:

1. Any untrue statement of material fact or any omission of material fact which would make such statement misleading in light of the circumstances under which such statement was made.
2. Any statement or representation that the land is offered without risk or that loss is impossible.

3. Any statement or representation or pictorial representation of proposed improvements or nonexistent scenes without clearly indicating the improvements are proposed and the scenes do not exist.

4. Any statement or representation that the lot or parcels are suitable as homesites or building lots unless either of the following is true:

(a) Potable water is available from a certificated public utility or a municipal corporation and either an individual sewage disposal system will operate or a sewer system is available from a certified public utility or a municipal corporation.

(b) Facts to the contrary are clearly and conspicuously included in each advertisement pertaining to the property.

C. All advertising and sales literature shall be consistent with the information contained in the notice of intention pursuant to section 32-2195 and the public report pursuant to section 32-2195.03.

D. If it appears to the commissioner that any person is or has engaged in advertising or promotional practices in violation of this article, the commissioner may hold a hearing as a contested case under title 41, chapter 6, article 10 and issue such order or orders as he deems necessary to protect the public interest, or the commission may bring an action in any court of competent jurisdiction against such person to enjoin such person from continuing such violation.

E. The commissioner may adopt such rules and guidelines as he deems necessary to protect the public interest and to assure that all advertising and promotional practices with respect to land subject to the provisions of this article are not false or misleading.

F. It is unlawful for any owner, agent or employee of any development or other person with intent directly or indirectly to sell or lease lots or parcels subject to the provisions of this article to authorize, use, direct or aid in any advertising, communication, sales literature or promotional practice which violates this section.

G. Nothing contained in this section shall apply to the owner or publisher of a newspaper, magazine or other publication of printed matter wherein such advertisement appears or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser.

32-2195.06. Civil liabilities

A. When any part of the notice of intention filed pursuant to section 32-2195 contains an untrue statement of a material fact or omits a material fact required to be stated in such notice, the owner or agent shall be liable as provided in this section to any person who acquires land covered by such notice of intention during such period the notice of intention remained uncorrected unless it is proved that at the time of such acquisition the person acquiring the land knew of such untruth or omission.

B. Any owner or agent who sells or leases unsubdivided lands subject to this article in violation of section 32-2195.03 or by means of a public report which contains an untrue statement of a material fact or omits a material fact required to be stated in such report shall be liable to the purchaser of such land as provided in this section.

C. It is unlawful for an owner or agent in selling or leasing, or offering to sell or lease, any unsubdivided lands subject to this article to:

1. Employ any device, scheme, or artifice to defraud.

2. Obtain money or property by means of a material misrepresentation with respect to any information included in the notice of intention or the public report or with respect to any

other information pertinent to the parcel and upon which the purchaser relies.

3. Engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon a purchaser.

D. Damages in any suit brought pursuant to this section shall be the difference between the amount paid for the land together with the reasonable cost of improvements to such land and whichever of the following amount is the smallest:

1. The value of the land and improvements as of the time such suit was brought.

2. The price at which such land was disposed of in a bona fide market transaction prior to suit.

3. The price at which such land was disposed of in a bona fide market transaction after suit was brought but prior to judgment.

E. In any action in which a violation of this section is established the purchaser shall also be entitled to recover reasonable attorney fees as determined by the court. If a violation is not established, the court, in its discretion, may award reasonable attorney fees to the defendant.

F. Every person who becomes liable to make any payment pursuant to this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment.

G. In no case shall the amount recoverable pursuant to this section exceed the sum of the purchase price of the land, the reasonable cost of improvements installed by the purchaser and reasonable court costs and attorneys fees.

H. Nothing contained in this section shall be construed to preclude any other remedies that may exist at law or in equity.

I. No action shall be maintained to enforce any liability created pursuant to subsection A or B of this section unless brought within one year after the discovery of the untrue statement or the omission or after such discovery should have been made by the exercise of reasonable diligence. No action shall be maintained to enforce any liability created pursuant to subsection C of this section unless brought within two years after the violation upon which it is based. In no event shall any such action be brought by a purchaser more than three years after the sale or lease to such purchaser.

32-2195.07. Jurisdiction

The commissioner shall not be denied jurisdiction over any person subject to the provisions of this article because of similar jurisdiction over such person by any other agency or the applicability to such person of any regulation prescribed pursuant to any other provision of law.

32-2195.09. Recordable forms of contracts

In accordance with regulations adopted by the commissioner, each purchaser of unsubdivided land shall be provided with a copy, in recordable form, of each contract involved in the sale of such land to the purchaser at the closing of the contract.

32-2195.10. Change of plan after approval by commissioner; notice

It is unlawful for an owner, agent or subdivider, after submitting to the commissioner a plan under which unsubdivided lands are to be offered for sale or lease and securing his approval, to change the plan materially without first notifying the commissioner in writing of the intended change. On receipt of a notice of a change of plan, the commissioner, if he determines such action to be necessary for the protection of purchasers, may suspend his approval of the sale or lease pending amendment of the public report.

32-2195.11. Civil penalties; limitation

A. An owner or agent who is subject to the jurisdiction of the department and who violates any provision of this chapter relating to the sale or lease of unsubdivided lands or any rule adopted or order issued by the commissioner relating to the sale or lease of unsubdivided lands or who engages in any unlawful practices defined in section 44-1522 with respect to the sale or lease of unsubdivided lands may be assessed a civil penalty by the commissioner, after a hearing, in an amount of not more than one thousand dollars per infraction. An infraction that concerns more than one lot among unsubdivided lands is a single infraction for the purposes of this section.

B. A proceeding for the imposition of a civil penalty or for suspension or revocation of a license for a violation of this article or any rule adopted or order issued by the commissioner must be commenced within the earlier of five years of either of the following:

1. Actual discovery by the department.
2. Discovery that should have occurred if the department was reasonably diligent.

32-2195.12. Recording of actions

A. Whenever the commissioner issues a cease and desist order, obtains a court order enjoining further sales, issues an order of prohibition or suspends approval of an unsubdivided lands public report, the action shall be recorded in the book of deeds in the office of the county recorder in any county in which the unsubdivided property is located and include the legal description of the affected land. The commissioner shall also provide notice of the order or suspension to all affected parties with an ownership interest of record in any lot, parcel or fractional interest, in the unsubdivided property within ten business days of issuing the order or suspension.

B. In the event of a revocation of any of the orders which require recording in subsection A, an order of release shall be recorded in the same manner within ten business days.

ARTICLE 9 - REAL ESTATE TIMESHARES

32-2197. Definitions

In this article, unless the context otherwise requires:

1. "Accommodation" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or other private or commercial structure containing toilet facilities that is designed and available for use and occupancy as a residence by one or more individuals and that is included in the offering of a timeshare plan.
2. "Advertisement" means any written, oral or electronic communication that is directed to or targeted to persons in this state and that contains a promotion, inducement, premium or offer to sell a timeshare plan, including brochures, pamphlets, radio and television scripts, electronic media, telephone and direct mail solicitations and other means of promotions.
3. "Assessment" means the share of funds required for the payment of common expenses that the managing entity assesses periodically against each purchaser.
4. "Association" means any organized body consisting of the purchasers of interests in a timeshare plan.
5. "Component site" means a specific geographic location where accommodations that are part of a multisite timeshare plan are located. Separate phases of a single timeshare property in a specific geographic location and under common management are a single component site.
6. "Developer" means either of the following:
    (a) Any person, corporation, partnership, limited liability company, trust or other entity, other than a sales agent, that creates a timeshare plan or is in the business of selling timeshare interests or employs sales agents to sell timeshare interests.
    (b) Any person or entity that succeeds to the interest of the developer by sale, lease, assignment, mortgage or other transfer if the person offers at least twelve timeshare interests in a particular timeshare plan and the person is in the business of selling timeshare interests or employs sales agents to sell timeshare interests.
7. "Dispose" or "disposition" means a voluntary transfer or assignment of any legal or equitable interest in a timeshare plan other than the creation, transfer, assignment or release of a security interest.
8. "Exchange company" means any person owning or operating or both owning and operating an exchange program.
9. "Exchange program" means any method, arrangement or procedure for the voluntary exchange of timeshare interests or other property interests. Exchange program does not include an assignment of the right to use and occupy accommodations and facilities to purchasers or owners of timeshare interests within a single site timeshare plan.
10. "Managing entity" means the association or other person that undertakes the duties, responsibilities and obligations of the management of a timeshare plan.
11. "Multisite timeshare plan" includes a specific timeshare interest or a nonspecific timeshare interest.

12. "Nonspecific timeshare interest" means the right to use accommodations at more than one component site created by or acquired through the timeshare plan's reservation system, but not including a specific right to use any particular accommodations.
13. "Offer" or "offering" means any marketing, promotion, solicitation or advertising of any kind that is intended to interest prospective customers in the sale, lease or use of a timeshare interest in a timeshare plan, other than as security for an obligation, whether now or in the future. Offer or offering does not include a general promotion of a resort not intended to market timeshare interests.
14. "Person" means a natural person, corporation, limited liability company, partnership, joint venture, association, estate, trust, federal or state government, political subdivision or other legal entity or any combination of these entities.
15. "Premium" means anything of value offered, promised or given to a prospective customer as an incentive to attend a presentation for the sale, lease or use of a timeshare interest or to tour or visit a timeshare property.
16. "Promotion" means a plan or device, including one involving the possibility of a prospective purchaser receiving a vacation, discount vacation, gift or prize, used by a developer or the developer's employee, or on the developer's behalf by an agent or the agent's employee, an independent contractor or the independent contractor's employee in connection with the offering and sale of timeshare interests in a timeshare plan.
17. "Purchaser" means any person, other than a developer, who, by means of a voluntary transfer, acquires a legal or equitable interest in a timeshare plan other than a security for an obligation.
18. "Purchase agreement" means a document that legally obligates a person to sell or buy a timeshare interest.
19. "Redemption certificate" means a premium that grants a right to or the promise of the future delivery of goods or services and that is conditioned on the holder's compliance with stated requirements, limitations or conditions. Redemption certificate does not include a prepaid premium or discount certificate, other than a travel related premium, that is redeemable for goods or services at a business located in this state, including a restaurant or retail store.
20. "Reservation system" means the method, arrangement or procedure in which a purchaser, in order to reserve the use or occupancy of any accommodation of a multisite timeshare plan for one or more timeshare periods, is required to compete with other purchasers in the same multisite timeshare plan, regardless of whether the reservation system is operated and maintained by the multisite timeshare plan managing entity, an exchange company or any other person. If a purchaser is required to use an exchange program as the purchaser's principal means of obtaining the right to use and occupy accommodations, that arrangement is a reservation system. Reservation system does not include the use by an exchange company of a mechanism for the exchange of use of timeshare periods among members of an exchange program.
21. "Sales agent" means a person who, directly or through the person's employees, agents or independent contractors, sells or offers to sell one or more timeshare interests in a timeshare plan to any individual in this state.
22. "Single site timeshare plan" means the right to use accommodations at a single timeshare property.

23. "Specific timeshare interest" means the right to use accommodations at a specific timeshare property, together with use rights in accommodations at one or more other component sites created by or acquired through the timeshare plan's reservation system.
24. "Timeshare estate" means the right of occupancy in a timeshare property that is coupled with an estate in real property.
25. "Timeshare instrument" means one or more documents creating or governing the operation of a timeshare plan.
26. "Timeshare interest" includes either a timeshare estate or a timeshare use.
27. "Timeshare period" means the period of time when the purchaser of a timeshare plan is afforded the opportunity to use the accommodations of a timeshare plan.
28. "Timeshare plan" means any arrangement, plan or similar device, other than an exchange program, whether by membership agreement, sale, lease, deed, license or right-to-use agreement or by any other means, in which a purchaser, in exchange for consideration, receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, but not necessarily for consecutive years. A timeshare plan may be a single site timeshare plan or a multisite timeshare plan.
29. "Timeshare property" means one or more accommodations subject to the same timeshare instrument, together with any other property or rights to property appurtenant to those accommodations.
30. "Timeshare use" is the right to occupy a timeshare property that is not coupled with an estate in real property.

32-2197.01. Creation of timeshare plans; ratio

A timeshare plan may be created in any accommodation unless prohibited by any law or county, city or town zoning ordinance or regulation to the contrary. All timeshare plans shall maintain a one-to-one purchaser-to accommodation ratio so that the total number of purchasers eligible to use the accommodations of the timeshare plan during a given calendar year never exceeds the total number of accommodations available for use in the timeshare plan during the same calendar year. For purposes of calculating the ratio, a purchaser who is delinquent in the payment of timeshare plan assessments shall continue to be considered eligible to use the accommodations of the timeshare plan.

32-2197.02. Notice of intent to sell; application for timeshare plan public report; authorization for pre-sales

A. Any person who sells, offers to sell or attempts to solicit prospective purchasers located in this state to purchase a timeshare interest or any person who creates a timeshare plan with an accommodation in this state, whether or not the plan is sold or offered for sale in this state, shall register a notice of intent to sell and application for a public report with the department.
B. Except as otherwise provided in subsection C of this section, an application for a public report for a timeshare plan must contain the following documents and information:
1. The name and address of the owner and developer. If the holder of any ownership interest in the land is other than an individual, including a corporation, partnership, limited liability company, trust or other entity, a statement naming the type of legal entity and listing the interest and the extent of such interest of each principal in the entity. For the purposes of this paragraph, "principal" means any person or entity having a ten per cent or more

financial interest or, if the legal entity is a trust, each beneficiary of the trust holding a ten per cent or more beneficial interest.
2. A comprehensive statement of the timeshare plan.
3. The legal description and location of the timeshare property being offered.
4. To the extent required by applicable local or state laws, a recorded map of the timeshare property showing book, page and date of recording or instrument number and date of recording, and if required by applicable local or state laws, approval by the county or city in which the timeshare property is located. A map, survey or location plan is required for incomplete timeshare properties. A timeshare property involving completed buildings where all purchasers are given an on-site tour prior to a financial commitment may not require a plat map. The need for a map, survey, location plan or building plan on such completed timeshare properties will be determined at the time of application.
5. A description of the total timeshare property in terms of the number of buildings, number of stories, number of units, common areas of the timeshare property or public use areas in any hotel, motel or other facility.
6. Proof of adequate financial arrangements and assurances for completion of any improvements included in the offering to be installed by the developer, the estimated schedule for completion of the improvements and provisions, if any, for the continued maintenance of the improvements.
7. A true statement of the availability of sewage disposal facilities and other public utilities including water, electricity, gas and telephone facilities in the timeshare property and the estimated schedule for their installation.
8. A statement of the provisions that have been made for permanent access, and provisions, if any, for health department approved sewage and solid waste collection and public utilities, including water.
9. A complete disclosure as to the operating costs of the timeshare plan, including all of the variable costs of operation, management and reserves and method of assessment, including evidence of financial arrangements which provide for the developer's guarantee of payment of assessment on unsold interests, or if the developer is not paying such costs, the effect such nonpayment will have on operating costs.
10. A statement that the developer must notify the commissioner if a timeshare plan accommodation may become subject to a tax or other lien arising out of claims against other purchasers in the same timeshare plan. The commissioner may require the developer to notify a prospective purchaser of any potential tax or lien that would materially and adversely affect the prospective purchaser.
11. A current preliminary title report for all accommodations comprising the timeshare property for which the application is being made.
12. The recorded declaration of dedication of the timeshare property or other timeshare instruments or contracts incorporating all covenants of the grantor or lessor and creating the timeshare interests and the provisions of the plan, if any, to include organization of an association.
13. A true statement as to the methods to be used in accordance with section 32-2197.12 to provide that the purchaser of a timeshare interest will not lose or have the purchaser's interest imperiled by the foreclosure of underlying liens, encumbrances or other obligations and that the developer can convey, or cause to be conveyed, the interest in the offering.

14. The terms and conditions as to how a purchaser's interest is to be conveyed including examples of all contracts, purchase agreements, deeds, fact sheets and other instruments to be used in marketing, financing and conveying timeshare interests.
15. A true statement as to title to personal property within the units or timeshare property incident to a purchaser's use and how purchasers will receive assured use of personal property during the term offered.
16. A statement of the provisions made for the management of the timeshare plan, including a copy of the management agreement, relationship with the developer and whether the management entity will be bonded or insured.
17. The name, street address, mailing address and telephone number of:
(a) The designated broker, if any, used by the developer.
(b) A managing entity of the timeshare plan.
18. Copies of all contracts and promotional material pertaining to any exchange program included in the offering.
19. If the timeshare property or timeshare plan being registered is located within the United States, but outside this state, each filing must include evidence that the timeshare property or timeshare plan is qualified for sale in the home state where the timeshare property or timeshare plan is located according to the standards or requirements for the sale of timeshare interests existing in the home state at the time of the filing.
20. If the timeshare property or timeshare plan being registered is located outside the United States, each filing of a foreign timeshare property or timeshare plan must include evidence establishing that all requirements of the country where the timeshare property or timeshare plan is located have been met for the sale of timeshare interests or the local equivalent of timeshare interests in the home country at the time of the filing.
21. A public report that complies with the requirements of section 32-2197.08.
22. Such other information and such other documents and certificates as the commissioner may reasonably require.

C. At the developer's request the commissioner may authorize the developer to conduct pre-sales of the timeshare plan before the issuance of a public report if the application for a public report is administratively complete, as determined by the commissioner or as established by rule. The authorization for pre-sales allows the developer to begin offering and selling timeshare interests while the application for the timeshare public report is in process. To obtain an authorization to conduct pre-sales, the developer shall do all of the following:

1. Submit a formal written request to the commissioner for an authorization to conduct pre-sales.
2. Submit an administratively complete application for a timeshare public report to the commissioner, including all appropriate fees and exhibits required under subsection B of this section.
3. Provide evidence acceptable to the commissioner that all monies received by the developer will be placed in an independent escrow account with instructions that monies will not be released until a timeshare public report has been granted.
4. Give each purchaser and prospective purchaser a copy of the proposed timeshare public report that the developer has submitted to the department with the initial application.
5. Give each purchaser the opportunity to cancel the purchase agreement in accordance with section 32-2197.03. The purchaser shall have an additional opportunity to cancel

in accordance with section 32-2197.03 on the issuance of an approved timeshare public report only if the commissioner determines that there is a material and adverse change in the disclosures contained in the approved timeshare public report from those given to the purchaser in the proposed timeshare public report.

32-2197.03. Purchase agreements; rescission of contract or agreement; cancellation or termination of timeshare interests

A. A purchase agreement shall be in writing and shall be signed by the purchaser. The developer shall give the purchaser a paper copy of the purchase agreement when the purchaser signs the purchase agreement.

B. The purchaser may rescind the purchase agreement without cause of any kind by sending or delivering a written notice of rescission by midnight of the tenth calendar day following the day on which the purchaser or prospective purchaser executed the purchase agreement. The rescission rights shall be conspicuously disclosed in the purchase agreement. If the developer allows the rescission period to extend beyond ten calendar days, the rescission period disclosure in the purchase agreement shall reflect the longer period of time. The disclosure required by this subsection shall be printed immediately before the space reserved in the purchase agreement for the signature of the purchaser and shall include the following information:

1. The purchaser may cancel the purchase agreement without a penalty or obligation within ten calendar days, or another time period if applicable, after the purchaser signs the purchase agreement.
2. If the purchaser decides to cancel the purchase agreement, the purchaser shall notify the seller in writing of the purchaser's intent to cancel.
3. The purchaser's notice of cancellation is effective on the date the cancellation is sent and shall be sent to the seller at the seller's address. The seller's address and telephone number shall be listed in the purchase agreement.
4. The purchaser may execute all closing documents in advance. However, the closing, as evidenced by delivery of the deed or other document, is prohibited before the ten calendar day cancellation period expires.

C. The denial of a purchaser's rights under this section without a good faith legal basis constitutes an unlawful practice under section 44-1522. The attorney general may investigate and take appropriate action as prescribed by title 44, chapter 10, article 7.

D. This section applies to any timeshare plan approved by the commissioner pursuant to either article 4 of this chapter or this article, regardless of the date of issuance of the public report.

Footer

32-2197.04. Notification of material change

A. The developer of a timeshare plan that is the subject of an outstanding timeshare public report shall immediately report to the department relevant details concerning any material change in the timeshare plan itself or in the program for marketing the timeshare interests.

B. On receipt of a written notice of a material change, the commissioner, if the commissioner determines such action to be necessary for the protection of purchasers, may suspend his approval of the sale or lease pending amendment of the public report. For sales made after the material change and pending amendment of the public report, the commissioner may require the developer to fully disclose the change in a prepared supplement to the public report. The supplement shall be deliv-

ered with the previously approved public report to all prospective purchasers until the new public report is issued. The commissioner shall not require the developer to deliver the amended public report to or obtain a receipt from prior purchasers unless the commissioner specifically finds that the developer's disclosure of the changes was not an adequate disclosure.

32-2197.05. Escrow or trust account; agreement; evidence of completion; financial assurance

A. A developer of a timeshare plan shall deposit in an escrow or trust account in a federally insured depository one hundred per cent of all monies that are received during the purchaser's rescission period. The deposit of these monies shall be evidenced by an executed agreement between the escrow or trust account agent and the developer that includes the following provisions:

1. Monies may be disbursed to the developer by the escrow or trust account agent from the account only after expiration of the purchaser's rescission period and in accordance with the purchase agreement, subject to subsection B.
2. If a purchaser cancels the purchase agreement pursuant to the agreement's terms, the monies shall be paid to the purchaser or paid to the developer if the purchaser's monies have been previously refunded by the developer.

B. If a developer contracts to sell a timeshare interest and the construction of any timeshare property in which the timeshare interest is located has not been completed, when the rescission period expires the developer shall continue to maintain in an escrow or trust account all monies received by the developer or on the developer's behalf from the purchaser under a purchase agreement either before or after the rescission period expires. The types of documentation that shall be required for evidence of completion include a certificate of occupancy, a certificate of substantial completion or an equivalent public safety inspection from an agency in the applicable jurisdiction or other evidence of completion acceptable to the commissioner or as provided by rule. Monies shall be released from escrow as follows:

1. If a purchaser properly cancels the purchase agreement pursuant to the agreement's terms, the monies shall be paid to the purchaser or paid to the developer if the developer has previously refunded the purchaser's monies.
2. If a purchaser defaults in the performance of the purchaser's obligations under the purchase agreement, the monies shall be paid to the developer.
3. If the developer defaults in the performance of the developer's obligations under the purchase agreement, the monies shall be paid to the purchaser.
4. If the monies of a purchaser have not been previously disbursed in accordance with paragraph 2 of this subsection, the monies may be disbursed to the developer by the escrow agent on the issuance of acceptable evidence of completion of construction.

C. In lieu of placing monies in escrow in accordance with this section, the commissioner may accept from the developer a surety bond, irrevocable letter of credit or other financial assurance acceptable to the commissioner or as provided by rule. Any acceptable financial assurance must be in an amount equal to or in excess of the monies that would otherwise be placed in escrow or in an amount equal to or in excess of the cost to complete the incomplete property in which the timeshare interest is located.

D. The developer shall make documents related to the escrow or trust account or escrow or trust obligation available to the commissioner on the commissioner's request. The developer shall maintain any disputed monies in the escrow account until either of the following occurs:

1. The developer receives a written direction agreed to and signed by all parties.

2. A civil action regarding the monies has been filed, in which case the developer shall deposit the monies with the court of appropriate jurisdiction.

32-2197.06. Declaration of dedication

The declaration or other documents described in section 32-2197.02, subsection B, paragraph 12 shall include the following general provisions as applicable to the particular timeshare property:

1. Provisions for organization of an association if applicable.
2. A description of the real and personal property for the common ownership or use of the timeshare interest owners.
3. A description of the services to be made available to timeshare interest owners under the timeshare program.
4. Provisions for transfer to the association of control over the timeshare property and services comprising the project.
5. Procedures for calculating and collecting regular and special assessments from timeshare owners to defray expenses of the timeshare plan and for related purposes.
6. Procedures for preparation and dissemination to timeshare owners of budgets, financial statements and other information related to the timeshare plan.
7. Procedures for terminating the membership and selling the interest of a timeshare owner for failure to pay regular or special assessments.
8. Policies and procedures for the disciplining of members for failure to comply with provisions of the governing timeshare instruments for the timeshare plan, including the late payment of assessments.
9. Procedures for employing and for terminating the employment of a managing entity for the timeshare plan.
10. Provisions for adoption of standards and rules of conduct for the use of accommodations by timeshare interest owners.
11. Provisions for establishment of the rights of owners to the use of accommodations according to a schedule or under a first reserved, first served priority system.
12. If applicable, procedures for compensating use periods or monetary compensation for an owner of a timeshare interest in a timeshare plan if an accommodation cannot be made available for the period of use to which the owner is entitled by schedule or under a reservation system because of an error by the association or managing entity.
13. Provisions for comprehensive general liability insurance for death, bodily injury and property damage resulting from the use of an accommodation within the timeshare plan by timeshare owners, their guests and other users.
14. A description of restrictions upon partition of a timeshare property.
15. Policies and procedures for the use of accommodations for transient accommodations or other income producing purposes during a period of nonuse by timeshare owners.
16. Policies and procedures for the inspection of the books and records of the timeshare plan by timeshare owners.
17. Procedures for the amendment of the timeshare instruments for the timeshare plan.
18. If applicable, procedures for annexation of additional accommodations to the timeshare plan.
19. Policies and procedures in the event of condemnation, destruction or extensive damage to accommodations including provisions for the disposition of insurance proceeds or dam-

ages payable on account of damage or condemnation.
20. Policies and procedures on regular termination of the timeshare plan including details on what happens to a purchaser's interest on termination.
21. Policies and procedures for collective decision making and the undertaking of action by or in the name of the association, if any, including, if applicable, representation of timeshare interests in an association for the common interest subdivision in which the interests are located.
22. If applicable, allocation of the costs of maintenance and operation between those accommodations dedicated to a timeshare plan and accommodations in the same timeshare plan being used for transient accommodations.
23. Policies and procedures for entry into accommodations of the timeshare plan under authority granted by the association for the purpose of cleaning, maid service, maintenance and repair, including emergency repairs and for the purpose of abating a nuisance or a known or suspected dangerous or unlawful activity.

32-2197.07. Examination of plan by commissioner; fees

A. The commissioner shall examine any timeshare plan offered for sale or lease in this state or located in this state and shall make public his findings.
B. The commissioner may physically inspect any timeshare plan offered for sale or lease in this state or located in this state.
C. An initial filing fee of twenty dollars per interest with a maximum fee of not more than one thousand dollars shall accompany the notice of intention filed pursuant to section 32-2197.02. A filing fee as established by rule shall accompany the application to amend the timeshare public report required in section 32-2197.04.
D. The developer of the timeshare plan shall bear the total cost of travel and subsistence expenses incurred by the department in the examination, in addition to the initial filing fee provided for in this section, on the basis of actual cost to the department.

32-2197.08. Issuance of public report and amended public report by commissioner on timeshare plan; denial of issuance; additional information; use of another state's public report

Amended by Ariz. Sess. Laws Ch. 52, (2024)

A. On examination of a timeshare plan, the commissioner, unless there are grounds for denial, shall approve for use by the developer a public report authorizing the sale or lease of the timeshare interests within the timeshare plan. For all timeshare interests sold in this state, the commissioner shall require the developer to reproduce the public report and furnish each prospective customer with a copy, taking a receipt for each copy. The public report shall be made available to each prospective purchaser in written format either by electronic means or in hard copy. The public report shall include the following:
1. The name and principal address of the owner and developer.
2. A description of the type of timeshare interests being offered.
3. A description of the existing and proposed accommodations and amenities of the timeshare plan, including type and number, any use restrictions and any required fees for use.
4. A description of any accommodations and amenities that are committed to be built, including:
(a) The developer's schedule of commencement and completion of all accommodations and amenities.

(b) The estimated number of accommodations per site that may become subject to the timeshare plan.

5. A brief description of the duration, phases and operation of the timeshare plan.

6. The current annual budget if available or the projected annual budget for the timeshare plan. The budget shall include:

(a) A statement of the amount or a statement that there is no amount included in the budget as a reserve for repairs and replacement.

(b) The projected common expense liability, if any, by category of expenditures for the timeshare plan.

(c) A statement of any services or expenses that are not reflected in the budget and that the developer provides or pays.

7. A description of any liens, defects or encumbrances on or affecting the title to the timeshare interests.

8. A statement that by midnight of the tenth calendar day after execution of the purchase agreement a purchaser may cancel any purchase agreement for a timeshare interest from a developer together with a statement providing the name and street address where the purchaser should mail any notice of cancellation. If, by agreement of the parties through the purchase agreement, the purchase agreement allows for cancellation of the purchase agreement for a period of time exceeding ten calendar days, the public report shall include a statement that the cancellation of the purchase agreement is allowed for that period of time exceeding ten calendar days.

9. A description of any bankruptcies, pending suits, adjudications or disciplinary actions material to the timeshare interests of which the developer has knowledge.

10. Any restrictions on alienation of any number or portion of any timeshare interests.

11. Any current or expected fees or charges to be paid by timeshare purchasers for the use of any amenities related to the timeshare plan.

12. The extent to which financial arrangements have been provided for completion of all promised improvements.

13. If the timeshare plan provides purchasers with the opportunity to participate in any exchange programs, a description of the name and address of the exchange companies and the method by which a purchaser accesses the exchange programs.

14. Any other information that the developer, with the approval of the commissioner, desires to include in the public report.

15. If the developer is offering a multisite timeshare plan, the following information, which may be disclosed in a written, graphic or tabular form:

(a) A description of each component site, including the name and address of each component site.

(b) The number of accommodations and timeshare periods, expressed in periods of use availability, committed to the multisite timeshare plan and available for use by purchasers.

(c) Each type of accommodation in terms of the number of bedrooms, bathrooms and sleeping capacity and a statement of whether or not the accommodation contains a full kitchen. For the purposes of this subdivision, "full kitchen" means a kitchen having a minimum of a dishwasher, range, oven, sink and refrigerator.

(d) A description of amenities available for use by the purchaser at each component site.

(e) A description of the reservation system, including the following:

(i) The entity responsible for operating the reservation system.

(ii) A summary of the rules governing access to and use of the reservation system.

(iii) The existence of and an explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first-reserved, first-served basis.

(f) A description of any right to make any additions, substitutions or deletions of accommodations or amenities and a description of the basis on which accommodations and amenities may be added to, substituted in or deleted from the multisite timeshare plan.

(g) A description of the purchaser's liability for any fees associated with the multisite timeshare plan.

(h) The location and the anticipated relative use demand of each component site in a multisite timeshare plan as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at the time within the multisite timeshare plan.

(i) Any other information reasonably required by the commissioner or established by rule that is necessary for the protection of purchasers of timeshare interests in timeshare plans.

(j) Any other information that the developer, with the approval of the commissioner, desires to include in the public report.

16. If a developer offers a nonspecific timeshare interest in a multisite timeshare plan, the information set forth in paragraphs 1 through 14 of this subsection as to each component site.

17. Any other information that the commissioner determines or establishes by rule is necessary to implement the purpose of this article.

B. Except as otherwise provided in this subsection, the requirements prescribed by subsection A of this section apply to a developer's application for approval to use an amended public report for the sale of timeshare interests in a timeshare plan, including an amended public report to disclose and address a material change under section 32-2197.04. A developer may elect to prepare an amended public report for use in the sale of timeshare interests as follows:

1. The developer shall prepare the amended public report and provide a copy of the report to the commissioner with the submission of the application for an amended public report, including any notification required by section 32-2197.04, and shall comply with all other requirements of this article.

2. An amendment filing fee established pursuant to section 32-2197.07 shall accompany the application prescribed by paragraph 1 of this subsection.

3. On receipt of the application and amended public report, the department shall review and, within fifteen business days if the amendment adds less than six new component sites to the timeshare plan or within thirty calendar days if the amendment adds six or more new component sites to the timeshare plan, issue either a certification that the application and amended public report are administratively complete or a denial letter if it appears that the application, amended public report or timeshare plan is not in compliance with all legal

requirements, that the applicant has a background of violations of state or federal law or that the applicant or timeshare plan presents an unnecessary risk of harm to the public. If the commissioner has received the application and amended public report but has not issued a certification or a denial letter within the required time period, the application and amended public report are deemed administratively complete.

4. The developer may commence sales or leasing activities as allowed under this article using an amended public report when the commissioner issues a certification of administrative completeness or as of the date the application and amended public report are deemed administratively complete pursuant to paragraph 3 of this subsection. The certification may be issued on paper or electronically.

5. Before or after the commissioner issues a certification of administrative completeness or, if applicable, after the application and amended public report are deemed to be administratively complete pursuant to paragraph 3 of this subsection, the department may examine any public report, timeshare plan or applicant that has applied for or received the certification. If the commissioner determines that the public report, timeshare plan or applicant is not in compliance with any requirement of state law or that grounds exist under this chapter to suspend, deny or revoke a public report, the commissioner may commence an administrative action under section 32-2154, 32-2157 or 32-2197.14. If the developer immediately corrects the deficiency and fully complies with state law, the commissioner shall promptly vacate any action that the commissioner may have commenced pursuant to section 32-2154, 32-2157 or 32-2197.14.

6. The department shall provide forms and guidelines for the submission of the application and amended public report pursuant to this subsection.

C. In the event of denial, suspension or revocation, grounds shall be set forth in writing at the time of denial, suspension or revocation. The commissioner may deny, suspend or revoke the public report on any of the following grounds:

1. Failure to comply with this article or the rules of the commissioner pertaining to this article.

2. The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.

3. Inability to demonstrate that adequate financial or other arrangements acceptable to the commissioner have been made for completion of the timeshare property, installation of all streets, sewers, electric, gas and water utilities, drainage, flood control and other similar improvements included in the offering.

4. The developer, including if an entity, an officer, director, member, manager, partner, owner, trust beneficiary holding ten percent or more beneficial interest, stockholder owning ten percent or more of the stock or other person exercising control of the entity, has:

(a) Been convicted of a felony or misdemeanor involving theft, fraud or dishonesty or involving the conduct of any business or a transaction in real estate, cemetery property, timeshare interests or membership camping campgrounds or contracts.

(b) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate, cemetery property, timeshare interests, membership camping campgrounds or contracts, or securities or involving consumer fraud or the Arizona racketeering laws.

(c) Had an administrative order entered against him by a real estate regulatory agency or securities regulatory agency.

(d) Had an adverse decision or judgment entered against him involving fraud or dishonesty or involving the conduct of any business in or a transaction in real estate, cemetery property, timeshare interests or membership camping campgrounds or contracts.

(e) Disregarded or violated this chapter or the rules of the commissioner pertaining to this chapter.

(f) Participated in, operated or held an interest in any entity to which subdivision (b), (c), (d), or (e) of this paragraph applies.

5. If within this state, the timeshare property is incompatible with the existing neighborhood and would introduce into a neighborhood a character of property or use that would clearly be detrimental to property values in that neighborhood.

D. If the timeshare property is within an active management area, as defined in section 45-402, the commissioner shall deny issuance of a public report unless the developer has been issued a certificate of assured water supply by the director of water resources and has paid all applicable fees pursuant to sections 48-3772 and 48-3774.01, or unless the developer has obtained a written commitment of water service for the timeshare property from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576.

E. In areas outside of active management areas, if the timeshare property is located in a county that has adopted the provision authorized by section 11-823, subsection A or in a city or town that has enacted an ordinance pursuant to section 9-463.01, subsection O, the commissioner shall deny issuance of a public report unless one of the following applies:

1. The director of water resources has reported pursuant to section 45-108 that the timeshare property has an adequate water supply.

2. The developer has obtained a written commitment of water service for the timeshare property from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108.

3. The timeshare property was approved pursuant to an exemption authorized by section 9-463.01, subsection K, pursuant to an exemption authorized by section 11-823, subsection B, paragraph 1, pursuant to an exemption granted by the director of water resources under section 45-108.02 and the exemption has not expired or pursuant to an exemption granted by the director of water resources under section 45-108.03.

4. The subdivision received final plat approval from the city, town or county before the requirement for an adequate water supply became effective in the city, town or county, and there have been no material changes to the plat since the final plat approval. If changes were made to the plat after the final plat approval, the director of water resources shall determine whether the changes are material pursuant to the rules adopted by the director to implement section 45-108.

F. In addition to providing to each prospective customer a copy of the public report as required in subsection A of this section, the developer shall also provide to each customer before the close of any transaction information and materials that identify any timeshare exchange companies currently under contract and disclosure statements regarding the use of the timeshare exchange companies, as well as any additional information the commissioner deems appropriate.

G. The commissioner may authorize for use in this state by a developer of a timeshare plan in which all accommodations are located outside of this state a current public report that is issued by another jurisdiction or an equivalent registration and disclosure document that is required before offering a timeshare plan for sale, lease or use and that is issued by another jurisdiction. This authorization does not constitute an exemption from other applicable requirements of this article.

32-2197.09. Rescindable sale or lease

A person shall not sell or lease or offer for sale or lease in this state timeshare interests in a timeshare plan without first obtaining a public report or authorization to conduct pre-sales from the commissioner. Unless exempt, any sale or lease of timeshare interests in a timeshare plan that consists of twelve or more timeshare interests before issuance of the public report or authorization to conduct pre-sales or failure to deliver the public report or evidence of pre-sale authorization renders the sale or lease rescindable by the purchaser or lessee. An action by the purchaser or lessee to rescind the transaction must be brought within three years of the date of the execution of the purchase or lease agreement by the purchaser. In any rescission action, the prevailing party is entitled to reasonable attorney fees as determined by the court.

32-2197.10. Timeshare interest reservations

Amended by Ariz. Sess. Laws Ch. 52, (2024)

A. The notice of intent required by section 32-2197.02 and the approval for use of a public report required by section 32-2197.08 are not required for any party to enter into a timeshare interest reservation.

B. Before the approval for use of a public report for a timeshare plan, a deposit may be accepted from a prospective buyer for a timeshare interest reservation if all of the following requirements are met:

1. Before accepting any timeshare interest reservation the prospective seller shall mail or deliver or provide to the department a hard copy notice or electronic notice as approved by the commissioner of the seller's intention to accept the timeshare interest reservations. The notice shall include:

(a) The name, address and telephone number of the prospective seller.

(b) The name, address and telephone number of any real estate broker retained by the prospective seller to promote the timeshare interest reservation program.

(c) The name and location of the timeshare property for which timeshare interest reservations are to be offered.

(d) The form to be used for accepting timeshare interest reservations subject to approval by the commissioner.

(e) The name and address of the independent third-party escrow or trust account agent responsible for holding the reservation deposits.

2. The reservation deposit for a single timeshare interest shall not exceed twenty percent of the purchase price.

3. Within one business day after a reservation is accepted by the prospective seller, the reservation deposit shall be delivered to an independent third-party escrow or trust account in a federally insured depository. The account may be interest bearing at the direction of either the prospective seller or prospective buyer. Payment of any account fees and payment of interest monies shall be as agreed to between the prospective buyer and prospective sell-

er. All reservation deposits shall remain in the account until cancellation or termination of the timeshare interest reservation or execution of a purchase agreement.
4. Within fifteen calendar days after the prospective seller receives the public report approved for use by the commissioner relating to the reserved timeshare interest, the prospective seller shall provide the prospective buyer with a copy of the public report and a copy of the proposed purchase agreement for the sale of the timeshare interest. The prospective buyer and prospective seller shall have ten business days after the prospective buyer's receipt of the public report and the proposed purchase agreement to enter into a contract for the purchase of the timeshare interest. If the prospective buyer and prospective seller do not enter into a contract for the purchase of the timeshare interest within the ten business day period, the reservation automatically terminates. The prospective seller has no cancellation rights concerning a timeshare interest reservation other than as provided in this subsection.
5. A prospective buyer may cancel a timeshare interest reservation at any time before the execution of a purchase agreement by delivering written notice of termination to the prospective seller as provided in paragraph 9 of this subsection.
6. Within five business days after a timeshare interest reservation has been terminated for any reason, the prospective seller shall refund to the prospective buyer all reservation deposits made by the prospective buyer, including any interest monies earned minus any account fees agreed on, if applicable. The independent third-party escrow account or trust account agent shall refund to the prospective buyer all reservation deposits made by the prospective buyer, including any interest monies earned minus any account fees agreed on if the prospective seller is not available. After the refund, neither the prospective buyer nor the prospective seller has any obligation arising out of the timeshare interest reservation.
7. A prospective buyer may not transfer rights under a reservation without the prior written consent of the prospective seller, and any purported transfer without the consent of the prospective seller is voidable at the sole discretion of the prospective seller.
8. If the department denies an application for a public report on a timeshare plan on which timeshare interest reservations were taken, within five business days after notification by the department, the prospective seller shall notify in writing each prospective buyer who entered into a timeshare interest reservation agreement. The prospective seller shall return any reservation deposits previously taken.
9. All notices required by this section to be given to the department, the prospective buyer or the prospective seller shall be in writing and either hand delivered or sent by certified mail, return receipt requested with postage fully prepaid. Notices sent by mail are deemed delivered on the earlier of actual receipt, as evidenced by the delivery receipt, or seven calendar days after being deposited in the United States mail.
10. Each timeshare interest reservation form shall contain the following statement in conspicuous type above the purchaser's signature line:

> The Arizona department of real estate has not inspected or approved this timeshare property and no public report has been issued for the timeshare plan. No offer to sell may be made and no offer to purchase may be accepted before issuance of a public report or pre-sale authorization for the timeshare plan.

C. The commissioner may deny, suspend or revoke authorization to accept timeshare interest reservations under this section to any person who has violated any provision of this chapter.

32-2197.11. Developer supervisory duties

The developer shall supervise, manage and control all aspects of the offering of the timeshare plan, including promotion, advertising, contracting and closing. The developer is responsible for each timeshare plan registered by the developer with the department and for the actions of any sales agent or managing entity used by the developer in the offering or selling of any registered timeshare plan. Any violation of this article that occurs during the offering activities shall be deemed to be a violation by the developer as well as by the sales agent or managing entity who actually committed the violation. The developer is responsible for the actions of the association and managing entity only while they are subject to the developer's control, as provided in the timeshare instruments or by law.

32-2197.12. Blanket encumbrance; lien; alternative assurance

Excluding any encumbrance placed against the purchaser's timeshare interest securing the purchaser's payment of purchase money financing for the purchase, the developer is not entitled to the release of any monies placed in escrow under section 32-2197.05 with respect to each timeshare interest and any other property or rights to property appurtenant to the timeshare interest, including any amenities represented to the purchaser as being part of the timeshare plan, until the developer has provided satisfactory evidence to the commissioner of one of the following:

1. The timeshare interest together with any other property or rights to property appurtenant to the timeshare interest, including any amenities represented to the purchaser as being part of the timeshare plan, are free and clear of any of the claims of the developer, any owner of the underlying fee, a mortgagee, judgment creditor or other lienor or any other person having a blanket encumbrance against the timeshare interest or appurtenant property or property rights.
2. The developer, any owner of the underlying fee, a mortgagee, judgment creditor or other lienor or any other person having a blanket encumbrance against the timeshare interest or appurtenant property or property rights, including any amenities represented to the purchaser as being part of the timeshare plan, has recorded a subordination and notice to creditors document in the appropriate public records of the jurisdiction in which the timeshare interest is located. The subordination document shall expressly and effectively provide that the interest holder's right or blanket encumbrance does not adversely affect and is subordinate to the rights of the owners of the timeshare interests in the timeshare plan regardless of the date of purchase, from and after the effective date of the subordination document.
3. The developer, any owner of the underlying fee, a mortgagee, judgment creditor or other lienor or any other person having a blanket encumbrance against the timeshare interest or appurtenant property or property rights, including any amenities represented to the purchaser as being part of the timeshare plan, has transferred the subject accommodations or amenities or all use rights to the accommodations or amenities to a nonprofit organization or owners' association to be held for the use and benefit of the owners of the timeshare plan. The organization or association shall act as a fiduciary to the purchasers, if the developer has transferred control of the organization or association to the owners or does not exercise

voting rights in the organization or association with respect to the subject accommodations or amenities. Before the transfer, any blanket encumbrance against the accommodation or facility shall be made subject to a subordination and notice to creditors instrument pursuant to paragraph 2.

4. Alternative arrangements have been made that are adequate to protect the rights of the purchasers of the timeshare interests and approved by the commissioner.

32-2197.13. Hearing on denial of public report

Any applicant objecting to the denial of a public report may, within thirty days after receipt of the order of denial, file a written request for a hearing. The commissioner shall hold the hearing within twenty days thereafter unless the party requesting the hearing requests a postponement. If the hearing is not held within twenty days after a request for a hearing is received, plus the period of any such postponement, or if a proposed decision is not rendered within forty-five days after submission, the order of denial shall be rescinded and a public report issued.

32-2197.14. Investigations; orders; hearings

A. The commissioner, on the commissioner's own motion, or if the commissioner has received a complaint and has satisfactory evidence that the owner, agent or developer is violating any provision of this article or rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 concerning the sale of timeshare interests or deviated from the provisions of the public report, may investigate the timeshare property and examine the books and records of the owner, agent or developer. For the purpose of examination, the owner, agent or developer shall keep and maintain records of all sales transactions and monies received pursuant to such sales transactions and make them accessible to the commissioner upon reasonable notice and demand.

B. The commissioner may conduct an investigation, issue a summary order as provided in section 32-2157 or hold a public hearing, on the commissioner's own motion, or if the commissioner has received a complaint and has satisfactory evidence that:

1. A person has violated any of the provisions of this article or the rules of the commissioner.

2. A person has engaged in any unlawful practice as defined in section 44-1522 concerning the sale of timeshare interests.

3. A person has deviated from the provisions of the public report.

4. The owner, agent, developer, officer or partner, developer trust beneficiary or, if a corporation, any stockholder owning ten per cent or more of the stock in such corporation has participated in, operated or held an interest in any land development company which is bankrupt or has been indicted for fraud or against whom an information for fraud has been filed or has been convicted of a felony, before or after the commissioner issues the public report.

C. After such hearing, the commissioner may issue such order or orders as the commissioner deems necessary to protect the public interest and ensure compliance with the law, or rules or public report, or may bring an action in any court of competent jurisdiction against the person to enjoin the person from continuing such violation or engaging in such violation or doing any act or acts in furtherance of such violation. The court may make such orders or judgments, including the appointment of a receiver, as are necessary to prevent the use or employment by a person of any unlawful practices or which are necessary to restore to any person in interest any monies or property, real or personal, which has been acquired by means of any practice declared to be unlawful in this article.

D. For any timeshare investigation made under this section of an out-of-state timeshare plan, or any in-state timeshare plan to which the commissioner issues any order necessary to protect the public interest and ensure compliance with law, rules or the public report, the developer shall reimburse the department for travel and subsistence expenses incurred by the department.

32-2197.15. Order; appointment of receiver; writ of ne exeat

A. If it appears to the commissioner that a person has engaged in or is engaging in a practice declared to be unlawful by this article, and that such person is concealing assets or self, or has made arrangements to conceal assets or is about to leave this state, the commissioner may apply to the superior court, ex parte, for an order appointing a receiver of the assets of such person or for a writ of ne exeat, or both.

B. The court, upon receipt of an application for the appointment of a receiver or for a writ of ne exeat, or both, shall examine the verified application of the commissioner and such other evidence that the commissioner presents to the court. If satisfied that the interests of the public require the appointment of a receiver or the issuance of a writ ne exeat without notice, the court shall issue an order appointing the receiver or issue the writ, or both. If the court determines that the interests of the public will not be harmed by the giving of notice, the court shall set a time for a hearing and require such notice be given as the court deems satisfactory.

C. If the court appoints a receiver without notice, the court shall further direct that a copy of the order appointing a receiver be served upon the person engaged in or engaging in a practice declared to be unlawful under this article by delivering such order to the last address of the person which is on file with the real estate department. The order shall inform the person that he has the right to request a hearing within ten days of the date of the order, and if requested, the hearing shall be held within thirty days from the date of the order.

32-2197.16. Separate disclosures

Amended by Ariz. Sess. Laws Ch. 52, (2024)

A. The purchase agreement must contain a separate disclosure document that discloses all of the following in at least ten-point type:

1. If the purchaser signs the purchase agreement, the purchaser has ten days to cancel the purchase agreement without a penalty.
2. If the purchaser signs the purchase agreement, the purchaser may be responsible for paying maintenance fees, taxes and other assessments every year for the duration of ownership.
3. Timeshares are not investments.
4. The purchase agreement is final and any conflicting statements made by the seller are not part of the purchase agreement.
5. The purchaser has the right to file a consumer complaint with the attorney general.

B. Before entering into a purchase agreement, the seller must provide the purchaser with a separate disclosure document to adequately inform the purchaser of the purchaser's actual and potential liabilities under the purchase agreement. At a minimum, this separate disclosure document must conspicuously disclose all of the following:

1. The duration of the timeshare agreement entered into by the purchaser or whether the agreement has no set duration.
2. A loan estimate of the total potential financial obligation of the purchaser during the first year of ownership that includes additional charges to which the purchaser may be subject

during the first year of ownership, including all potential assessments. The disclosure shall be as follows:

(a) If the maximum amount of the first year's assessments is known at the time of purchase, the disclosure must disclose the maximum amount of these assessments and the assessments levied for each of the previous three years, if available.

(b) If the maximum amount of the first year's assessments is unknown at the time of purchase, the disclosure must provide the purchaser with the following:

(i) Notice that the purchaser will be required to pay assessments in addition to the disclosed purchase payment and that the amount of those assessments is currently unknown.

(ii) A statement disclosing the assessments levied for each of the previous three years, if available, and a loan estimate of the first year's assessments that is at least the highest amount assessed during any of the previous three years based on the timeshare interest being offered.

(iii) Unless the purchase agreement provides for a limit on assessments during the first year of ownership, an affirmative statement that there is no limit on the assessments that the purchaser may be charged in the first year of ownership.

C. If there are blank spaces in the purchase agreement or the disclosure documents prescribed by this section, the contract is voidable.

D. The purchaser must separately initial each disclosure prescribed by subsection A of this section, sign the separate disclosure prescribed by subsection B of this section and verify that the purchaser has read and understands the information presented in the separate disclosures. An initialed copy of the separate disclosure prescribed by subsection A of this section and a signed copy of the separate disclosure prescribed by subsection B of this section shall be provided to the purchaser for the purchaser's records at the time of signing, and the seller shall keep a signed copy of the separate disclosures.

E. The commissioner may recommend or require that the separate disclosures be in a specified form. The form must contain the information required by this section.

32-2197.17. Advertising and promotional requirements; telemarketing and promotional employees; presentations and tours, drawings and contests; commissioner's authority; disclosures

A. Within ten days after a request by the commissioner, the developer shall file with the commissioner a copy of any promotional and advertising material that will be used in connection with the sale, lease or use of timeshare interests. If filing is required, the commissioner shall approve or deny the use of any material within fifteen days of receiving all information and documents. If the commissioner denies the use of promotional and advertising material, specific grounds shall be set forth in writing. The commissioner may grant provisional approval for promotional and advertising material if the developer agrees to correct any deficiencies. Any proposed advertising not requested by the commissioner for review may be filed for review and approval by the commissioner.

B. Any advertising, communication or sales literature of any kind, including oral statements by salespeople or any other person, shall not contain:

1. Any untrue statement of material fact or any omission of material fact which would make such statements misleading in light of the circumstances under which such statements were made.

2. Any statement or representation that the timeshare interests are offered without risk or that loss is impossible.

3. Any statement or representation or pictorial presentation of proposed improvements or nonexistent scenes without clearly indicating that the improvements are proposed and the scenes do not exist.

C. All promotional and advertising material shall be consistent with the information contained in the notice of intention pursuant to section 32-2197.02 and the public report pursuant to section 32-2197.08 and shall clearly indicate that the material is being used to promote the sale, lease or use of an interest in a timeshare plan. An interest in a timeshare plan, vacation ownership plan, fractional ownership plan, vacation club or other term or terms may be approved by the commissioner on a case by case basis after the commissioner finds that such term or terms clearly disclose to prospective purchasers the nature of the timeshare interest being offered.

D. If it appears to the commissioner that any person is engaging or has engaged in advertising or promotional practices in violation of this article, the commissioner may hold a hearing as a contested case under title 41, chapter 6, article 10 and issue such order or orders as the commissioner deems necessary to protect the public interest, or the commissioner may bring an action in any court of competent jurisdiction against such person to enjoin that person from continuing such violation.

E. The commissioner may adopt such written guidelines as the commissioner deems necessary to protect the public interest and to assure that all advertising and promotional practices with respect to land subject to the provisions of this article are not false or misleading.

F. It is unlawful for any owner, developer, agent or employee of any timeshare plan or other person with intent directly or indirectly to sell or lease timeshare interests subject to the provisions of this article to authorize, use, direct or aid in any advertising, communication, sales literature or promotional practice which violates this section.

G. This section does not apply to the owner or publisher of a newspaper or magazine or to any other publication of printed matter in which such advertisement appears or to the owner or operator of a radio or television station which disseminates such advertisement if the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser.

H. A telemarketing or any other promotional employee involved in activities whose primary duties are limited to soliciting initial interest, scheduling or confirming persons for appointments, handing out promotional literature or explaining promotional incentives and related duties is not required to hold a real estate license. To the extent that a telemarketing or any other promotional employee is engaged in soliciting interest in the actual purchase, lease or use of timeshare interests, the employee shall be employed and supervised by a real estate broker who is licensed in this state subject to the following:

1. Supervision of unlicensed telemarketing and other promotional employees shall be performed directly by a broker or a licensed real estate salesperson under the supervision of the broker.

2. An unlicensed employee in the course of the employee's duties shall not engage in discussions about any details or benefits of the property transaction being promoted, including dimensions of the property, contract terms, discounts, exchange benefits, price and financing.

3. The amount and manner in which an unlicensed employee is individually compensated may not be based, in whole or in part, on the completion of a timeshare transaction.

4. For the purposes of the supervision required under this subsection, a developer may:

(a) Operate its own promotional program and provide supervision of its unlicensed telemarketing or other promotional employees through its designated broker.

(b) Establish a branch office that is managed by a licensed real estate salesperson under the supervision of the developer's designated broker and who provides supervision of the developer's unlicensed telemarketing or other promotional employees.

(c) Pursuant to a written promotion agreement:

(i) Contract with an unlicensed telemarketer or any other promoter if the agreement requires the developer's designated broker to provide supervision of the telemarketer's or promoter's unlicensed telemarketing or other promotional employees.

(ii) Contract with a telemarketer or any other promoter who is licensed as a broker in this state if the agreement requires the designated broker of the telemarketer or other promoter to provide supervision of unlicensed telemarketing or other promotional employees.

5. The commissioner may exempt from the supervision requirements of this section a timeshare developer that is not based in this state and that desires to conduct telemarketing solicitations of residents of this state or a developer that is based in this state but that desires to use the services of a telemarketer that is not located in this state to conduct telemarketing solicitations of residents of this state on written application containing information about the developer, the timeshare plan and the marketing procedures that will be used. The commissioner may grant such an exemption on a showing that supervision equivalent to that required under this section exists. If the developer does not adhere to the marketing procedures submitted with its application for exemption or if there is any material change in the information submitted with the application, the exemption may be denied or revoked.

I. A timeshare developer may hold a drawing or contest to solicit interest in or promote timeshare interests if all of the following requirements are met:

1. The timeshare plan has in effect a current public report.

2. The developer is not the subject of an ongoing investigation by the commissioner, unless the commissioner in the commissioner's discretion gives written permission to the developer to hold a drawing or contest.

3. The extent to which the drawing or contest is limited in time and scope and the geographic location in which eligible recipients reside are fully disclosed.

4. The estimated odds of winning and all other material terms of the drawing or contest are fully disclosed to all participants.

5. No fee is charged to any person who participates in a drawing or contest.

6. No participant in a drawing or contest, as a condition of participation, is required to attend a timeshare sales presentation or take a site tour.

7. The developer is in compliance with all applicable federal, state and local laws involving drawings or contests.

8. The developer is responsible at all times for the lawful and proper conduct of any drawing or contest.

9. The developer submits the details of the drawing or contest, including the method of awarding any offered.

J. A premium may be given to persons who visit timeshare properties or who attend a timeshare

presentation. No person is required to attend any presentation or tour for longer than one hundred twenty minutes to receive the premium. The developer shall make complete and clear written disclosure that minimally includes detailed information about any premium offered as an incentive, including its estimated retail value and any conditions that must be met or limitations that apply to receive the premium, and about the one hundred twenty minute limit placed on a site tour or sales presentation to each timeshare prospect before any presentation or tour.

K. A developer or a representative of a developer conducting timeshare presentations or tours may offer a timeshare prospect a redemption certificate in return for participation in a presentation or tour if all of the following requirements are met:

1. If for any reason the goods or services are not provided in the time frame stated in or are not as represented in the redemption certificate and the recipient provides proof of timely satisfaction of all conditions and requirements for redemption, the developer does the following:

(a) Within fifteen days of receipt of notice from the timeshare prospect of the proven nonreceipt of the goods or services, provides the promised goods or services or a reasonable substitute of equal or greater value.

(b) If unable to provide the goods or services or a reasonable substitute within the fifteen day period, immediately pays the redemption certificate recipient an amount equal to the estimated retail value of the premium as advertised in the certificate promotional material or, if the value was not advertised, pays the estimated retail value of the premium.

2. All advertising and offers referring to redemption certificates shall clearly and conspicuously set forth any terms, conditions, restrictions or limitations governing the use of the certificates.

L. The disclosure required by subsection C of this section shall be provided as part of the initial advertising promotion contact with a prospective purchaser. Any other disclosures required pursuant to this section shall be provided before the prospective purchaser is required to pay any money or attend a sales presentation pursuant to the advertising promotion. The disclosures shall be given to each prospective purchaser on only one piece of advertising for each advertising promotion, including advertising promotions that consist of multiple related pieces. If advertising promotions are approved as multiple related pieces, the advertising promotion must be used in that form. If the advertising promotion contains terms and conditions the disclosures required in this section shall be included on any piece containing these terms and conditions. Repetitive filings of the same advertising material are not required.

32-2197.18. Recording of actions

A. If the commissioner issues a cease and desist order, obtains a court order enjoining further sales, issues an order of prohibition or suspends approval of a timeshare plan, the action shall be recorded in the book of deeds in the office of the county recorder in any county in which the timeshare property is located.

B. In the event of revocation of any of the orders which require recording in subsection A, an order of release shall be recorded in the same manner.

32-2197.19. Civil liabilities; prohibitions; limitations

A. If any part of the notice of intention filed pursuant to section 32-2197.02 contains an untrue statement of a material fact or omits a material fact required to be stated in such notice, the developer or agent is liable as provided in this section to any person who acquires a timeshare interest in the timeshare plan covered by the notice of intention during the period the notice of intention remained uncorrected, unless it is proved that at the time of such acquisition the person acquiring the timeshare interest knew of such untruth or omission.

B. A developer or agent who sells or leases a timeshare interest in a timeshare plan in violation of section 32-2197.09 or by means of a public report which contains an untrue statement of a material fact, or omits a material fact required to be stated in such report, is liable to the purchaser of such timeshare interest as provided in this section.

C. No developer or agent shall, in selling or leasing, or offering to sell or lease, any timeshare interest in a timeshare plan:

1. Employ any device, scheme or artifice to defraud.

2. Obtain money or property by means of a material misrepresentation with respect to any information included in the notice of intention or the public report or with respect to any other information pertinent to the timeshare interest or timeshare plan and upon which the purchaser relies.

3. Engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon a purchaser.

D. Damages in any suit brought pursuant to this section are the difference between the amount paid for the timeshare interest, together with the reasonable cost of improvements to such timeshare interest, and whichever of the following amount is less:

1. The value of the timeshare interest and improvements as of the time such suit was brought.

2. The price at which the timeshare interest was disposed of in a bona fide market transaction prior to the suit.

3. The price at which the timeshare interest was disposed of in a bona fide market transaction after suit was brought, but prior to judgment.

E. In any action in which a violation of this section is established, the purchaser is also entitled to recover reasonable attorney fees as determined by the court. If a violation is not established, the court may award reasonable attorney fees to the defendant.

F. Every person who becomes liable to make any payment pursuant to this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment.

G. The amount recoverable pursuant to this section shall not exceed the sum of the purchase price of the timeshare interest, the reasonable cost of improvements installed by the purchaser and reasonable court costs and attorney fees.

H. This section does not preclude any other remedies that may exist at law or in equity.

I. An action shall not be maintained to enforce any liability created pursuant to subsection A or B of this section unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence. An action shall not be maintained to enforce any liability created pursuant to subsection C of this section unless brought within two years after the violation upon which it is based. Any such action under subsection C of this section shall not be brought by a purchaser more than three years after the sale or lease to such purchaser.

32-2197.20. Civil penalty

A. Any developer who is subject to the jurisdiction of the department and who has violated any provision of this article or any rule or order adopted by the commissioner, who has deviated substantially from the provisions of a public report or who has engaged in any unlawful practices defined in section 44-1522 with respect to the sale or lease of timeshare interests may be assessed a civil penalty by the commissioner, after a hearing, in an amount of at least one thousand dollars and not more than five thousand dollars per infraction.

B. Actions to recover penalties pursuant to this section shall be brought by the attorney general in the name of this state in the superior court in the county in which the violation occurred or in a county in which the commissioner maintains an office.

32-2197.21. Payment of finder fees; limits; prohibited activities; records; definition

A. Notwithstanding sections 32-2155, 32-2163 and 32-2165 or any other provision of this chapter, a developer or managing entity may pay a finder fee to a person who is not licensed pursuant to this chapter and who owns a timeshare interest in the developer's timeshare plan or in the timeshare plan managed by that managing entity.

B. A finder fee paid pursuant to this section shall not exceed one thousand dollars in credit or nonmonetary compensation during any twelve month period.

C. This section does not permit a person who is not licensed pursuant to this chapter to advertise or promote the person's services in procuring or assisting to procure prospective timeshare interest purchasers.

D. The developer or managing entity shall keep records of all finder fees paid pursuant to this section for three years after the payment is made.

E. For purposes of this section, "finder fee" means credit or nonmonetary compensation paid to a person who is not licensed pursuant to this chapter, who owns a timeshare interest and who provides the name and address of a prospective purchaser to the developer or managing entity of the timeshare plan in which the owner previously purchased a timeshare interest.

32-2197.22. Exemptions; disclosures; exempt communications

A. Sections 44-1841 and 44-1842 do not apply to a timeshare plan that has been issued a timeshare public report pursuant to this article or exempted by special order of the commissioner.

B. A person is exempt from this article if any of the following applies:

1. The person is either an owner of a timeshare interest or a real estate broker who represents an owner of a timeshare interest if the owner acquired the timeshare interest for the owner's own use and occupancy and offers it for resale.

2. The person is a managing entity or an association or a designated agent of a managing entity or association if all of the following apply:

(a) The entity or association is not a developer of a timeshare plan.

(b) The person solely acts as an association or is under a contract with an association to offer or sell a timeshare interest transferred to the association through foreclosure, deed or gratuitous transfer if done in the regular course of, or incident to, the management of the association for the management's account in the timeshare plan.

(c) The managing entity or the association provides to each purchaser who is not

an existing owner in the timeshare plan, the following disclosures before execution of the purchase agreement:

(i) The name and address of the timeshare plan and of the managing entity of the timeshare plan.

(ii) The following statement in conspicuous type located before the disclosure required by item (vi) of this subdivision:

The current year's assessment for common expenses allocable to the timeshare interest you are purchasing is $_____. This assessment, which may be increased periodically by the managing entity of the timeshare plan, is payable in full each year on or before _____. This assessment (includes/does not include) yearly ad valorem real estate taxes that (are/are not) billed and collected separately.

(iii) If ad valorem real property taxes are not included in the current year's assessment for common expenses, the following statement must be in conspicuous type located immediately after the disclosure required by item (ii) of this subdivision:

The most recent annual assessment for ad valorem real estate taxes for the timeshare interest you are purchasing is $_____.

(iv) If there are any delinquent assessments for common expenses or ad valorem taxes outstanding with respect to the timeshare interest in question, the following statement must be in conspicuous type located immediately after the disclosure required by items (ii) and (iii) of this subdivision:

A delinquency in the amount of $_____ for unpaid common expenses or ad valorem taxes currently exists with respect to the timeshare interest you are purchasing, together with a per diem charge of $_____ for interest and late charges.

(v) The following statement in conspicuous type located immediately after the disclosure required by items (ii), (iii) and (iv) of this subdivision:

Each owner is personally liable for the payment of the owner's assessments for common expenses, and failure to timely pay these assessments may result in restriction or loss of your use and ownership rights. There are many important documents relating to the timeshare plan that you should review before purchasing a timeshare interest, copies of which are available from the association or the managing entity on request, including the declaration of condominium or covenants and restrictions, the association articles and bylaws, the current year's operating and reserve budgets and any rules affecting the use of timeshare plan accommodations and facilities.

(vi) The year in which the purchaser will first be entitled to occupancy or use of a timeshare period associated with the timeshare interest that is the subject of the resale purchase agreement.

3. The person offers a timeshare plan in a national publication or by electronic media, as determined by the commissioner or as provided by rule, that is not directed to or targeted to any individual located in the state. For purposes of this paragraph, "national publication" or "electronic media" means publications or media circulated, distributed and broadcast on a regional or national basis to residents of the United States and foreign countries.

National publication or electronic media includes radio, newspapers, television, the internet and other media that is not intentionally directed to or targeted to individuals located in this state. The sending of a direct solicitation or electronic mail message to the internet address of an individual known to be located in this state is not an offer through a national publication or electronic media.

4. The person has acquired twelve or more timeshare interests in one or more voluntary or involuntary transactions and subsequently conveys, assigns or transfers twelve or more of the timeshare interests received to a single purchaser in a single transaction during the preceding twelve month period.

C. The following are exempt communications from the provisions of this article:

1. Any stockholder communication including an annual report or interim financial report, proxy material, a registration statement, a securities prospectus, a registration, a property report or other material required to be delivered to a prospective purchaser by an agency of any state or the federal government.

2. Any oral or written statement disseminated by a developer to broadcast or print media, other than paid advertising or promotional material, regarding plans for the acquisition or development of timeshare property. Any rebroadcast or any other dissemination of such oral statements to a prospective purchaser by a seller in any manner or any distribution of copies of newspaper or magazine articles or press releases or any other dissemination of written statements to a prospective purchaser by a seller in any manner constitutes an advertisement and is not an exempt communication.

3. Any advertisement or promotion in any medium to the general public if the advertisement or promotion clearly states that it is not an offer in any jurisdiction in which any applicable registration requirements have not been fully satisfied.

4. Any audio, written or visual publication or material relating to the availability of any accommodations for transient rental if a sales presentation is not a requirement for the availability of the accommodations and if the failure of any transient renter to take a tour of a timeshare property or attend a sales presentation does not result in any reduction in the level of services that would otherwise be available to the transient renter.

5. Any billboard or other sign that is affixed to real or personal property and that is not disseminated by other than visual means to any prospective purchaser and that does not suggest or invite any action on the part of the prospective purchaser.

D. The following communications are exempt from this article if the communications are delivered to any person who has previously executed a contract for the purchase of or is an existing owner of a timeshare interest in a timeshare plan:

1. Any communication addressed to and relating to the account of any person who has previously executed a contract for the sale or purchase of a timeshare interest in a timeshare plan relating to the communication.

2. Any audio, written or visual publication or material relating to an exchange company or exchange program provided to an existing member of the exchange company or exchange program.

3. Any communication by a developer to encourage a person who has previously acquired a timeshare interest from the developer to acquire additional use or occupancy rights or benefits or additional timeshare interests offered by the same developer.

32-2197.23. Power of commissioner to exempt timeshare plans

A. The commissioner may by special order exempt from the provisions of this article timeshare plans upon written petition and upon a showing by the petitioner, satisfactory to the commissioner, that compliance with the provisions of this article is not essential to the public interest or for the protection of purchasers by reason of the special characteristics of the timeshare plan.

B. Special orders issued pursuant to this section shall relate to specific timeshare plans.

C. A petition filed under this section shall be accompanied by an initial fee of three hundred dollars. A fee is not returnable irrespective of the nature of the action upon the petition.

32-2197.24. Applicability of article

A. This article applies to all of the following:

1. A timeshare property located in this state.
2. Timeshare plans with an accommodation or component site in this state if those timeshare plans are sold or offered to be sold to any individual located in this state.
3. Timeshare plans without an accommodation or component site in this state if the timeshare plans are sold or offered to be sold to any individual located in this state.

B. This article does not apply to the following:

1. An exchange program except as provided in subsection C.
2. Timeshare plans consisting of fewer than twelve timeshare interests whether or not an accommodation is located in this state.
3. Timeshare plans the use of which extends over any period of less than three years.
4. Timeshare plans, whether or not an accommodation is located in this state, under which the prospective purchaser's total financial obligation will be less than one thousand five hundred dollars during the entire term of the timeshare plan.

C. A method, arrangement or procedure that meets the definition of an exchange program pursuant to section 32-2197 shall be regulated as a timeshare plan in accordance with this article if the purchaser's total contractual financial obligation exceeds three thousand dollars for any individual, recurring timeshare period.

ARTICLE 10 - MEMBERSHIP CAMPING

32-2198. Unlawful offer or sale of membership camping contract

It is unlawful for any person to offer to sell or to sell within or from this state a membership camping contract unless a final membership camping public report has been issued by the commissioner. Any sale of a membership camping contract before the issuance of the final public report is voidable by the purchaser.

32-2198.01. Application for membership camping public report; signature; amendment

A. An application for a membership camping public report shall contain the following documents and information:

1. The name and address of the membership camping operator.
2. A copy of the articles of incorporation, partnership agreement or joint venture agreement and the camping club association bylaws as contemplated or currently in effect.
3. A list of all officers and directors or persons occupying a similar status of the membership camping operator including their names, addresses and occupations during the last five years.
4. A list of material affiliates of the membership camping operator, including the names and addresses of partners, officers, directors and persons with a direct or indirect interest of ten per cent or more in the membership camping operator.
5. A list of all owners of over ten per cent of the voting stock of the membership camping operator, except that this list is not required if the membership camping operator is a reporting company under the securities and exchange act of 1934.
6. Copies of forms of all advertisements intended to be used in connection with the offer or sale of membership camping contracts within this state.
7. A copy of each type of membership camping contract to be sold, a description of the purchase price of each type and, if the price varies, the reason for the variance.
8. A copy of any conditional use permit or any other major use permits indicating approval of the project by this state or a political subdivision of this state for each of the membership camping operator's camping projects located in this state. If the membership camping operator has no projects in this state, the same documents shall be provided for all out of state projects for which membership contracts are to be sold or offered for sale in this state.
9. The financial statements of the membership camping operator prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant.
10. A statement of the total number of membership camping contracts intended to be sold in this state and the method used to determine this number including a statement of commitment that this total number will not be exceeded unless it is disclosed by an amendment to the registration.
11. If membership camping contracts are sold with different privileges or durations, a list of each type of membership camping contract and the approximate number of each type to be sold.

12. A copy of the agreement, if any, between the operator and any person owning, controlling or managing the campground.
13. The names of any other states or foreign countries in which an application for registration of the membership camping operator or the membership camping contract or any similar document has been filed.
14. Complete information concerning any adverse order, judgment or decree involving forgery, theft, extortion, conspiracy to defraud, a crime of moral turpitude or any other like conduct which has been entered by a court or administrative agency in connection with a campground or other business operated by the applicant or in which the applicant has or had an interest at the time of the acts which led to the order, judgment or decree.
15. A current title report which is signed and dated not more than thirty days before receipt by the commissioner and which provides a true statement of the condition of the title to the campground property, including all encumbrances on the property.
16. A statement on the provisions that have been made for permanent access and provisions, if any, for health department approved sewage and solid waste collection and disposal and public utilities, if any, in the proposed campground, including water, electricity, gas and telephone facilities.
17. A statement of the provisions, if any, limiting the use or occupancy of the campground, together with copies of any restrictive covenants affecting all or part of the campground.
18. A true statement of the approximate amount of indebtedness which is a lien on the campground or any part of the campground and which was incurred to pay for the construction of any on-site or off-site improvement or any community or recreational facility.
19. A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area or assessment district within the boundaries of which the campground or any part of the campground is located, and which is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to the campground, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax on the campground or any part of the campground.
20. A true statement as to the approximate amount, if any, of annual taxes, special assessments or fees to be paid by the membership camping contract owner for the proposed annual maintenance of common facilities in the campground.
21. A true statement of assurances for the installation of improvements, such as roads and utilities, and approval by the political subdivision having authority.
22. A true statement of provisions made for financing any community, recreational or other facilities to be included in the offering or represented as being in the offering. The statement shall include a trust agreement or other evidence of assurances for delivery of such facilities and a statement of the provisions, if any, for the continued maintenance of the facilities.
23. A true statement of the nature of any improvements to be installed or represented to be installed, the estimated schedule for completion and the estimated costs related to these improvements which will be borne by membership camping contract owners in the campground.
24. A true statement of the membership camping operator's experience in the membership camping business, including the number of years the operator has been in the membership camping business.

25. A true statement of the nature of the purchaser's right or license to use the membership camping operator's property or facilities.
26. The location of each of the membership camping operator's parks and a brief description for each park of the significant facilities then available for use by purchasers and those which are represented to purchasers as being planned, together with a brief description of any significant facilities that are or will be available to nonpurchasers or nonmembers. As used in this paragraph "significant facilities" includes campsites, swimming pools, tennis courts, recreation buildings, rest rooms and showers, laundry rooms and trading posts or grocery stores.
27. A true statement of the membership camping operator's ownership of or other right to use the camping properties represented to be available for use by purchasers, together with the duration of any lease, license, franchise or reciprocal agreement entitling the membership camping operator to use the property, and any material provisions of any agreements which restrict a purchaser's use of the property.
28. A copy of the rules, restrictions or covenants regulating the purchaser's use of the membership camping operator's properties, including a statement of whether and how the rules, restrictions or covenants may be changed.
29. A description of any restraints on the transfer of the membership camping contract.
30. A true statement of the policies relating to the availability of camping sites and whether reservations are required.
31. A true statement of any grounds for forfeiture of a purchaser's membership camping contract.
32. Any other information, documents and certificates as the commissioner may reasonably require to clarify or ascertain the accuracy of the information required by this section.

B. The application shall be signed by the membership camping operator, an officer or general partner of the membership camping operator or by another person holding a power of attorney for this purpose from the membership camping operator. If the application is signed pursuant to a power of attorney, a copy of the power of attorney or the resolution authorizing the signature shall be included with the application.

C. The application must be submitted on a form prescribed by the commissioner with the application fee.

D. An application for registration to offer to sell or sell membership camping contracts shall be amended when a material change to the information previously filed occurs.

32-2198.02. Issuance of public report; representations prohibited

A. On examination of a membership campground, the commissioner, unless there are grounds for denial, shall issue to the owner or operator a public report authorizing the sale in or from this state of membership camping contracts. The report shall contain the data obtained in accordance with section 32-2198.01 and any other information which the commission determines is necessary to implement the purposes of this article. The commissioner shall require the owner or operator to reproduce the report and furnish each purchaser with a copy, taking a receipt. The owner and licensed broker shall each retain a receipt for at least five years from the date of its taking.

B. The issuance of a public report is not deemed to be an endorsement by the commissioner of the membership camping contract, the operator or the campground. It is unlawful for a person to make or use any statement or promotional device which tends to indicate that issuance constitutes an endorsement.

32-2198.03. Exemptions

A. The following transactions are exempt from the provisions of section 32-2198:

1. An offer, sale or transfer by any one person of not more than one membership camping contract in any twelve month period any agent for the person, participating in more than one transaction in a twelve-month period is not exempt from registration as a membership camping salesperson under this chapter if he receives a commission or similar payment for the sale or transfer.
2. An offer or sale by a government or subdivision of a government agency.
3. An offer, sale or transfer by a membership camping operator of a membership camping contract previously authorized if the offer, sale or transfer constitutes a transfer to an owner other than the original owner of the contract.

B. The commissioner may by special order exempt from the provisions of section 32-2198 the offer for sale or the sale of membership camping contracts on written petition and a showing by the petitioner satisfactory to the commissioner that compliance with this chapter is not essential to the public interest or for the protection of purchasers.

32-2198.04. Examination of project by commissioner

The commissioner, pursuant to an investigation conducted under section 32-2108 or an application for public report pursuant to section 32-2198.01, may examine any membership campground project offered or sold in this state and make his findings public. The total cost of travel and subsistence expenses incurred by the department in the examination shall be borne by the owner of the project on the basis of the actual cost to the department.

32-2198.05. Contracts; cancellation

A membership camping contract may be cancelled by a resident purchaser for any reason at any time before midnight of the third business day after the purchaser has signed and received a copy of the contract. A membership camping contract may be cancelled by a nonresident purchaser for any reason at any time before midnight of the seventh calendar day after the purchaser has signed and received a copy of the contract. To cancel a contract the purchaser may notify the campground operator of the cancellation in writing, by certified mail return receipt requested, or personal delivery, to an address in this state as specified in the contract. Proof of timely cancellation is satisfied if the certified letter is postmarked on or before midnight of the seventh day. All monies paid pursuant to the cancelled contract shall be fully refunded within thirty days of receipt of the notice of cancellation. If the purchaser executed any credit or loan agreement through the campground operator to pay all or part of the camping services, the debt and security instruments shall also be returned within thirty days. The contract shall contain a conspicuous notice printed in at least ten point bold-faced type as follows:

Notice to purchaser

You are entitled to a copy of this contract at the time you sign it.

You may cancel this contract at any time, if a resident of this state, before midnight of the third business day or if a nonresident of this state before midnight of the

seventh calendar day after receiving a signed copy of this contract. If you choose to cancel this contract, you must either:

1. Send a signed and dated written notice of cancellation by certified mail, return receipt requested.
2. Personally deliver a signed and dated written notice of cancellation to:
_____(Name of Campground)
_____(Address of Campground)

If you cancel this contract within the time periods set forth above, you are entitled to a full refund of your money. If the last day for giving notice falls on a Sunday or holiday, notice is timely given if it is mailed or delivered as specified on the next business day. Refunds must be made within thirty days of receipt of the cancellation notice by the campground operator.

32-2198.06. Execution of notes; assignment; purchaser's defenses retained

A. A membership camping contract shall not require the execution of any note or series of notes by the purchaser which if separately negotiated would terminate as to third parties any right of action or defense which the customer has against the campground operator.

B. A right of action or defense arising out of a membership camping contract which the customer has against the campground operator shall not be terminated by assignment of the contract whether or not the assignee acquires the contract in good faith and for value.

32-2198.08. Denial, suspension or revocation of a public report

A. The commissioner may order that a public report be denied, suspended or revoked or an application for a public report be denied if he finds that the order is necessary for the protection of purchasers or owners of membership camping contracts and that any of the following is true:

1. The membership camping operator's advertising, sales techniques or trade practices have been or are deceptive, false or misleading under section 44-1522.
2. The membership camping operator has failed to comply with any provision of this article or the rules pertaining to this article.
3. The membership camping operator is not financially responsible or has insufficient capital to warrant its offering or selling membership camping contracts or to complete proposed amenities.
4. The membership camping operator's offering of membership camping contracts has worked or would work a fraud on purchasers or owners of membership camping contracts.
5. The membership camping operator's application or any amendment to the application is incomplete in any material respect.
6. The membership camping operator has represented or is representing to purchasers in connection with the offer or sale of a membership camping contract that any property, facility, campsite or other development is planned without reasonable grounds to believe that the property, facility, campsite or other development will be completed within a reasonable time.
7. The membership camping operator has withdrawn from use all or any substantial portion of any campground, the rights of all purchasers at the affected location have not expired and no adequate provision has been made to provide a substitute campground of

comparable quality and attraction in the same general area within a reasonable time after the withdrawal.

8. The membership camping operator or its agent made a representation which is false or misleading in any application, document or statement filed with the commissioner.

9. The membership camping operator has disseminated or caused to be disseminated any false or misleading promotional materials in connection with a campground.

10. The membership camping operator or any of his agents has failed to comply with any representation in the final public report or membership camping contract.

11. The owner, operator, agent, officer, director or partner, trust beneficiary holding ten per cent or more beneficial interest or, if a corporation, any stockholder owning ten per cent or more of the stock in such corporation has:

(a) Been convicted of a felony or misdemeanor involving fraud, dishonesty, moral turpitude or any like offense, or involving a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(b) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, time-share intervals, membership camping contracts or campgrounds, or securities or involving consumer fraud or the racketeering laws of this state.

(c) Had an administrative order entered against him by a real estate regulatory agency or security regulatory agency.

(d) Had an adverse decision or judgment entered against him involving fraud or dishonesty or involving the conduct of any business in or a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(e) Disregarded or violated any of the provisions of this chapter or the rules of the commissioner pertaining to this chapter.

(f) Participated in, operated or held an interest in any entity to which subdivision (b), (c), (d) or (e) applies.

B. Within thirty days after receipt of the order of denial, an applicant objecting to the denial of a public report may file a written request for a hearing. The commissioner shall hold the hearing within twenty days thereafter unless the party requesting the hearing has requested a postponement. If the hearing is not held within twenty days after a request for a hearing is received, plus the period of any postponement, or if a proposed decision is not rendered within forty-five days after submisssion, the order of denial shall be rescinded and a public report issued.

C. The commissioner, on his own motion or if he has received a complaint and has satisfactory evidence that grounds exist as provided in subsection A of this section or that any person has deviated from the provisions of the public report, may conduct an investigation of such matter, may issue a summary order as provided in section 32-2157 or may hold a public hearing and, after the hearing, may issue such order or orders as he deems necessary to protect the public interest and ensure compliance with the law, the rules or the public report, or the commissioner may bring an action in any court of competent jurisdiction against the person to enjoin the person from continuing the violation, engaging the violation or doing any act in furtherance of the violation. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by a person of any unlawful practices, or which may be necessary

to restore to any person in interest any monies or property, real or personal, which may have been acquired by means of any practice in this article declared to be unlawful.
D. If the commissioner has reasonable cause to believe that a person has engaged or is engaging in a practice declared to be unlawful by this article and that the person is concealing assets or self or has made arrangements to conceal assets or is about to leave this state and that the public health, safety or welfare so requires, the commissioner may apply to the superior court, ex parte, for an order appointing a receiver of the assets of the person or for a writ of ne exeat, or both.
E. The court, on receipt of an application for the appointment of a receiver or for a writ of ne exeat, or both, shall examine the verified application of the commissioner and any other evidence that the commissioner may present the court. If satisfied that the interests of the public require the appointment of a receiver or the issuance of a writ of ne exeat without notice, the court shall issue an order appointing the receiver or issue the writ, or both. Unless the court determines that the interests of the public will be harmed by the giving of notice, the court shall set a time for a hearing and require that such notice be given as the court deems satisfactory.
F. If the court appoints a receiver without notice, the court shall further direct that a copy of the order appointing a receiver be served on the person alleged to have engaged or to be engaging in a practice declared to be unlawful under this article by delivering the order to the last address of the person which is on file with the department. The order shall inform the person that he has the right to request a hearing within ten days of the date of the order and, if requested, that the hearing shall be held within twenty days from the date of the order.
G. If the commissioner determines that the managing camp operator is not financially responsible or has insufficient capital, the commissioner may require a surety bond or if one is unobtainable, other evidence of financial assurances in accordance with generally accepted accounting principles and generally accepted commercial standards of financial responsibility satisfactory to the commissioner to assure the financial responsibility and sufficient capitalization of the membership camping operator or to assure the completion of proposed amenities.

32-2198.09. Fees
A. Each application for a membership camping public report shall be accompanied by a fee of five hundred dollars.
B. Each application for amendment or renewal of a public report shall be accompanied by a fee of three hundred dollars.
C. Each application for a special order of exemption shall be accompanied by a fee of one hundred dollars.

32-2198.10. Advertising plans; disclosures; lotteries and drawings
A. Any advertising, communication or sales literature, including oral statements by salespersons or any other person, shall not contain:

1. Any untrue statement of material fact or any omission of material fact which would make the statements misleading in light of the circumstances under which such statements were made.
2. Any statement or representation that the membership camping contracts are offered without risk or that loss is impossible.
3. Any statement or representation or pictorial presentation of proposed improvements or nonexistent scenes without clearly indicating that the improvements are proposed and the scenes do not exist.

B. It is unlawful for any owner, developer, agent or employee of any membership camping project or other person with intent directly or indirectly to sell membership camping contracts to authorize, use, direct or aid in any advertising, communication, sales literature or promotional practice which violates this section.

C. This section does not apply to the owner or publisher of a newspaper or magazine or to any other publication of printed matter in which an advertisement appears or to the owner or operator of a radio or television station which disseminates an advertisement if the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser.

D. The commissioner may adopt rules permitting lotteries and drawings for the purpose of inducing prospective buyers to attend a sales presentation or to take a campground tour and establishing requirements and conditions for lotteries and drawings. These requirements and conditions shall include that:

1. No membership camping operator may hold a lottery or drawing who does not also have pursuant to section 32-2198.14 a recorded nondisturbance agreement, a bond or irrevocable letter of credit or some other financial assurance acceptable to the commissioner. The commissioner may require the campground operator to provide an independent auditor's report by a certified public accountant or other expert concerning the campground operator's financial condition.
2. No lottery or drawing may be held unless approved in advance by the commissioner.
3. The membership camping operator shall submit an application for approval of a lottery or drawing on a form approved by the commissioner and a fee of at least one hundred dollars and not more than two hundred fifty dollars.
4. The department shall require the applicant to pay all costs of field inspections to audit or oversee the operation of any drawing or lottery, including mileage, lodging and time spent in the field inspections and any experts employed to assist the department.
5. The deed, title, cash amount or other prize or guarantee of the prize shall be held by the department or in a neutral escrow by a disinterested third party approved by the department, pending the award of the prize to the lottery or drawing winner.
6. Any lottery or drawing shall be limited in time, scope and geographic location. The estimated odds of winning and terms of the lottery or drawing shall be disclosed in writing to participants.
7. No fee may be charged to any person who participates in a lottery or drawing.
8. The commissioner may deny or revoke any authorization to conduct a lottery or drawing to any person if the campground operator or broker or a salesperson violates any statute or rule adopted or order issued by the commissioner.
9. Violations of any requirements or conditions set forth in this section or by rule shall be grounds for the commissioner to deny future applications to hold lotteries or drawings.
10. The membership camping broker is responsible at all times for the lawful and proper conduct of any lottery or drawing.

E. No campground facility may be advertised or promoted in any way that appears to guarantee the unimpeded use of or access to campground properties, if a blanket encumbrance exists on the properties, unless a nondisturbance or other acceptable agreement has been recorded, filed and accepted by the department pursuant to section 32-2198.14.

32-2198.11. Purchaser's remedies

A. A membership camping contract entered into in substantial reliance on any false, fraudulent or misleading information, representation, notice or advertisement of the campground operator or its agents is voidable at the option of the purchaser. Reasonable attorney fees shall be awarded to the prevailing party in any action under this chapter.

B. Any waiver of the provisions of this article by the purchaser is void.

C. A purchaser who is injured by a violation of this article may bring an action for the recovery of damages, reasonable attorney fees and, if the violation is wilful, punitive damages in the amount of five thousand dollars per violation.

32-2198.13. Construction of this article

The provisions of this article are in addition to all other causes of action, remedies and penalties available to this state or to the purchaser.

32-2198.14. Advertising availability of campgrounds to campground members; blanket encumbrances

A. No membership campground may be advertised or promoted in any way that guarantees the unimpeded use of or access to the campground's properties unless the membership camping operator applies for and receives approval by filing information satisfactory to the department guaranteeing that the purchasers of membership camping contracts cannot be denied access to and use of campground properties pursuant to the membership camping contracts. The department may require the applicant to pay for any costs of experts hired by the department to evaluate the application, nondisturbance clause or financial condition of the applicant. No lien or encumbrance may be construed to deny access and use.

B. The applicant shall include satisfactory evidence that purchasers of campground memberships acquire an unimpeded and irrevocable right of access to and use of campground properties by means acceptable to the department, including:

1. A duly recorded nondisturbance agreement from each holder of a lien or encumbrance on a membership campground that provides minimally for:

(a) Enforcement of the agreement by individual campground members.

(b) Effectiveness of the agreement notwithstanding insolvency, bankruptcy of the membership campground operator or sale of the campground.

(c) Binding successors in interest of both the campground membership operator and each holder of a lien or encumbrance.

(d) Alternative means to continue operation of the campground if the campground operator, holder of a lien or encumbrance or purchaser who obtains title or possession of the campground ceases to act as operator.

2. A bond or irrevocable letter of credit posted by the membership camping operator in an aggregate principal amount sufficient to cover the indebtedness remaining under any lien or encumbrance.

3. Other financial assurances reasonably acceptable to the department.

ARTICLE 11 - ADMINISTRATIVE HEARINGS

32-2199 Administrative Hearings

Pursuant to title 41, chapter 6, article 10, an administrative law judge shall adjudicate complaints regarding and ensure compliance with:

1. Title 33, chapter 9 and condominium documents.
2. Title 33, chapter 16 and planned community documents.

32-2199.01. Hearing; rights procedures

A. For a dispute between an owner and a condominium association or planned community association that is regulated pursuant to title 33, chapter 9 or 16, the owner or association may petition the department for a hearing concerning violations of condominium documents or planned community documents or violations of the statutes that regulate condominiums or planned communities. The petitioner shall file a petition with the department and pay a filing fee in an amount to be established by the commissioner. The filing fee shall be deposited in the condominium and planned community hearing office fund established by section 32-2199.05. On dismissal of a petition at the request of the petitioner before a hearing is scheduled or by stipulation of the parties before a hearing is scheduled, the filing fee shall be refunded to the petitioner. The department does not have jurisdiction to hear:

1. Any dispute among or between owners to which the association is not a party.
2. Any dispute between an owner and any person, firm, partnership, corporation, association or other organization that is engaged in the business of designing, constructing or selling a condominium as defined in section 33-1202 or any property or improvements within a planned community as defined in section 33-1802, including any person, firm, partnership, corporation, association or other organization licensed pursuant to this chapter, arising out of or related to the design, construction, condition or sale of the condominium or any property or improvements within a planned community.

B. The petition shall be in writing on a form approved by the department, shall list the complaints and shall be signed by or on behalf of the persons filing and include their addresses, stating that a hearing is desired, and shall be filed with the department.

C. On receipt of the petition and the filing fee the department shall mail by certified mail a copy of the petition along with notice to the named respondent that a response is required within twenty days after mailing of the petition showing cause, if any, why the petition should be dismissed.

D. After receiving the response, the commissioner or the commissioner's designee shall promptly review the petition for hearing and, if justified, refer the petition to the office of administrative hearings. The commissioner may dismiss a petition for hearing if it appears to the commissioner's satisfaction that the disputed issue or issues have been resolved by the parties.

E. Failure of the respondent to answer is deemed an admission of the allegations made in the petition, and the commissioner shall issue a default decision.

F. Informal disposition may be made of any contested case.

G. Either party or the party's authorized agent may inspect any file of the department that pertains to the hearing, if the authorization is filed in writing with the department.

H. At a hearing conducted pursuant to this section, a corporation may be represented by a corporate officer, employee or contractor of the corporation who is not a member of the state bar if:

1. The corporation has specifically authorized the officer, employee or contractor of the corporation to represent it.
2. The representation is not the officer's, employee's or contractor of the corporation's primary duty to the corporation but is secondary or incidental to the officer's, employee's or contractor of the corporation's, limited liability company's, limited liability partnership's, sole proprietor's or other lawfully formed and operating entity's duties relating to the management or operation of the corporation.

32-2199.02. Orders; penalties; disposition

A. The administrative law judge may order any party to abide by the statute, condominium documents, community documents or contract provision at issue and may levy a civil penalty on the basis of each violation. All monies collected pursuant to this article shall be deposited in the condominium and planned community hearing office fund established by section 32-2199.05 to be used to offset the cost of administering the administrative law judge function. If the petitioner prevails, the administrative law judge shall order the respondent to pay to the petitioner the filing fee required by section 32-2199.01.

B. The order issued by the administrative law judge is binding on the parties unless a rehearing is granted pursuant to section 32-2199.04 based on a petition setting forth the reasons for the request for rehearing, in which case the order issued at the conclusion of the rehearing is binding on the parties. The order issued by the administrative law judge is enforceable through contempt of court proceedings and is subject to judicial review as prescribed by section 41-1092.08.

32-2199.04. Rehearing; appeal

A. A person aggrieved by a decision of the administrative law judge may apply for a rehearing by filing with the commissioner a petition in writing pursuant to section 41-1092.09. Within ten days after filing such petition, the commissioner shall serve notice of the request on the other party by mailing a copy of the petition in the manner prescribed in section 32-2199.01 for notice of hearing.

B. The filing of a petition for rehearing temporarily suspends the operation of the administrative law judge's action. If the petition is granted, the administrative law judge's action is suspended pending the decision on the rehearing.

C. In the order granting or denying a rehearing, the commissioner shall include a statement of the particular grounds and reasons for the commissioner's action on the petition and shall promptly mail a copy of the order to the parties who have appeared in support of or in opposition to the petition for rehearing.

D. In a rehearing conducted pursuant to this section, a corporation may be represented by a corporate officer or employee who is not a member of the state bar if:

1. The corporation has specifically authorized such officer or employee to represent it.
2. Such representation is not the officer's or employee's primary duty to the corporation but is secondary or incidental to such officer's or employee's duties relating to the management or operation of the corporation.

32.2199.05. Condominium and planned community hearing office fund

A. The condominium and planned community hearing office fund is established in the department

to be administered by the commissioner. Monies in the fund are continuously appropriated. On notice from the commissioner, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.
B. Monies in the condominium and planned community hearing office fund shall be used to reimburse the actual costs of the office of administrative hearings in conducting hearings pursuant to section 32-2199.01. Monies remaining in the fund may be used by the department to offset the costs of administering cases filed pursuant to section 32-2199.01.

ARIZONA ADMINISTRATIVE CODE, TITLE 4. PROFESSIONS AND OCCUPATIONS, CHAPTER 28. STATE REAL ESTATE DEPARTMENT

ARTICLE 1. GENERAL PROVISIONS

R4-28-101. Definitions

In addition to the definitions listed in A.R.S. § 32-2101 the following terms apply to this Chapter:

"Active license" or "active status license" means a current license issued by the Department to a broker or salesperson that states the name of the broker that employs the broker or salesperson and the location at which the salesperson or broker is employed. If referring to an employing broker, it means a currently licensed employing broker with a currently licensed designated broker of record.

"ADEQ" means the Arizona Department of Environmental Quality.

"ADWR" means the Arizona Department of Water Resources.

"Closing" means the final step of a real estate transaction, such as when the consideration is paid, all documents relating to the transaction are executed and recorded, or the deed is delivered or placed in escrow.

"Credit hour" means 50 minutes of instruction.

"Course" means a class, seminar, or presentation.

"D.b.a." means `doing business as' and is a name, other than a person's legal name, authorized by the Department for a licensee's use in conducting business.

"Distance learning course" means a course of instruction outside a traditional classroom situation consisting of computer-based interactive instructional material, requiring completion in the credit hours specified. A course that requires a student to read text, listen to audio tapes, or view video material without student participation, feedback, and remedial instruction is not a distance learning course.

"Immediate family" means persons related to an individual by blood, marriage, or adoption, including spouse, siblings, parents, grandparents, children, and grandchildren.

"Individual" means a natural person.

"Material change" means any significant change in the size or character of the development, development plan, or interest being offered, or a change that has a significant effect on the

rights, duties, or obligations of the developer or purchaser, or use and enjoyment of the property by the purchaser.

"Non-resident license" means a license authorized under the provisions of 32-2122(A) issued to a person who has been domiciled in this state for less than one year and who does not meet any of the following:

Has an Arizona driver's license;

Has an Arizona motor vehicle registration;

Has been employed in Arizona;

Has an Arizona voter registration;

Has transferred banking services to Arizona;

Has changed permanent address on all pertinent records;

Is a domestic corporation or limited liability company;

Has filed an Arizona income tax return with the Department of Revenue during the previous or current tax year; or

Has received benefits from any Arizona public service department or agency, such as welfare, food stamps, unemployment benefits, or worker's compensation.

"Property interest" means a person's ownership or control of a lot, parcel, unit, share, use in a development, including any right in a subdivided or unsubdivided land, a cemetery plot, a condominium, a time-share interval, a membership camping contract, or a stock cooperative.

R4-28-102. Document Filing; Computation of Time

A. All documents shall be considered filed on the date received by the Department. An original or renewal application postmarked on or before the end of the application or renewal deadline shall be considered timely.

B. In computing any period of time allowed by these rules or by an order of the Commissioner, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the period is included unless it is Saturday, Sunday, or a legal holiday in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Unless the time period is specified as calendar days, when the period of time allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

R4-28-103. Licensing Time-frames

A. Overall time-frame. The Department shall issue or deny a license within the overall time-frames listed in Table 1 after receipt of a complete application. The overall time-frame is the total of the number of days provided for in the administrative completeness review and the substantive review.

B. Administrative completeness review.

1. The applicable administrative completeness review time-frame established in Table 1 begins on the date the Department receives the application. The Department shall notify the applicant in writing within the administrative completeness review time-frame whether the application is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant, the license application shall be considered complete.

2. An applicant with an incomplete license application shall supply the missing information

within the completion request period established in Table 1. The administrative completeness review time-frame is suspended from the date the Department mails the notice of missing information to the applicant until the date the Department receives the information.

3. If the applicant fails to submit the missing information before expiration of the completion request period, the Department shall close the file, unless the applicant requests an extension in writing from the Department before expiration of the Response to Completion Request period in Table 1. The Department shall grant the applicant one extension for the number of days identified as the Response to Completion Request period for the type of license. An applicant whose file has been closed may obtain a license by submitting a new application.

C. Substantive review. The substantive review time-frame established in Table 1 begins after the application is administratively complete.

1. The Department may schedule an inspection.

2. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date the Department mails the request until the information is received by the Department. If the applicant fails to provide the information identified in the written request the Department shall consider the application withdrawn unless the applicant requests in writing an extension from the Department before expiration of the Response to Additional Information period in Table 1. The Department shall grant the applicant one extension for the number of days identified in the Response to Additional Information period for the type of license.

3. If the application is denied, the Department shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant's right to seek a fair hearing, and the time period for appealing the denial.

D. Renewals. If an applicant for renewal of a salesperson's or broker's license submits a complete renewal application:

1. Before the expiration date and there are no changes in the applicant's license or qualifications pursuant to R4-28-301(A), the Department shall send the applicant notice that the license is renewed;

2. After the expiration date, or if a substantive review is required because the applicant wishes to make changes to or has answered in the affirmative any question on the license questionnaire, the Department shall process the application as a modified or amended application.

R4-28-104. Development Inspection Fee

A fee shall be charged for a development site inspection pursuant to A.R.S. §§ 32-2182, 32-2194.02, 32-2195.02, 32-2197.05, and 32-2198.04, before or after issuance of a public report. Multiple inspections and fees may be required based on development circumstances.

R4-28-105. Expired

Table 1. Time-frames (Calendar Days)

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Review	Response to Additional Information	Overall Time-Frame
Broker or Salesperson	A.R.S. § 32-2122					
(Individual)	A.A.C. R4-28-301	30	30	30	30	60
Individual Renewal	A.A.C. R4-28-303	30	30	30	30	60
Modified/Amended (Change of Name, Address, or License Status)	A.A.C. R4-28-303	30	30	30	30	60
Individual Reinstatement	A.A.C. R4-28-303	30	30	30	30	60
Corp/LLC/Partnership/ PC/PLC/Desig. Broker Status	A.R.S. § 32-2125 A.A.C. R4-28-302	60	30	60	60	120
Branch Office	A.R.S. § 32-2127	60	30	60	60	120
Entity/DB status Renewal	A.A.C. R4-28-303	60	30	60	60	120
Modified/Amended (Change of Name, Address, or License Status)	A.A.C. R4-28-303	60	30	30	60	120
Entity Reinstatement	A.A.C. R4-28-303	60	30	60	60	120
Temporary Broker	A.R.S. § 32-2133	60	30	60	60	120
Temp Cemetery Salesperson	A.R.S. § 32-2134	60	30	60	60	120
Membership Camping Cert. of Convenience	A.R.S. § 32-2134.01 A.A.C. R4-28-305	60	30	60	60	120
School Approval	A.R.S. § 32-2135(A) A.A.C. R4-28-404	10	15	20	15	30
Course Approval:	A.R.S. § 32-2135					
New (Live Instruction)	A.A.C. R4-28-404	10	15	20	15	30
New (Distance Learning)	A.A.C. R4-28-402 A.A.C R4-28-404	30	30	90	30	120
Instructor Approval	A.R.S. § 32-2135 A.A.C. R4-28-404	10	15	20	15	30
ADVERTISING						
Membership Campground (only for lottery or drawing)	A.R.S. § 32-2198.10(D) A.R.S. § 32-2198.14 A.A.C. R4-28-503(D)	15	5	0	0	15

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Review	Response to Additional Information	Overall Time-Frame
Subdivision						
(only for drawing or contest)	A.R.S. § 32-2183.01(I) A.A.C. R4-28-503(D) A.A.C. R4-28-503(D)	15	5	0	0	15
Time-Share						
(only for drawing or contest)	A.R.S. § 32-2197.17(I) A.A.C. R4-28-503(D)	15	5	0	0	15
Time Share						
(the offer of a premium)	A.R.S. § 32-2197.17(K) A.A.C. R4-28-503(D)	15	5	0	0	15
Development Application	A.R.S. § 32-2183(A) A.R.S. § 32-2195.03(A) A.R.S. § 32-2197.06 A.R.S. § 32-2198.02 A.A.C. R4-28-B1203q	40	40	60	40	100
Amended Report	A.R.S. § 32-2184 A.R.S. § 32-2195.10 A.R.S. § 32-2197.03 A.R.S. § 32-2198.01(D) A.A.C. R4-28-B1203	30	30	30	30	60
Certificate of Authority	A.R.S. § 32-2194.03(A)	40	40	60	40	100
Amended Certificate	A.R.S. § 32-2194.10 A.A.C. R4-28-B1204	30	30	30	30	60
WAIVERS						
Pre-license	A.R.S. § 32-2124 A.A.C. R4-28-401	15	60	30	0	45
Continuing Education	A.R.S. § 32-2130 A.R.S. R4-28-402	5	10	7	0	12
EXEMPTIONS						
Subdivision	A.R.S. § 2181.01 A.A.C. R4-28-B1202	40	40	40	40	80
Unsubdivided Lands	A.R.S. § 32-2195.01 A.A.C. R4-28-B1202	40	40	40	40	80
Time-Share	A.R.S. § 32-2197.13	40	40	40	40	80
Membership Camping	A.R.S. § 32-3198.03	40	40	40	40	80

ARTICLE 3. LICENSURE

R4-28-301. General License Requirements; Non-resident License

A. An applicant for any Department-issued license or license renewal including, if an entity, any officer, director, member, manager, partner, owner, trust beneficiary holding 10% or more beneficial interest, stockholder owning 10% or more stock, or other person exercising control of the entity, shall submit the following information to the Department:

1. A signed original licensure or renewal questionnaire, as applicable, disclosing any:
    a. Conviction for a misdemeanor or felony, or deferral of a judgment or sentencing for a misdemeanor or felony;
    b. Order, judgment, or adverse decision entered against the applicant involving fraud or dishonesty, or involving the conduct of any business or transaction in real estate, cemetery property, time-share intervals, membership camping contracts, or campgrounds;
    c. Restriction, suspension, or revocation of a professional or occupational license, or registration currently or previously held by the applicant in any state, district, or possession of the United States or under authority of any federal or state agency; any civil penalty imposed under the license, or any denial of a license; or
    d. Order, judgment, or decree permanently or temporarily enjoining the applicant from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, time-share intervals, membership camping contracts, campgrounds, securities, or involving consumer fraud or violation of the racketeering laws by the applicant, or payment from a recovery fund or fund of last resort due to the applicant's action or inaction.
2. If the applicant discloses information under subsection (A)(1), the applicant shall provide all of the following written documentation:
    a. A signed written statement describing in detail the circumstances surrounding the matter disclosed;
    b. A certified copy of any police report and court record that pertains to each crime for which the applicant has been convicted or for which sentencing or judgment has been deferred. If the applicant is unable to provide documents for each crime, the applicant shall provide written documentation from the court or agency having jurisdiction, stating the reason the records are unavailable.
    c. Three written and dated references from individuals, 18 years or older and not related by blood or marriage to the applicant, who have known the applicant for at least one year before the date of the Department's receipt of the application. Each reference shall be dated no more than one year from the date the application is submitted to the Department and include the writer's name, address, and telephone number;
    d. A 10-year work history, stating each employer's name and address, supervisor's name and telephone number, position held, and dates of employment, specifying any periods of unemployment;

e. A certified copy of all documents pertaining to every reprimand, censure or sanction, order assessing a civil penalty, or denying, suspending, restricting, or revoking any professional or occupational license currently held or held by the applicant within the last 10 years;

f. A certified copy of any civil judgment awarded by a court of competent jurisdiction against the applicant that included findings of fraud or dishonest dealings by the applicant;

g. A certified copy of any document evidencing a payment of a judgment on behalf of the applicant by any recovery fund administered by any state or professional or occupational licensing board, or repayment by the applicant as a judgment debtor to any recovery fund administered by any state or professional or occupational licensing board. If an Arizona real estate or subdivision recovery fund matter, a written disclosure of the file number, approximate date, and approximate amount of payment and current repayment status satisfies this requirement.

h. A certified copy of any temporary or permanent order of injunction entered against the applicant;

i. Any other documentation that the applicant believes supports the applicant's qualifications for licensure.

3. A full set of fingerprints as prescribed in A.R.S. § 32-2108.01;

4. The appropriate license application and fee; and

5. Social security number, if the applicant is an individual.

B. In addition to the information required in subsection (A), an applicant for a salesperson's or broker's license shall provide information showing the person meet the qualifications listed in A.R.S. § 32-2124, A.A.C. R4-28-401, and R4-28-403. If disclosing censure, sanction, disciplinary action, or other order against any professional or occupational license currently or previously held by the applicant, the applicant shall submit a certified license history from each state in which the applicant holds, or has held, a professional or occupational license within the five years before the application.

C. The Department shall not issue a broker's license to any person who holds an active salesperson's license in this state. An active-status salesperson applying for broker's license may simultaneously submit a severance signed by the designated broker on behalf of the salesperson's employing broker under R4-28-303(E)(10) or may request to be administratively severed under R4-28-303(G).

D. The Department shall issue to a qualified person a license bearing the legal name of the licensee and any additional nickname, corporate, or dba name that the Commissioner finds is not detrimental to the public interest. A professional corporation or professional limited liability company licensed under A.R.S. § 32-2125(B) shall not adopt a dba name.

E. Every salesperson and broker holding a current license shall file with the Commissioner both the address of the salesperson's or broker's principal place of business, if any, and a current residence address.

F. Each salesperson, broker, school owner, director, administrator, and instructor shall, within 10 days of each occurrence, notify the Commissioner in writing of any change in information provided under subsection (A)(1)(a) through (d) and provide documentation listed in subsection (A)(2).

G. A licensee shall, within 14 calendar days or a later date determined by the Department, respond to a request from the Commissioner or the Commissioner's representative for any documents, electronic files, written statements, or other information required as a part of a complaint investigation, regardless of whether the licensee is named in the complaint.

R4-28-302. Employing Broker's License; Non-resident Broker

A. A person applying for an employing broker's license shall provide the following information:

1. The name, business address, telephone number, fax number and e-mail address, if any, and designated broker's name, license number and expiration date, and the signature of the designated broker;
2. Whether the broker is an individual, a sole proprietorship, corporation, partnership, limited liability company, professional corporation or professional limited liability company;
3. The mailing address, if different than the business address;
4. The d.b.a. name, if applicable;
5. The bank name and location of each of the broker's trust accounts, if any; and
6. The name and number of the trust account.

B. Partnership.

1. When the applicant is a partnership, the applicant shall name a broker to serve as designated broker:
    a. The designated broker shall be a partner of the general partner if the general partner is a partnership.
    b. The designated broker shall be a corporate officer of the corporate partner if the general partner is a corporation.
    c. The designated broker shall be a member of the member-managed limited liability company or manager of the manager-managed limited liability company if the general partner is a limited liability company.
    d. A limited partner of a partnership shall not be designated broker for the partnership.
2. In addition to the information provided in subsection (A), an applicant for an employing broker's license as a partnership shall, if applicable, provide:
    a. The name and address of each partner, and the name of any other person with a beneficial or membership interest in the partnership;
    b. An agreement signed by all partners, stating the name of the partner appointed to act as the designated broker for the partnership;
    c. A written statement signed by the designated broker stating that:
        i. The partnership has applied for a broker's license in Arizona;
        ii. Each partner has read the complete application on the named partnership as submitted to the Department;
        iii. All the information contained in the application is true;
        iv. Each general partner is qualified to do business in Arizona; and
        v. The name of the partnership complies with A.R.S. § 29-245 and subsections (H) and (I), and is not likely to be misleading or confusing;
    d. A copy of the partnership agreement and any amendments;
    e. A copy of the application for partnership registration stamped "Received and Filed" by the Arizona Secretary of State; and
    f. Any other information required by the Department to verify the applicant's qualifications.

C. Corporation. In addition to the information provided in subsection (A), an applicant for an employing broker's license for a corporation shall provide:

1. The name and address of each officer and director, and the name and address of each shareholder controlling or holding more than 10% of the issued and outstanding common shares, or 10% of any other proprietary, beneficial, or membership interest in the corporation;

2. A copy of the Articles of Incorporation and any amendments stamped "Received and Filed" by the Arizona Corporation Commission. If more than one year has elapsed between the date the Articles were stamped "Filed" by the Arizona Corporation Commission and the application for the corporate license, a Certificate of Good Standing from the Arizona Corporation Commission is required;

3. A corporate resolution stating that the designated broker was elected or appointed as a corporate officer, naming the office held, and stating that the individual was appointed to act as designated broker for the corporation;

4. A written statement signed by the designated broker stating that:

a. The corporation has applied for a broker's license in Arizona;

b. Each officer and director has read the complete application on the named corporation as submitted to the Department;

c. All the information contained in the application is true;

d. The name of the corporation complies with A.R.S. § 10-401 and 4 A.A.C. 28, Article 10, and is not likely to be misleading or confusing; and

e. Each corporation is qualified to do business in Arizona; and

5. Any other information required by the Department to verify the applicant's qualifications.

D. Limited liability company. In addition to the information provided in subsection (A), an applicant for an employing broker's license for a limited liability company shall provide:

1. The name and address of each member and manager, and the name and address of any person controlling or holding more than 10% of the membership interest in the limited liability company;

2. A copy of the Articles of Organization and any amendments stamped "Received and Filed" by the Arizona Corporation Commission. If more than one year has elapsed between the date the Articles were stamped "Filed" by the Arizona Corporation Commission and the application for the limited liability company license, a Certificate of Good Standing from the Arizona Corporation Commission is required;

3. A company resolution signed by all members stating whether management of the limited liability company is established as manager-controlled or member-controlled and the name of the member or manager appointed to act as the designated broker;

4. A written statement signed by the designated broker stating that:

a. The limited liability company has applied for a broker's license in Arizona;

b. Each member and manager has read the complete application on the limited liability company as submitted to the Department;

c. All of the information contained in the application is true;

d. The name of the limited liability company complies with A.R.S. § 29-602 and 4 A.A.C. 28, Article 10, and is not likely to be misleading or confusing; and

e. The limited liability company is qualified to do business in Arizona.

5. A copy of the operating agreement and any amendments; and

6. Any other information required by the Department to verify the applicant's qualifications.

E. Foreign entity. In addition to the requirements in this Section, the Department may require any of the following information from an entity applying for a broker's license if a partner, member, officer, or director of the entity is domiciled in another state:

1. The agreement and plan of merger;
2. The Certificate of Good Standing;
3. The Certificate of Merger on file in the state in which the applicant is domiciled;
4. The Certificate of Merger on file with the Arizona Corporation Commission;
5. A filed and stamped Articles of Merger;
6. A filed and stamped application for registration of the foreign limited liability company, foreign corporation, or partnership;
7. Any other information required by the Department to verify the applicant's qualifications.

F. Self-employed broker. In addition to the information provided in subsection (A), any person applying as a self-employed broker shall provide a sworn statement attesting that the applicant is the sole proprietor of the business.

G. If any information prescribed in subsections (A) through (F) changes, the designated broker shall, within 10 days after the change, file a supplemental statement in writing with the Department listing the change and include the appropriate fee, if any.

H. The Department shall not license an employing broker or authorize an employing broker to do business under a dba name similar to that of any employing broker already licensed if the name would cause uncertainty or confusion to the public. If there is a conflict of names between two employing brokers, the Commissioner shall require the employing broker seeking licensure to supplement or otherwise modify the broker's name.

I. The Department shall not license an employing broker under more than one dba name and a person shall not conduct or promote real estate business under any name other than the name under which the person is licensed.

J. A broker shall not employ a salesperson or associate broker and allow the salesperson or associate broker to establish and carry on a brokerage business if the broker's only interest is the receipt of a fee for the use of the license and the broker does not exercise supervision over the salesperson or associate broker.

K. Change of designated broker.

1. To resign as an employing broker's designated broker a broker shall submit to the Department a copy of the broker's letter of resignation and shall return the licenses issued to the designated broker and the employing broker to the Department.
2. A licensed entity may remove its designated broker by submitting to the Department a copy of the partnership agreement, corporate or company resolution removing the broker and returning to the Department the licenses issued to the employing broker and designated broker.
3. The employing broker whose designated broker has resigned or been removed shall cease conducting business until the employing broker has complied with subsection (K)(4).
4. An employing broker whose designated broker has resigned or been removed may continue business without interruption if the incoming designated broker on the same day as, or the next business day following, the departure or removal of the outgoing designated broker:

a. Completes, signs, and submits the Change Form as prescribed in R4-28-303; and

b. If the entity is a corporation or limited liability company, submits a resolution appointing the new broker to act on its behalf; or

c. If the entity is a partnership, submits an amendment to the partnership agreement naming the new broker to act on its behalf.

L. Non-resident employing broker.

1. An employing broker that holds a non-resident license and maintains a principal office outside this state shall:

a. Maintain a trust account or licensed escrow account situated in Arizona for monies received from Arizona transactions;

b. Maintain, in Arizona, copies of all documents pertaining to any Arizona transactions handled by the broker;

c. Provide a written statement to the Department identifying the name, address, and telephone number of the person residing in Arizona, such as a statutory agent or attorney, who has possession of the records; and

d. Identify the physical location of the records.

2. An employing broker that holds a non-resident license and employs a licensed salesperson or broker within the state shall:

a. Establish an office in Arizona and appoint a branch manager; and

b. Provide a statement describing how the licensed employee shall be supervised.

3. An employing broker who holds a non-resident license shall notify the Department within 10 days of any change to any information required under this Section.

R4-28-303. License Renewal; Reinstatement; Changes of Personal Information, License, or License Status; Professional Corporation or Professional Limited Liability Company Licensure; Administrative Severance

A. Renewal.

1. If a salesperson or broker makes a timely and sufficient application for license renewal or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the Department, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the Commissioner's order or a later date fixed by order of the reviewing court.

2. Any salesperson or broker applying for a license renewal shall submit the following information on the Application for License Renewal form:

a. Any change or correction to the applicant's licensing information;

b. Whether the renewal application is late;

c. If the renewal is for an active license and is filed in paper format, the Department shall require the application to include the date and signature of the designated broker, authorized branch office manager, or authorized designee under A.R.S. § 32-2127(D). If signed by a branch manager or designee, the branch manager or designee shall attach a copy of the authorization or designation;

d. The signature of the applicant, attesting to the truthfulness of the application information;

e. A completed certification questionnaire, providing details and supporting documents for any affirmative response not previously disclosed in writing to the De-

partment concerning judgments, orders, professional licenses, or convictions, as required under R4-28-301(A).

f. To renew as designated broker for an employing broker, the designated broker shall complete and submit a signed Broker Supervision & Control Audit Declaration for the sole proprietorship or entity on whose behalf the broker acts as designated broker. The completed declaration shall:

i. Be dated and filed before or with the broker's renewal application, and submitted to the Department no earlier than 90 days before the broker's license expiration date;

ii. Be in the form prescribed by the Department;

iii. State the broker's compliance or non-compliance with, or the non-applicability of, specified statutes and rules; and

iv. Identify all of the broker's property management and trust accounts.

B. Late renewal. In addition to the information required in subsection (A), any person applying for renewal after the date of license expiration shall specify whether the person conducted unlawful license activities as described in R4-28-306.

C. Reinstatement.

1. Any salesperson or broker applying for license reinstatement under A.R.S. § 32-2131 shall, in addition to the requirements in R4-28-301(A), submit the following information on the Application For Reinstatement form:

a. The type of license and status requested;

b. The applicant's legal name, business address, and telephone number;

c. Whether the license was suspended, canceled, terminated, or revoked, and the date of and reason for the action;

d. The license number of the applicant;

e. The mailing address, if different than the business address;

f. The name, address, and telephone number of the employing broker, if applicable;

g. The employer's trade or d.b.a. name, if any;

h. The date of the application; and

i. The signature of the applicant attesting to the above information and that the applicant is aware of the provisions in A.R.S. §§ 32-2131, 32-2153, and 32-2160.01.

2. If the license was active at the time of suspension, cancellation, revocation, or termination, the applicant shall provide the information required under R4-28-306.

D. A salesperson or broker shall notify the Department in writing within 10 days of any change in the individual's personal information or qualifications. The salesperson or broker shall include in the notice the individual's name, signature, license number, and:

1. If disclosing information required under R4-28-301, such as a criminal conviction, adverse judgment, denial or restriction of or disciplinary action against a professional or occupational license, or recovery fund payment on the person's behalf, a written statement providing detailed information and, upon request by the Department, the supporting documentation identified in R4-28-301(A)(2);

2. If requesting a change of personal name, written notice stating the prior name and new name, supporting documentation for the change, and applicable fee;

3. If changing residence address or residential mailing address, written notice stating the prior address, new address and the date of the change;

4. If changing residence telephone number or providing an additional telephone number or e-mail address, written notice of the prior and current number or e-mail address; or

5. If becoming licensed as a professional corporation or professional limited liability company, or changing licensure as a professional corporation or professional limited liability company, the information required under subsection (F).

E. A designated broker shall notify the Department in writing within 10 days of any change in the employing broker's qualifications under R4-28-301, and shall provide notice of any proposed change in the employing broker's business information under this Section. An employing broker shall not conduct business under information described in subsections (E)(2), (3), (7), (9), (12), or (13) until the change is approved by the Department. The designated broker shall include in the notice the designated broker's name and signature, the employing broker's legal name, and:

1. If disclosing information required under R4-28-301 such as an adverse judgment, denial, or restriction of or disciplinary action against a professional or occupational license, or recovery fund payment on the person's own behalf or on behalf of any officer, director, member, manager, partner, owner, trust beneficiary holding 10 percent or more beneficial interest, stockholder owning 10 percent or more stock, or other person exercising control of the employing broker, file with the Department a written statement within 10 days of the occurrence, providing detailed information and, upon request by the Department, the supporting documentation identified in R4-28-301(A)(2);

2. If changing the employing broker's legal name, written notice stating the current name and proposed name, supporting documentation, and applicable fee;

3. If changing the employing broker's dba name, written notice stating the current dba name, if any, the proposed dba name, and applicable fee;

4. If changing the employing broker's physical address, changing or adding a business mailing address, or changing the address of any branch office, written notice within 10 days of the change stating the prior address and new address, return all current licenses issued to the former address, and pay the applicable fee;

5. If changing business telephone number, written notice within 10 days of the change, providing the prior and current number. The broker may provide additional telephone numbers or e-mail addresses;

6. If changing the structure or membership of the employing broker as provided in A.R.S. § 32-2125 (G), written notice within 10 days of the change including supporting documentation identified in R4-28-302;

7. If changing branch office managers at an established branch office of the employing broker, or changing the authority delegated to the branch office manager, the application form, applicable fee, and letter of authority that identifies the person appointed and specifies the duties delegated as provided by R4-28-304;

8. If closing a branch office, a written statement informing the Department within 10 days of the closure, accompanied by the branch office license and Department form severing the employment of or transferring to another branch office each employee at the branch;

9. If hiring a salesperson or broker, or transferring a salesperson or broker employed by the employing broker to another office of the employing broker, a change form that includes the name, license number, signature of the employee, and the branch office address where the employee will work, and applicable fee;

10. If severing a licensee employed by the employing broker, written notice and return of

the employee's license within 10 days of the severance;

11. If opening or closing a broker's trust account, written notice within 10 days of the opening or closing that provides the name of the account, the account number, and the name and address of the bank where the account is located. If relocating or changing the name of a trust account, the designated broker shall include the information for the previous and new accounts;

12. If appointing a temporary broker, submit the information specified in R4-28-305 and in accordance with provisions of A.R.S. §§ 32-2127 or 32-2133, as applicable; or

13. If an employing broker is changing designated brokers, the information and documentation provided in R4-28-302(K).

F. In addition to the applicant's name, signature, license number, the name and address of the employing broker's office where the employee will work, and the change fee, a salesperson or broker shall submit the following information to be licensed as a professional corporation or professional limited liability company, to add or remove members of a licensed professional corporation or professional limited liability company, or to change the name of a licensed professional corporation or professional limited liability company:

1. Professional corporation.

a. The name of the professional corporation that includes the full or last name of each officer, director, and shareholder of the professional corporation as it appears in the Articles of Incorporation;

b. The name and business address of each officer, director, and shareholder in the corporation and a written statement that each holds a current and active real estate license;

c. A copy of the Articles of Incorporation, as amended, stamped "Received and Filed" by the Arizona Corporation Commission;

i. The Articles of Incorporation shall state that the corporation's sole purpose is to provide professional real estate, cemetery, or membership camping services, or real estate, cemetery, and membership camping services.

ii. If more than one year has elapsed between the date the Articles of Incorporation were stamped "Filed" by the Arizona Corporation Commission and the date of the application for a license as a professional corporation, the Department shall require the salesperson or associate broker to submit a Certificate of Good Standing from the Arizona Corporation Commission; and

d. Evidence that membership in the professional corporation is limited to the designated broker and does not include any other person if the applicant for licensure as a professional corporation is licensed as a designated broker;

2. Professional limited liability company.

a. The name of the professional limited liability company which includes the full or last name of each member of the professional limited liability company as it appears in the Articles of Organization;

b. The name and address of each member and manager in the limited liability company and a written statement that each holds a current and active real estate license;

c. A copy of the Articles of Organization, as amended, stamped "Received and Filed" by the Arizona Corporation Commission:

i. The Articles of Organization shall state that the limited liability company's sole purpose is to provide professional real estate, cemetery, or membership camping services, or real estate, cemetery, and membership camping services.

ii. If more than one year has elapsed between the date the Articles of Organization were stamped "Filed" by the Arizona Corporation Commission and the date of the application for a license as a professional limited liability company, the Department shall require the salesperson or associate broker to submit a certificate of Good Standing from the Arizona Corporation Commission.

d. A copy of the operating agreement, as amended; and

e. Evidence that membership in the professional limited liability company is limited to the designated broker and does not include any other person if the applicant for licensure as a professional limited liability company is licensed as a designated broker.

3. To return a license from professional corporation or professional limited liability company status to individual status:

a. The name, license number, and dated signature of the salesperson or broker;

b. A written statement that the salesperson or broker no longer wishes to be licensed as a professional corporation or professional limited liability company; and

c. The change fee.

G. Administrative severance.

1. A salesperson or broker may request that the Department sever the salesperson's or broker's license from the employing broker. The salesperson or broker shall provide the following information on a form or in the manner prescribed by the Department:

a. The name, license number, and dated signature of the salesperson or broker seeking the severance; and

b. The name of the employing broker from whom the license is being severed.

2. Upon receipt of the written request for severance as provided in subsection (G)(1)(a), the Department shall administratively sever the license and provide written notice to the employing broker, who shall return the severed person's license to the Department under subsection (E)(10).

R4-28-304. Branch Office; Branch Office Manager

A. To obtain a branch office license, the designated broker shall submit to the Department before operating the branch office the following information for each branch office of the employing broker on the Application for Branch Office form:

1. The name, date, and signature of the designated broker;
2. The license number and license expiration date of the employing broker;
3. The name, address, telephone, and license number of the main office;
4. The type of employing broker's license;
5. The employing broker's dba name, if applicable;
6. The address, telephone number, and fax number, if any, of the branch office; and
7. The name and license status of the salesperson or broker who is the branch office manager and the authority granted to the branch office manager, including any designation of

authority under subsection (B).

B. Branch office manager. A designated broker may authorize in writing an associate broker or salesperson to act as a branch office manager to perform any of the following duties of the designated broker at the branch office. This designation does not relieve the designated broker from any responsibilities. Upon change of the branch manager, the designated broker shall submit a new authorization to the Department within 10 days of the change and shall retain a copy in the broker's main office for five years.

1. If the branch manager is an associate broker, the associate broker may, when dealing with branch office transactions:

a. Review and initial contracts,

b. Supervise the activity of salespersons and associate brokers,

c. Hire or sever a salesperson or associate broker,

d. Sign compensation checks,

e. Be a signer on the branch office trust account and property management trust account,

f. Write checks from the broker's trust accounts, and

g. Be responsible for the handling of all trust account funds administered by the branch manager.

2. If the branch manager is a salesperson, the salesperson may, when dealing with branch office transactions:

a. Perform office management tasks that are not statutory duties of the employing broker, and

b. Be a signer on the broker's trust account and property management trust account.

C. Temporary office. An additional license is not required for a temporary office established for the original on-site sale of properties within the immediate area of a subdivision or unsubdivided land.

1. The broker named in the application for public report shall supervise operation of the temporary office to sell or lease the subdivided or unsubdivided land.

2. The broker shall display the subdivision or unsubdivided land name and the licensed name of the employing broker marketing the development in a prominent manner at the entrance to the temporary office.

R4-28-305. Temporary License, Certificate of Convenience

A. Any individual applying for a temporary cemetery salesperson's license, a temporary broker's license, or a membership camping salesperson's certificate of convenience shall submit the following information and applicable fee to the Department:

1. The type of license requested;

2. The name, address, telephone number, and date of birth of the applicant;

3. The mailing address if different from the address in subsection (A)(2);

4. The name, business address, telephone number, fax number, if any, and license number of the employing broker; and

5. The branch office number, address, telephone number, and fax number, if any, where employed, if different than the employing broker in subsection (A)(4).

B. The designated broker shall submit an affidavit under A.R.S. § 32-2134 or 32-2134.01 for:

1. An applicant for temporary cemetery license stating that the applicant has been trained in cemetery and contract law; or

2. An applicant for a membership camping certificate of convenience stating that the applicant will be trained in membership camping and contract laws.

C. In addition to the information required in subsection (A), an applicant for a temporary broker's license pursuant to A.R.S. § 32-2133 shall submit the following information to the Department:

1. A copy of the death certificate or notice, if applicable, or a letter advising the Department of the broker's illness or disability; and

2. A letter from the surviving spouse, an attorney representing the broker or the broker's family, personal representative, or other responsible party, appointing an individual to serve as a temporary broker for 90 days.

R4-28-306. Unlawful License Activity

A. Unlawful license activity is:

1. The performance of acts requiring a license under A.R.S. § 32-2122 by a person who does not hold a current and active license;

2. The performance of acts requiring a license by a person on behalf of a broker other than the person's employing broker; or

3. A broker's employment of a person as a salesperson or broker if the person does not hold a current and active license issued to the person under that employing broker.

B. A person who conducts unlawful license activity shall submit to the Department, as soon as the person becomes aware that the activity has occurred, the following:

1. A written explanation of why the unlawful license activity occurred;

2. A signed statement from the person that the person will not conduct activities requiring licensure under A.R.S. § 32-2122 unless the person holds a current and active license to perform those acts;

3. A signed statement from the employing broker's designated broker, identifying all unlawful activity by the person on behalf of the employing broker;

4. Upon request by the Department:

a. A copy of all listing and employment agreements, offers or contract to buy, sell, lease, exchange, transfer, or manage real estate, cemetery property, or membership camping contracts prepared, negotiated or executed by the person while the person was not properly licensed under the employing broker;

b. Documentation listing all compensation received or to be received by the person based on transactions that occurred while the person was not properly licensed;

c. Documentation listing all compensation received or to be received by the person's employing broker and designated broker, if any, resulting from transactions that occurred while the person was not properly licensed if not provided in response to subsection (B)(4)(b); and

d. A signed statement from the person stating that the information provided under subsection (B)(4) is true and complete and that the copies provided are true copies of all contracts, agreements, statements, and leases and no relevant documents are omitted.

C. A person who has no prior history of engaging in unlawful license activity under this Section, who conducted unlawful license activity for not more than 30 days and against whom there are no pending complaints may apply to renew the person's license or for license change to active status. The Department shall not delay processing the application based on the unlawful licensed activity.

The Department shall issue an Advisory Letter of Concern to the person.
D. The Commissioner may take disciplinary action under A.R.S. § 32-2153 against a person who engages in unlawful license activity under this Section for longer than 30 days, has previously conducted unlawful license activity, or is the subject of a pending complaint.

ARTICLE 4. EDUCATION

R4-28-401. Prelicensure Education Requirements; Waiver

A. Any individual applying for a real estate license shall either:

1. Complete the required 90-hour prelicensure education as prescribed in A.R.S. § 32-2124; or

2. Except for the 27-hour Arizona-specific course, apply for and be granted a waiver of the prelicensure courses.

B. If the waiver request is based on prior education, the applicant shall submit a letter to the Commissioner that includes or demonstrates:

1. The name, mailing, and business address, daytime telephone number, and signature of the applicant;

2. The type of license sought;

3. The name and address of the school;

4. The course description or curriculum, including credit hours; and

5. Completion of one or more real estate courses. Acceptable evidence includes;

a. A signed letter from a school representative or official transcript from a college or university, which indicates:

i. The starting and ending dates of the course;

ii. The number of semesters, quarters, and credit hours awarded per course; and

iii. Whether the course examination was passed.

b. Evidence of course completion provided as part of a certified license history from a state in which the applicant is currently or was previously licensed.

C. If the waiver request is based on experience, or education and experience, the applicant shall submit a letter to the Commissioner that includes:

1. A detailed resume covering the previous 10 years, indicating duties performed and the name and telephone number for each employer; and

2. An original certified license history, including disciplinary action if any, from the real estate regulatory agency in each state in which the applicant is currently licensed and from any other state in which the applicant was licensed during the preceding 10 years; and

3. One or more of the following:

a. Completion of one or more real estate courses. Acceptable evidence includes a signed letter from a school representative, or official transcript from a college or university, which identifies:

i. The starting and ending dates of the course;

ii. The number of semesters, or quarters, and credit hours awarded per course;

iii. Whether the course examination was satisfactorily passed.

b. Evidence of more than five years' experience in a real estate related field; or

c. Evidence of course completion provided as part of a certified license history from a state in which the applicant is currently or was previously licensed.

D. The Department shall provide a copy of the prelicensure course content to any person requesting it.
E. A person shall not receive credit for more than 10 hours of prelicensure education classes per day.

R4-28-402. Continuing Education Requirements; Waiver; Distance Learning

A. Continuing education requirements.

1. To be eligible for license renewal, a real estate salesperson or broker shall complete continuing education courses approved by the Department under R4-28-404, presented by a real estate school approved under R4-28-404, and taken since the salesperson's or broker's original licensure or effective date of the preceding license, whichever is later.
2. A real estate salesperson or associate broker applying for renewal shall submit proof of satisfactory completion of 24 credit hours of continuing education courses in the categories specified in subsection (A)(5). The renewal applicant shall complete a minimum of three hours in each of the mandatory categories under subsections (A)(5)(a) through (A)(5)(f). The renewal applicant shall take additional courses in the mandatory categories, or shall take courses in the business brokerage or general real estate categories described in subsection (A)(5)(g) and (A)(5)(h) to fulfill the required 24 credit hours.
3. A real estate designated broker applying for renewal shall submit proof of satisfactory completion of 24 credit hours of continuing education courses. The renewal applicant shall complete a minimum of three hours in each of the mandatory categories under subsections (A)(5)(a) through (A)(5)(f) and shall complete a Broker Management Clinic under A.R.S. 32-2136 approved in the Commissioner's Standards category under subsection (A)(5)(c). The renewal applicant shall take additional courses in the mandatory categories, or shall take courses in the business brokerage or general real estate categories described in subsection (A)(5)(g) and (A)(5)(h) to fulfill the required 24 credit hours.
4. A salesperson renewing for the first time may include credit for attendance at the Contract Writing class taken under A.R.S. § 32-2124(L) if taken within one year before the date of the salesperson's original licensure. A broker renewing for the first time may include credit for attendance at the Broker Management Clinic under A.R.S. § 32-2136 taken before the broker's original licensure date.
5. The categories for real estate continuing education courses are:
    a. Agency law. The majority of class material concerns agency relationships and disclosure.
    b. Contract law. The majority of class material concerns the contract formation and implementation, or the results of contract use, including:
        i. Various contract forms and clauses, fundamentals, updates, options, offers, counter offers, first right of refusal, and exchanges;
        ii. Contract writing;
        iii. Required disclosures, problem-solving, and law and rule requirements;
        iv. Recent court decisions and case law studies;
        v. Breach of contract issues;
        vi. Legal, ethical and agency considerations, procedures, and disclosures;
        vii. Accommodating current financing procedures, requirements, and options.

c. Commissioner's standards. The majority of class material relates to license laws, including:

i. Article 26 of the Arizona Constitution;

ii. A.R.S. Title 32, Chapter 20, and A.A.C. Title 4, Chapter 28, which includes trust accounts, recordkeeping, license requirements, exemptions to licensure, commission payments, recovery fund provisions, development requirements, processes for public reports for and sale of subdivided and unsubdivided land, membership campgrounds and time-shares, cemetery regulations, and grounds for disciplinary action and hearings.

iii. A.R.S. Title 44, Chapter 10, Article 3.1, Trade Names and Business Practices.

d. Real estate legal issues. The majority of class material concerns existing real estate law, including:

i. Sources of real estate law (constitutions, statutes, zoning, common), and the legal system;

ii. Land and its elements (air, mineral rights, real and personal property);

iii. Land, title, and interests in land, homestead, encumbrances, and the Landlord and Tenant Act;

iv. Easements, fixtures, land descriptions, ownership, deeds, and building restrictions;

v. Escrow procedures, financing documents, and lending laws and regulations, including Regulation Z;

vi. Wills and estates, taxes, bankruptcy law, securities laws, title insurance, and appraisal law;

vii. Case law studies, real estate fraud, disclosure law, interstate and international real estate;

viii. Commission issues and forms of business ownership;

ix. Homeowners Association regulations;

x. Real Estate Settlement Procedures Act (RESPA); and

xi. Environmental issues.

e. Fair housing. The majority of class material concerns equal opportunities in housing, including:

i. Americans with Disabilities Act, ADA architectural designs (construction and development), and pertinent court cases;

ii. Arizona and federal fair housing laws, including advertising, marketing, information, and enforcement;

iii. Housing developments, deed restrictions, affordable housing, elder housing, zoning, local ordinances, and disclosures;

iv. Commercial and residential concerns; and

v. Administrative procedures and business practices.

f. Disclosure. The majority of class material concerns the following:

i. Licensee's disclosure obligations to client and others;

ii. Seller's and buyer's disclosure obligations to each other;

iii. Common material facts warranting disclosure, and liability for failure to disclose;

iv. Avoiding inadvertent non-disclosures;
v. Transaction documents that should be reviewed;
vi. Common "red flags" in a real estate transaction;
vii. Homeowner associations and buyers' obligations to homeowner associations; and
viii. Advising buyers and sellers of common "red flags."

g. Business brokerage. The majority of class material concerns business brokerage including:

i. Business brokerage basics including introducing licensees to business brokerage, associated terminology, marketing, prospecting, listing, pricing, closing practices, the use of contracts related to and unique to business brokerage, and the application of business brokerage contracts;
ii. Business valuations and appraisals, and establishing an in-depth review of proper business valuation techniques for small, medium, and large businesses;
iii. Tax structure and considerations, tax law, and policy including subjects such as financing tools available, options available, and tax implications;
iv. Accounting for business brokers;
v. Agency in business brokerages, the use of contracts related to and unique to business brokerage, and the application of business brokerage contracts; and
vi. Disclosure issues in business brokerage, including common "red flags" in a business opportunity transaction, and advising buyers and sellers of common "red flags."

h. General real estate. The majority of class material concerns real estate, but does not fall within any of the categories listed in subsections (A)(5)(a) through (A)(5)(g), including:

i. Appraisal methodology;
ii. General finance, use of financial calculators, mathematics, and managing cash flow;
iii. History of development in metropolitan areas; and
iv. Introduction to property management.

6. The Department may require an individual applying for renewal to obtain credit hours based upon significant current issues in the real estate community. The Department shall notify licensees of a new requirement by written notice published in printed or electronic format.

7. The Department may grant continuing education credit for a course that does not have a certificate of approval under R4-28-404 if the applicant demonstrates to the satisfaction of the Commissioner that the course meets the requirements prescribed in R4-28-404 and the course content requirements of this Section.

8. An applicant may substitute subject matter hours within a 90-hour broker's prelicensure course that meet the criteria for credit under subsections (A)(5)(a) through (A)(5)(h), if taken since the last license renewal, for the continuing education credit required in subsection (A)(2) or (3).

9. If any change in the continuing education course requirements occurs during a renewal

applicant's license period and the applicant has fully complied with the continuing education requirement in effect before the change occurs, the Department shall consider the renewal applicant to be in compliance with the continuing education requirements for the license period.

B. Continuing education waiver. Under A.R.S. § 32-2130, the Commissioner may waive all or a portion of the continuing education requirement or grant additional time to complete a continuing education requirement when a salesperson or broker submits a written request to the Commissioner and shows good cause for the waiver or additional time.

1. Good cause may include:

a. A person employed by the state or political subdivision establishes to the satisfaction of the Commissioner that the person's employment during the prior license period involved real estate-related matters;

b. Any officer or employee of the state whose license is on an inactive status due to a possible conflict of interest or other employment requirement;

c. The person demonstrates successful completion of a course on topics specifically related to the person's field of real estate practice;

d. An approved real estate instructor requests a waiver for a course the instructor has taught;

e. The salesperson or broker demonstrates other extraordinary circumstances.

2. A salesperson or broker is granted additional time by the Commissioner to complete the continuing education requirement for license renewal shall complete the continuing education hours by the deadline or be subject to disciplinary action.

C. The Department shall not grant a person credit for more than nine hours of continuing education per day.

D. Distance learning.

1. Only a school holding a Certificate of Approval shall offer a distance learning course. The school shall obtain course approval from the Department before advertising the course as approved by the Department for credit hours and before issuing Department credit hours for the course to students.

2. The Department shall not approve a distance learning course unless it contains:

a. Individual modules of instruction for delivery on a computer or other interactive program;

b. At least one learning objective for each module of instruction. The learning objective shall ensure that if all the objectives are met, the entire content of the course is understood;

c. A structured learning method to enable the student to attain each learning objective;

d. A diagnostic assessment of the student's performance during each module of instruction;

i. The assessment shall measure what the student learned throughout the module of instruction, and

ii. Assess the comprehension of each concept covered in the module;

e. Remediation.

i. Repetition of a module if a student is deficient in a diagnostic assessment; and

ii. Continuous repetition of the module until the student understands the content material.

3. An approved instructor shall teach and an approved instructor or the school director shall grade distance learning courses. The instructor or school director shall:

a. Provide the student with assistance, if required;

b. Obtain a signed certification statement from the student indicating that the student has completed each assignment of instruction; and

c. Certify the student as completing a distance learning course only if the student:

i. Completes all required instructional modules,

ii. Attends any required hours of live instruction or testing, or both, for a given course; and

iii. Passes a final examination.

4. As part of its application for approval of a distance learning course, a school shall file a plan with the Department describing how the school will deal with hardware and software failure.

R4-28-403. License Examinations

A. The Department shall hold, or contract for, at least one state licensing examination each week.

B. A state license examination shall not be returned to the applicant. The applicant shall be notified in person of the results of the examination by the words "passed" or "did not pass." The results notification for an applicant who did not pass the examination shall also show the score for the examination and the relative score for each content area.

C. Qualifying to take or passing a license examination does not constitute a waiver of the Commissioner's right to deny issuance of a license if grounds exist pursuant to A.R.S. § 32-2153 or any other applicable statute.

R4-28-404. Real Estate School Requirements, Course and Instructor Approval

A. Certificate of School Approval. Except for a community college or university accredited by the Council on Post Secondary Accreditation or the U.S. Department of Education offering courses in real estate, any school offering a course of study for original or renewal licensure of a real estate applicant shall apply for and possess a Certificate of School Approval from the Department. The school's authorized representative shall provide the following information on or with the Certificate of School Approval form:

1. The name, address, telephone number, and fax number, if any, of the school;

2. The name of the owner and d.b.a. name, if any;

3. Whether the owner is a sole proprietorship, partnership, trust, limited liability company, or corporation;

4. The name, address, telephone number, and percentage ownership of each person, entity, or beneficiary holding or controlling 10% or more financial interest in the school;

5. The name of each individual authorized to act on behalf of the school and sign continuing education certificates or prelicensure verifications, or both;

6. The name, business address, and telephone number of all current and prospective administrators, directors, and instructors;

7. In addition to the information required in R4-28-301(A), each school owner, administrator, director, and instructor shall provide a statement of the individual's:

a. Education,
b. Teaching experience, and
c. Employment history.

8. If the owner is a partnership, a copy of the partnership agreement naming the partner authorized to act on its behalf;

9. If the owner is a corporation or limited liability company, a copy of:

a. A corporate or company resolution or operating agreement naming the officer, member, or manager authorized to execute the Certificate of Approval form;

b. A current Certificate of Good Standing from the Arizona Corporation Commission;

c. The latest annual report on file with the Arizona Corporation Commission;

d. The Articles of Incorporation or Organization, as amended.

10. The location of school registration and licensing certification records.

B. Certificate of Course Approval. Any school offering a course of study for original or renewal licensure of a real estate applicant shall apply for and possess a Certificate of Course Approval for each course offered by the school. The school's authorized representative shall submit the following information:

1. The school name, address, telephone number, and fax number, if any;

2. The authorized representative's name, title, and signature;

3. The title of the course;

4. A detailed outline of course material content that clearly lists the subject matter to be covered;

5. The date, time, and location of the anticipated presentation, if known;

6. The number of credit hours requested. The time allocated by a school for examination shall not be included in calculating credit hours if the examination is used for overall evaluation.

7. The category of approval requested;

8. A definition of segments if the course is to be offered in part and in its entirety;

9. If video or audio tapes will be used as instructional aids, the percentage of the class they will comprise;

10. The name of every instructor who will teach the course; and

11. The date of the application.

C. Instructor approval. Any person wishing to teach an approved real estate course shall apply for an instructors approval, and shall have at least one of the following in the proposed subject area:

1. A bachelor's or master's degree in an area traditionally associated with real estate, such as business, law, economics, marketing, and finance;

2. An award of a generally-recognized professional real estate designation, such as Certified Commercial Investment Member, Graduate Realtor Institute, Certified Residential Specialist, Independent Fee Appraiser, or Member of the Appraisal Institute, and two years of postsecondary education from an accredited institution;

3. Experience in real estate, and a bachelor's degree in education with a valid certificate issued within 15 years of the date of application for instructor approval;

4. A real estate salesperson's or broker's license, and is an employee or former employee of a regulatory agency;

5. A Distinguished Real Estate Instructor designation, with credentials in the specific sub-

ject;

6. At least three years real estate or specific subject experience; or

7. Other education or experience determined by the Commissioner to qualify the applicant as an instructor.

D. The school shall maintain a record for five years of each student attending the school. The record shall include:

1. The name of each student;

2. The dates of attendance;

3. The title of each course taken;

4. The course number, category, and credit hours awarded;

5. The final grade or score in each prelicensure course; and

6. The original signature roster for each course or course segment taught.

E. The prospective student shall sign an agreement or application to enroll, presented to the student by the school representative, that includes the following, in bold type and capital letters:

1. The course or course segment title within a curriculum,

2. The total credit hours applicable for licensure or renewal,

3. The cost of each course,

4. A statement of the refund policy, and

5. A statement of any job placement service.

F. The Department does not consider lists of employers given to graduates to be a placement service. The school may advertise job placement services only if:

1. Student referrals result from direct contact between the school placement service and prospective employers,

2. Documented evidence of student referrals is maintained and includes:

a. The number of referrals to prospective employers per student,

b. Results of referrals,

c. Final placement or other disposition.

G. Complaints. The Commissioner may, and upon a verified complaint in writing shall, investigate and observe the classes of any school, owner, administrator, director, or instructor acting on behalf of the school and may examine the books and records of the school in connection with the offering of approved courses.

H. Change in school, course, or instructor. Each school owner, operator, director, and instructor shall:

1. Provide a written notice and supporting documentation within 10 days of any:

a. Change of personal name or address,

b. Change of business address,

c. Change of business mailing address,

d. School closing, or

e. Disclosure of certification information pursuant to R4-28-301(A),

2. Provide a written notice and supporting documentation within 30 days after any change in structure of a licensed entity, including any change of a:

a. Director, officer, or person holding or controlling 10% or more of the shares, if a corporation;

b. Partner, if a partnership;

c. Member or manager, if a limited liability company.

3. Obtain approval from the Commissioner before conducting business when:
    a. Changing a business name,
    b. Establishing a school location,
    c. Changing the course content,
    d. Changing the course length, or
    e. Offering a new course.
4. Provide written notice as soon as practical of a last minute change of instructor due to illness or emergency.

R4-28-405. Expired

ARTICLE 5. ADVERTISING

R4-28-502. Advertising by a Licensee

A. A salesperson or broker acting as an agent shall not advertise property in a manner that implies that no salesperson or broker is taking part in the offer for sale, lease, or exchange.

B. Any salesperson or broker advertising the salesperson's or broker's own property for sale, lease, or exchange shall disclose the salesperson's or broker's status as a salesperson or broker, and as the property owner by placing the words "owner/agent" in the advertisement.

C. A salesperson or broker shall ensure that all advertising contains accurate claims and representations, and fully states factual material relating to the information advertised. A salesperson or broker shall not misrepresent the facts or create misleading impressions.

D. A school shall include its name, address and telephone number in all advertising of Department-approved courses. The school owner, director, or administrator shall supervise all advertising. The school owner shall ensure that the school's advertising is accurate.

E. A salesperson or broker shall ensure that all advertising identifies in a clear and prominent manner the employing broker's legal name or the dba name contained on the employing broker's license certificate.

F. A licensee who advertises property that is the subject of another person's real estate employment agreement shall display the name of the listing broker in a clear and prominent manner.

G. The designated broker shall supervise all advertising, for real estate, cemetery, or membership camping brokerage services.

H. A licensee shall not use the term "acre," either alone or modified, unless referring to an area of land representing 43,560 square feet.

I. Before placing or erecting a sign giving notice that specific property is being offered for sale, lease, rent, or exchange, a salesperson or broker shall secure the written consent of the property owner, and the sign shall be promptly removed upon request of the property owner.

J. The provisions of subsections (E) and (G) do not apply to advertising that does not refer to specific property.

K. Trade Names.

1. Any broker using a trade name owned by another person on signs displayed at the place of business shall place the broker's name, as licensed by the Department on the signs;
2. The broker shall include the following legend, "Each (TRADE NAME or FRANCHISE) office is independently owned and operated," or a similar legend approved by the Commissioner, in a manner to attract the attention of the public.

L. The use of an electronic medium, such as the Internet or web site technology, that targets residents of this state with the offering of a property interest or real estate brokerage services pertaining to property located in this state constitutes the dissemination of advertising as defined in A.R.S. § 32-2101(2).

R4-28-503. Promotional Activities

A. A licensee shall not describe a premium offered at no cost or reduced cost to promote sales or leasing as an "award," or "prize," or use a similar term.

B. A licensee shall clearly disclose to a person in writing the terms, costs, conditions, restrictions, and expiration date of an offer of a premium before the person participates in the offer.
C. Unless otherwise provided by law, a person shall not solicit, sell, or offer to sell an interest in a development by conducting a lottery contest, drawing, or game of chance.
D. A subdivider, time-share developer, or membership camping operator may apply for approval to conduct a lottery, contest, drawing, or game of chance, or award a premium under A.R.S. § 32-2197.17(J), by submitting to the Department the information under A.R.S. §§ 32-2183.01(I), 32-2197.17(J) or 32-2198.10(D), the applicable fee, if any, and:

1. The name, address, telephone number, and fax number, if any, of the subdivider, time-share developer, or operator;
2. The legal name of the broker;
3. The public report number;
4. The time and location for collecting entries for the lottery, contest, or drawing;
5. The date, time, and site for selection of a winner; and
6. The conditions and restrictions to enter, if any.

R4-28-504. Development Advertising
A. If a developer obtains a conditional sales exemption, under R4-28-B1202, or registers a notice of intent with the Department to accept lot reservations under A.R.S. § 32-2181.03, the developer shall disclose on all advertising that only reservations or conditional sales contracts will be taken until the public report has been issued.
B. Only a developer or the developer's authorized representative shall file advertising for a development under A.R.S. §§ 32-2183.01(A), 32-2194.05(A), 32-2195.05(A), 32-2197.17(A) or 32-2198.01(A)(6) with the Department.
C. A developer shall ensure that advertisement of property in a development includes the name of the development as registered with the Department. The Commissioner may waive application of this subsection if the Commissioner determines that the public interest is not affected.
D. A developer shall not advertise a monthly payment, total price, or interest rate that is not available to all prospective purchasers or is restricted, unless the lack of availability or the restriction is conspicuously disclosed to all prospective purchasers within the advertisement.
E. A developer shall not advertise proposed or incomplete improvements unless the following requirements are met:

1. The estimated date of completion is specified or, if there is no estimated date of completion, the developer includes a prominent disclosure in the advertisement that the improvement is proposed only and no warranty is given or implied that the improvement will be completed; and
2. If a completion date is specified, the developer has submitted to the Department evidence to satisfactorily demonstrate to the Department that the completion and operation of the facilities are assured and that completion will be within the time represented in the advertisement or promotional material.

F. The developer shall not reference a proposed public facility or project that purports to effect the value or utility of an interest in a development without disclosing in writing the existing status of the proposed facility. The developer shall base the disclosure upon information supplied or verified by the authority responsible for the public facility or project and shall forward the information to the Department.

G. Pictorial or illustrative depictions, other than unmodified photographs of the property being offered, shall bear a prominent disclosure identifying the nature of the depiction, such as an artist's conception, and shall identify those improvements that are proposed and not in existence.
H. When a pictorial representation is used in an advertisement for a specific development and is not an actual or accurate representation of the property, a statement within the advertisement shall prominently disclose the distance of the pictorial representation from the advertised property.
I. If a map or diagram is used to show the location of the development in relation to other facilities, actual road miles from each facility to the development shall be shown on the map or diagram.
J. A developer shall not expressly state or imply that a facility is available for the exclusive use of purchasers of lots or interests if a public right of access or public use of the facility exists.
K. A developer shall not refer to availability for use of private clubs or facilities in which the owner will not acquire a proprietary interest through purchase of an interest in the development unless a disclosure is made in the advertisement. The disclosure shall affirmatively state the existence of the facilities and that availability for use by owners of an interest in the development is at the pleasure of the owners of the facility.
L. When a standing body of water is described as a feature of a development, all advertising shall indicate the average surface area of the body of water. If a standing body of water or a flowing waterway described as a feature of a development is not permanent, or fluctuates substantially in size or volume, the developer shall disclose this fact in all advertisements describing the feature.
M. At the time an incentive is offered to visit any place where a sales presentation for a development is to be made and before the recipient of the incentive makes the trip, the developer shall disclose in writing all conditions, limitations, or recipient qualifications that will be applied.
N. A developer shall not include in advertising testimonials or endorsements that contain statements that a salesperson or broker would be precluded by law from making on the salesperson's or broker's behalf.

ARTICLE 7. COMPENSATION

R4-28-701. Compensation Sharing Disclosure

A real estate broker shall disclose to all the parties in a transaction, in writing before closing, the name of each employing broker who represents a party to the transaction and who will receive compensation from the transaction.

ARTICLE 8. DOCUMENTS

R4-28-802. Conveyance Documents

A. Upon execution of any transaction document a salesperson or broker shall, as soon as practical, deliver a legible copy of the signed document and final agreement to each party signing the document.

B. During the term of a listing agreement, a salesperson or broker shall promptly submit to the salesperson's or broker's client all offers to purchase or lease the listed property. Upon receiving permission from the seller or lessor, the salesperson or broker acting on behalf of the seller or lessor may disclose to all offerors or their agents the existence and terms of all additional offers on the listed property. The salesperson or broker shall submit to the client all offers made prior to closing and is not released from this duty by the client's acceptance of an offer unless the client instructs the salesperson or broker in writing to cease submitting offers or unless otherwise provided in the listing agreement, lease, or purchase contract. The salesperson or broker may voluntarily submit offers to the seller or lessor regardless of any limitations contained in the listing agreement and may submit offers after the listing agreement is terminated.

C. Transaction statements. In addition to the requirements of A.R.S. §§ 32-2151.01 and 32-2174, the broker shall retain true copies of all receipts and disbursements, or copies of the executed and delivered escrow closing statements that evidence all receipts and disbursements in the transaction.

R4-28-803. Contract Disclosures

A. A developer or the developer's agent shall ensure that any agreement or contract for the sale or lease of a property interest in a development that requires a public report contains substantially the following language in bold print or print larger than the other print used in the document above the signature portion of the document:

> *THE DEVELOPER SHALL GIVE A PROSPECTIVE PURCHASER A COPY OF THE PUBLIC REPORT AND AN OPPORTUNITY TO READ AND REVIEW IT BEFORE THE PROSPECTIVE PURCHASER SIGNS THIS DOCUMENT.*

B. A developer or the developer's agent shall ensure that any agreement or contract for the sale or

lease of a property interest in a development conspicuously discloses the nature of the document at or near the top of the document.
C. The contract shall indicate where the earnest money or down payment, if any, will be deposited and shall include the name of the title company, the name of the broker's trust account, or other depository.
D. Any agreement or contract for the sale or lease of a property interest in a development where a down payment, earnest money deposit, or other advanced money, if any, is paid directly to the seller and not placed in a neutral escrow depository, shall conspicuously disclose this fact within the document, and the purchaser shall sign or initial this provision indicating approval in the space adjacent to or directly below the disclosure in the purchase contract or agreement of sale. The following disclosure shall be written in large or bold print and shall be included in the public report, purchase contract, and agreement of sale:

> *Prospective purchasers are advised that earnest money deposits, down payments, and other advanced money will not be placed in a neutral escrow. This money will be paid directly to the seller and may be used by the seller. This means the purchaser assumes a risk of losing the money if the seller is unable or unwilling to perform under the terms of the purchase contract.*

R4-28-804. Rescission of Contract
A. Any agreement or contract for the purchase or lease of an unimproved subdivided lot, or any unsubdivided land, shall contain substantially the following language in bold print or print larger than the other print used in the document above the signature portion of the document:

> *The purchaser or lessee has the legal right to rescind (cancel) this agreement without cause or reason of any kind, and to the return of any money or other consideration by sending or delivering a written notice of rescission to the seller or lessor by midnight of the seventh calendar day following the day the purchaser or lessee executed the agreement. If the purchaser or lessee does not inspect the lot or parcel before the execution of the agreement, the purchaser or lessee shall have six months to inspect the lot or parcel, and at the time of inspection shall have the right to unilaterally rescind the agreement.*

B. Any agreement or contract for the purchase or lease of a time-share interval shall contain substantially the following language in bold print or print larger than the other print used in the document above the signature portion of the document:

> *The purchaser or lessee has the legal right to rescind (cancel) this agreement without cause or reason of any kind by sending or delivering a written notice of rescission to the seller or lessor by midnight of the seventh calendar day following the day the purchaser or lessee executed the agreement.*

C. An opportunity to exercise the seven-day right of rescission shall be provided by conspicuously disclosing the complete current name, address, and telephone number of the seller on the face of all agreements and contracts.

R4-28-805. Public Report Receipt

When a public report is required, the developer shall complete the following public report receipt and obtain the purchaser's signature to verify that the prospective purchaser has received a copy of the public report:

PUBLIC REPORT RECEIPT

The developer shall furnish you, as a prospective customer, with a copy of the public report required by the Arizona Department of Real Estate. It is recommended that you read the report before you make any written offer to purchase or lease an interest in the development and before you pay any money or other consideration toward the purchase or lease of an interest in the development.

FOR YOUR PROTECTION, DO NOT SIGN THIS RECEIPT UNTIL YOU HAVE RECEIVED A COPY OF THE REPORT AND HAVE HAD THE OPPORTUNITY TO READ IT. BY SIGNING THIS RECEIPT, THE BUYER HAS ACCEPTED THE PUBLIC REPORT AND ACKNOWLEDGES THE INFORMATION IT CONTAINS.

_____ _____

Public Report Registration No. Development Name and Lot No.

I understand the report is not a recommendation or endorsement of the development by the Arizona Department of Real Estate, but is for information only.

_____ _____

Buyer's Name Address

_____ _____

Date

ARTICLE 11. PROFESSIONAL CONDUCT

R4-28-1101. Duties to Client

A. A licensee owes a fiduciary duty to the client and shall protect and promote the client's interests. The licensee shall also deal fairly with all other parties to a transaction.

B. A licensee participating in a real estate transaction shall disclose in writing to all other parties any information the licensee possesses that materially or adversely affects the consideration to be paid by any party to the transaction, including:

1. Any information that the seller or lessor is or may be unable to perform;
2. Any information that the buyer or lessee is, or may be, unable to perform;
3. Any material defect existing in the property being transferred; and
4. The existence of a lien or encumbrance on the property being transferred.

C. A licensee shall expeditiously perform all acts required by the holding of a license. A licensee shall not delay performance, either intentionally or through neglect.

D. A licensee shall not allow a controversy with another licensee to jeopardize, delay, or interfere with the initiation, processing, or finalizing of a transaction on behalf of a client. This prohibition does not obligate a licensee to agree to alter the terms of any employment or compensation agreement or to relinquish the right to maintain an action to resolve a controversy.

E. A real estate salesperson or broker shall not act directly or indirectly in a transaction without informing the other parties in the transaction, in writing and before the parties enter any binding agreement, of a present or prospective interest or conflict in the transaction, including that the:

1. Salesperson or broker has a license and is acting as a principal;
2. Purchaser or seller is a member of the salesperson's, broker's, or designated broker's immediate family;
3. Purchaser or seller is the salesperson's or broker's employing broker, or owns or is employed by the salesperson's or broker's employing broker; or
4. Salesperson or broker, or a member of the salesperson's or broker's immediate family, has a financial interest in the transaction other than the salesperson's or broker's receipt of compensation for the real estate services.

F. A salesperson or broker shall not accept compensation from or represent more than one party to a transaction without the prior written consent of all parties.

G. A salesperson or broker shall not accept any compensation, including rebate or other consideration, directly or indirectly, for any goods or services provided to a person if the goods or services are related to or result from a real estate transaction, without that person's prior written acknowledgement of the compensation. This prohibition does not apply to compensation paid to a broker by a broker who represents a party in the transaction.

H. The services that a salesperson or broker provides to a client or a customer shall conform to the standards of practice and competence recognized in the professional community for the specific real estate discipline in which the salesperson or broker engages. A salesperson or broker shall not undertake to provide professional services concerning a type of property or service that is outside the salesperson's or broker's field of competence without engaging the assistance of a person who

is competent to provide those services, unless the salesperson's or broker's lack of expertise is first disclosed to the client in writing and the client subsequently employs the salesperson or broker.

I. A salesperson or broker shall exercise reasonable care in ensuring that the salesperson or broker obtains information material to a client's interests and relevant to the contemplated transaction and accurately communicates the information to the client. A salesperson or broker is not required to have expertise in subject areas other than those required to obtain the salesperson's or broker's license. A salesperson or broker shall take reasonable steps to assist a client in confirming the accuracy of information relevant to the transaction.

J. A salesperson or broker shall not:

1. Permit or facilitate occupancy in a person's real property by a third party without prior written authorization from the person; or
2. Deliver possession prior to closing unless expressly instructed to do so by the owner of the property or property interest being transferred.

K. A salesperson or broker shall recommend to a client that the client seek appropriate counsel from insurance, legal, tax, and accounting professionals regarding the risks of pre-possession or post-possession of a property.

R4-28-1102. Property Negotiations

Except for owner listed properties, negotiations shall be conducted exclusively through the principal's broker or the broker's representative unless:

1. The principal waives this requirement in writing, and
2. No licensed representative of the broker is available for 24 hours.

R4-28-1103. Broker Supervision and Control

A. An employing broker and a designated broker shall exercise reasonable supervision and control over the activities of brokers, salespersons, and others in the employ of the broker. Reasonable supervision and control includes the establishment and enforcement of written policies, procedures, and systems to:

1. Review and manage:
    a. Transactions requiring a salesperson's or broker's license; and
    b. Use of disclosure forms and contracts and, if a real estate broker, real estate employment agreements under A.R.S. § 32-2151.02;
2. Manage:
    a. Filing, storing, and maintaining documents pertaining to transactions under subsection (A)(5)(a);
    b. Handling of trust funds; and
    c. Use of unlicensed assistants by a salesperson or broker;
3. Oversee delegation of authority to others to act on behalf of the broker;
4. Familiarize salespersons and associate brokers with the requirements of federal, state, and local laws relating to the practice of real estate, or the sale of cemetery property or membership camping contracts; and
5. Review and inspect:
    a. Documents that may have a material effect upon the rights or obligations of a party to a transaction; and
    b. Advertising and marketing by the broker and by salespersons, brokers, and others in the broker's employ.

B. A designated broker shall establish a system for monitoring compliance with statutes, rules, and the employing broker's policies, procedures, and systems.
C. A designated broker shall supervise associate brokers, salespersons, and employees of the employing broker and shall exercise reasonable supervision and control over activities by the employing broker for which a license is required.
D. An employing broker is responsible for the acts of all associate brokers, salespersons, and other employees acting within the scope of their employment.
E. A designated broker may use the services of employees to assist in administering the provisions of this Section but shall not relinquish overall responsibility for supervision and control of the acts of the employing broker's employees.
F. A designated broker who, upon learning of a violation of real estate statutes or rules by a salesperson or associate broker under the broker's supervision, immediately reports the violation to the Department is not subject to disciplinary action by the Department for failure to supervise the salesperson or broker.
G. If an employing broker maintains one office and employs a designated broker, no more than one other licensed person, and no more than one unlicensed person, the employing broker and designated broker are not required to develop and maintain written policies, procedures, and systems as described in subsection (A).

PART A. APPLICATION FOR PUBLIC REPORT, CERTIFICATE OF AUTHORITY, OR SPECIAL ORDER OF EXEMPTION

R4-28-A1201. Development Name; Lot Sales; Applicant
A. Any person may submit a development application for a public report, a certificate of authority, or a special order of exemption, provided the applicant has a recorded ownership interest in the land, such as a deed, option, beneficial interest in a trust, or other recorded interest approved by the Commissioner. The application for a public report or certificate of authority shall contain the following information, as applicable:

1. The name of the development or cemetery, as shown on the recorded map, and the marketing name if one will be used;
2. The list of the lots to be offered, including the description of the sales offering;
3. The name, address, telephone number, and fax number, if any, of the applicant; and
4. The applicable information in this Article, Parts A and B.

B. If the applicant is a corporation, the application shall contain the following information:

1. A Certificate of Good Standing from the Arizona Corporation Commission, dated no earlier than one year from the date of the application;
2. A corporate resolution, authorizing the person signing the application on behalf of the corporation; and
3. The name and address of each officer, director, and shareholder controlling or holding more than 10% of the issued and outstanding common shares, or 10% of any other proprietary, beneficial, or membership interest in the entity.

C. If the applicant is a partnership, the application shall contain the following information:

1. A copy of all partnership agreements;
2. Proof of registration with the Secretary of State if any partnership is a limited partnership, foreign or domestic;

3. If the general partner is a corporation, the information requested in subsection (B);
4. If the general partner is a limited liability company, the information requested in subsection (D); and
5. The name and address of each partner in the partnership.

D. If the applicant is a limited liability company, the application shall contain the following information:

1. A copy of the Articles of Organization, stamped "Received and Filed" by the Arizona Corporation Commission. If more than one year has elapsed between the original filing with the Arizona Corporation Commission and the filing date of the development application, a Certificate of Good Standing from the Arizona Corporation Commission is required;
2. A copy of the operating agreement and any amendments;
3. If not included in the operating agreement or Articles of Organization, a copy of the company resolution signed by all members stating whether management of the limited liability company is established as manager-controlled or member-controlled and the name of the member or manager appointed to act on behalf of the company and sign the application;
4. The name and address of each member, manager, and managerial employee, and the name and address of any person controlling or holding more than 10% of the membership interest in the limited liability company;
5. If a member is a corporation, the information requested in subsection (B);
6. If a member is a partnership, the information requested in subsection (C).

E. If the applicant is a trust, the application shall contain the name and address of each trustee, beneficiary, and anyone in control of the trust.

F. If the applicant is a subsidiary corporation, the application shall contain the name and address of the parent corporation.

R4-28-A1202. Development Map; Location; Land Characteristics

A. The applicant shall submit a legible copy, no larger than 11" x 17", of the recorded development map showing, as applicable:

1. The county recorder's recording information, including the book and page of maps and recording date;
2. County or city approval;
3. Applicable dedications;
4. Monuments, distances, and bearings; and
5. Registered land surveyor certification.

B. The applicant shall identify the location of the development, including the street, city, county, and state, and:

1. The miles and direction from the nearest city or town, if applicable; and
2. The most direct route for getting to the development from a federal, state, county, or city road.

C. The application shall include a description of the physical characteristics of the land and any unusual factors that may affect it, such as if it has level or hilly terrain, rocky, loose, or alkaline soil, and

1. The gross acreage of the development;
2. The total number of lots within the development, including a description of phasing, if applicable; and

3. Whether and how lots are permanently or temporarily staked or marked for easy location.

R4-28-A1203. Flood and Drainage; Land Uses; Adverse Conditions

The applicant shall state, or include as applicable:

1. Whether the development is subject to any known flooding or drainage problems and a letter bearing the signature and seal of a professional civil, city, and county engineer, or county flood district detailing the drainage conditions and flood hazards. The letter shall include the effect of any flood plain and its location, the effect of a 100 year frequency storm, and whether flood insurance is required.
2. Whether the development lots are subject to subsidence or expansive soils. If subsidence or expansive soils exist, a professional engineer's letter addressing the effects of the condition, remedies, and a buyer's on-going responsibilities in plain language;
3. A description of the existing and proposed land uses in the vicinity of the development that may cause a nuisance or adversely affect lot owners, such as freeways, airports, sewer plants, railroads, and canals, including:
    a. Any unusual safety factors within or near the development, and
    b. A description of all current and proposed adjacent land uses.
4. Whether the development is affected by any unusual or unpleasant odors, noises, pollutants, or other nuisances;
5. A description of any agricultural activity or condition in the area that may adversely affect a lot owner, including any odors, cultivation and related dust, agricultural burning, application of pesticides, or irrigation and drainage;
6. Whether the development lots are subject to any known geological or environmental condition that would or may be detrimental to a purchaser's health, safety, or welfare; or
7. Whether the development lots are located within the boundary of a federal, designated Superfund site or a state designated Water Quality Assurance Revolving Fund site.

R4-28-A1204. Utilities

The applicant shall include information about electrical, telephone, and natural gas utilities available to the development, including:

1. The names, addresses, and telephone numbers of the electrical, telephone, and natural gas company that will provide service;
2. The location of existing electrical, telephone, and natural gas utilities in relation to the development;
3. The name of each person responsible for extending each utility to the lot lines;
4. The estimated completion date for extending each utility to the lot lines;
5. If the developer will only install conduit, a description of the arrangement made to complete operational utilities to lot lines;
6. The estimated cost a lot purchaser will be required to pay for completion of each utility to the purchaser's lot line, and, if the offer is for unimproved lots, the estimated costs to provide service from the lot line to the dwelling;
7. Upon completion of the utilities, other costs or requirements that must be addressed before the lot purchaser receives service, including the current service charges, hookup fees, turn-on fees, meter fees, and fees for pulling wire through conduit;

8. If propane gas will be used, a letter from the supplier stating that it will be providing service to the development, with a description of requirements to be met and costs to be paid by the lot purchaser for receiving the service; and
9. If street lights will be available, the person responsible for completion, the estimated completion date and the person who will pay for the electricity.

R4-28-A1205. Water Supply

An applicant shall include information about any water supply to the development, including:

1. The type of water provider such as a municipal system, improvement district, public utility, private water company, co-operative, irrigation district, private well, water hauler, or other source;
2. The name, address, and telephone number of the water provider;
3. The compliance status of the water provider with federal and state environmental laws, as of the date of the application. If in noncompliance, provide an explanation;
4. The location of the water lines closest to the development;
5. The name of the person responsible for extending the water lines to the lot lines;
6. The estimated completion date for extending the water lines to the lot lines;
7. The estimated cost a lot purchaser will be required to pay for completion of the water lines to the purchaser's lot line;
8. The estimated cost a lot purchaser will pay for completion of water lines from the lot line to a dwelling;
9. Other costs or requirements before the lot purchaser receives water service, including the current service charges, hookup fees, turn-on fees, meter fees, and development fees;
10. The name of the person responsible for maintenance of the water lines within the development, other than from lot line to dwelling;
11. The name of the person who is or will be responsible for maintenance of the water lines outside the development;
12. If a private well will be used, a description of the requirements and costs involved to install an operational domestic water system;
13. If the source of water is a private well and domestic water cannot be obtained from a private well, whether the purchaser will be offered a refund of the purchase price and if so, an explanation of any condition or restriction involving the refund;
14. The name and location of the water provider if domestic water will be transported or hauled by the lot purchaser. A cost estimate computed on a monthly basis for a four-member family, including the cost of water, cistern, and other holding tanks, pumps, or any other costs necessary to install an operational water system;
15. A water adequacy report from ADWR if the development is a subdivision or part of a subdivision located outside of a groundwater active management area;
16. A water availability report from ADWR if the development is unsubdivided land. A copy of the report or a brief summary of the report, approved by the Department, shall be displayed in all promotional material and contracts for sale; and
17. If a water provider is a public service corporation, whether a Certificate of Convenience and Necessity from the Arizona Corporation Commission has been issued and, if not, an explanation of why a Certificate has not been issued.

R4-28-A1206. Sewage Disposal

The applicant shall include information about sewage disposal for the development, including:

1. Whether the sewage disposal will be provided by a municipality, improvement district, public utility, private company, or individual sewage disposal system;
2. The name, address, and telephone number of the sewage disposal company;
3. The compliance status of the sewage disposal provider with the ADEQ as of the date of the application. If in noncompliance, provide an explanation;
4. The name of the person responsible for extending the sewage disposal utility to the lot lines;
5. The estimated completion date for extending the utility to the lot lines;
6. The estimated cost the lot purchaser will be required to pay for completion of the utility to the purchaser's lot line;
7. If offering an unimproved lot, the estimated cost a lot purchaser will pay for completion of the utility from the lot line to the dwelling;
8. Upon completion of the utility, other costs or requirements that must be addressed before the lot purchaser receives service, including the service charge, hookup fees, tap-in fees, and development fees;
9. The name of the person responsible for maintenance of the sewage disposal utility within the development, other than from lot line to dwelling;
10. The name of the person who is or will be responsible for maintenance of the sewage disposal utility outside the development;
11. What cost, if any, will the lot purchaser pay toward maintenance of the sewage disposal utility;
12. If a sewage disposal provider is a for-profit public service corporation, whether a Certificate of Convenience and Necessity from the Arizona Corporation Commission has been issued, and if not, an explanation of why a Certificate has not been issued;
13. A description of the type of individual sewage disposal system the lot purchaser will be required to install in accordance with the standards and requirements of ADEQ or its designee;
14. A description of all requirements and costs involved to install an operational individual sewage disposal system, including any cost for governmental licensing and permitting, equipment, and other installation, maintenance, and operation costs;
15. If an operational individual sewage disposal system cannot be installed, will the lot purchaser be offered a refund of the purchase price, and if so, an explanation of any condition or restriction involving the refund; and
16. If a dry sewer system will be installed for future connection to a future provider, the name of the future provider, all requirements and costs for lot purchasers, and the estimated connection date.

R4-28-A1207. Streets and Access

A. The applicant shall include a statement attesting that:

1. Exterior streets providing access are private; or federal, state, and county highways; or municipal streets;
2. The interior streets are public or private; and
    a. If any streets are private, a description of what provisions have been made to assure purchasers of a legal right to use the private streets;

b. Whether the streets are completed;
c. The standards to which the streets will be or are constructed;
d. If the streets are not completed, the person responsible for completion and the estimated completion date;
e. The type of existing and proposed surfacing;
f. The cost, if any, the lot purchaser will pay toward street completion;
g. The name of the person responsible for exterior and interior street maintenance;
h. Whether a city or county is responsible for maintaining the streets and the approximate date when streets will be accepted for maintenance; and
i. The cost, if any, the lot purchaser will pay toward street maintenance.

B. The applicant shall demonstrate that there is permanent access to the land over terrain that may be traversed by conventional 2-wheel drive automobiles and emergency vehicles by providing any of the following information or documents necessary to make the demonstration:

1. A statement from a title insurance company, signed by an authorized title officer, affirming that legal access exists to the development and lots within the development. The statement shall:
   a. Describe the legal access by listing all recorded instruments which establish legal access,
   b. Be accompanied by a map on which legal access is shown with accurate references to the recorded instruments,
   c. Be accompanied by a legible copy of each recorded instrument listed in the statement.
2. A statement bearing the seal and signature of a registered land surveyor or professional engineer, affirming that legal access to and within the development, as described in the title insurance company legal access statement, is over terrain that can be traversed by conventional 2-wheel drive automobiles and emergency vehicles. The statement shall affirm that:
   a. The legal access corresponds with the actual physical access to the development and to the lots,
   b. The legal access is permanent and describe how that permanence is assured.
3. The recorded subdivision map which shows approval by the applicable city or county officials.
4. Recorded easements or road dedications whether public or private. If private, the applicant shall ensure that development lot owners, emergency vehicles, and utility service providers have access rights.
5. Land, on which easements and roads are provided, is traversable by conventional 2-wheel drive automobiles and emergency vehicles.
6. Road maintenance programs that assure permanent access. Road maintenance programs include those administered by city or county governments, city or county improvement districts, or private property owner associations.
7. Recorded documentation that establishes legal and permanent access for development lot owners through federal or state lands.

R4-28-A1208. Flood Protection and Drainage Improvements

The applicant shall include with the application the following information about flood protection and drainage improvement:

1. A description of any current or proposed improvement;
2. The name of the person responsible for completion of the improvement;
3. The estimated completion date of the improvement;
4. The cost, if any, the lot purchaser will pay for completion of the improvement;
5. The name of the person responsible for the continuing maintenance and expense of the improvement;
6. If a city or county is responsible for maintenance, the approximate date when the improvement will be accepted for maintenance; and
7. The cost, if any, the lot purchaser will pay toward completion and maintenance of the improvement.

R4-28-A1209. Common, Community, or Recreational Improvements

The applicant shall provide with the application a list of all common, community, or recreational improvements, located within the development, and include the following information:

1. The name of the person responsible for completion of each improvement;
2. The estimated completion date of each improvement;
3. The estimated cost a lot purchaser will be required to pay for the completion of each improvement;
4. The name of the person responsible for the continuing maintenance and expense of each improvement; and
5. The cost, if any, the lot purchaser will be responsible for paying toward the maintenance of each improvement.

R4-28-A1210. Master Planned Community

The applicant shall include the following information about a master planned community:

1. A list of all improvements located outside the development, but included in the development offering, including all common, community and recreational improvements;
2. The name of the person responsible for completing each improvement;
3. The estimated completion date of each improvement;
4. The name of the person responsible for the continuing maintenance and expense of each improvement; and
5. The cost, if any, the lot purchaser will pay toward the completion and maintenance of each improvement.

R4-28-A1211. Assurances for Completion and Maintenance of Improvements

A. The applicant shall identify:

1. Whether arrangements have been made to assure the completion, delivery, and continued maintenance of the improvements listed in subsections R4-28-A1204 through R4-28-A1210; and
2. Whether the assurances to complete and deliver the improvements have been approved by the county or city, where applicable, and if so, submit a copy of the county or city approval;

B. An applicant shall provide one or more of the following assurances for completion:

1. A surety or completion bond from an insurance company licensed in Arizona with a rating of good or higher from a rating agency and a copy of the rating. The bond shall specify which improvements are included and shall:

a. Be stipulated by and payable to a third party who is not the developer;
b. Be accepted and signed by all parties;
c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date;
d. State when and how the third party may draw on the funds;
e. Be in an amount 10% greater than the estimated amount to complete all improvements; and
f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements.

2. An irrevocable letter of credit from a financial institution licensed to do business in Arizona. The irrevocable letter of credit shall specify which improvements are included and shall:
a. Be stipulated by and payable to a third party who is not the developer;
b. Be accepted and signed by all parties;
c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date;
d. State when and how the third party may draw on the funds;
e. Be in an amount 10% greater than the estimated amount to complete all improvements;
f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements;
g. State that repayment is the responsibility of the developer and not of the third party; and
h. State that the irrevocable letter of credit is noncancelable.

3. A loan commitment and agreement from a lender licensed in Arizona. The loan commitment and agreement shall specify which improvements are included and shall:
a. Be stipulated by and payable to a third party who is not the developer;
b. Be accepted and signed by all parties;
c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date;
d. State when and how the third party may draw on the funds;
e. Be in an amount 10% greater than the estimated amount to complete all improvements;
f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements; and
g. State that repayment is the responsibility of the developer and not of the third party even if the third party draws on the funds.

4. A trust or escrow account with a financial institution or escrow company licensed in Arizona. The trust or escrow account shall specify which improvements are included and shall:
a. Be stipulated by and payable to a third party who is not the developer;
b. Be accepted and signed by all parties;
c. Include an expiration date not less than 90 Days beyond the last improvement estimated completion date;
d. State when and how the third party may draw on the funds;

e. Be in an amount 10% greater than the estimated amount to complete all improvements;

f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements; and

g. Directly pay for the improvements completed or release funds to the developer upon written verification from a registered engineer that the improvements have been completed in accordance with the plan.

5. City and county trust agreement. A municipal or county government may enter into an assurance agreement with a trustee to hold a lot conveyance until improvements are completed:

a. The trustee is an escrow company licensed in Arizona, and

b. The agreement is recorded.

6. Written escrow agreement. A developer may enter into a written escrow agreement with a title insurance company or escrow company to escrow all funds and prohibit close of escrow until all improvements are complete. The agreement shall contain the following stipulations:

a. The funds are not released nor the purchaser's deed or other relevant documents recorded until the developer's architect or engineer certifies to the Department and the escrow agent that the project is complete, ready for occupancy, and in compliance with all city and county requirements;

b. If the completion date is not met:

i. The developer will give purchasers notice that completion dates were not met and an updated completion schedule,

ii. A purchaser may, within 30 days of receiving the notice specified in subsection (B)(6)(b)(i), cancel and receive a full refund by sending written notice to the escrow agent,

iii. The public report is invalid and all sales are suspended; and

iv. The Department considers the public report valid if improvements are completed at a later date and the public report is complete and accurate.

7. Subdivision assurances. The municipal or county government shall prohibit occupancy and an subdivider shall not close escrow on lots sold in a subdivision until all proposed or promised subdivision improvements are complete.

a. The subdivider shall submit an agreement or copy of the ordinance from the city or county prohibiting occupancy until all proposed or promised subdivision improvements are complete.

b. If improvements are completed in phases, the subdivider shall submit complete details of the phasing program, including approval of the phasing by the city or county and the completion schedule for the phases to the Department.

c. The subdivider shall submit a written statement that no escrow will close on any lot until all subdivision improvements are complete. If a lot is within a phase of the subdivision where all improvements are complete and can be used and maintained separately from the improvements required for the entire subdivision the escrow may be closed.

d. The subdivider shall submit a copy of the subdivider's purchase contract containing in large or bold print the condition that escrow will not close until the city or

county issues its occupancy clearance and all subdivision improvements are complete.

e. Any improvement offered or promised to a purchaser that is scheduled for completion in a later phase of completion shall have its completion assured by an alternative method of assurance listed in this Section.

f. If the subdivider's sales include unimproved (vacant) lots, the subdivider shall deposit all earnest money into a neutral escrow depository until escrow closes.

8. Any other assurance satisfactory to the Department that is not listed in subsections (B)(1) through (B)(7).

C. If the construction of any improvement is completed in phases, the applicant shall provide a description of the phased schedule of completion, including the lots in each phase and estimated completion dates.

R4-28-A1212. Schools and Services

A. The applicant shall include the following information about schools:

1. The location of and distance to the nearest public elementary, junior, and high schools and whether school bus or other transportation is available;

2. The type and location of any other school located within a 1/2 mile radius of the exterior boundaries of the development.

B. The applicant shall include the following information about services:

1. Community shopping. The location and distance from the development of the nearest community shopping area where food, drink, and medical supplies may be purchased;

2. Public transportation. The type, provider, location, and distance to the nearest access point to public transportation for the development;

3. Medical facility. The type, provider, location, and distance to the nearest medical facility;

4. Fire protection. Whether fire protection is available to the development, the name of the provider and the cost to the lot purchaser;

5. Ambulance service. Whether ambulance service is available to the development and whether the development is in a 911 service area. If 911 service is not available, the name, address, and telephone number of the ambulance service.

6. Police service. Whether police service is available to the development, and the name of the provider;

7. Refuse collection. Whether provisions have been made for refuse collection, the name of the service provider, and the cost to the lot purchaser. If no provisions have been made, what a buyer will do to dispose of refuse.

R4-28-A1213. Property Owners' Association

The applicant shall provide the following information about a property owner's association:

1. The name of the association, if any;

2. The name of the master property owners' association, if any;

3. The amount of the association assessment that property owners will be required to pay, and how it will be paid;

4. Whether the association is legally formed and operational;

5. When and under what conditions control of the association will be released to lot purchasers;

6. When and under what conditions title to the common areas will be transferred to the association;
7. Whether the common areas are subject to any lien or encumbrance. If yes, explain how purchasers' use and enjoyment of common areas will be protected in the event of default;
8. Whether all lot owners will be required to be members of the association. If not, explain;
9. Whether nonmembers will be liable for payments to the association; and
10. A copy of the Articles of Incorporation and Bylaws in effect.

R4-28-A1214. Development Use

The applicant shall provide the following information about development use:

1. Whether unimproved (vacant) lots or improved (with building) lots will be sold or leased;
2. The use for which development lots will be offered and an identification of the lots and their proposed use if more than one use is contemplated;
3. Whether the development or any lot is subject to adult occupancy or age restrictions;
    a. If yes, explain the restriction;
    b. If yes, explain whether this restriction is in compliance with the Federal Fair Housing Act.
4. Whether all or any portion of the development is located in an open range or area in which livestock may roam at large under the laws of this State and what provisions, if any, have been made for the fencing of the development to prevent livestock from roaming within the development and on a purchaser's lot. If land is located in an open range or area in which livestock may roam at large, the purchase contract shall contain:
    a. Any provisions for the fencing of the development to prevent livestock from roaming within the development; and
    b. Any fencing requirements for the buyers to prevent livestock from roaming on their property.
5. Whether mineral rights are, or will be, reserved from the development lots and what the effect will be on lot owners if the minerals are extracted from the development; and
6. A full written disclosure of any condition or provision not specified in subsections (1) through (5) that may limit the use or occupancy of the property.

R4-28-A1215. Development Sales

The applicant shall provide a description of the sales offering and:

1. A description of how sales or leases will be made and the manner by which title, right, or other interest is to be conveyed to the purchaser, including copies of sales and lease transaction documents;
2. Indicate whether cash sales are allowed and when the purchaser takes title;
3. Indicate where the purchaser's deposit and earnest monies will be deposited and held;
4. If the deposit monies are available for use by the seller, when and under what conditions the monies will be refunded;
5. Indicate when the lot purchaser will be permitted to use and occupy the lot;
6. An explanation if the purchaser will not receive title free and clear of all liens;
7. The estimated average sales price for the lots;
8. Indicate whether any of the property will be leased, and if so;

a. Provide a description of any provision for increase of rental payments during the term of the lease and any provisions in the lease prohibiting assignment or subletting, or both;
b. Indicate whether the lease prohibits the lessee from mortgaging or otherwise encumbering the leasehold; and
c. Indicate whether the lessee is permitted to remove an improvement when the lease expires.

9. The name, address, and telephone number of the Arizona broker who will be responsible for sales. If none, explain why;
10. The name and telephone number of the custodian of the development records and the physical location where the records will be kept;
11. Indicate whether the property has been or will be offered for sale before the date of the development application. If yes, explain; and
12. Indicate whether the sales documents contain all contract disclosures required by rule and statute.

R4-28-A1216. Title Reports and Encumbrances

The applicant shall provide the following information concerning title reports and encumbrances:

1. Copies of any unrecorded liens or encumbrances against the property;
2. A title report showing:
   a. An effective date not more than 30 days before Department receipt. The Department may request that the applicant update the title report so that it is not more than 30 days old when the public report is issued;
   b. A legal description based upon a recorded map, condominium or timeshare declaration. Metes and bounds legal descriptions shall be used only for membership camping application title reports;
   c. The applicant's interest in the property;
   d. The name and telephone number of the person who prepared the title report;
   e. A requirement page, if applicable; and
   f. The following statement after the title exceptions: "There are no further matters of record affecting the land."
3. Legible copies of all recorded and unrecorded documents reflected by the title report, or known to applicant, such as restrictions, easements, liens, encumbrances, trust agreements, options, and maps.

R4-28-A1217. ADEQ Approval

The applicant shall obtain subdivision approval from ADEQ or its designee.

R4-28-A1218. Property Registrations in Other Jurisdictions

The applicant shall provide a list of the jurisdictions where a property registration was filed with or accepted by another department of real estate or similar regulatory agency.

R4-28-A1219. Condominium Developments

The applicant shall provide the following information about condominium developments:

1. A copy of the recorded condominium declaration, map, and amendments in effect, and

2. An opinion letter from an attorney licensed to practice in Arizona, stating that the condominium plat and declaration of condominium are in compliance with the requirements of A.R.S. §§ 33-1215 and 33-1219.

R4-28-A1220. Foreign Developments

A. Unless exempt pursuant to A.R.S. § 32-2181.02, an applicant shall ensure that any development located outside the state that is advertised, promoted, or sold within the state complies with all Arizona laws and rules as if the land was located in the state.

B. Any law or rule that is specific to Arizona may be waived by the Department, or the Department may request and accept the domicile state or country's equivalent form of documentation.

C. The applicant shall provide evidence that the domicile state or country has authorized the sale of lots and that the development is in compliance and good standing. If the domicile state or country issues a public report or equivalent, the application shall include the report.

~~**R4-28-A1221. Cemetery Developments**~~ **(Expired Oct. 1, 2024)**

~~The applicant shall provide the following information about cemetery developments:~~

~~1. A statement that there are no liens on the cemetery property,~~

~~2. An accounting of the endowment care fund for an existing perpetual care cemetery, and~~

~~3. A financial statement of the applicant.~~

R4-28-A1222. Membership Camping Developments

The applicant shall provide the following information about a membership camping development:

1. If the interest of the operator is evidenced by a lease, license, franchise, or a reciprocal agreement, a copy of the document and any amendments;
2. A description of any lakes or streams available for recreational use; and
3. A description of any exchange network and the responsibilities, obligations, and rights of the operator and purchaser, and copies of all exchange network documents.

R4-28-A1223. Affidavit

The applicant shall sign an affidavit attesting that the information found in the application is true and correct.

PART B. GENERAL INFORMATION

~~R4-28-B1201. Expedited Registration For Improved Subdivision Lots and Unsubdivided Lands~~ (Expired October 1, 2024

~~A. A developer may use the expedited public report registration by preparing the public report and submitting the appropriate application documents and fees established in A.R.S. §§ 32-2183(B) or 32-2195.03(B) to the Department. The Department shall assign a registration number to each application and verify the following:~~

~~1. The correct application form has been used and is two-hole punched at the top in standard placement. The application is placed on a two-prong AACO-type fastener in a file folder and delivered to the Department in an expanding file folder. Maps may be left off the fastener, folded, and placed in the expanding file. The application shall include:~~

~~a. The Expedited Registration Request letter signed by the applicant; and~~

~~b. The completed Department checklist for administrative completeness which indicates inclusion of the documents required by A.R.S. Title 32, Chapter 20, Article 4 and 4 A.A.C. 28, Article 12, Part A.~~

~~2. The filing fees have been included with the application;~~

~~3. All application questions have been answered;~~

~~4. The application signature page has been properly executed;~~

~~5. All required documents have been submitted; and~~

~~6. A complete and accurate public report in the Department's published format on a computer diskette, formatted in a word processing program compatible with the Department's current computer operating system and word processing software, has been submitted and all exhibits used for disclosure have been included on the diskette. (The developer may obtain a diskette containing the public report template from the Department upon request.)~~

~~B. The Department may allow the applicant to correct a deficiency within the administrative completeness time-frame provided in A.R.S. §§ 32-2183(B) and 32-2195.03(B), in which case the overall 15 business day limitation is suspended until the applicant corrects the deficiency.~~

R4-28-B1202. Conditional Sales Exemption

A. Any developer applying for a special order of exemption authorizing the offer for sale of a subdivision lot or unsubdivided land before issuance of a public report shall provide the following information to the Department:

1. The completed and executed Petition for Conditional Sales Exemption;
2. The completed and executed subdivision or unsubdivided land application for a public report;
3. The purchase contract containing all required contract disclosures and the Conditional Sales Addendum;
4. A current title report showing the ownership interest of the developer and acceptable condition of title;
5. A copy of the recorded development map, or if not recorded, a copy of the unrecorded map;

6. A copy of the Condominium Declaration, if applicable;
7. A Certificate of Assured Water Supply, or a letter from the ADWR or other evidence that the property is located in an area designated as having an assured water supply, if the property is located in a groundwater active management area;
8. A water adequacy report from the ADWR or evidence that the property is located in an area designated as having an adequate water supply, if the property is located outside of a groundwater active management area; and
9. Any other information revealed necessary after preliminary review.

B. The conditional sales exemption shall expire upon issuance or denial of the public report, or upon issuance of an order to summarily suspend sales, to cease and desist, or a voluntary suspension of sales by the developer or owner.

R4-28-B1203. Material Change; Public Report Amendments

A. The developer shall notify the Department of all material changes in the information required by A.R.S. Title 32, Chapter 20, Articles 4, 7, 9, and 10, or 4 A.A.C. 28, Article 12, Part A.

B. According to material changes reported in subsection (A), the Department may require the developer to amend the public report.

C. Completion Date Extension.

1. A developer may apply to the Department for an amendment to a public report to extend the completion date of any improvement by providing an affidavit from the developer attesting that each purchaser, owner, and the city or county officials responsible for improvements were provided written notice of the completion status of the improvement, including a list of all people who were provided notice.
2. The Department may deny the application to extend the completion date beyond the first extension if a purchaser, owner, or city or county official opposes issuance of an amended public report to extend a completion date.
3. If an extension is denied, the developer shall provide the Department with a written agreement to suspend sales until the improvement is complete or the Department may issue a summary suspension order as provided in A.R.S. § 32-2157(B).

D. To amend a public report, a developer shall submit payment of the applicable amendment fee and the following information:

1. The name and registration number of the development;
2. The name and signature of the developer;
3. A list of the changes to the development and sales offering or in the information previously provided to the Department;
4. Status of sales as prescribed in subsections (C) and (E); and
5. A purchase contract addendum, to be signed and dated by both seller and purchaser, acknowledging that the sale is conditioned upon issuance of the amended public report and purchaser's receipt and acceptance of the amended public report.

E. Suspension of sales.

1. If necessary for the protection of purchasers, the Department may suspend approval to sell or lease pending amendment of the report.
2. In lieu of issuing a suspension order under A.R.S. § 32-2157, the Department may accept a developer's written agreement to suspend sales until the amended public report has been issued by the Department.

F. If the Department determines that a suspension of sales is not necessary for the protection of purchasers and approves the proposed disclosure of the change, sales may continue if the prospective purchaser is provided a copy of the current public report and disclosure of all changes before signing a contract. Completion of sales is conditioned upon the developer obtaining and delivering to each purchaser under contract the amended public report.
G. Upon obtaining the amended report, the developer shall provide a copy to prospective purchasers in place of the earlier public report and obtain a receipt for the amended public report.
H. If an application to amend a public report is denied, the Department shall notify the developer in writing of the statutory basis for the denial and of the developer's right to a fair hearing.

R4-28-B1204. Cemetery Notice; Amendments
A change to information required pursuant to the provisions of Title 32, Chapter 20, Article 6, R4-28-301(A), or any other Section, requires amendment of the notice filed pursuant to A.R.S. 32-2194.01.

~~R4-28-B1205. Contiguous Parcels~~ (Expired October 1, 2024)
~~Except for lots in a platted subdivision, if two or more contiguous parcels of land are acquired by a single owner, the Department shall classify the lots as a single parcel for purposes of subdivision laws.~~

R4-28-B1206. Filing with HUD
If the subdivider requests that a subdivision public report be certified by the Department for filing with HUD, the subdivider shall comply with the terms, conditions, and requirements of the HUD certification agreement.

R4-28-B1207. Subsequent Owner
A. Except as provided in A.R.S. § 32-2181.02, any developer who is a successor in interest to six or more lots within a subdivision on which the Department previously issued a public report shall file an application for and obtain a new public report before offering or selling any lot.
B. Any developer who is a successor in interest to six or more parcels within an unsubdivided land development on which the Department previously issued a public report shall file an application for and obtain a new public report before offering or selling any parcel.
C. Any developer who is a successor in interest to 12 or more time-share intervals within a time-share project on which the Department previously issued a public report shall file an application for and obtain a new public report, before offering or selling any interval.
D. The Department shall not issue a new public report to a subsequent owner of a development if the previous developer failed to complete proposed improvements in accordance with estimated completion dates specified in the previously issued public report until one of the following occurs:

1. The subsequent owner makes financial arrangements, as described in R4-28-A1211, in favor of the local governmental authority and for the benefit of purchaser, securing the owner's promise to complete the previously proposed improvements by a designated date; or
2. The subsequent owner becomes obligated to place all sales funds in a neutral escrow depository until the Department is furnished satisfactory evidence that all proposed improvements have been completed or accepted by the city or county; or

3. Permission is obtained by all previous purchasers in the development for completion of the proposed improvements by the new designated date for completion; or

4. The subsequent owner establishes to the satisfaction of the Department that adequate financial arrangements have been made to assure completion of the proposed improvements by the new designated date for completion.

E. A developer who is a new owner of property that is the subject of a pending application for a public report shall not replace or be substituted for the applicant of the pending application.

R4-28-B1208. Public Report Correction

If the public report contains an error, the Department shall correct the report at its own expense. Additional or changed information that was known to the developer before issuance of the report is not an error. The Department shall not correct the public report after it has been in effect for 10 days. After 10 days, the developer shall change the report through the development amendment process, established in R4-28-B1203, with payment of the applicable amendment fee.

R4-28-B1209. Options; Blanket Encumbrances; Releases

A. The Department shall not issue or amend a public report for any lot held under option or subject to a blanket encumbrance if a condition precedent to the optionee's right to acquire the lot or to release from the blanket encumbrance shows that the lot shall:

1. Be acquired or released in a particular sequence,

2. Be acquired or released only after one or more additional lots have been acquired or released, or

3. Not be released if the encumbrance is in default because of a cross-default provision contained in the encumbrance,

B. The developer may require payment of a premium to permit the acquisition or release of the lot.

C. When a blanket encumbrance clouds title to a development, the developer shall place a written statement from the holder of the blanket encumbrance in the public report application, quoting the provisions that enable a buyer to acquire title to a lot, free of the blanket encumbrance.

R4-28-B1210. Earnest Money

The developer shall deposit earnest money and down payments in a neutral depository if:

1. The seller is in bankruptcy;

2. The sale is conditional pursuant to R4-28-B1202; or

3. The Department perceives a risk to the buyer.

R4-28-B1211. Recordkeeping

If real property in a development is sold or leased by a developer without the services of a listing or selling broker, the developer shall keep all records as required by A.R.S. § 32-2151.01(A) and (C).

ARTICLE 13 ADMINISTRATIVE PROCEDURES

R4-28-1302. Service of Pleadings Subsequent to Complaint and Notice

A. Service of pleadings subsequent to complaint and notice of hearing shall be made by personal service or by mail to the last known address of record of the party or the party's counsel. If service is made by mail, response time shall be increased by five days. Service by mail is complete upon mailing.

B. Any person filing a pleading or brief with the Department shall also file with the Attorney General.

R4-28-1303. Information Obtained in an Investigation

A. The Department shall ensure that information and documents in open audits and investigations remain confidential. Officers and employees of the Department shall not make confidential information or documents available to anyone other than the Attorney General or the Attorney General's representative, or authorized employees of the Department, unless the Commissioner authorizes disclosure of the information or production of documents as being in the public interest.

B. Upon request, the Department shall disclose the existence of and make available for review audit and investigative files that were closed within five years of the request for the information, subject to redaction of confidential or privileged information such as date of birth, social security number, bank and trust account numbers, home address and telephone number of active-status licensees, criminal history reports, attorney-client privileged communications, work product, and information regarding settlement negotiations.

R4-28-1304. Response; Default

A. A response shall specifically admit, deny, or state that the party does not have, or is unable to obtain, sufficient information to admit or deny each allegation in the complaint. A statement of a lack of information shall have the effect of a denial. Any allegation not denied is deemed to be admitted. When a party intends in good faith to deny only a part of an allegation, the party shall admit so much of it as is true and shall deny the remainder.

B. If the party fails to file a response or after being served notice, fails to appear at a hearing within the time provided by the statute under which the hearing is commenced, the Department may file an Affidavit of Default against the party, and proceed to take action against the party based upon the allegations of the charges. This action may be taken before the hearing date established in the Notice of Hearing. The party may file a motion to vacate the default and any action taken by the Commissioner within 15 days after receiving a copy of the default and the action or order by the Commissioner. For good cause, the Commissioner may vacate a default and any action taken and reschedule a hearing.

C. Every response filed pursuant to this Section shall be signed by the filing party or by at least one attorney, in the attorney's individual name, who represents the party, and shall be verified.

R4-28-1305. Notice of Appearance of Counsel

A. A party may participate in the party's own behalf or be represented by a member of the State Bar of Arizona.

B. Any person intending to appear at a contested case hearing or appealable agency action as counsel or representative of a party shall file a Notice of Appearance which shall advise the Department of the person's intent to appear on behalf of a party. The notice shall be filed with the Office of Administrative Hearings and served on all parties and shall contain:

1. The title of the case,
2. The name of the agency ordering the hearing,
3. The current address and telephone number of the person appearing, and
4. The name of the party for whom the person is appearing.

R4-28-1307. Expired

R4-28-1310. Rehearing or Review of Decision; Response; Decision

A. Unless otherwise provided by statute or rule, any party to a hearing before the Office of Administrative Hearings who is aggrieved by a decision rendered in a case may, pursuant to A.R.S. § 41-1092.09, file with the Commissioner a written motion for rehearing or review of the decision. The motion shall specify the particular grounds for rehearing or review. The moving party shall serve copies upon all other parties. A motion for rehearing or review under this Section may be amended at any time before the Commissioner rules upon the motion.

B. A rehearing or review of the decision may be granted for any one of the following causes that materially affect the moving party's rights:

1. Irregularity in the proceedings or any order or abuse of discretion by the administrative law judge that deprived a party of a fair hearing;
2. Misconduct by the Department, administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring during the proceeding;
7. That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
8. That the findings of fact or decision is not supported by the evidence or is contrary to law.

C. Presenting specific grounds for rehearing or review, affidavits and relief sought.

1. Each party filing a motion for rehearing or review shall specify in the motion which of the grounds listed in subsection (B) the motion is based upon and shall set forth specific facts and law in support of the rehearing or review. The party may cite relevant portions of testimony by reference to pages or lines of the reporter's transcript of the hearing or to the date and time range of the Office of Administrative Hearings audio record, and may cite hearing exhibits by reference to the exhibit number.
2. When a party files a motion for rehearing or review based upon an affidavit, the person shall attach the affidavit to the motion before filing the motion unless leave for later filing of an affidavit is granted by the Commissioner. The leave may be granted ex parte.
3. Each party filing a motion for rehearing or review shall specify the specific relief sought by the motion, such as a different decision or penalty, a new hearing, a dismissal of the complaint, or other relief. A party may seek multiple forms of relief, in the alternative.

D. Any party may file a written response to the motion. An affidavit may be attached to and filed

with the response and shall not be later filed unless leave for later filing of affidavits is granted by the Commissioner. The original response shall be filed with the Department pursuant to R4-28-102, within 15 days after the date the motion for rehearing or review is filed, and a copy shall be served upon all other parties to the hearing.

E. Within 30 days after a decision is rendered, the Commissioner may, on the Commissioner's own initiative, order a rehearing or review of a decision for any reason for which a motion for rehearing or review might have been granted. The Commissioner shall specify the grounds for rehearing or review in the order.

F. Upon review of a motion for rehearing or review of the decision, and any response, the Commissioner shall issue a ruling granting or denying the motion. If granted, the Commissioner may modify the decision or grant a rehearing. An order granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the rehearing shall cover only those matters specified. All parties to the hearing may participate as parties at any rehearing.

R4-28-1313. Correction of Clerical Mistakes

Clerical mistakes in opinions, orders, rulings, any process issued by the Department, or other parts of the record, and errors arising from oversight or omission, may be corrected by the administrative law judge before transmission of the Department hearing file to the Commissioner, or by the Commissioner after transmission of the file, either upon the initiative of the administrative law judge or Commissioner, or upon motion of any party.

SUBSTANTIVE POLICY STATEMENTS

Substantive Policy Statements are advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with Arizona Administrative Procedure Act.

For updated versions of the Substantive Policy Statements please refer to the ADRE website at www.azre.gov or follow this link Substantive Policy Statements (http://www.azre.gov/LawBook/SubstantivePolicyStatements.aspx).

ADDITIONAL STATUTES OF RELEVANCE

TITLE 11 - COUNTIES

Chapter 6 - County Planning and Zoning

11-831. Review of land divisions; definitions

F. It is unlawful for a person or group of persons acting in concert to attempt to avoid this section or the subdivision laws of this state by acting in concert to divide a parcel of land into six or more lots or sell or lease six or more lots by using a series of owners or conveyances. Either the county where the division occurred or the state real estate department pursuant to title 32, chapter 20, but not both, may enforce this prohibition. A familial relationship alone is not sufficient to constitute unlawful acting in concert.

TITLE 12 - COURTS AND CIVIL PROCEEDINGS

Chapter 6 - Judicial Review of Administrative Decisions

12-901. Definitions

In this article, unless the context otherwise requires:

1. "Administrative agency" or "agency" means every agency, board, commission, department or officer authorized by law to exercise rule-making powers or to adjudicate contested cases, whether created by constitutional provision or legislative enactment. Except as provided in section 33-1905, administrative agency or agency does not include an agency in the judicial or legislative departments of the state government, any political subdivision or municipal corporation or any agency of a political subdivision or municipal corporation.

2. "Administrative decision" or "decision" means any decision, order or determination of an administrative agency that is rendered in a case, that affects the legal rights, duties or privileges of persons and that terminates the proceeding before the administrative agency. In all cases in which a statute or a rule of the administrative agency requires or permits an application for a rehearing or other method of administrative review, and an application for a rehearing or review is made, no administrative decision of such agency is final as to the party applying for the rehearing or review until the rehearing or review is denied or the decision on rehearing or review is rendered. Administrative decision or decision does not include either:

(a) Rules, standards or statements of policy of general application issued by an administrative agency to implement, interpret or make specific the legislation enforced or administered by it unless the rule, standard or statement of policy is involved in a proceeding before the agency and its applicability or validity is in issue in the proceeding.

(b) Rules concerning the internal management of the agency and not affecting private rights or interests.

12-902. Scope of article

A. This article applies to and governs:

1. Every action to judicially review a final decision of an administrative agency except public welfare decisions pursuant to title 46, or if the act creating or conferring power on an agency or a separate act provides for judicial review of the agency decisions and prescribes a definite procedure for the review.

2. An action to review the decision at an administrative hearing as otherwise provided by statute.

B. Unless review is sought of an administrative decision within the time and in the manner provided in this article, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of the decision. If under the terms of the law governing procedure before an agency an administrative decision becomes final because of failure to file any document in the nature of an objection, protest, petition for hearing or application for administrative review within the time allowed by the law, the decision is not subject to judicial review under the pro-

visions of this article except for the purpose of questioning the jurisdiction of the administrative agency over the person or subject matter.

12-903. Power of supreme court to make procedural rules

The supreme court may make rules of pleading, practice and procedure supplementary to but not inconsistent with the provisions of this article, and to amend such rules, for the purpose of making this article effective for the convenient administration of justice, and simplifying procedure so far as it affects judicial review of administrative decisions.

12-904. Commencement of action; transmission of record

A. An action to review a final administrative decision shall be commenced by filing a notice of appeal within thirty-five days from the date when a copy of the decision sought to be reviewed is served upon the party affected. The method of service of the decision shall be as provided by law governing procedure before the administrative agency, or by a rule of the agency made pursuant to law, but if no method is provided a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party affected at the party's last known residence or place of business. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address. The notice of appeal shall identify the final administrative decision sought to be reviewed and include a statement of the issues presented for review. The statement of an issue presented for review is deemed to include every subsidiary issue fairly comprised in the statement.

B. Within ten days after filing a notice of appeal pursuant to this article, the party seeking judicial review shall file a notice of the action with the office of administrative hearings or the agency that conducted the hearing, and the office of administrative hearings or the agency that conducted the hearing shall transmit the record to the superior court. The record shall consist of the following:

1. The original agency action from which review is sought.
2. Any motions, memoranda or other documents submitted by the parties to the appeal.
3. Any exhibits admitted as evidence at the administrative hearing.
4. The decision by the administrative law judge and any revisions or modifications to the decision.
5. A copy of the transcript of the administrative hearing, if the party seeking judicial review desires a transcript to be included in the record and provides for preparation of the transcript at the party's own expense. Any other party may have a transcript included in the record by filing a notice with the office of administrative hearings or the agency that conducted the hearing within ten days after receiving notice of the notice of appeal and providing for preparation of the transcript at the party's own expense.

12-905. Jurisdiction and venue

A. Jurisdiction to review final administrative decisions is vested in the superior court.

B. If the venue of the action to review a final administrative decision is expressly prescribed in the statute under authority of which the decision was made, such venue shall control, but if the venue is not prescribed, an action to review a final administrative decision may be commenced in the superior court of any county in which any of the following conditions obtains:

1. Any part of the hearing or proceeding culminating in the decision of the administrative agency was held.

2. Any part of the subject matter involved is situated.
3. Any part of the transaction giving rise to the proceedings before the agency occurred.

12-906. Service of process
In an action to review the decision of an administrative agency, a copy of the notice of appeal shall be served pursuant to rule 4 of the rules of civil procedure, on the agency at its principal office and on all other parties to the proceeding before the agency.

12-907. Appearance of parties to the appeal
Within twenty days after service of the notice of appeal, the appellee agency and all other appellees shall file a notice of appearance in response to the notice of appeal. All subsequent filings shall be made as provided by section 12-914.

12-908. Parties
A. In an action to review a final decision of an administrative agency, the agency and all persons, other than the appellant, who are parties of record in the proceedings may appear in the proceedings before the superior court as appellees.
B. If the administrative hearing is held before the office of administrative hearings, the office of administrative hearings is not a party of record in the proceedings and is not to be named as a party in the notice of appeal or to appear as a party in the appellate proceedings before the court unless otherwise required by law or order of the court. For the purposes of this section, the office of administrative hearings includes the director of the office of administrative hearings and the administrative law judge.

12-909. Pleadings and record on review
A. The notice of appeal shall contain a statement of the findings and decision or part of the findings and decision sought to be reviewed.
B. Notwithstanding section 12-904, subsection B, by order of the court or by stipulation of all parties to the action, the record may be shortened or supplemented.
C. If the cause is remanded to the administrative agency and a review thereafter is sought of the administrative decision, the original and supplemental record, or so much thereof as is determined by court order or stipulation of all the parties, shall constitute the record on review.

12-910. Scope of review
A. An action to review a final administrative decision shall be heard and determined with convenient speed. If requested by a party to an action within thirty days after filing a notice of appeal, the court shall hold an evidentiary hearing, including testimony and argument, to the extent necessary to make the determination required by subsection F of this section. The court may hear testimony from witnesses who testified at the administrative hearing and witnesses who were not called to testify at the administrative hearing.
B. Relevant and admissible exhibits and testimony that were not offered during the administrative hearing shall be admitted, and objections that a party failed to make to evidence offered at the administrative hearing shall be considered, unless either of the following is true:
1. The exhibit, testimony or objection was withheld for purposes of delay, harassment or other improper purpose.

2. Allowing admission of the exhibit or testimony or consideration of the objection would cause substantial prejudice to another party.

C. For review of final administrative decisions of agencies that are exempt from sections 41-1092.03, 41-1092.04, 41-1092.05, 41-1092.06, 41-1092.07, 41-1092.08, 41-1092.09, 41-1092.10, and 41-1092.11, pursuant to section 41-1092.02, the trial shall be de novo if trial de novo is demanded in the notice of appeal or motion of an appellee other than the agency and if a hearing was not held by the agency or the proceedings before the agency were not stenographically reported or mechanically recorded so that a transcript might be made. On demand of any party, if a trial de novo is available under this section, it may be with a jury, except that a trial of an administrative decision under section 25-522 shall be to the court.

D. For review of final administrative decisions of agencies that regulate a profession or occupation pursuant to title 32, title 36, chapter 4, article 6, title 36, chapter 6, article 7 or title 36, chapter 17, the trial shall be de novo if trial de novo is demanded in the notice of appeal or motion of an appellee other than the agency.

E. The record in the superior court shall consist of the record of the administrative proceeding, and the record of any evidentiary hearing, or the record of the trial de novo.

F. After reviewing the administrative record and supplementing evidence presented at the evidentiary hearing, the court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless the court concludes that the agency's action is contrary to law, is not supported by substantial evidence, is arbitrary and capricious or is an abuse of discretion. In a proceeding brought by or against the regulated party, the court shall decide all questions of law, including the interpretation of a constitutional or statutory provision or a rule adopted by an agency, without deference to any previous determination that may have been made on the question by the agency. In a proceeding brought by or against the regulated party, the court shall decide all questions of fact without deference to any previous determination that may have been made on the question by the agency. Notwithstanding any other law, this subsection applies in any action for judicial review of any agency action that is authorized by law.

G. Notwithstanding subsection F of this section, if the action arises out of title 20, chapter 15, article 2, the court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

H. This section does not apply to any agency action pursuant to title 40, chapter 2, article 5 or 6.2.

12-911. Powers of superior court

A. The superior court may:

1. With or without bond, unless required by the statute under authority of which the administrative decision was entered, and before or after the filing of the notice of appearance, stay the decision in whole or in part pending final disposition of the case, after notice to the agency and for good cause shown, except that the court shall not stay an administrative decision wherein unemployment compensation benefits have been allowed to a claimant pursuant to title 23, chapter 4.

2. Make any order that it deems proper for the amendment, completion or filing of the record of the proceedings of the administrative agency.

3. Allow substitution of parties by reason of marriage, death, bankruptcy, assignment or

other cause.

4. Dismiss parties or realign parties appellant and appellee.

5. Modify, affirm or reverse the decision in whole or in part.

6. Specify questions or matters requiring further hearing or proceedings and give other proper instructions.

7. When a hearing has been held by the agency, remand for the purpose of taking additional evidence when from the state of the record of the administrative agency or otherwise it appears that such action is just.

8. In the case of affirmance or partial affirmance of an administrative decision requiring payment of money, enter judgment for the amount justified by the record and for costs, on which execution may issue.

B. Technical errors in the proceedings before the administrative agency or its failure to observe technical rules of evidence shall not constitute grounds for reversal of the decision, unless it appears to the superior court that the error or failure affected the rights of a party and resulted in injustice to him.

C. On motion of a party before rendition of judgment, the superior court shall make findings of fact and state conclusions of law on which its judgment is based.

12-912. Costs

Costs may be awarded to the appellee agency if a judgment adverse to the appellant is rendered. Such costs may be awarded in an amount deemed reasonable by the superior court, based on the expense the appellee agency has incurred in preparing the record of the proceedings before judicial review.

12-913. Appellate review

The final decision, order, judgment or decree of the superior court entered in an action to review a decision of an administrative agency may be appealed to the supreme court.

12-914. Rules of procedure

A. Where applicable, the rules of procedure for judicial review of administrative decisions in superior courts, including rules relating to appeals to the supreme court, shall apply to all proceedings except as otherwise provided in this article, except in cases in which the superior court has conducted a trial de novo pursuant to section 12-910.

B. The rules of civil procedure apply to all proceedings in which the superior court orders a trial de novo pursuant to section 12-910.

TITLE 25 - MARITAL AND DOMESTIC RELATIONS

Chapter 3 - Dissolution Of Marriage

25-320. Child support; factors; methods of payment; additional enforcement provisions; definitions

P. Each licensing board or agency that issues professional, recreational or occupational licenses or certificates shall record on the application the social security number of the applicant and shall enter this information in its database in order to aid the department of economic security in locating parents or their assets or to enforce child support orders. This subsection does not apply to a license that is issued pursuant to title 17 and that is not issued by an automated drawing system. If a licensing board or agency allows an applicant to use a number other than the social security number on the face of the license or certificate while the licensing board or agency keeps the social security number on file, the licensing board or agency shall advise an applicant of this fact.

TITLE 32 - PROFESSIONS AND OCCUPATIONS

Chapter 43 - Board Licensure, Certification, And Registration

32-4301. License, certificate or registration expiration; military active duty; one hundred eighty-day extension

A. Except as otherwise provided in this section, a license, certificate or registration that is issued pursuant to this title to any member of the national guard or the United States armed forces reserves shall not expire while the member is serving on federal active duty and shall be extended one hundred eighty days after the member returns from federal active duty, provided that the member, or the legal representative of the member, notifies the license, certificate or registration issuing authority of the federal active duty status of the member. A license, certificate or registration that is issued pursuant to this title to any member serving in the regular component of the United States armed forces shall be extended one hundred eighty days from the date of expiration, provided that the member, or the legal representative of the member, notifies the license, certificate or registration issuing authority of the federal active duty status of the member.

B. A license, certificate or registration that is issued pursuant to this title to any member of the national guard, the United States armed forces reserves or the regular component of the United States armed forces shall not expire and shall be extended one hundred eighty days from the date the military member is able to perform activities necessary under the license, certificate or registration if the member both:

1. Is released from active duty service.
2. Suffers an injury as a result of active duty service that temporarily prevents the member from being able to perform activities necessary under the license, certificate or registration.

C. If the license, certificate or registration is renewed during the applicable extended time period after the member returns from federal active duty, the member is responsible only for normal fees and activities relating to renewal of the license, certificate or registration and shall not be charged any additional costs such as late fees or delinquency fees.

D. The member, or the legal representative of the member, shall present to the authority issuing the license, certificate or registration a copy of the member's official military orders, a redacted military identification card or a written verification from the member's commanding officer before the end of the applicable extended time period in order to qualify for the extension.

E. This section does not apply to licenses that are issued pursuant to chapter 10 of this title if a person other than the person who is a member of the national guard, the United States armed forces reserves or the regular component of the United States armed forces is authorized to renew the license.

F. A license or certificate that is issued pursuant to chapter 36 of this title to any member of the national guard, the United States armed forces reserves or the regular component of the United States armed forces shall be placed in active status for ninety days after the member returns from federal active duty, provided that the member, or the legal representative of the member, notifies the department of insurance and financial institutions of the federal active duty status of the member.

32-4302. Out-of-state applicants; residents; military spouses; licensure; certification; exceptions; notice

A. Notwithstanding any other law, an occupational or professional license or certificate shall be issued, in the discipline applied for and at the same practice level as determined by the regulating entity, pursuant to this title to a person who establishes residence in this state or without an examination to a person who is married to an active duty member of the armed forces of the United States and who is accompanying the member to an official permanent change of station to a military installation located in this state if all of the following apply:

1. The person is currently licensed or certified in at least one other state in the discipline applied for and at the same practice level as determined by the regulating entity and the license or certification is in good standing in all states in which the person holds a license or certification.
2. The person has been licensed or certified by another state for at least one year.
3. When the person was licensed or certified by another state there were minimum education requirements and, if applicable, work experience and clinical supervision requirements in effect and the other state verifies that the person met those requirements in order to be licensed or certified in that state.
4. The person previously passed an examination required for the license or certification if required by the other state.
5. The person has not had a license or certificate revoked and has not voluntarily surrendered a license or certificate in any other state or country while under investigation for unprofessional conduct.
6. The person has not had discipline imposed by any other regulating entity. If another jurisdiction has taken disciplinary action against the person, the regulating entity shall determine if the cause for the action was corrected and the matter resolved. If the matter has not been resolved by that jurisdiction, the regulating entity may not issue or deny a license until the matter is resolved.
7. The person does not have a complaint, allegation or investigation pending before another regulating entity in another state or country that relates to unprofessional conduct. If an applicant has any complaints, allegations or investigations pending, the regulating entity in this state shall suspend the application process and may not issue or deny a license to the applicant until the complaint, allegation or investigation is resolved.
8. The person pays all applicable fees.
9. The person does not have a disqualifying criminal history as determined by the regulating entity pursuant to section 41-1093.04.

B. This section does not prevent a regulating entity under this title from entering into a reciprocity agreement with another state or jurisdiction for persons married to active duty members of the armed forces of the United States, except that the agreement may not allow out-of-state licensees or certificate holders to obtain a license or certificate by reciprocity in this state if the applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the regulating entity on a case-by-case basis.

C. Except as provided in subsection A of this section, a regulating entity that administers an examination on laws of this state as part of its license or certificate application requirement may require an applicant to take and pass an examination specific to the laws of this state.

D. A person who is licensed pursuant to this title is subject to the laws regulating the person's prac-

tice in this state and is subject to the regulating entity's jurisdiction.

E. This section does not apply to:

1. A license or registration certificate that is issued pursuant to chapter 24 or 26 of this title.

2. Requirements for a fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.

3. Criteria for a license, permit or certificate of eligibility that is established by an interstate compact.

4. The ability of a regulating entity under this title to require an applicant to submit fingerprints in order to access state and federal criminal records information for noncriminal justice purposes.

F. A license or certificate issued pursuant to this section is valid only in this state and does not make the person eligible to be part of an interstate compact. A regulating entity under this title may determine eligibility for an applicant to be licensed or certified under this section if the applicant is not part of an interstate compact.

G. A regulating entity under this title shall prominently print the following notice on all license and certificate applications and regulating entity websites:

Pursuant to section 32-4302, Arizona Revised Statutes, a person shall be granted an occupational or professional license or certificate if the person has been licensed or certified in another state for at least twelve months, the license or certificate is in the same discipline and at the same practice level as the license or certificate for which the person is applying in this state and the person meets other conditions prescribed by section 32-4302, Arizona Revised Statutes.

H. Before any regulating entity takes any official action to deny a professional or occupational license that a person applies for pursuant to this section, the regulating entity shall submit the application and the reason for denial to the governor for review. The regulating entity shall notify the governor of any required time frames for approval or denial of the license application by the regulating entity.

I. Beginning July 1, 2022, all regulating entities that are required to issue occupational or professional licenses pursuant to this section shall track information about applications received in the format to be determined by the governor and annually report that information to the governor.

J. For the purposes of subsections H and I of this section, "regulating entity":

1. Means all executive departments, agencies and offices and all state boards and commissions.

2. Does not include:

(a) A state agency that is headed by a single elected state official.

(b) The corporation commission.

(c) Any board or commission established by ballot measure at or after the November 1998 general election.

(d) The judiciary.

32-4303. Military education, training and experience

Notwithstanding any other law, the education, training or experience requirements for a license, certificate or registration issued pursuant to this title are completely or partially satisfied, as determined by the regulating entity, on presentation of satisfactory evidence that the applicant received substantially equivalent education, training or experience as a member of the United States armed forces or any national guard or other reserve component. The regulating entity shall work in con-

junction with the department of veterans' services to access information regarding the applicant's military education, training or experience.

32-4304. Occupational and professional licenses; websites; reporting; definition

A. A regulating entity that issues occupational or professional licenses shall:

1. Prominently post on its website home page all current state policies that ease licensing burdens and the exact steps applicants must complete to receive their license using such policies. Policies that ease licensing burdens include the following:

(a) Universal recognition of out-of-state licenses.

(b) Availability of temporary licenses.

(c) Fee waivers.

(d) Examination exemptions.

(e) Allowing an applicant to substitute military education or experience for licensing requirements.

2. Have a designated area on its website home page that includes licensing information specifically for military spouses, active duty service members and veterans and all policies that make it easier for the applicant groups to receive a license.

3. Display all information required by paragraphs 1 and 2 of this subsection in a location that is easy to locate and shall use language that is clear and concise. A website home page feature may link to an internal webpage with more information if a regulating entity deems it necessary.

4. Beginning July 1, 2022, track whether each applicant is a veteran or military spouse and shall annually report the information gathered pursuant to this paragraph to the governor.

B. For the purposes of this section, "regulating entity":

1. Means all executive departments, agencies and offices and all state boards and commissions.

2. Does not include:

(a) A state agency that is headed by a single elected state official.

(b) The corporation commission.

(c) Any board or commission established by ballot measure at or after the November 1998 general election.

(d) The judiciary.

TITLE 41 - STATE GOVERNMENT

Chapter 6 - Administrative Procedure

Article 1 - General Provisions

41-1001.01. Regulatory bill of rights; small businesses

A. To ensure fair and open regulation by state agencies, a person:

1. Is eligible for reimbursement of fees and other expenses if the person prevails by adjudication on the merits against an agency in a court proceeding regarding an agency decision as provided in section 12-348.

2. Is eligible for reimbursement of the person's costs and fees if the person prevails against any agency in an administrative hearing as provided in section 41-1007.

3. Is entitled to have an agency not charge the person a fee unless the fee for the specific activity is expressly authorized as provided in section 41-1008.

4. Is entitled to receive the information and notice regarding inspections and audits prescribed in section 41-1009.

5. May review the full text or summary of all rulemaking activity, the summary of substantive policy statements and the full text of executive orders in the register as provided in article 2 of this chapter.

6. May participate in the rulemaking process as provided in articles 3, 4, 4.1 and 5 of this chapter, including:

(a) Providing written comments or testimony on proposed rules to an agency as provided in section 41-1023 and having the agency adequately address those comments as provided in section 41-1052, subsection D, including comments or testimony concerning the information contained in the economic, small business and consumer impact statement.

(b) Filing an early review petition with the governor's regulatory review council as provided in article 5 of this chapter.

(c) Providing written comments or testimony on rules to the governor's regulatory review council during the mandatory sixty-day comment period as provided in article 5 of this chapter.

7. Is entitled to have an agency not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized by statute, rule or state tribal gaming compact as provided in section 41-1030, subsection B.

8. Is entitled to have an agency not base a decision regarding any filing or other matter submitted to an agency on a requirement or condition that is not specifically authorized by a statute, rule, federal law or regulation or state tribal gaming compact as provided in section 41-1030, subsection C.

9. Is entitled to have an agency not make a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute or not make a rule under a general grant of rulemaking authority to supplement a more specific grant of rulemaking authority as provided in section 41-1030, subsection D.

10. May allege that an existing agency practice or substantive policy statement constitutes a rule and have that agency practice or substantive policy statement declared void because the practice or substantive policy statement constitutes a rule as provided in section 41-1033.

11. May file a complaint with the administrative rules oversight committee concerning:

(a) A rule's, practice's or substantive policy statement's lack of conformity with statute or legislative intent as provided in section 41-1047.

(b) An existing statute, rule, practice alleged to constitute a rule or substantive policy statement that is alleged to be duplicative or onerous as provided in section 41-1048.

12. May have the person's administrative hearing on contested cases and appealable agency actions heard by an independent administrative law judge as provided in articles 6 and 10 of this chapter.

13. May have administrative hearings governed by uniform administrative appeal procedures as provided in articles 6 and 10 of this chapter and may appeal a final administrative decision by filing a notice of appeal pursuant to title 12, chapter 7, article 6.

14. May have an agency approve or deny the person's license application within a predetermined period of time as provided in article 7.1 of this chapter.

15. Is entitled to receive written notice from an agency on denial of a license application:

(a) That justifies the denial with references to the statutes or rules on which the denial is based as provided in section 41-1076.

(b) That explains the applicant's right to appeal the denial as provided in section 41-1076.

16. Is entitled to receive information regarding the license application process before or at the time the person obtains an application for a license as provided in sections 41-1001.02 and 41-1079.

17. May receive public notice and participate in the adoption or amendment of agreements to delegate agency functions, powers or duties to political subdivisions as provided in section 41-1026.01 and article 8 of this chapter.

18. May inspect all rules and substantive policy statements of an agency, including a directory of documents, in the office of the agency director as provided in section 41-1091.

19. May file a complaint with the office of the ombudsman-citizens aide to investigate administrative acts of agencies as provided in chapter 8, article 5 of this title.

20. Unless specifically authorized by statute, may expect state agencies to avoid duplication of other laws that do not enhance regulatory clarity and to avoid dual permitting to the extent practicable as prescribed in section 41-1002.

21. May have the person's administrative hearing on contested cases pursuant to title 23, chapter 2 or 4 heard by an independent administrative law judge as prescribed by title 23, chapter 2 or 4.

22. Pursuant to section 41-1009, subsection E, may correct deficiencies identified during an inspection unless otherwise provided by law.

B. The enumeration of the rights listed in subsection A of this section does not grant any additional rights that are not prescribed in the sections referenced in subsection A of this section.

C. Each state agency that conducts audits, inspections or other regulatory enforcement actions pursuant to section 41-1009 shall create and clearly post on the agency's website a small business

bill of rights. The agency shall create the small business bill of rights by selecting the applicable rights prescribed in this section and section 41-1009 and any other agency-specific statutes and rules. The agency shall provide a written document of the small business bill of rights to the authorized on-site representative of the regulated small business. In addition to the rights listed in this section and section 41-1009, the agency notice of the small business bill of rights shall include the process by which a small business may file a complaint with the agency employees who are designated to assist members of the public or regulated community pursuant to section 41-1006. The notice must provide the contact information of the agency's designated employees. The agency notice must also state that if the regulated person has already made a reasonable effort with the agency to resolve the problem and still has not been successful, the regulated person may contact the office of ombudsman-citizens aide.

41-1006. Employees providing agency assistance; identification and publication

A. Each state agency shall publish annually in the register, in the state directory and in a telephone directory for Maricopa county the name or names of those employees who are designated by the agency to assist members of the public or regulated community in seeking information or assistance from the agency.

B. In any written communication between a state agency and a person, the state agency shall provide the name, telephone number and email address of the employee who is authorized and able to provide information about the communication if the communication does any of the following:

1. Demands payment of a tax, fee, penalty, fine or assessment.
2. Denies an application for a permit or license that is issued by the state agency.
3. Requests corrections, revisions or additional information or materials needed for approval of any application for a permit, license or other authorization that is issued by the state agency.

C. An employee who is authorized and able to provide information about any communication that is described in subsection B of this section shall reply within five business days after the state agency receives that communication.

41-1009. Inspections and audits; applicability; exceptions

A. An agency inspector, auditor or regulator who enters any premises of a regulated person for the purpose of conducting an inspection or audit shall, unless otherwise provided by law:

1. Present photo identification on entry of the premises.
2. On initiation of the inspection or audit, state the purpose of the inspection or audit and the legal authority for conducting the inspection or audit.
3. Disclose any applicable inspection or audit fees. Notwithstanding any other law, a regulated person being inspected or audited is responsible for only the direct and reasonable costs of the inspection or audit and is entitled to receive a detailed billing statement as described in paragraph 5, subdivision (e) of this subsection.
4. Afford an opportunity to have an authorized on-site representative of the regulated person accompany the agency inspector, auditor or regulator on the premises, except during confidential interviews.
5. Provide notice of the right to have on request:
    (a) Copies of any original documents taken by the agency during the inspection or audit if the agency is allowed by law to take original documents.

(b) A split of any samples taken during the inspection if the split of any samples would not prohibit an analysis from being conducted or render an analysis inconclusive.

(c) Copies of any analysis performed on samples taken during the inspection.

(d) Copies of any documents to be relied on to determine compliance with licensure or regulatory requirements if the agency is otherwise allowed by law to do so.

(e) A detailed billing statement that provides reasonable specificity of the inspection or audit fees imposed pursuant to paragraph 3 of this subsection and that cites the statute or rule that authorizes the fees being charged.

6. Inform each person whose conversation with the agency inspector, auditor or regulator during the inspection or audit is tape recorded that the conversation is being tape recorded.

7. Inform each person who is interviewed during the inspection or audit that:

(a) Statements made by the person may be included in the inspection or audit report.

(b) Participation in an interview is voluntary, unless the person is legally compelled to participate in the interview.

(c) The person is allowed at least twenty-four hours to review and revise any written witness statement that is drafted by the agency inspector, auditor or regulator and on which the agency inspector, auditor or regulator requests the person's signature.

(d) The agency inspector, auditor or regulator may not prohibit the regulated person from having an attorney or any other experts in their field present during the interview to represent or advise the regulated person.

8. At the end of the inspection, offer to review, with an authorized representative of the regulated person, the findings of the inspection and what agency actions the regulated person can expect.

B. On initiation of an audit or an inspection of any premises of a regulated person, an agency inspector, auditor or regulator shall provide the following in writing:

1. The rights described in subsection A of this section and section 41-1001.01, subsection C.

2. The name and telephone number of a contact person who is available to answer questions regarding the inspection or audit.

3. The due process rights relating to an appeal of a final decision of an agency based on the results of the inspection or audit, including the name and telephone number of a person to contact within the agency and any appropriate state government ombudsman.

4. A statement that the agency inspector, auditor or regulator may not take any adverse action, treat the regulated person less favorably or draw any inference as a result of the regulated person's decision to be represented by an attorney or advised by any other experts in their field.

5. A notice that if the information and documents provided to the agency inspector, auditor or regulator become a public record, the regulated person may redact trade secrets and proprietary and confidential information unless the information and documents are confidential pursuant to statute.

6. The time limit or statute of limitations applicable to the right of the agency inspector, auditor or regulator to file a compliance action against the regulated person arising from the inspection or audit, which applies to both new and amended compliance actions.

C. An agency inspector, auditor or regulator shall obtain the signature of the regulated person or

on-site representative of the regulated person on the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable, indicating that the regulated person or on-site representative of the regulated person has read the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable, and is notified of the regulated person's or on-site representative of the regulated person's inspection or audit and due process rights. The agency inspector, auditor or regulator may provide an electronic document of the writing prescribed in subsection B of this section and section 41-1001.01, subsection C and, at the request of the regulated person or on-site representative, obtain a receipt in the form of an electronic signature. The agency shall maintain a copy of this signature with the inspection or audit report and shall leave a copy with the regulated person or on-site representative of the regulated person. If a regulated person or on-site representative of the regulated person is not at the site or refuses to sign the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable, the agency inspector, auditor or regulator shall note that fact on the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable.

D. An agency that conducts an inspection shall give a copy of the inspection report to the regulated person or on-site representative of the regulated person either:

1. At the time of the inspection.
2. Notwithstanding any other state law, within thirty working days after the inspection.
3. As otherwise required by federal law.

E. The inspection report shall contain alleged deficiencies identified during an inspection. Unless otherwise provided by state or federal law, the agency shall provide the regulated person an opportunity to correct the alleged deficiencies unless the agency documents in writing as part of the inspection report that the alleged deficiencies are:

1. Committed intentionally.
2. Not correctable within a reasonable period of time as determined by the agency.
3. Evidence of a pattern of noncompliance as demonstrated by alleged deficiencies previously identified in an inspection report or other written notice at the same premises.
4. A significant risk to any person, the public health, safety or welfare or the environment.

F. If the agency is unsure whether a regulated person meets the exemptions in subsection E of this section, the agency shall provide the regulated person with an opportunity to correct the alleged deficiencies.

G. If the agency allows the regulated person an opportunity to correct the alleged deficiencies pursuant to subsection E of this section, the regulated person shall notify the agency when the alleged deficiencies have been corrected. Within thirty days after receipt of notification from the regulated person that the alleged deficiencies have been corrected, the agency shall determine if the regulated person is in substantial compliance and notify the regulated person whether or not the regulated person is in substantial compliance. If the regulated person fails to correct the alleged deficiencies or the agency determines the alleged deficiencies have not been corrected within a reasonable period of time, the agency may take any enforcement action authorized by law for the alleged deficiencies.

H. If the agency does not allow the regulated person an opportunity to correct alleged deficiencies pursuant to subsection E of this section, on the request of the regulated person, the agency shall provide a detailed written explanation of the reason that an opportunity to correct was not allowed.

I. An agency decision pursuant to subsection E or G of this section is not an appealable agency action.

J. At least once every month after the commencement of the inspection, an agency shall provide a regulated person with an update on the status of any agency action resulting from an inspection of the regulated person. An agency is not required to provide an update after the regulated person is notified that no agency action will result from the agency inspection or after the completion of agency action resulting from the agency inspection.

K. For agencies with authority under title 49, if, as a result of an inspection or any other investigation, an agency alleges that a regulated person is not in compliance with licensure or other applicable regulatory requirements, the agency shall provide written notice of that allegation to the regulated person. The notice shall contain the following information:

1. A citation to the statute, regulation, license or permit condition on which the allegation of deficiency is based, including the specific provisions in the statute, regulation, license or permit condition that are alleged to be violated.
2. Identification of any documents relied on when determining the allegation of deficiency.
3. An explanation stated with reasonable specificity of the regulatory and factual basis for the allegation of deficiency.
4. Instructions for obtaining a timely opportunity to discuss the alleged deficiencies with the agency.

L. Subsection K of this section applies only to inspections or any other investigations necessary for the issuance of a license or to determine compliance with licensure or other regulatory requirements. Subsection K of this section does not apply to an action taken pursuant to section 11-871, 11-876, 11-877, 49-457.01, 49-457.03 or 49-474.01. Issuance of a notice under subsection K of this section is not a prerequisite to otherwise lawful agency actions seeking an injunction or issuing an order if the agency determines that the action is necessary on an expedited basis to abate an imminent and substantial endangerment to public health or the environment and documents the basis for that determination in the documents initiating the action.

M. This section does not authorize an inspection or any other act that is not otherwise authorized by law.

N. Except as otherwise provided in subsection L of this section, this section applies only to inspections necessary for the issuance of a license or to determine compliance with licensure or other regulatory requirements applicable to a licensee and audits pursuant to enforcement of title 23, chapters 2 and 4. This section does not apply:

1. To criminal investigations, investigations under tribal state gaming compacts and undercover investigations that are generally or specifically authorized by law.
2. If the agency inspector, auditor or regulator has reasonable suspicion to believe that the regulated person may be engaged in criminal activity.
3. To the Arizona peace officer standards and training board established by section 41-1821.
4. To certificates of convenience and necessity that are issued by the corporation commission pursuant to title 40, chapter 2.

O. If an agency inspector, auditor or regulator gathers evidence in violation of this section, the violation may be a basis to exclude the evidence in a civil or administrative proceeding.

P. Failure of an agency, board or commission employee to comply with this section:

1. May subject the employee to disciplinary action or dismissal.
2. Shall be considered by the judge and administrative law judge as grounds for reduction of any fine or civil penalty.

Q. An agency may make rules to implement subsection A, paragraph 5 of this section.

R. Nothing in this section shall be used to exclude evidence in a criminal proceeding.
S. Subsection A, paragraph 7, subdivision (c) and subsection E of this section do not apply to the department of health services for the purposes of title 36, chapters 4 and 7.1.
T. Subsection B, paragraph 5 and subsection E of this section do not apply to the corporation commission for the purposes of title 44, chapters 12 and 13.
U. Except as otherwise prescribed by this section and notwithstanding any other law:

1. This section applies to all state agencies that conduct inspections and audits.
2. If a conflict arises between the rights afforded a regulated person pursuant to this section and the rights afforded a regulated person pursuant to another statute, this section governs.

Article 7 - Military Administrative Relief

41-1071. Military relief from administrative procedures; process

At any stage, any action or proceeding before any state agency, board, commission or administrative tribunal involving a person on active duty in the military service of the United States or this state as a necessary party, which occurs during such period of service or within sixty days thereafter, may be stayed in the discretion of the state administrative entity before which it is pending, on its own motion. The state administrative entity shall not stay an action or proceeding on its own motion if the service member makes a written objection to the stay. Such action or proceeding shall be stayed on application to the state administrative entity by such person or some person on his behalf, unless in the written decision of the state administrative entity, the ability of the service member to pursue the claim or defense in the action or proceeding is not prejudiced by the military service.

Article 7.1 - Licensing Time Frames

41-1072. Definitions

In this article, unless the context otherwise requires:

1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.
2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame.
3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.

41-1073. Time frames; exception

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.
2. The resources of the agency granting or denying the license.
3. The economic impact of delay on the regulated community.
4. The impact of the licensing decision on public health and safety.
5. The possible use of volunteers with expertise in the subject matter area.
6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
7. The possible increased cooperation between the agency and the regulated community.
8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.
2. Within seven days after receipt of initial application.
3. By a lottery method.

41-1074. Compliance with administrative completeness review time frame

A. An agency shall issue a written notice of administrative completeness or deficiencies to an applicant for a license within the administrative completeness review time frame.

B. If an agency determines that an application for a license is not administratively complete, the agency shall include a comprehensive list of the specific deficiencies in the written notice provided pursuant to subsection A of this section. If the agency issues a written notice of deficiencies within the administrative completeness time frame, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date that the agency receives the missing information from the applicant.

C. If an agency does not issue a written notice of administrative completeness or deficiencies within the administrative completeness review time frame, the application is deemed administratively

complete. If an agency issues a timely written notice of deficiencies, an application is not complete until the agency receives all requested information.
D. Except for an application submitted to the department of water resources pursuant to title 45, a determination by an agency that an application is not administratively complete is an appealable agency action, which if timely initiated, entitles the applicant to an adjudication on the merits of the administrative completeness of the application.

41-1075. Compliance with substantive review time frame
A. During the substantive review time frame, an agency may make one comprehensive written request for additional information. The agency and applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information. If an agency issues a comprehensive written request or a supplemental request by mutual written agreement for additional information, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date that the agency receives the additional information from the applicant.
B. By mutual written agreement, an agency and an applicant for a license may extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed twenty-five per cent of the overall time frame.

41-1076. Compliance with overall time frame
Unless an agency and an applicant for a license mutually agree to extend the substantive review time frame and the overall time frame pursuant to section 41-1075, an agency shall issue a written notice granting or denying a license within the overall time frame to an applicant. If an agency denies an application for a license, the agency shall include in the written notice at least the following information:

1. Justification for the denial with references to the statutes or rules on which the denial is based.
2. An explanation of the applicant's right to appeal the denial. The explanation shall include the number of days in which the applicant must file a protest challenging the denial and the name and telephone number of an agency contact person who can answer questions regarding the appeals process.

41-1077. Consequence for agency failure to comply with overall time frame; refund; penalty
A. If an agency does not issue to an applicant the written notice granting or denying a license within the overall time frame or within the time frame extension pursuant to section 41-1075, the agency shall refund to the applicant all fees charged for reviewing and acting on the application for the license and shall excuse payment of any such fees that have not yet been paid. The agency shall not require an applicant to submit an application for a refund pursuant to this subsection. The refund shall be made within thirty days after the expiration of the overall time frame or the time frame extension. The agency shall continue to process the application subject to subsection B of this section. Notwithstanding any other statute, the agency shall make the refund from the fund in which the application fees were originally deposited. This section applies only to license applications that were subject to substantive review.
B. Except for license applications that were not subject to substantive review, the agency shall pay a penalty to the state general fund for each month after the expiration of the overall time frame or

the time frame extension until the agency issues written notice to the applicant granting or denying the license. The agency shall pay the penalty from the agency fund in which the application fees were originally deposited. The penalty shall be two and one-half per cent of the total fees received by the agency for reviewing and acting on the application for each license that the agency has not granted or denied on the last day of each month after the expiration of the overall time frame or time frame extension for that license.

41-1079. Information required to be provided

A. An agency that issues licenses shall provide the following information to an applicant at the time the applicant obtains an application for a license:

1. A list of all of the steps the applicant is required to take in order to obtain the license.
2. The applicable licensing time frames.
3. The name and telephone number of an agency contact person who can answer questions or provide assistance throughout the application process.

B. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

Article 7.2 - Licensing Requirements

41-1080. Licensing eligibility; authorized presence; documentation; applicability; definitions

A. No agency may enter into or amend any delegation agreement unless the delegation agreement clearly sets forth all of the following:

1. Each function, power or duty being delegated by the agency, the term of the agreement and the procedures for terminating the agreement.
2. The standards of performance required to fulfill the agreement.
3. The types of fees that will be imposed on regulated parties and the legal authority for imposing any such fees.
4. The qualifications of the personnel of the political subdivision responsible for exercising the delegated functions, powers or duties.
5. Record keeping and reporting requirements.
6. Auditing requirements if the delegation agreement includes the transfer of funds from the delegating agency to the political subdivision.
7. A definition of the enforcement role if enforcement authority is being delegated.
8. Procedures for resolving conflicts between the parties to the delegation agreement.
9. Procedures for amending the delegation agreement.
10. The names and addresses of primary contact persons at both the delegating agency and the political subdivision.

B. An agency that seeks to delegate functions, powers or duties shall file with the secretary of state a summary of the proposed delegation agreement. The summary shall provide the name of a person to contact in the agency with questions or comments and shall state that a copy of the proposed delegation agreement may be obtained upon request from the agency. The secretary of state shall publish the summary in the next register.

C. For at least thirty days after publication of the notice of the proposed delegation agreement in the register, the agency shall provide persons the opportunity to submit in writing statements, arguments, data and views on the proposed delegation agreement and shall provide an opportunity for a public hearing if there is sufficient public interest.

D. A public hearing on the delegation agreement shall not be held earlier than thirty days after the notice of its location and time is published in the register. The agency shall determine a location and time for the public hearing that affords a reasonable opportunity for persons to participate. At that public hearing persons may present oral argument, data and views on the proposed delegation agreement.
E. After the conclusion of the public comment period and hearing, if any, the agency shall prepare a written summary, responding to the comments received, whether oral or written. The agency shall consider the comments received from the public in determining whether to enter into the proposed delegation agreement. The agency shall give written notice to those persons who submitted comments of the agency's decision on whether to enter into the proposed delegation agreement. The delegation agreement is effective thirty days after written notice of the agency's final decision is given unless an appeal is filed and pending before the council pursuant to subsection F.
F. A person who filed written comments with the delegating agency objecting to all or part of the proposed delegation agreement may appeal to the council the delegating agency's decision to enter into the delegation agreement within thirty days after the agency gives written notice to enter into the delegation agreement pursuant to subsection E. The council shall place the appeal of the delegation agreement on its next meeting agenda if at least three council members make such a request of the council chairman within two weeks of the filing of the appeal.
G. Delegation agreements that are appealed to and considered by the council shall become effective upon council approval of the delegation agreement. Delegation agreements that are appealed to the council and not considered by the council are effective either thirty days after written notice of the agency's final decision is given pursuant to subsection E, or two weeks after an appeal is filed if at least three council members do not request council consideration of the delegation agreement pursuant to subsection F, whichever date is later.
H. The council shall not approve the delegation agreement if it does not meet the provisions set forth in subsection A or if the agency has not provided adequate notice and an opportunity for comment to the public.

41-1080.01. Licensing fees; waiver; annual report; definitions

A. Except for an individual who applies for a license pursuant to title 36, chapter 4, article 10 or chapter 28.1, an agency shall waive any fee charged for an initial license for any of the following individuals if the individual is applying for that specific license in this state for the first time:

1. Any individual applicant whose family income does not exceed two hundred percent of the federal poverty guidelines.
2. Any active duty military service member's spouse.
3. Any honorably discharged veteran who has been discharged not more than two years before application.

B. On or before March 1 of each year, the department of administration shall report to the president of the senate, the speaker of the house of representatives, the joint legislative budget committee and the governor's office of strategic planning and budgeting the total number of waived licensing fees by each agency. The report shall specify for which purpose the fee was waived pursuant to this section.
C. For the purposes of this section, "agency" and "license" have the same meanings prescribed in section 41-1080.

Article 10 - Uniform Administrative Hearing Procedures

41-1092. Definitions

In this article, unless the context otherwise requires:

1. "Administrative law judge" means an individual or an agency head, board or commission that sits as an administrative law judge, that conducts administrative hearings in a contested case or an appealable agency action and that makes decisions regarding the contested case or appealable agency action.
2. "Administrative law judge decision" means the findings of fact, conclusions of law and recommendations or decisions issued by an administrative law judge.
3. "Adversely affected party" means:
    (a) An individual who both:
        (i) Provides evidence of an actual injury or economic damage that the individual has suffered or will suffer as a direct result of the action and not due to being a competitor or a general taxpayer.
        (ii) Timely submits comments on the license application that include, with sufficient specificity, the questions of law, if applicable, that are the basis for the appeal.
    (b) A group or association that identifies, by name and physical address in the notice of appeal, a member of the group or association who would be an adversely affected party in the individual's own right.
4. "Appealable agency action" means an action that determines the legal rights, duties or privileges of a party, including the administrative completeness of an application other than an application submitted to the department of water resources pursuant to title 45, and that is not a contested case. Appealable agency actions do not include interim orders by self-supporting regulatory boards, rules, orders, standards or statements of policy of general application issued by an administrative agency to implement, interpret or make specific the legislation enforced or administered by it or clarifications of interpretation, nor does it mean or include rules concerning the internal management of the agency that do not affect private rights or interests. For the purposes of this paragraph, administrative hearing does not include a public hearing held for the purpose of receiving public comment on a proposed agency action.
5. "Director" means the director of the office of administrative hearings.
6. "Final administrative decision" means a decision by an agency that is subject to judicial review pursuant to title 12, chapter 7, article 6.
7. "Licensee":
    (a) Means any individual or business entity that has been issued a license by a state agency to engage in any business or activity in this state and that is subject to a licensing decision.
    (b) Includes any individual or business entity that has applied for such a license and that appeals a licensing decision pursuant to section 41-1092.08 or 41-1092.12.
8. "Office" means the office of administrative hearings.
9. "Self-supporting regulatory board" means any of the following:
    (a) The Arizona state board of accountancy.
    (b) The barbering and cosmetology board.
    (c) The board of behavioral health examiners.

(d) The Arizona state boxing and mixed martial arts commission.
(e) The state board of chiropractic examiners.
(f) The state board of dental examiners.
(g) The Arizona game and fish commission.
(h) The board of homeopathic and integrated medicine examiners.
(i) The Arizona medical board.
(j) The naturopathic physicians medical board.
(k) The Arizona state board of nursing.
(l) The board of examiners of nursing care institution administrators and assisted living facility managers.
(m) The board of occupational therapy examiners.
(n) The state board of dispensing opticians.
(o) The state board of optometry.
(p) The Arizona board of osteopathic examiners in medicine and surgery.
(q) The Arizona peace officer standards and training board.
(r) The Arizona state board of pharmacy.
(s) The board of physical therapy.
(t) The state board of podiatry examiners.
(u) The state board for private postsecondary education.
(v) The state board of psychologist examiners.
(w) The board of respiratory care examiners.
(x) The state board of technical registration.
(y) The Arizona state veterinary medical examining board.
(z) The acupuncture board of examiners.
(aa) The Arizona regulatory board of physician assistants.
(bb) The board of athletic training.
(cc) The board of massage therapy.

41-1092.01. Office of administrative hearings; director; powers and duties; fund

A. An office of administrative hearings is established.

B. The governor shall appoint the director pursuant to section 38-211. At a minimum, the director shall have the experience necessary for appointment as an administrative law judge. The director also shall possess supervisory, management and administrative skills, as well as knowledge and experience relating to administrative law.

C. The director shall:

1. Serve as the chief administrative law judge of the office.
2. Make and execute the contracts and other instruments that are necessary to perform the director's duties.
3. Subject to chapter 4, article 4 of this title, hire employees, including full-time administrative law judges, and contract for special services, including temporary administrative law judges, that are necessary to carry out this article. An administrative law judge employed or contracted by the office shall have graduated from an accredited college of law or shall have at least two years of administrative or managerial experience in the subject matter or agency section the administrative law judge is assigned to in the office.
4. Make rules that are necessary to carry out this article, including rules governing ex parte

communications in contested cases.

5. Submit a report to the governor, speaker of the house of representatives and president of the senate by November 1 of each year describing the activities and accomplishments of the office. The director's annual report shall include a summary of the extent and effect of agencies' utilization of administrative law judges, court reporters and other personnel in proceedings under this article and recommendations for changes or improvements in the administrative procedure act or any agency's practice or policy with respect to the administrative procedure act. The director shall provide a copy of the report to the secretary of state.

6. Secure, compile and maintain all decisions, opinions or reports of administrative law judges issued pursuant to this article and the reference materials and supporting information that may be appropriate.

7. Develop, implement and maintain a program for the continuing training and education of administrative law judges and agencies in regard to their responsibilities under this article. The program shall require that an administrative law judge receive training in the technical and subject matter areas of the sections to which the administrative law judge is assigned.

8. Develop, implement and maintain a program of evaluation to aid the director in the evaluation of administrative law judges appointed pursuant to this article that includes comments received from the public.

9. Annually report the following to the governor, the president of the senate and the speaker of the house of representatives and provide a copy of this report to the secretary of state by December 1 for the prior fiscal year:

(a) The number of administrative law judge decisions rejected or modified by agency heads.

(b) By category, the number and disposition of motions filed pursuant to section 41-1092.07, subsection A to disqualify office administrative law judges for bias, prejudice, personal interest or lack of expertise.

(c) By agency, the number and type of violations of section 41-1009.

10. Schedule hearings pursuant to section 41-1092.05 on the request of an agency or the filing of a notice of appeal pursuant to section 41-1092.03.

D. The director shall not require legal representation to appear before an administrative law judge.

E. Except as provided in subsection F of this section, all state agencies supported by state general fund sources, unless exempted by this article, and the registrar of contractors shall use the services and personnel of the office to conduct administrative hearings. All other agencies shall contract for services and personnel of the office to conduct administrative hearings.

F. An agency head, board or commission that directly conducts an administrative hearing as an administrative law judge is not required to use the services and personnel of the office for that hearing.

G. Each state agency, and each political subdivision contracting for office services pursuant to subsection I of this section, shall make its facilities available, as necessary, for use by the office in conducting proceedings pursuant to this article.

H. The office shall employ full-time administrative law judges to conduct hearings required by this article or other laws as follows:

1. The director shall assign administrative law judges from the office to an agency, on either

a temporary or a permanent basis, at supervisory or other levels, to preside over contested cases and appealable agency actions in accordance with the special expertise of the administrative law judge in the subject matter of the agency.

2. The director shall establish the subject matter and agency sections within the office that are necessary to carry out this article. Each subject matter and agency section shall provide training in the technical and subject matter areas of the section as prescribed in subsection C, paragraph 7 of this section.

I. If the office cannot furnish an office administrative law judge promptly in response to an agency request, the director may contract with qualified individuals to serve as temporary administrative law judges. These temporary administrative law judges are not employees of this state.

J. The office may provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this article. The director may enter into contracts with political subdivisions of this state, and these political subdivisions may contract with the director for the purpose of providing administrative law judges and reporters for administrative proceedings or informal dispute resolution. The contract may define the scope of the administrative law judge's duties. Those duties may include the preparation of findings, conclusions, decisions or recommended decisions or a recommendation for action by the political subdivision. For these services, the director shall request payment for services directly from the political subdivision for which the services are performed, and the director may accept payment on either an advance or reimbursable basis.

K. The office shall apply monies received pursuant to subsections E and J of this section to offset its actual costs for providing personnel and services.

L. The office shall receive complaints against a county, a local government as defined in section 9-1401 or a video service provider as defined in section 9-1401 or 11-1901 and shall comply with the duties imposed on the office pursuant to title 9, chapter 13 for complaints involving local governments and title 11, chapter 14 for complaints involving counties.

41-1092.02. Appealable agency actions; application of procedural rules; exemption from article

A. This article applies to all contested cases as defined in section 41-1001 and all appealable agency actions, except contested cases with or appealable agency actions of:

1. The state department of corrections.
2. The board of executive clemency.
3. The industrial commission of Arizona.
4. The Arizona corporation commission.
5. The Arizona board of regents and institutions under its jurisdiction.
6. The state personnel board.
7. The department of juvenile corrections.
8. The department of transportation, except as provided in title 28, chapter 30, article 2.
9. The department of economic security except as provided in section 46-458.
10. The department of revenue regarding:

(a) Income tax or withholding tax.

(b) Any tax issue related to information associated with the reporting of income tax or withholding tax unless the taxpayer requests in writing that this article apply and waives confidentiality under title 42, chapter 2, article 1.

11. The board of tax appeals.
12. The state board of equalization.
13. The state board of education, but only in connection with contested cases and appealable agency actions related to either:
(a) Applications for issuance or renewal of a certificate and discipline of certificate holders and noncertificated persons pursuant to sections 15-203, 15-505, 15-534, 15-534.01, 15-535, 15-545 and 15-550.
(b) The Arizona empowerment scholarship account program pursuant to title 15, chapter 19.
14. The board of fingerprinting.
15. The department of child safety except as provided in sections 8-506.01 and 8-811.

B. Unless waived by all parties, an administrative law judge shall conduct all hearings under this article, and the procedural rules set forth in this article and rules made by the director apply.

C. Except as provided in subsection A of this section:
1. A contested case heard by the office of administrative hearings regarding taxes administered under title 42 shall be subject to section 42-1251.
2. A final decision of the office of administrative hearings regarding taxes administered under title 42 may be appealed by either party to the director of the department of revenue, or a taxpayer may file and appeal directly to the board of tax appeals pursuant to section 42-1253.

D. Except as provided in subsections A, B, E, F and G of this section and notwithstanding any other administrative proceeding or judicial review process established in statute or administrative rule, this article applies to all appealable agency actions and to all contested cases.

E. Except for a contested case or an appealable agency action regarding unclaimed property, sections 41-1092.03, 41-1092.08 and 41-1092.09 do not apply to the department of revenue.

F. The board of appeals established by section 37-213 is exempt from:
1. The time frames for hearings and decisions provided in section 41-1092.05, subsection A, section 41-1092.08 and section 41-1092.09.
2. The requirement in section 41-1092.06, subsection A to hold an informal settlement conference at the appellant's request if the sole subject of an appeal pursuant to section 37-215 is the estimate of value reported in an appraisal of lands or improvements.

G. Auction protest procedures pursuant to title 37, chapter 2, article 4.1 are exempt from this article.

41-1092.03. Notice of appealable agency action or contested case; hearing; informal settlement conference; applicability

A. Except as provided in subsection D of this section, an agency shall serve notice of an appealable agency action or contested case pursuant to section 41-1092.04. The notice shall:
1. Identify the statute or rule that is alleged to have been violated or on which the action is based.
2. Identify with reasonable particularity the nature of any alleged violation, including, if applicable, the conduct or activity constituting the violation.
3. Include a description of the party's right to request a hearing on the appealable agency action or contested case.
4. Include a description of the party's right to request an informal settlement conference pursuant to section 41-1092.06.

B. A party may obtain a hearing on an appealable agency action or contested case by filing a notice of appeal or request for a hearing with the agency within thirty days after receiving the notice prescribed in subsection A of this section. The notice of appeal or request for a hearing may be filed by a party whose legal rights, duties or privileges were determined by the appealable agency action or contested case. A notice of appeal or request for a hearing also may be filed by a party who will be adversely affected by the appealable agency action or contested case and who exercised any right provided by law to comment on the action being appealed or contested, provided that the grounds for the notice of appeal or request for a hearing are limited to issues raised in that party's comments. The notice of appeal or request for a hearing shall identify the party, the party's address, the agency and the action being appealed or contested and shall contain at least the following:

1. A concise statement of the reasons for the appeal or request for a hearing.
2. Detailed and complete information regarding all questions of law, if applicable, that are the basis for the appeal.
3. All relevant supporting documentation.
4. How the party is an adversely affected party, if applicable.

C. The agency shall notify the office of the appeal or request for a hearing and the office shall schedule an appeal or contested case hearing pursuant to section 41-1092.05, except as provided in section 41-1092.01, subsection F.

D. If good cause is shown an agency head may accept an appeal or request for a hearing that is not filed in a timely manner.

E. This section does not apply to a contested case if the agency:

1. Initiates the contested case hearing pursuant to law other than this chapter and not in response to a request by another party.
2. Is not required by law, other than this chapter, to provide an opportunity for an administrative hearing before taking action that determines the legal rights, duties or privileges of an applicant for a license.

41-1092.04. Service of documents

Unless otherwise provided in this article, every notice or decision under this article shall be served by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the agency and every other party to the action to the party's last address of record with the agency. Each party shall inform the agency and the office of any change of address within five days of the change.

41-1092.05. Scheduling of hearings; prehearing conferences

A. Except as provided in subsections B and C, hearings for:

1. Appealable agency actions shall be held within sixty days after the notice of appeal is filed.
2. Contested cases shall be held within sixty days after the agency's request for a hearing.

B. Hearings for appealable agency actions of or contested cases with self-supporting regulatory boards that meet quarterly or less frequently shall be held at the next meeting of the board after the board receives the written decision of an administrative law judge or the issuance of the notice of hearing, except that:

1. If the decision of the administrative law judge is received or the notice of hearing is issued within thirty days before the board meets, the hearing shall be held at the following meeting of the board.

2. If good cause is shown, the hearing may be held at a later meeting of the board.

C. The date scheduled for the hearing may be advanced or delayed on the agreement of the parties or on a showing of good cause.

D. The agency shall prepare and serve a notice of hearing on all parties to the appeal or contested case at least thirty days before the hearing. The notice shall include:

1. A statement of the time, place and nature of the hearing.

2. A statement of the legal authority and jurisdiction under which the hearing is to be held.

3. A reference to the particular sections of the statutes and rules involved.

4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. After the initial notice and on application, a more definite and detailed statement shall be furnished.

E. Notwithstanding subsection D, a hearing shall be expedited as provided by law or upon a showing of extraordinary circumstances or the possibility of irreparable harm if the parties to the appeal or contested case have actual notice of the hearing date. Any party to the appeal or contested case may file a motion with the director asserting the party's right to an expedited hearing. The right to an expedited hearing shall be listed on any abatement order. The Arizona health care cost containment system administration may file a motion with every member grievance and eligibility appeal that cites federal law and that requests that a hearing be set within thirty days after the motion is filed.

F. Prehearing conferences may be held to:

1. Clarify or limit procedural, legal or factual issues.

2. Consider amendments to any pleadings.

3. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing.

4. Obtain stipulations or rulings regarding testimony, exhibits, facts or law.

5. Schedule deadlines, hearing dates and locations if not previously set.

6. Allow the parties opportunity to discuss settlement.

41-1092.06. Appeals of agency actions and contested cases; informal settlement conferences; applicability

A. If requested by the appellant of an appealable agency action or the respondent in a contested case, the agency shall hold an informal settlement conference within fifteen days after receiving the request. A request for an informal settlement conference shall be in writing and shall be filed with the agency no later than twenty days before the hearing. If an informal settlement conference is requested, the agency shall notify the office of the request and the outcome of the conference, except as provided in section 41-1092.01, subsection F. The request for an informal settlement conference does not toll the sixty day period in which the administrative hearing is to be held pursuant to section 41-1092.05.

B. If an informal settlement conference is held, a person with the authority to act on behalf of the agency must represent the agency at the conference. The agency representative shall notify the appellant in writing that statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference shall waive their right to object to the participation of the agency representative in the final administrative decision.

41-1092.07. Hearings

A. A party to a contested case or appealable agency action may file a nonperemptory motion with the director to disqualify an office administrative law judge from conducting a hearing for bias, prejudice, personal interest or lack of technical expertise necessary for a hearing.

B. The parties to a contested case or appealable agency action have the right to be represented by counsel or to proceed without counsel, to submit evidence and to cross-examine witnesses.

C. The administrative law judge may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil matters. The administrative law judge may administer oaths and affirmations to witnesses.

D. All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the administrative law judge may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. The administrative law judge shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make the cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time and protecting witnesses from harassment or undue embarrassment.

E. All hearings shall be recorded. The administrative law judge shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the agency's expense. Any party that requests a transcript of the proceeding shall pay the costs of the transcript to the court reporter or other transcriber.

F. Unless otherwise provided by law, the following apply:

1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings is grounds for reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.

2. Copies of documentary evidence may be received in the discretion of the administrative law judge. On request, the parties shall be given an opportunity to compare the copy with the original.

3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. The parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence. An agency-issued license that substantially complied with the applicable licensing requirements establishes a prima facie demonstration that the license meets all state and federal legal and technical requirements and the license would protect public health, welfare and the environment. An adversely affected party may rebut a prima facie demonstration by presenting clear and convincing evidence demonstrating that one or more provisions in the license violate a specifically applicable state or federal requirement. If an adversely affected party rebuts a prima facie demonstration, the applicant or licensee

and the agency director may present additional evidence to support issuing the license.

4. On application of a party or the agency and for use as evidence, the administrative law judge may permit a deposition to be taken, in the manner and on the terms designated by the administrative law judge, of a witness who cannot be subpoenaed or who is unable to attend the hearing. The administrative law judge may order subpoenas for the production of documents if the party seeking the discovery demonstrates that the party has reasonable need of the materials being sought. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness in court, unless otherwise provided by law or agency rule. Notwithstanding section 12-2212, subpoenas, depositions or other discovery shall not be permitted except as provided by this paragraph or subsection C of this section.

5. Informal disposition may be made by stipulation, agreed settlement, consent order or default.

6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

7. A final administrative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Conclusions of law shall specifically address the agency's authority to make the decision consistent with section 41-1030.

G. Except as otherwise provided by law:

1. At a hearing on an agency's denial of a license or permit or a denial of an application or request for modification of a license or permit, the applicant has the burden of persuasion.

2. At a hearing on an agency action to suspend, revoke, terminate or modify on its own initiative material conditions of a license or permit, the agency has the burden of persuasion.

3. At a hearing on an agency's imposition of fees or penalties or any agency compliance order, the agency has the burden of persuasion.

4. At a hearing held pursuant to chapter 23 or 24 of this title, the appellant or claimant has the burden of persuasion.

H. Subsection G of this section does not affect the law governing burden of persuasion in an agency denial of, or refusal to issue, a license renewal.

41-1092.08. Final administrative decisions; review; exception

A. The administrative law judge of the office shall issue a written decision within twenty days after the hearing is concluded. The written decision shall contain a concise explanation of the reasons supporting the decision, including the findings of fact and conclusions of law. The administrative law judge shall serve a copy of the decision on all parties to the contested case or appealable agency action. On request of the agency, the office shall also transmit to the agency the record of the hearing as described in section 12-904, except as provided in section 41-1092.01, subsection F.

B. Within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, the head of the agency, executive director, board or commission may review the decision and accept, reject or modify it. If the head of the agency, executive director, board or commission declines to review the administrative law judge's decision, the agency shall serve a copy of the decision on all parties. If the head of the agency, executive director, board or commission rejects or modifies the decision, the agency head,

executive director, board or commission must file with the office, except as provided in section 41-1092.01, subsection F, and serve on all parties a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification of each finding of fact or conclusion of law. If there is a rejection or modification of a conclusion of law, the written justification shall be sent to the president of the senate and the speaker of the house of representatives.

C. A board or commission whose members are appointed by the governor may review the decision of the agency head, as provided by law, and make the final administrative decision.

D. Except as otherwise provided in this subsection, if the head of the agency, the executive director or a board or commission does not accept, reject or modify the administrative law judge's decision within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, as evidenced by receipt of such action by the office by the thirtieth day, the office shall certify the administrative law judge's decision as the final administrative decision. If the board or commission meets monthly or less frequently, if the office sends the administrative law judge's decision at least thirty days before the next meeting of the board or commission and if the board or commission does not accept, reject or modify the administrative law judge's decision at the next meeting of the board or commission, as evidenced by receipt of such action by the office within five days after the meeting, the office shall certify the administrative law judge's decision as the final administrative decision.

E. For the purposes of subsections B and D of this section, a copy of the administrative law judge's decision is sent on personal delivery of the decision or five days after the decision is mailed to the head of the agency, executive director, board or commission.

F. The decision of the agency head is the final administrative decision unless one of the following applies:

1. The agency head, executive director, board or commission does not review the administrative law judge's decision pursuant to subsection B of this section or does not reject or modify the administrative law judge's decision as provided in subsection D of this section, in which case the administrative law judge's decision is the final administrative decision.
2. The decision of the agency head is subject to review pursuant to subsection C of this section.
3. The licensee accepts the administrative law judge's decision concerning the appeal of a licensing decision as final pursuant to subsection I of this section.

G. If a board or commission whose members are appointed by the governor makes the final administrative decision as an administrative law judge or on review of the decision of the agency head, the decision is not subject to review by the head of the agency.

H. A party may appeal a final administrative decision pursuant to title 12, chapter 7, article 6, except as provided in section 41-1092.09, subsection B and except that if a party has not requested a hearing on receipt of a notice of appealable agency action pursuant to section 41-1092.03, the appealable agency action is not subject to judicial review. The license is not stayed during the appeal unless the affected party that has appealed applies to the superior court for an order requiring a stay pending final disposition of the appeal as necessary to prevent an imminent and substantial endangerment to public health or the environment. The court shall determine the matter under the standards applicable for granting preliminary injunctions.

I. Except for a licensing decision concerning the administrative completeness of an application submitted by a licensee or a licensing decision where the agency, executive director, board or com-

mission has determined that the licensee poses a threat of grave harm or danger to the public or has acted with complete disregard for the well-being of the public in engaging or in being allowed to engage in the licensee's regulated business activity, for any appealable agency action or contested case involving a licensing decision, the licensee may accept the decision not more than ten days after receiving the administrative law judge's written decision. If the licensee accepts the administrative law judge's written decision, the decision shall be certified as the final decision by the office. If the licensee does not accept the administrative law judge's written decision as the final decision in the matter, the head of the agency, executive director, board or commission may review the decision and accept, reject or modify the decision. If the head of the agency, executive director, board or commission intends to reject or modify the decision, the parties shall meet and confer, within thirty days after receiving the administrative law judge's decision pursuant to subsection A of this section, concerning the agency's proposed modifications to the findings of fact and conclusions of law. Within twenty days after conferring, the head of the agency, executive director, board or commission shall file its final decision in accordance with subsection B of this section. This subsection does not apply to any appealable agency actions of the department of water resources pursuant to title 45.

J. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

41-1092.09. Rehearing or review

A. Except as provided in subsection B of this section:

1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.
2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.
3. After a hearing has been held and a final administrative decision has been entered pursuant to section 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

B. A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after the service of the administrative decision that is subject to rehearing or review in order to be eligible for judicial review pursuant to title 12, chapter 7, article 6. The board shall notify the parties in the administrative decision that is subject to rehearing or review that a failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.

C. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.

D. Except as provided in this subsection, the agency head, executive director, board or commission shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period. A self-supporting regulatory board shall rule on the motion within fifteen days after the response to the motion is filed or at the board's next meeting after the motion is received, whichever is later.

41-1092.10. Compulsory testimony; privilege against self-incrimination

A. A person may not refuse to attend and testify or produce evidence sought by an agency in an

action, proceeding or investigation instituted by or before the agency on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture unless it constitutes the compelled testimony or the private papers of the person that would be privileged evidence either pursuant to the fifth amendment of the Constitution of the United States or article II, section 10, Constitution of Arizona, and the person claims the privilege before the production of the testimony or papers.

B. If a person asserts the privilege against self-incrimination and the agency seeks to compel production of the testimony or documents sought, the office or agency as provided in section 41-1092.01, subsection F may issue, with the prior written approval of the attorney general, a written order compelling the testimony or production of documents in proceedings and investigations before the office or agency as provided in section 41-1092.01, subsection F or apply to the appropriate court for such an order in other actions or proceedings.

C. Evidence produced pursuant to subsection B of this section is not admissible in evidence or usable in any manner in a criminal prosecution, except for perjury, false swearing, tampering with physical evidence or any other offense committed in connection with the appearance made pursuant to this section against the person testifying or the person producing the person's private papers.

41-1092.11. Licenses; renewal; revocation; suspension; annulment; withdrawal

A. If a licensee makes timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

B. Revocation, suspension, annulment or withdrawal of any license is not lawful unless, before the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this article. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the agency may order summary suspension of a license pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

41-1092.12. Private right of action; recovery of costs and fees; definitions

A. If an agency takes an action against a party that is arbitrary, capricious or not in accordance with law, the action is an appealable agency action if all of the following apply:

1. Within ten days after receiving notification of the action that is arbitrary, capricious or not in accordance with law, the party notifies the director of the agency in writing of the party's intent to file a claim pursuant to this section. This notice shall include a description of the action the party claims to be arbitrary, capricious or not in accordance with law and reasons why the action is arbitrary, capricious or not in accordance with law.
2. The agency continues the action that is arbitrary, capricious or not in accordance with law more than ten days after the agency receives the notice.
3. The action is not excluded from the definition of appealable agency action as defined in section 41-1092.

B. This section only applies if an administrative remedy or an administrative or a judicial appeal of final agency action is not otherwise provided by law.

C. If the party prevails, the agency shall pay reasonable costs and fees to the party from any monies

appropriated to the agency and available for that purpose or from other operating monies of the agency. If the agency fails or refuses to pay the award within fifteen days after the demand, and if no further review or appeal of the award is pending, the prevailing party may file a claim with the department of administration. The department of administration shall pay the claim within thirty days in the same manner as an uninsured property loss under chapter 3.1, article 1 of this title, except that the agency is responsible for the total amount awarded and shall pay it from its operating monies. If the agency had appropriated monies available for paying the award at the time it failed or refused to pay, the legislature shall reduce the agency's operating appropriation for the following fiscal year by the amount of the award and shall appropriate that amount to the department of administration as reimbursement for the loss.

D. If the administrative law judge determines that the appealable agency action is frivolous, the administrative law judge may require the party to pay reasonable costs and fees to the agency in responding to the appeal filed before the office of administrative hearings.

E. Notwithstanding any other law, a licensee may forgo an administrative appeal and seek judicial review of an agency's grant, denial, modification or revocation of a permit issued pursuant to title 49.

F. For the purposes of this section:

1. "Action against the party" means any of the following that results in the expenditure of costs and fees:
   (a) A decision.
   (b) An inspection.
   (c) An investigation.
   (d) The entry of private property.
   (e) A notice of violation.
2. "Agency" means the department of environmental quality established pursuant to title 49, chapter 1, article 1.
3. "Costs and fees" means reasonable attorney and professional fees.
4. "Notice of violation" means a written notice issued after an inspection or investigation pursuant to section 41-1009 that documents and communicates an alleged deficiency meeting one or more of the criteria listed in section 41-1009, subsection E.
5. "Party" means an individual, partnership, corporation, association and public or private organization at whom the action was directed and who has expended costs and fees as a result of the action against the party.

Article 11 - Occupational Regulation

41-1093. Definitions

In this article, unless the context otherwise requires:

1. "Health, safety or welfare":
   (a) Means the protection of members of the public against harm, fraud or loss, including the preservation of public security, order or health.
   (b) Does not include the protection of existing businesses or agencies, whether publicly or privately owned, against competition.
2. "Individual" means a natural person.
3. "Occupational regulation":
   (a) Means a rule, regulation, practice or policy that allows an individual to use an

occupational title or work in a lawful occupation, trade or profession or a cease and desist demand or other regulatory requirement that prevents an individual from using an occupational title or working in a lawful occupation, trade or profession.

(b) Does not include:

(i) A business license, facility license, building permit or zoning and land use regulation.

(ii) Any rule or regulation relating to an institution or individual that is subject to title 36, chapter 4, article 10 or chapter 20.

(iii) Any license or regulation that is required by federal law.

(iv) Any rule or regulation adopted by an agency that is authorized by statute and has been approved by the council pursuant to section 41-1052.

(v) Any rule or regulation relating to emergency medical and transportation services that originated with a public access system or medical transportation requested by a medical authority or by the patient for which a certificate of necessity is required under section 36-2233.

(vi) Any rule relating to the licensing of a securities dealer, securities salesman, investment adviser or investment adviser representative.

41-1093.01. Occupational regulations; limitations

An agency shall limit all occupational regulations to regulations that are demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern.

41-1093.02. Administrative proceedings

A. Any individual harmed by an occupational regulation may petition an agency to repeal or modify any occupational regulation within the agency's jurisdiction.

B. Within ninety days after a petition is filed, the agency shall repeal the occupational regulation, modify the occupational regulation to comply with section 41-1093.01, recommend legislative action, if required, to repeal or amend the occupational regulation to comply with section 41-1093.01 or state the basis on which the agency concludes that the occupational regulation complies with section 41-1093.01.

41-1093.03. Enforcement; fees and costs

A. Whether or not a petition is filed pursuant to section 41-1093.02, any individual may file an action in a court of general jurisdiction to challenge an occupational regulation.

B. To prevail in an action challenging the occupational regulation, the court must find by a preponderance of the evidence that the challenged occupational regulation on its face or in its effect burdens the entry into or participation in an occupation, trade or profession and that this state has failed to prove by a preponderance of the evidence that the challenged occupational regulation is demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern.

C. If the court finds for the plaintiff, the court shall enjoin further enforcement of the challenged occupational regulation and shall award reasonable attorney fees and costs to the plaintiff.

41-1093.04. Occupational license, permit or certificate or other state recognition rights; petition for review of criminal record; annual report

Amended by Ariz. Sess. Laws Ch. 83 and 91, (2024)

A. A person with a criminal record may petition an agency, at any time, including before obtaining any required education or experience, taking any examination or paying any fee, for a determination of whether the person's criminal record disqualifies the person from obtaining a license, permit, certificate or other state recognition.

B. In the petition, the person shall include:

1. The person's complete criminal history record or authorization for the agency to obtain the person's criminal history record.

2. Any additional information about the person's current circumstances, including the time since the offense was committed and the sentence was completed, the payment of any court-ordered restitution, evidence of rehabilitation, testimonials, employment history and employment aspirations.

C. The agency shall determine whether the person's criminal record disqualifies the person from obtaining a license, permit, certificate or other state recognition.

D. Notwithstanding any other law or rule, when making a determination regarding the person's petition, the agency may determine that the person's criminal record disqualifies the person from obtaining a license, permit, certificate or other state recognition only if the agency concludes that this state has an important interest in protecting public safety that is superior to the person's right and either of the following applies:

1. The person was convicted of any of the following, the conviction occurred within three years before the date of the petition, excluding any period of time that the person was imprisoned in the custody of the state department of corrections, and the conviction has not been set aside or sealed:

(a) A felony offense.

(b) A violent crime as defined in section 13-901.03.

(c) An offense included in title 13, chapter 20, 21 or 22 or section 13-2310 or 13-2311 if the license, permit, certificate or other state recognition is for an occupation in which the applicant would owe a fiduciary duty to a client.

2. The person was, at any time, convicted of either of the following:

(a) An offense that a law specifically requires the agency to consider when issuing a license, permit, certificate or other state recognition and the conviction has not been set aside or sealed.

(b) A dangerous offense as defined in section 13-105, a serious offense as defined in section 13-706, a dangerous crime against children as defined in section 13-705 or an offense included in title 13, chapter 14 or 35.1, and the conviction has not been set aside or sealed.

E. To conclude that the state has an important interest in protecting public safety that is superior to the person's right, as required by subsection D of this section, the agency must determine by clear and convincing evidence at the time of the petition that both of the following apply:

1. The specific offense that the person was convicted of:

(a) For an occupational or professional licensing board or a health profession regulatory board, substantially relates to the occupation or approval would pose a reasonable threat to public health and safety as prescribed by section 41-1093.08.

(b) For all other agencies, substantially relates to this state's interest and specifically and directly relates to the duties and responsibilities of the occupation, except offenses involving moral turpitude

2. The person, based on the nature of the specific offense that the person was convicted of and the person's current circumstances, including the passage of time since the person committed the offense and any evidence of rehabilitation or treatment, is more likely to reoffend by virtue of having the license, permit, certificate or other state recognition than if the person did not have the license, permit, certificate or other state recognition.

F. In determining if a person's criminal record disqualifies the person from obtaining a license, permit, certificate or other state recognition pursuant to subsection D of this section, the agency may not consider negatively any of the following:

1. Nonconviction information, including information related to a deferred adjudication, participation in a diversion program or an arrest that was not followed by a conviction.
2. A conviction that has been sealed, dismissed, expunged or pardoned.
3. A juvenile adjudication.
4. A nonviolent misdemeanor.
5. Whether the person would qualify for a fingerprint clearance card issued pursuant to chapter 12, article 3.1 of this title without a good cause exception.

G. The agency shall issue a determination on the petition within ninety days after the agency receives the petition. The determination on the petition must be in writing and include all of the following:

1. Findings of fact and conclusions of law.
2. The grounds and reasons for the determination if the person's criminal history disqualifies the person.

H. If the agency determines that the state's interest to protect public safety is superior to the person's right, the agency shall advise the person of the actions that the person may take to remedy the disqualification, including:

1. An appeal of the determination as provided in title 12, chapter 7, article 6.
2. The earliest date the person may submit a new petition to the agency, which must be not later than two years after the final determination of the initial petition.

I. Subject to Section 41-1093.08, if applicable, the agency shall rescind the determination any time after the determination is made but before issuing a license, permit, certificate or other state recognition if the person is convicted of an additional offense that is included in subsection D of this section.

J. Subsection D and subsection F, paragraphs 1, 2 and 4 of this section do not apply to any of the following:

1. Any law enforcement agency or the Arizona peace officer standards and training board.
2. Any license or registration certificate that is issued pursuant to title 32, chapter 24 or 26.
3. Any certification, license or permit that is issued pursuant to title 15.
4. Statutory requirements for a fingerprint clearance card issued pursuant to chapter 12, article 3.1 of this title.
5. Any criteria for license, permit or certificate eligibility that is established by an interstate compact.

K. Each agency shall submit a report on or before July 1 of each year to the governor and the legislature, provide a copy of this report to the secretary of state and post the report on the agency's website. The report shall include the following information for the previous calendar year:

1. The number of applicants who petitioned the agency for a determination.
2. The number of petitions that were granted and the types of offenses at issue.

3. The number of petitions that were denied and the types of offenses at issue.
4. The number of determinations that were rescinded.

L. An agency shall adopt forms for petitions as prescribed in subsections A and B of this section.

41-1093.05. License applicants; notice

An agency shall prominently post the following on the agency's website and print on a license application, a communication denying a license, a cease and desist order or any other communication in which the agency asserts that a person is required to obtain a license:

Notice:

> Pursuant to section 41-1093.01, Arizona Revised Statutes, an agency shall limit all occupational regulations to regulations that are demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. Pursuant to sections 41-1093.02 and 41-1093.03, Arizona Revised Statutes, you have the right to petition this agency to repeal or modify the occupational regulation or bring an action in a court of general jurisdiction to challenge the occupational regulation and to ensure compliance with section 41-1093.01, Arizona Revised Statutes.

41-1093.06. Occupational licenses; drug offense conviction; eligibility; exceptions; definition

A. Notwithstanding any other law, an agency may not deny to an otherwise qualified applicant who has been convicted of an offense that involves a violation of title 13, chapter 34 or 34.1 or an offense committed in another jurisdiction that has the same elements as an offense listed in title 13, chapter 34 or 34.1 either of the following:

1. The regular occupational license for which the applicant applied.
2. A provisional occupational license.

B. This section does not apply to the following:

1. The state board of education for the purposes of certification of persons pursuant to section 15-501.01.
2. A health profession regulatory board as defined in section 32-3201.
3. The department of health services for the purposes of title 36, chapter 28.1.
4. A law enforcement agency and the Arizona peace officer standards and training board.

C. For the purposes of this section, "occupational license" means any agency permit, certificate, approval, registration or charter or any similar form of permission that allows an individual to use an occupational title or work in a lawful occupation, trade or profession.

41-1093.07. Private employers; effect of article

This article does not:

1. Require a private employer to grant or deny employment to any individual.
2. Impair the right of private employers to establish and enforce eligibility criteria, ethics codes or disciplinary policies.

41-1093.08. Occupational or professional licensing boards; health profession regulatory boards; denial, suspension or revocation; prior criminal offense; review; procedures; notice; definitions

Added by Ariz. Sess. Laws Ch. 91, (2024)

A. Notwithstanding any other law, an occupational or professional licensing board or health profession regulatory board may not deny, suspend or revoke a license, registration or certificate for an applicant's, licensee's, registrant's or certificate holder's prior criminal offense unless either:

1. The offense is substantially related to the occupation.

2. Approving or not imposing disciplinary action against the license, registration or certificate would pose a reasonable threat to public health and safety.

B. In addition to other available remedies, an applicant, licensee, registrant or certificate holder may petition the office of administrative hearings to request a review of a denial, suspension or revocation of a license, registration or certificate for a prior criminal offense. A petition submitted pursuant to this subsection may not be more than five double-spaced pages. Review hearings shall be confidential and conducted in an informal manner. Article 10 of this chapter does not apply to reviews requested pursuant to this subsection.

C. On receipt of a properly submitted petition pursuant to subsection B of this section, the office of administrative hearings shall review the denial, suspension or revocation and determine whether the offense is substantially related to the applicant's, licensee's, registrant's or certificate holder's occupation or if approving or not imposing a disciplinary action against the license, registration or certificate would pose a reasonable threat to public health and safety. Questions from the office of administrative hearings shall be limited to only matters specified in the petition.

D. Each occupational or professional licensing board or health profession regulatory board shall post prominently on the board's website and on each license, registration or certificate denial a notice of an individual's right to petition the office of administrative hearings for review pursuant to this section.

E. This section does not impact a person's right to petition an agency for a criminal record review pursuant to section 41-1093.04 or an agency's requirement to determine whether the person's criminal record disqualifies the person from obtaining a license, permit, certificate or other state recognition.

F. For the purposes of this section:

1. "Health profession regulatory board" has the same meaning prescribed in section 32-3201.
2. "Reasonable threat" means the criminal conduct the person was convicted of involved an act or threat of harm against another person and has a direct bearing on the person's ability to safely serve the public or work with others in the occupation.
3. "Substantially related" means has a direct bearing on the ability to perform any duties or responsibilities related to the occupation.

Chapter 27 - Legislative Review of Agencies and Expiration of New Programs

41-3030.05. State real estate department; termination July 1, 2030

A. The state real estate department terminates on July 1, 2030.

B. Title 32, chapter 20 and this section are repealed on January 1, 2031.

Title 44 - Trade and Commerce
Chapter 1 - Contracts

44-101. Statute of frauds

No action shall be brought in any court in the following cases unless the promise or agreement upon which the action is brought, or some memorandum thereof, is in writing and signed by the party to be charged, or by some person by him thereunto lawfully authorized:

1. To charge an executor or administrator upon any promise to answer for any debt or damages due from his testator or intestate out of his own estate.
2. To charge a person upon a promise to answer for the debt, default or miscarriage of another.
3. To charge a person upon any agreement made upon consideration of marriage, except a mutual promise to marry.
4. Upon a contract to sell or a sale of goods or choses in action of the value of five hundred dollars or more, unless the buyer accepts part of the goods or choses in action, and actually receives them or gives something in earnest to bind the contract, or in part payment, but when a sale is made at auction, an entry by the auctioneer in his sale book, made at the time of the sale, of the kind of property sold, the terms of the sale, the price, and the name of the purchaser and person on whose account the sale is made is a sufficient memorandum.
5. Upon an agreement which is not to be performed within one year from the making thereof.
6. Upon an agreement for leasing for a longer period than one year, or for the sale of real property or an interest therein. Such agreement, if made by an agent of the party sought to be charged, is invalid unless the authority of the agent is in writing, subscribed by the party sought to be charged.
7. Upon an agreement authorizing or employing an agent or broker to purchase or sell real property, or mines, for compensation or a commission.
8. Upon an agreement which by its terms is not to be performed during the lifetime of the promisor, or an agreement to devise or bequeath any property, or to make provision for any person by will.
9. Upon a contract, promise, undertaking or commitment to loan money or to grant or extend credit, or a contract, promise, undertaking or commitment to extend, renew or modify a loan or other extension of credit involving both an amount greater than two hundred fifty thousand dollars and not made or extended primarily for personal, family or household purposes.

Chapter 5 - Exclusive Property Engagement

44-501. Definitions

In this chapter, unless the context otherwise requires:

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.

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.

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 September 14, 2024 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.

Chapter 10 - Competition and Competitive Practices

44-1522. Unlawful practices; intended interpretation of provisions

A. The act, use or employment by any person of any deception, deceptive or unfair act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely on such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

B. The violation of chapter 9, article 16 or chapter 19, article 1 of this title is declared to be an unlawful practice and subject to enforcement under this article.

C. It is the intent of the legislature, in construing subsection A, that the courts may use as a guide interpretations given by the federal trade commission and the federal courts to 15 United States Code sections 45, 52 and 55(a)(1).

Chapter 15.1 - Residential Property

44-5101. Wholesale buyers; wholesale sellers; disclosure; unlawful practice; definitions

A. Before the parties enter into any binding agreement:

1. A wholesale buyer of residential real property shall disclose in writing to the seller that the buyer is a wholesale buyer.
2. 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.

B. Notwithstanding any other provisions contained in the contract for sale, if a wholesale buyer violates this section, the 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.

C. Notwithstanding any other provisions contained in the contract for sale, if a wholesale seller violates this section, the 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.

D. For the purposes of this section:

1. "Residential real property" means real property with fewer than five dwelling units.
2. "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.
3. "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.

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