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## **Title 32, Chapter 20 REAL ESTATE**

### **Article 1 Real Estate Department**

#### **32-2101. Definitions**

In this chapter, unless the context otherwise requires:

1. "Acting in concert" means evidence of collaborating to pursue a concerted plan.
2. "Advertising" means the attempt 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 for the publication or use of 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.
3. "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.
4. "Associate broker" means a licensed broker employed by another broker. Unless otherwise specifically provided, an associate broker has the same license privileges as a salesperson.
5. "Barrier" means a natural or man-made geographical 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.
6. "Blanket encumbrance" means any mortgage, any deed of trust or any other encumbrance or lien securing or evidencing the payment of money and affecting more than one lot or parcel of subdivided land, or an agreement affecting more than one lot or parcel by which the subdivider holds the subdivision under an option, contract to sell or trust agreement. Blanket encumbrance does not include taxes and assessments levied by public authority.
7. "Board" means the state real estate advisory board.
8. "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.
9. "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.
10. "Camping site" means a space designed and promoted for the purpose of locating any trailer, tent, tent trailer, pickup camper or other similar device used for camping.
11. "Cemetery" or "cemetery property" means any one, or a combination of more than one, of the following in a place 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.
12. "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.
13. "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.
14. "Commissioner" means the state real estate commissioner.
15. "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.
16. "Compensation" means any fee, commission, salary, money or other valuable consideration for services rendered or to be rendered as well as the promise of consideration whether contingent or not.
17. "Contiguous" means lots, parcels or fractional interests that share a common boundary or point. Lots, parcels or fractional interests are not contiguous if they are separated by either of the following:
- (a) A barrier.
  - (b) 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.
18. "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.
19. "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.
20. "Department" means the state real estate department.
21. "Designated broker" means the 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.
22. "Developer" 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. Developer does not include a person whose involvement with a development is limited to the listing of property within the development for sale, lease or use.
23. "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.
24. "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
  - (b) Sole proprietorship if the sole proprietor is a broker licensed pursuant to this chapter.
25. "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.

26. "Improved lot or parcel" means a lot or parcel of a subdivision upon which lot or parcel 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 complete construction of a residential, commercial or industrial building on the lot or parcel within two years from the date on which the contract of sale for the lot is entered into.

27. "Inactive license" means a license 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.

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

29. "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.

30. "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.

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

32. "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.

33. "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.

34. "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 improvement or development of real property or is governed or administered by a master owner's association.

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

36. "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 the procuring of 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.

37. "Membership camping contract" means an agreement 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.

38. "Membership camping operator" 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. Membership camping operator 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.

39. "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.

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

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

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

43. "Perpetual-care" or "endowed-care" means the maintenance and care of all places where interments have been made of the trees, shrubs, roads, streets and other improvements and embellishments contained within or forming a part of the cemetery. This shall not include the maintenance or repair of monuments, tombs, copings or other man-made ornaments as associated with individual burial spaces.

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

45. "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.

46. "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.

47. "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.

48. "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.

(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 the procuring of prospects, 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 the negotiation of 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 upon or transfer of real estate, businesses and business opportunities or timeshare

interests subject to section 32-2155, subsection C. 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 upon, lands owned by the state or federal government.

(m) Claims, demands, charges, receives, collects or contracts for the collection of 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 advertisement or by any other offering to sell, lease, exchange or rent real property or selling kits connected therewith. This shall not include the activities of any communications media of general circulation or coverage not primarily engaged in the advertisement of 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.

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

50. "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.

51. "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 the offering of the property as a prize or gift if a monetary charge or consideration for whatever purpose is required.

52. "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.

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

54. "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.

55. "Subdivider" 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, but does not include a public agency or officer authorized by law to create subdivisions.

56. "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, upon investigation by the commissioner, there is evidence of intent to subdivide. (Effective 09.30.2011)*

57. "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.

58. "Trustee" means:

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

(b) A person holding bare legal title to real property under a subdivision trust. A trustee shall not be deemed to be a developer, subdivider, broker or salesperson within this chapter.

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

60. "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 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 Laws 2014, Ch. 74)*

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 with at least five years of brokerage experience in this state. Not more than one member shall be appointed from any one county.
2. Three members, two of whom have been engaged in residential 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. Two members who are primarily engaged in subdividing real property.
4. 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**

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, 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, nor act as a broker, and salesman or agent therefor except through a trust over which the applicant has no control.

### **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, handicap 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**

A. The commissioner on the commissioner's own motion may, and upon 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 additional information and documents that are reasonably necessary to determine the good moral character of 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 per cent or more beneficial interest, stockholder owning ten per cent 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, time-share 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, time-share 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) applies.

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

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. However, the department shall suspend the license if the fingerprint clearance card is determined to be invalid and an applicant who was issued a license fails to submit a new valid fingerprint clearance card within ten 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, cemetery and membership camping salesperson and 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 card to the department.

3. Any natural person, or for an entity applicant, any person exercising control of the entity, on 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 time-share 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 recorded 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**

A. Each year the department shall contact the chairperson of the Arizona military airspace working group and request the name, address and telephone number of the chairperson.

B. The department shall post the information it receives pursuant to subsection A on the department's web site.

**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, 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. Nothing in this section shall be construed as denying 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**

A. The provisions of this article do 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 in the performance of the attorney's duties as an attorney. Nothing in this paragraph shall be construed to 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 no 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 no 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 purposes of this paragraph "residential leasing agents or on-site managers" means natural persons employed by the owner or the owner's licensed management agent 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 the conduct of 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 in the employ of an employing broker or of a person or entity exempt under this section, who 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 in the employ of 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 upon 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 money, or both, for occupancies of thirty-one or fewer days in a dwelling unit in a common interest development.
  16. An escrow agent in the performance of the escrow agent's duties as an escrow agent, a title insurer in the performance of the title insurer's duties as a title insurer or a title insurance agent in the performance of the title insurance agent's duties as a title insurance agent. Nothing in this paragraph shall be construed to 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 shall be unlawful for any person, corporation, partnership or limited liability company to engage in any business, occupation or activity listed in subsection A without first obtaining a license as prescribed in this chapter and otherwise complying with the provisions of 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 the performance of any acts included in the definition of a broker unless otherwise provided in this chapter.

D. Any act, in consideration or expectation of compensation, which is included in the definition of a real estate, cemetery 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.

### **32-2123. Application for license as broker or salesperson**

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 legal name and residence address of the applicant.
2. The applicant's employers and employment history for the immediately preceding ten years and any experience in real estate sales, appraisals, transfers or similar business in which the applicant previously engaged, if the commissioner determines that this information is needed to reasonably evaluate the good moral character of the applicant.
3. The name and place of business of the applicant's present employer, if any.
4. Whether the applicant has ever been convicted of a felony and, if so, the nature of the felony, where and when committed and the disposition of the conviction, or whether the applicant has been disbarred or suspended from the practice of law.
5. 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.
6. 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.
7. 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 situs and mailing address of the applicant's place of business, or if more than one, the situs and mailing addresses of each.

D. An applicant for a broker's or salesperson's license shall provide information that the commissioner determines is reasonably necessary to establish the character of the applicant. The information may include but shall not be limited to:

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 which has filed, or is subject to, a petition under any chapter of the federal bankruptcy act.

E. Each person licensed pursuant to this article, whether the license is active or inactive, shall have available for the licensee's use a current copy of the department's statutes, rules and annotations pertaining to real estate laws. Failure to comply with this requirement shall not be deemed grounds for a civil penalty or for denial, suspension or revocation of a license.

### **32-2124. Qualifications of licensees**

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 honesty, truthfulness, good character and competency of the applicant and shall require that the applicant has:

1. If for an original real estate broker's license, at least three years' actual experience as a licensed real estate salesperson or real estate broker 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 broker or as a licensed real estate salesperson or 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 broker or as a licensed real estate salesperson or 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, cemetery 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, prescribed and approved by the commissioner, of at least ninety classroom hours, or its equivalent, of instruction in a real estate school certified by the commissioner and have satisfactorily passed an examination on the course. In no case shall the real estate salesperson's course completion or its equivalent 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. 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, prescribed and approved by the commissioner, of 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. In no case shall the real estate broker's course completion or its equivalent 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. 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. Prior to receiving any license provided for by this chapter, an applicant shall be at least eighteen years of age.

E. The commissioner shall ascertain by written, electronic or any 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 general understanding of the obligations between principal and agent, the principles of real estate and business opportunity practice, the applicable canons of business ethics, the provisions of this chapter and rules made under this chapter.

F. The commissioner shall ascertain by written, electronic or any 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 made under this chapter relating to the organization and regulation of cemeteries and the licensing and regulation of cemetery brokers and cemetery salespersons.
3. A thorough 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.
4. An appropriate knowledge of other real estate practices and principles as determined by the commissioner.

G. The commissioner shall ascertain by written, electronic or any 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 under 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. No renewal applicant for a real estate, cemetery or membership camping broker's or salesperson's license shall be required to submit to an examination if the application is made within twelve months after the license expires and the license is not cancelled, 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 broker's license who currently holds at least an equivalent license in another state may be exempt from taking the national portion of the real estate examination if the applicant can demonstrate having previously passed a national examination within the past five years that is satisfactorily similar to the one administered by the department.
- 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 report presented by the board to the governor pursuant to section 32-2104.
- L. An applicant for an original real estate salesperson's license, after completion of 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 the drafting of 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.

### **32-2125. Licenses for corporations, limited liability companies or partnerships**

- 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 permitted to become a professional corporation or a professional limited liability corporation. 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 corporation 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 4, 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 upon 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 prior to 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.
- 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. Nothing in this section shall be construed to enlarge the functions of salespersons, to permit salespersons to assume any of the responsibilities or functions of brokers or to relieve the commissioner of any regulatory power or authority over salespersons or brokers.

F. 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.

G. 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 per cent 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**

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 which 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 fifteen dollars, 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.

E. Broker or salesperson license applicants who do not reside in this state are required to complete a minimum of a twenty-seven hour course that is specific to this state's real estate statutes, rules, practices and procedures and that is prescribed and approved by the commissioner and are required to pass the real estate school examination before taking this state's examination. The subject matter and course outline shall cover areas specific to this state's real estate practice and law. The requirements of this



subsection also apply, to the extent applicable, to broker or salesperson applicants who wish to use college credit in fulfillment of the required ninety prelicensure hours.

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**

A. Each employing broker shall have and maintain a definite place of business. Notice of change of business location shall be given to the commissioner in writing and the commissioner shall issue a new license for the unexpired period. Change or abandonment of a business location without notice shall automatically cancel the 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 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. Upon 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**

A. When a broker maintains more than one place of business within the state he shall be required to 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, he may designate a licensee whom he employs or another designated broker to act in his behalf. The designated broker shall make this designation in writing and shall keep the original designation at his 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 which 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**

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 shall remain in the possession of the employer until cancelled, terminated, suspended or revoked by the department, or when the licensee is severed from employment, when it shall be returned to the department by the designated broker. If a pocket card identification was issued to a licensee whose license is subsequently cancelled, terminated, suspended or revoked or if the licensee is no longer employed by a broker, the licensee shall immediately return the pocket card to the broker.

**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**

A. 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. Nothing in this section requires 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 subsection, 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, no 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.

### **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**

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 less than thirty-five dollars and not more than one hundred twenty-five dollars.

2. A broker's examination fee of not less than thirty-five dollars and not more than one hundred dollars.

3. A broker's license fee of not less than seventy-five dollars and not more than two hundred fifty dollars.

4. A broker's renewal fee of not less than one hundred dollars and not more than four hundred dollars.

5. A salesperson's examination application fee of not less than fifteen dollars and not more than seventy-five dollars.

6. A salesperson's examination fee of not less than fifteen dollars and not more than fifty dollars.

7. A salesperson's license fee of not less than thirty-five dollars and not more than one hundred twenty-five dollars.

8. A salesperson's renewal fee of not less than sixty dollars and not more than two hundred dollars.

9. A branch office broker's license fee or renewal fee of not less than sixty dollars and not more than two hundred dollars.

10. A fee for a change of name and address of licensee on records of the department of not more than twenty dollars.

11. A duplicate license fee of five dollars.

12. A fee for reinstatement of license within license period of five dollars.

13. A fee for each certificate of correctness of copy of records or documents on file with the department of one dollar, plus the cost to the department for reproducing the records or documents.

14. A temporary broker's license fee of not less than fifteen dollars and not more than fifty dollars.

15. A temporary cemetery salesperson's license fee of not less than fifteen dollars and not more than fifty dollars.

16. A membership camping salesperson certificate of convenience fee of not less than fifteen dollars and not more than fifty dollars.

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 live classroom continuing education course approval or renewal fee.

(d) A live classroom prelicensure education course approval or renewal fee.

(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.

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 disabled 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**

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. Live classroom prelicensure education, live classroom continuing education 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. The commission of or the failure to report a violation by an approved school or instructor of any provision of this chapter or rules adopted pursuant to this chapter.
2. Improper certification of student attendance or performance.
3. 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. 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 a desired instructional outcome for the course. 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 upon 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. For a currently approved course:
1. The school shall submit notice to the department at least fourteen days before holding the course to permit 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.
- H. 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.
- I. 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. Upon the commissioner's request, the school shall either:
1. Provide the department with a videotape or videotapes of the course.
  2. Make arrangements that are approved by the department for monitoring the course.
- J. An instructor shall file with the department an application for instructor approval or renewal. Instructor approval shall be for at least four years from 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.
- K. Beginning January 1, 2012, in the twenty-four months before application, each instructor original or renewal applicant, other than a panelist, guest speaker, an 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.

L. The thirty day and fourteen day course filing time frames prescribed in this section may be waived by the department for good cause shown.

M. 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.

N. 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**

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 record keeping 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.

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.

D. Attendance at a broker management clinic constitutes three courses of three hours each for a total of nine credit hours of real estate oriented education pursuant to section 32-2130, subsection A.

### **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**

A. Unless otherwise provided in writing by all parties to a transaction, any licensed real estate broker who does not immediately place all funds entrusted to the broker, in the broker's capacity as a real estate broker, in a neutral escrow depository in this state shall upon receipt place all such funds 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 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 a properly descriptive

receipts and 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. The broker shall maintain a trust fund account bank reconciliation and client ledger balance on a monthly basis and shall remove any interest earned on a trust fund account at least once every twelve months. A broker shall not permit advance payment of monies belonging to others to be deposited in the broker's personal account or to be commingled with personal monies. It is not considered commingling if, when establishing a trust fund account, a broker deposits monies not exceeding three thousand dollars to keep the account open or to avoid charges for an insufficient minimum balance.

C. 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.

D. This section shall not be construed to 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**

A. Each licensed employing broker shall keep records of all real estate, cemetery, time-share 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 from 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 of 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, a copy or a microfilm 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**

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 the performance of or attempt 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 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 legal right to do so.
6. Employed any unlicensed salesperson or unlicensed associate broker.
7. Accepted compensation as a licensee for the performance of any of the acts specified in this chapter from any person other than the licensed broker to whom the licensee is licensed, 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.
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 coming 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 funds deposited with the licensee relating to a real estate transaction.
16. Commingled the money or other property of the licensee's principal or client with the licensee's own or converted that money or property to the licensee or another.
17. Failed or refused upon 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 which 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 when 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 which 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, which constitutes fraud or dishonest dealings.

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

7. Not shown that the holder or applicant is a person of honesty, truthfulness and good character.

8. 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.

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

10. 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.

11. 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 upon 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 per cent 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 shall 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 other 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**

A. A broker shall employ and pay only active licensees, and a licensee shall accept employment and compensation as a licensee only from the legally licensed broker to whom the licensee is licensed. 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.

B. It is unlawful for a person, firm or corporation, whether 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 shall be 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.

C. 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.

D. Notwithstanding subsection A 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 shall not be construed to 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 charges; summary suspension; 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 under 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**

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 him, except that a licensed broker in this state may pay compensation to and receive compensation from a broker 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 shall not be construed to permit 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 48 for compensation or any other thing of value pertaining to real property located in this state through an internet web site 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**

A. All property management accounts shall be designated as trust accounts and shall include descriptive wording, substantially similar to one of the following, in the trust account title:

1. "Trust account".

2. "Fiduciary account".

3. "In trust for (individual or entity name)".

4. "Trustee for (individual or entity name)".

5. "Fiduciary for (individual or entity name)".

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 and related residential rental agreement documents for one year from 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. The records shall be kept at the broker's main 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.

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. Records shall be kept at the broker's main 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.

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. 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 shall 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 not exceed a two hundred dollar credit toward or reduction in the tenant's monthly rent. A tenant may receive multiple finder fees pursuant to this section up to five times in any twelve month period.

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. Nothing in this section permits 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 relationship 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 encumbrances.
  - (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 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 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 accordance 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 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, 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 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 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 report 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 one thousand dollars for each infraction. An infraction which 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 which 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 32-2182.02 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 five thousand dollars 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 of 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 counties where the judgment was obtained and in the county 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 deficiencies 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 created under the provisions of 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 which shall be 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 in the cemetery is financially interested in any way.

2. The principal of the trust fund shall remain permanently intact and only the income therefrom shall be expended. It is the intent of this section that the income 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.

### **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**

Endowment care funds shall not be used for any purpose other than to provide income for the care of burial spaces as stated above. 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 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, but not by way of limitation, 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 required 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 avoidance 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. Rescission of contract or agreement**

A. The purchaser may rescind the purchase agreement 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 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 the seven 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 seven calendar days 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 on 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 seven calendar day cancellation period expires.

B. 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.

### **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 delivered 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 damages 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**

- 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 and may also be made available in CD-ROM or other electronic format as approved by the commissioner. 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 seventh 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. However, 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 seven calendar days, the public report shall include a statement that the cancellation of the purchase agreement is allowed for that period of time exceeding seven 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 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 permitted 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 per cent or more beneficial interest, stockholder owning ten per cent 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**

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 in written, CD-ROM or other electronic format as approved by the commissioner, notice of the seller's intention to accept timeshare interest 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 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 per cent 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 seller. 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 seven 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 seven 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 less 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 less 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 of 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: *"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.

#### **32-2197.17. 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 prize, to the department for review and approval at least thirty days before the drawing or contest is 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 submission, 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.

## **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.

**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 (Individual)	A.R.S. § 32-2122 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

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Review	Response to Additional Information	Overall Time- Frame
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
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 Department 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 subject;
  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. Business Brokerage Specialist Designation**

A. The Department shall award the business brokerage specialist designation under A.R.S. § 32-2124(N) to a real estate salesperson or broker or an applicant for licensure as a real estate salesperson or broker who submits to the Department satisfactory proof that the licensee or applicant completed 24 credit hours of courses on business brokerage, approved by the Department under R4-28-404, as follows:

1. Either two 12-hour courses or three eight-hour courses that contain instruction on business brokerage practices, review and analysis of financial statements, including recasting, and business valuation; and
2. The applicant passes an examination on each course.

B. A real estate salesperson or broker may request the designation from the Department by submitting to the Department satisfactory proof from the International Business Broker Association of having taken the courses and passed the course examinations described in subsection (A) within the five years before the request.

## **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 a 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**

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**

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**

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.

**R4-28-1310. 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

### No. 2013.01. Short Title: Multifamily Housing Records Retention

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

#### Description of Practice/Procedure:

Per A.R.S. §32-2175 - A broker managing multifamily housing may designate an onsite leasing office as an off-site storage location in this state for residential rental agreements, related residential rental agreement documents and records of finder's fees if the Department of Real Estate is notified in writing. Off-site storage location may include a multifamily leasing office as well as electronic storage. If electronic, then ADRE shall be notified of the physical location and records host as prescribed in SPS No. 2010.01 Electronic Records Storage.

Per A.R.S. §32-2151 trust account records shall not be maintained at an onsite leasing office.

The broker managing multifamily housing shall notify the department within 10 days of any change in location of the off-site storage location.

**Authority:** A.R.S. §§32-2102, 32-2151, 32-2175

**Policy Program:** Multifamily Housing Records Retention

**Effective Date:** March 28, 2013

### No. 2012.01. Short Title: Broker Management Clinic Course/Instructor Requirements

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

#### Description of Practice/Procedure:

The Arizona Department of Real Estate (Department) presents the following clarification of the requirements for Broker Management Clinic (BMC) classes and instructors under the Department's original jurisdiction and as provided by amendments adopted by the 2012 Legislature. This legislation provides that on and after January 1, 2013, each real estate Designated Broker (DB) and Delegated Associate Broker (DAB) with duties authorized in writing pursuant to A.R.S. § 32-2151.01(G) to act on the designated broker's behalf to review and initial contracts or similar instruments, shall complete a BMC consisting of nine (9) credit hours (three (3) courses of three (3) hours each). This brings the total renewal credit hours required for these licensees to 30 per 24-month license period.

#### BMC COURSE STANDARDS AND GUIDELINES

The BMC shall be presented in three (3) different three (3) hour classes and may be delivered in either live classroom or distance learning format. Each class shall be approved for three (3) hours of continuing education credit in Commissioner's Standards and may include/emphasize a specific real estate discipline (specialty) as described below under BMC Specialty Option that includes the distinct Specialty Name in the course title. To meet statutory requirements these three (3) classes shall be designed as follows:

**BMC #1- Statutes and Rules (Specialty Name)** This class shall include the following topic areas:

Record keeping requirements  
Trust fund accounts

Contracts  
Fiduciary duties

Department Audits  
Advertising and promotions

Material disclosures

Employment agreements

Department Investigations

Other related statutes and rules

BMC #2- Broker Policies (Specialty Name) This class shall include the following topic areas:

1. Broker Policy Development
2. Related Topics, including a minimum of one of the following three areas:
  - a. Establishment of broker policies (A.A.C. R4-28-1103)
  - b. Practical application enforcing
  - c. Emphasis on those policies which ADRE has policies identified as common complaints/ violations to avoid

BMC #3- Supervision(Specialty Name) This class shall include the following topic areas:

1. Broker supervision
2. Broker responsibilities/legal obligations
3. Broker risk management
4. Other related topics

BMC Specialty Option A BMC course may include/emphasize a specific real estate discipline, or disciplines, such as:

Residential resale

Business brokerage

Property management

Timeshares

Commercial real estate

New home sales

Other specific real estate issues

The Department will accept BMC course applications beginning August 1, 2012, to ensure the availability of courses prior to the January 1, 2013 implementation date. **Current BMC courses approved prior to August 1, 2012, will terminate January 1, 2013.**

#### BMC COURSE INSTRUCTOR QUALIFICATIONS

A BMC course instructor applicant, original or renewal, may apply to be an instructor in any or all of the classes that make up the Broker Management Clinic per Real Estate Instructor Approval/Renewal/Change Application (Form ED-101). Current/existing BMC course instructors must apply to instruct any or all of the new BMC classes, their existing certification will terminate January 1, 2013. The applicant shall:

- a) Possess the appropriate subject area experience/expertise in the content areas required to be included in the specific BMC class(es).
- b) A current licensed Arizona Real Estate Broker for three (3) of the immediately preceding five (5) years.
- c) Have satisfactorily completed six separate 3-hour BMC courses (2 each of BMC #1, #2, and #3) within the immediately preceding 48 months, or a 9-hour BMC instructor Development Workshop (IDW) within the immediately preceding 24 months. (An instructor application submitted prior to March 1, 2013 may petition the Commissioner to accept evidence of equivalent education if a 9-hour BMC IDW or six (6) 3-hour BMCs were not available.)

#### REAL ESTATE BROKER LICENSING/RENEWAL REQUIREMENTS

Original broker license applicants who have not completed the licensing process prior to January 1, 2013, shall take the nine (9) hour BMC course prior to becoming licensed brokers pursuant to A.R.S. § 32-2136(C).

Associate Brokers (AB) without the authority pursuant to A.R.S. § 32-2151.01(G) are not required to complete a BMC course to meet the renewal requirements.

Designated Brokers subject to this legislation who complete the current BMC continuing education requirements prior to January 1, 2013, are exempt pursuant to A.A.C. R4-28-402 (A) (9) and may renew their license without meeting the new BMC course requirements.

DABs subject to this legislation who complete their current continuing education requirements prior to January 1, 2013, are exempt pursuant to A.A.C. R4-28-402 (A) (9) and may renew their license without meeting the new BMC course requirements.

Designated Brokers subject to this legislation who do not complete the current continuing education requirements by January 1, 2013, must complete a nine (9) hour BMC course.

DABs subject to this legislation who do not complete the current continuing education requirements by January 1, 2013, must complete a nine (9) hour BMC course.

An AB applying to become a DB on or after January 1, 2013, shall have completed a nine (9) hour BMC course within the past 23 months.

An AB shall have completed a nine (9) hour BMC course within the past 23 months before acting under the delegated authority pursuant to A.R.S. § 32-2151.01(G) on or after January 1, 2013.

Real Estate Salespersons and ABs who are delegated the authority to act as a temporary broker during a designated broker's temporary absence pursuant to A.R.S. § 32-2127(D) are not required to complete a BMC course to meet the requirements of A.R.S. § 32-2136.

Licensees may take the three BMC classes in any order, and from any combination of approved schools within any discipline, however all three classes must be completed for the current license period.

**Authority:** A.R.S. § 32-2102 provides that the Department of Real Estate, under the direction of the Real Estate Commissioner, shall administer Title 32, Chapter 20. A.R.S. § 32-2130 specifies the educational requirements for license renewal. A.R.S. § 32-2136 specifies the content of Broker Management Clinics. Arizona Administrative Code R4-28-402(A)(9) specifies the requirements for course completion

**Policy Program:** Education

**Effective Date:** 8-1-2012

### **No. 2010.03. Short Title: Real Estate School Audit Declaration**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

#### **Description of Practice/Procedure:**

##### **STATEMENT OF PURPOSE AND SCOPE**

This Substantive Policy Statement is intended to inform the regulated real estate education industry of the Department's current enforcement approach to and opinion of the requirements of education statutes and rules under the Department's original jurisdiction, by establishing a biennial reporting requirement by schools, to assist the Department in the regulation of real estate schools. The *Real Estate School Audit Declaration* will collect important information about real estate schools specific to school compliance with education statutes and rules. The *School Audit Declaration* is calculated to reduce the audit burden of the Department and to gather more reliable and valuable information.

##### **REAL ESTATE SCHOOL AUDIT DECLARATION**

School Audit Declaration: A *Real Estate School Audit Declaration* shall be completed by each school that holds Department approval to teach real estate. The *School Audit Declaration* shall:

1. Be completed by the school administrator, in an online form provided by the Department, not earlier than December 15, 2010 and not later than January 31, 2011, and shall be re-submitted every other year thereafter between December 15 and January 31.

2. Be required for every approved real estate school – prelicensure, continuing education and distance learning.
3. Be signed by the school administrator, attesting to the reliability and truthfulness of the information provided.
4. Contain audit questions concerning the operations and activities of the school, including:
  - a. Appropriate content of approved courses.
  - b. Courses where content is no longer current or is substantially changed.
  - c. Courses requiring revision and approval resubmission.
  - d. Reasonable supervision of the school and instructors.
  - e. Assignment of competent instructors.
  - f. Proper certification of student attendance or performance.
  - g. Teaching of unapproved courses.
  - h. Course outlines which accurately reflect the content taught.
  - i. Unapproved courses being advertised as “pending.”
  - j. Adherence to the 50-minute hour for every hour of course credit issued by the school.
  - k. Advertising which contains no misleading or inaccurate statistics or which is otherwise deceptive.

**Authority:** A.R.S. §§ 32-2101, 32-2108, 32-2135 and 32-2153, and A.A.C. §§ R4-28-101, R4-28-401, R4-28-402 and R4-28-404.

**Policy Program:** Education/Regulation/Enforcement

**Effective Date:** 11-1-2010

**No. 2010.02. Short Title: Distance Learning Guidelines**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

**Description of Practice/Procedure:**

STATEMENT OF PURPOSE AND SCOPE

This Substantive Policy Statement is intended to inform the regulated real estate education industry of the Department’s current approach to and opinion of the requirements of education statutes and rules under the Department’s original jurisdiction, by establishing sensible distance learning standards, guidelines and parameters that are based on the Department’s interpretation and application of the education statutes and rules. “Distance Learning” applies solely to the delivery of Continuing Education courses.

Course Approval: In facilitating the original approval and renewal of courses:

1. Prior to Department approval of a course, the real estate school shall provide access to the Department to view and evaluate the proposed course, in the manner that the course is proposed by the school to be delivered. The school shall additionally permit access to the Department to view and evaluate a currently-approved course, as required.
2. All real estate course content, including laws, administrative code, practices, policies, codes of ethics, customs and standards of care, shall be applicable to Arizona real estate practice. No course shall include content based on laws, practices, policies, codes of ethics or standards of care that have no practical or meaningful application to Arizona real estate.
3. For each original course approval submission to the Department, the school shall identify the Department-approved instructor who has authored the course and that the course meets all Department requirements. The approved instructor must meet applicable instructor qualifications established for instructors of live classroom course delivery, including course content competence.

4. Each Distance Learning Course must meet the requirements for the applicable course credit category before being approved for continuing education credit in that category.
5. A continuing education distance learning course approval shall not be issued later than 90 days after filing with the Department. If approval is not granted within 90 days, the course shall be automatically approved on a provisional basis for 180 days, unless the Department otherwise notifies the school of specific deficiencies or unfulfilled requirements for the course submission.

Course Administration: The following are required in the school administration of distance learning courses:

#### Course Timing Requirements

1. The 50-minute-per-credit-hour rule shall be enforced for each course. For example, a 3-credit-hour course must incorporate a requirement that the student log a total of at least 150 minutes to complete the course. Each school must have the ability to measure the amount of time spent by the student in the school's course, and enforcement of the 50-minute-per-credit-hour requirement shall be subject to Department audit.
2. A course completion certificate may be issued only after student satisfaction of the 50-minute-per-credit-hour requirement for the course.
3. Each 3-hour segment of a course shall be divided into five or more timed divisions (i.e., "modules") for the purpose of course delivery. Each module shall be timed such that the student may not proceed in the course until the minimum time for the module has elapsed. The sum of the minimum times of the modules for a 3-hour course, for example, will equal 150 minutes

#### Course Quizzes and Exam

1. Course delivery must include interactivity, and course performance shall be measured by a diagnostic assessment in the form of quizzes and exams.
2. Each course module shall include a quiz. The student shall achieve a minimum passing score of 80% before proceeding in the course. The difficulty of the quiz shall be reflective of the content presented in that module.
3. Each course shall include a final exam. The student shall achieve a passing score of at least 80% on the final exam before completing the course and being awarded a course completion certificate. The difficulty of the exam shall be reflective of the content presented in the course.
4. Each module shall contain a minimum of 5 instances of interactivity, which may be achieved via multiple choice, true-false, fill-in-the-blank, matching, prioritizing, etc., at the discretion of the author. In addition, each module shall contain a minimum of 5 unique end-of-module multiple choice quiz questions with only one correct/best answer.
5. The course final exam shall have a minimum of 25 multiple-choice questions with only one correct/best answer. If an end-of-module quiz question is repeated in a final exam retake, the order of the exam questions shall be randomly reselected and/or any repeated questions shall have the answers reordered.

#### Miscellaneous

1. Each course shall include the means for the student to attest to the identity of the student and to provide the student's Arizona real estate license number, before issuance of the course completion certificate.
2. Each school shall include with each course approval filing the school's plan for dealing with possible hardware and software failure. The plan shall include appropriate contact information on the school's website and/or within the course.
3. The school administrator shall insure that any instructor who is represented as the course author is a Department-approved instructor in the applicable category and is competent to field content questions regarding the course.
4. The business hours for contacting the school shall be easily available through the school's website and/or within the course.

Application of Provisions: The above provisions apply to every original and renewal application for course approval.

**Authority:** A.R.S. §§ 32-2101, 32-2108, 32-2130, 32-2135 and 32-2153, and A.A.C. §§ R4-28-101, R4-28-401, R4-28-402 and R4-28-404.

**Policy Program:** Education/Regulation

**Effective Date:** 11-1--2010 for original course approval applications; Revised 11-2-2010

**No. 2010.01. Short Title: Guidance for using Electronic Real Estate Transaction Management and/or Document Storage Programs**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

**Description of Practice/Procedure:** Designated brokers may implement a Transaction Management (TM) program for internal standardization of document storage, so long as the document storage program adheres to the guidelines mandated by the Arizona Revised Statutes ("A.R.S." or "statutes") and the Arizona Administrative Code Rules ("A.A.C. R" or "rules") applicable to the Arizona Department of Real Estate ("Department" or ADRE).

Understanding there are several computer based TM and/or document storage programs ("TM system" or "electronic storage system"), this advisory provides guidance and outlines the responsibilities of brokers who are using or intend to use any electronic record program. This advisory also provides guidance to brokers using electronic record programs who have signed or intend to sign the Department's User Agreement, which provides the Department access to their electronic storage systems.

**Electronic Record Keeping:**

1. **Backing up records:** Transaction and employment records required to be maintained pursuant to statute or rule, must be backed-up (duplicated and stored in a secure, offsite location) in a manner allowing restoration in the event electronic data maintained at the principal place of business is destroyed.
2. **Production of records:** Records must be reproducible for the Department, at the broker's expense, in a legible, paper form ("hard copy") upon the request of the Commissioner, or the Commissioner's representative, for auditing, inspection, or investigation purposes. Brokers who maintain electronic records in a computer based TM and/or document storage program may provide the Department with electronic access to records, unless a hard copy is specifically requested by the Department.
3. Electronic records maintained in an electronic storage system should be legible, exact duplicates of the original documents.
4. **Maintenance of a log:** Brokers using web based TM and/or document storage programs shall maintain a log in a chronological or other systematic manner that lists each real estate purchase contract or lease agreement, and identifies the file in which these documents are maintained. If the web based TM and/or document storage program maintains this log or list electronically, it should be made easily accessible upon request by the Commissioner or the Commissioner's representatives. If the web based TM and/or document storage program is not capable of maintaining this log or list electronically, the broker shall maintain a separate list or log in either written or electronic form and shall make it available to the Commissioner or the Commissioner's representative upon request.
5. **Notification requirements:** If the file servers containing a broker's web based TM and/or document storage program are directly or indirectly owned by the broker, the broker shall inform the Commissioner in writing of the location of these file servers. If the file servers containing a broker's web based TM and/or document storage program are not directly or indirectly owned by the broker, the broker shall inform the Commissioner in writing of the legal address and name of the entity responsible for storing such records. The broker may be required to show evidence that

the broker's electronic records are backed-up in accordance with this SPS, and SPS 2005.06 addressing "Electronic Record Keeping":

- a. **ADRE Online Review/Audit Option:** A broker using a web based TM and/or document storage program may opt to sign the Department's User Agreement and provide the Department with direct access to his/her electronic storage system. Providing the Department access to brokers' electronic storage systems is intended to enable efficient, streamlined exchanges of information with the Department, increase efficiency within the brokerage, and assist in ensuring compliance among real estate salespersons and associate brokers licensed to brokers. This capability is available using a web based TM and/or document storage program if a broker complies with the following requirements: (1) the broker must sign a User Agreement with ADRE allowing ADRE internet access to all required documents; (2) the broker must be able to produce the required documents and files in hard copy format if hard copies of documents are specifically requested by the Commissioner or the Commissioner's representative; and (3) the broker must sign a guarantee that the documents and files will be maintained for the mandatory time frames set forth in the relevant statutes and rules including, but not limited to, A.R.S. §§ 32-2151.01, 32-2153(A)(17) and 32-2175.
- b. The Commissioner's access to broker's files shall be used for:
  - i. Preliminary review/research of consumer complaints against brokers and salespersons;
  - ii. Routine audits or audit reviews of broker files to ensure compliance with any requirements in the relevant statutes and rules, including but not limited to ensuring that brokers properly maintain documents in a timely manner; and
  - iii. Any other purposes the Commissioner deems necessary to protect Arizona consumers.

### **Electronic Signature**

1. A broker's statutory review of contracts and agreements maintained on an electronic TM and/or document storage system may be recorded through a dated secure electronic signature in compliance with A.R.S. § 44-7031. The TM and/or document system must have a means of demonstrating, in accordance with A.R.S. §§ 44-7032 thru 44-7034 as applicable, that when the signature was made, the signature was:
  - a. Unique to the person using it;
  - b. Capable of verification;
  - c. Under the sole control of the person using it; and
  - d. Linked to the electronic record it relates to in such a manner that if the record were changed the electronic signature would be invalidated;
2. Electronic review of any document is permitted in lieu of actual initials on a document, providing that such electronic review is recorded in an unalterable history or log file.
3. The broker must enforce a written supervision policy requiring personal computer security that, at a minimum, requires each person with electronic signature authority and capability to lock or sign off his/her computer every time he/she walks away from the computer.
4. The broker must have a backup system defining how and when contracts and agreements would be reviewed in situations where the broker's computers become inaccessible for an extended period of time.
5. The electronic TM and/or document storage system must have the ability to create a secure history log of all activity for electronic signatures or broker review which can be reviewed by Department auditors and investigators.

**Authority:** A.R.S. §§ 32-2108, 32-2151, 32-2151.01, 32-2151.02, 32-2153, 32-2175, and A.A.C. R4-28-701, R4-28-802, R4-28-803, R4-28-804, R4-28-805, R4-28-1101, R4-28-1102, R4-28-1103, R4-28-1303.

**Policy Program:** Regulation

**Effective Date:** 4-8-2010

**No. 2008.06 rev. Short Title: Preventing Mortgage Fraud through Disclosure**

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**Description of Practice/Procedure:**

1. This policy statement applies to real estate transactions with financing.
2. The Department considers a conviction under A.R.S. § 13-2320 to warrant disciplinary action under A.R.S. § 32-2153(B). The Department recommends that a licensee who provides a premium, credit, or rebate in a real estate transaction disclose the premium, credit, or rebate to all parties in the transaction, including the lender and third-party service providers, such as appraisers, in the purchase agreement and the HUD-1 statement (or other writing if no HUD-1 is required).
3. A licensee is in violation of Title 32 Chapter 20 and AAC Title 4 Chapter 28 if:
  - a. The licensee gives a premium, credit or rebate or otherwise pays an individual and is convicted of A.R.S. § 13-2320 (Residential Mortgage Fraud).
  - b. The licensee gives a credit, rebate, premium or otherwise pays an individual in violation of 12 U.S.C. § 2607 et seq. (RESPA's prohibitions against kickbacks, fee splitting, and unearned fees), Fannie Mae, Freddie Mac, FHA, VA, other federal and state requirements.

**Authority:** A.R.S. §§ 32-2151.01(A), 32-2153(A), 32-2155(A)(B), 32-2163, 32-2176, and R4-28-1101(B). A.R.S. § 32-2102 provides that the department of Real Estate, under the direction of the Real Estate Commissioner, shall administer Title 32 Chapter 20.

**Policy Program:** Regulation

**Effective Date:** 6-18-2008

**No. 2008.05 rev. Short Title: Continuing Education Requirements for Renewal of 4-Year License (REPEALED effective January 29, 2014)**

**No. 2008.04 rev. Short Title: Business Brokers; License Requirement Clarification (REPEALED effective January 27, 2011)**

**No. 2008.03 rev. Short Title: Acceptable Forms of Payment**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

**Description of Practice/Procedure:** The Department will only accept payment for fees and for any other purposes when made by credit card, cash, check, or money order.



Acceptable checks include pre-printed personal or business account checks or drafts, either in-state or out-of-state. Two-party checks, counter checks or any check not pre-printed with the name and address of the account holder, the name of the subject financial institution and the account number are considered unacceptable forms of payment.

Payment of a civil penalty shall be by credit card, money order, certified check, cashier's check or cash.

If an individual or entity has an outstanding "bad check," no further checks or payment of any other kind for any purpose will be accepted by the Department from that individual or entity until the outstanding check is redeemed, using a credit card, cashier's check, money order, certified check or cash.

The Department will accept one form of payment per transaction.

**Authority:** A.R.S. §§ 32-2125.01, -2129, -2130, -2186, -2194.02, -2195.02, -2196, -2197.05 and -2198.09 authorize the Commissioner to assess fees and prescribe the amounts to be charged. A.R.S. § 35-142(I) authorizes state agency acceptance of credit card payments pursuant to § 35-515.

**Policy Program:** Commissioner's Office

**Effective Date:** 2-8-2008

**No. 2008.02 rev. Short Title: Subsequent Owners/Subdivision Disclosure Reports (Public Reports) (REPEALED effective September 13, 2013).**

**No. 2008.01 rev. Short Title: Pre-license Education Waiver (REPEALED effective March 3, 2011)**

**No. 2007.18 rev. Short Title: Real Estate Licensee Advertising**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

**Description of Practice/Procedure:** To reduce unsubstantiated complaints and the backlog of investigations from such complaints regarding telephone and address requirements for advertising by a licensee, the following clarifies the Commissioner's Rules on advertising.

**There is no statute or rule that states which telephone number (employing broker's or licensee's) or address must appear in an advertisement.**

R4-28-502 (E) requires that **the (legal or dba) name of the EMPLOYING BROKER (the corporation, partnership, limited liability company or sole proprietor) appears in all advertising in "a clear and prominent manner."**

R4-28-502 also addresses other requirements for advertising not addressed in this Substantive Policy Statement.

**Authority:** A.R.S. § 32-2102 provides that the Department of Real Estate, under the direction of the Real Estate Commissioner, shall administer Title 32, Chapter 20. A.R.S. § 32-2153(A)(3) provides that violation of the Commissioner's Rules is subject to disciplinary action.

**Policy Program:** Regulation

**Effective Date:** Revised, effective 2-12-2007

**No. 2007.17. Short Title: Electronic License Certificate Complies with Statutory Requirement**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

**Description of Practice/Procedure:** The Department of Real Estate will deem a printout of data contained in the ADRE Public Database, or an electronic file of such data that can be recreated electronically or on paper upon request, to be a license certificate. This will increase efficiencies and enhance the timelines of issuing license certificates to real estate, cemetery and membership camping salespersons and brokers.

A broker may comply with the statutory requirement that the broker retain and have the certificates available for inspection by accessing the licensed employee's record in the Public Database at [www.azre.gov](http://www.azre.gov) and printing a copy showing current and active licensure to the employing broker or having this data available electronically.

Employing broker and designated broker license certificates must still be displayed. An acceptable form is a printout of data contained in the ADRE Public Database.

**Authority:** A.R.S. § 32-2102 provides that the Department of Real Estate, under the direction of the Real Estate Commissioner, shall administer Title 32, Chapter 20. A.R.S. § 32-2128 requires designated brokers and, where applicable, employing brokers, to prominently display their licenses in the office of the broker. Designated brokers are also required to have the licenses of salespersons and associate brokers licensed to the broker available and retained by the broker until or unless the license is returned to the Department due to license expiration, sever of employment, cancellation, suspension, termination or a change of employment information. A.A.C. R4-28-303. A.R.S. § 32-2151.01 requires the employing broker to maintain in the broker's files a copy of employment status for all current and former employees for a period of at least 5 years from the date of the termination of employment.

**Policy Program:** Licensure/Regulation

**Effective Date:** Feb 1, 2007

**No. 2006.16 rev. (REPEALED)**

**No. 2005.15. Short Title: Broker Home Office**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

**Description of Practice/Procedure:** This policy is to describe the circumstances when the Department will not require compliance with the signage requirement. Some brokers retain their licenses on active status but do little or no real estate related activity and do not maintain an office outside their home. A.R.S. § 32-2126(B) provides, in part, that "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, . . ."

The Department will not consider a broker to be in violation of the signage requirement under the provisions of A.R.S. § 32-2126(B) when the broker:

- A. maintains a home office in the broker's PRIMARY RESIDENCE,
- B. handles FEWER THAN 3 transactions a year (0, 1, or 2), and
- C. has no real estate related employees (licensed or unlicensed)

The broker shall clearly and obviously display the broker's real estate license in the home office, and comply with all other applicable statutory and rule requirements to hold a broker's license.

**Authority:** A.R.S. § 32-2102 provides that the Department of Real Estate, under the direction of the Real Estate Commissioner, shall administer Title 32, Chapter 20, Ariz. Rev. Stat.

**Policy Program:** Licensing/Enforcement/Auditing

**Effective Date:** December 28, 2005

#### **No. 2005.14. Short Title: Fair Housing Course Substitute**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

**Description of Practice/Procedure:** Fair Housing Issues is a mandatory category for real estate license renewal: Real estate licensees must take a minimum of three credit hours in the six mandatory categories, and a total of twenty-four credit hours of Department-approved courses to apply for renewal of their real estate licenses.

Some licensees engage exclusively in specialties in which Fair Housing is not an issue, for instance, farm and ranch sales, business brokerage and commercial sales/leasing. These licensees who deal exclusively in real estate specialty areas have requested an accommodation to allow them to substitute a class applicable to their area of specialization instead of taking a course in Fair Housing.

1. A real estate renewal applicant who is engaged in a specialty that does not include residential transactions may substitute an additional class that has been approved for a minimum of three credit hours in place of the mandatory Fair Housing course **when all of the following apply:**
  - a. **The licensee's business is exclusively in a specialty field in which the fair housing law does not apply;**
  - b. **The licensee provides proof (or has previously provided proof) of attendance at a Department-approved fair housing course in the past;**
  - c. **The substitute course proposed is relevant to the licensee's real estate activities.**
2. To request the course substitution, the licensee shall submit an email to [education@azre.gov](mailto:education@azre.gov) prior to initiating the license renewal application process that specifically states the licensee's compliance with the criteria listed in 1 above.
3. The Education Division will approve or deny the requested replacement class and inform the licensee of the decision. If approved the licensee may proceed with the renewal process using the substitute course.

**Authority:** A.R.S. § 32-2130(A), A.R.S. § 32-2130; A.A.C. R4-28-402 (A)(5), A.A.C. R4-28-402(B).

**Policy Program:** Education

**Effective Date:** August 9, 2005; Revised November 5, 2008

#### **No. 2005.13. Short Title: Agent Responsibility to Client**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

**Description of Practice/Procedure:** A licensee is a real estate professional with a fiduciary duty to his or her client to act in the client's best interests as described in R4-28-1101(I). Reasonable care or competence may include recommending that a client seek professional or technical advice when the matter is beyond the expertise of the agent.

Licensees are expected to take reasonable steps to assist their clients in confirming or verifying information under circumstances in which a reasonably prudent real estate professional has reason to question the accuracy of the information being provided in a transaction, or where the client has questioned the accuracy of the information.

These considerations are intended to provide a reasonable standard for licensees to follow in complying with their duties and obligations under statute and rule.

**Authority:** Commissioner's Rule R4-28-1101 describes a licensee's "professional duties" and A.R.S. § 32-2153(A)(3) and (22) identify violation of rules and negligence as grounds for disciplinary action against a licensee.

**Policy Program:** Enforcement

**Effective Date:** Revised 6/1/2001; revised and renumbered 5/28/04, revised and renumbered 4/8/2005.

**No. 2005.12. Short Title: Continuing Education and the Residential Resale Purchase Contract (REPEALED effective January 27, 2011)**

**No. 2005.11. Short Title: Subdivision Public Report Application Form, Changes**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

**Description of Practice/Procedure:** The Application for Subdivision Public Report may be updated on a quarterly basis to insure proper and full disclosure to prospective purchasers. This is subject to public health, safety, and welfare issues which may result in an immediate change to the subdivision application form.

- A. Prior to publication of the updated application form, a draft will be provided to stakeholders for review. Stakeholders will be provided no less than ten (10) business days to provide comment to the Department.
- B. After receiving and reviewing stakeholder comments, the updated application form will be published and placed on the Department website for download by applicants.

**Authority:** A.R.S. § 32-2181 provides the Commissioner authority to create and modify the application form for public report.

**Policy Program:** Subdivisions.

**Effective Date:** April 1, 2005.

**No. 2005.10. Short Title: Electronic Signatures**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

**Description of Practice/Procedure:** A broker may use an electronic signature to indicate the broker's approval of contracts and agreements as required by statute. The following elements or requirements must be met and will be the basis for any Broker Audit of that aspect of the broker's practice:

- A. System must meet the criteria under A.R.S. § 44-7031: A signature is a secure electronic signature if, through the application of a security procedure, it can be demonstrated that the electronic signature at the time the signature was made was all of the following:
  - 1. Unique to the person using it.
  - 2. Capable of verification.
  - 3. Under the sole control of the person using it.
  - 4. Linked to the electronic record to which it relates in such a manner that if the record were changed the electronic signature would be invalidated.

- B. The brokerage must have and enforce a written internal policy regarding personal computer security and, at a minimum, require that any person with electronic signature authority and capability locks or signs off his/her computer every time they walk away from their computer.
- C. The brokerage must have a back-up system defined for when the computers are down for an extended period of time. (i.e. how and when contracts and agreements will be manually reviewed).
- D. The system must have the ability to create a secure history log of all activity for electronic signatures which can be reviewed by Department auditors and investigators.

Authority: A.R.S. § 32-2151.01 identifies Arizona Licensed Broker requirements for record keeping. Subsection G requires the designated broker to review each listing agreement, purchase or lease agreement or similar instrument within 5 days of the date the parties executed the document, and to place the broker's initials and date of review on the same page as the parties' signatures. Commissioner's Rule R4-28-1103 describes a broker's professional duties and requirement for written policy manual.

**Policy Program:** Enforcement/Auditing

**Effective Date:** 11/5/2004; Renumbered 4/01/05.

**No. 2005.09 rev. Short Title: Non-commercial Requests to Inspect Department Records & Fees for Copies**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

**Description of Practice/Procedure:** Arizona's public record statute, A.R.S. § 39-121, provides: "Public records and other matters in the office of any officer at all times during office hours shall be open to inspection by any person."

Contact the Custodian of Records, Arizona Department of Real Estate, 2910 N. 44th Street, Suite 110, Phoenix, AZ 85018, to request an appointment to review, or in writing to request copies of, any file of record at The Department. If the request is for numerous files or a requested file is stored off-site, additional time may be required. Fees charged to ADRE for retrieval will be passed on to the requesting party. The charge for photocopies of records is published in the ADRE Fee Schedule available on the ADRE web site: [www.azre.gov](http://www.azre.gov), for non-commercial use, except in response to any Subpoena Duces Tecum. Fees for certification of copies, fees for employment histories, and other similar services are also published in that Schedule.

The following sets out the minimum number of days typically required for files to be retrieved and any restricted information to be redacted:

- 1) 3-5 day advance notice for: salesperson, broker, school, instructor or course file.
- 2) 3-5 days advance notice for: audit inspection or hearing/disciplinary file.
- 3) 5-7 days advance notice for: recovery fund files; public report files (for: subdivisions, time-shares, membership campgrounds, & unsubdivided land); cemetery applications; and **closed** investigative files.

The Department will deny public inspection of a particular document if:

- 1) the document is made confidential by statute;
- 2) the document involves the privacy interests of persons;
- 3) disclosure would be detrimental to the best interests of the state;
- 4) it is correspondence between the Attorney General's Office and the Department, or any other document, that contains information protected under attorney/client privilege;
- 5) it is criminal history record information; or

- 6) it is a written offer to settle or compromise, or is correspondence related to settlement of administrative actions by the Department;
- 7) it is an internal memorandum regarding regulated parties and case strategy; and
- 8) it is an instrument of the internal deliberative process.

The Department will deny public inspection or reproduction of information and documents in open (active or pending) audits and investigations, unless the Commissioner authorizes disclosure of the information or production of documents as being in the public interest. Such open files remain confidential until the matter is final, a notice of hearing is issued, or the matter is settled by consent order.

The following information shall be redacted:

- 1) a licensee's date of birth and Social Security Number; and
- 2) in some circumstances, the residence address of a licensee.

**Authority:** The authority to charge a fee for copying is at A.R.S. § 39-121.03. Fees for copies required by a Subpoena Duces Tecum are set by Arizona Rules of Civil Procedure. The authority to withhold specific documents from the Department's public record is cited for the following types of documents: correspondence between the Attorney General's Office and the Department as well as advice given to the Department from the Attorney General's Office pursuant to A.R.S. § 12-2234; criminal history record information pursuant to A.R.S. § 41-1740; written offers to settle or compromise administrative actions by the Department; all correspondence related to settlement negotiations pursuant to Rule 408, Arizona Rules of Evidence; and memoranda, both interoffice & intra-office, to the Commissioner, either directly or through the supervisory chain of command, of an advisory or consultative nature pursuant to the deliberative process privilege. The authority to keep confidential all information and documents in an open audit file or investigation file is found at A.A.C. R4-28-1303. The authority to redact certain data from the Department's records before they are produced includes: dates of birth pursuant to *Scottsdale Unified School District v. KPNX*, 191 Ariz. 297, 955 P.2d 534 (1998); Social Security Numbers pursuant to 42 USC § 405 (c)(2)(C)(viii)(I). See S.P.S. 2005.03 relative to restricted release of home addresses.

**Policy Program:** Administration; Administrative Actions; Education & Licensing; Investigations & Audits; Subdivision Compliance.

**Effective Date:** 6/18/1999; Revised & Renumbered 5/28/04; Renumbered 4/01/2005; Revised 8/21/2006.

#### **No. 2005.08. Short Title: Payment of Commission to Salesperson After License Expiration or Transfer of Employment**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

**Description of Practice/Procedure:** When a real estate licensee has rightfully earned a commission while in the employ of a broker, and in accordance with their agreement, that broker shall pay the licensee, even though the licensee may have left the employ of that broker. The same finding applies to similar circumstances for an associate broker.

**Authority:** A.R.S. § 32-2155

**Policy Program:** Enforcement

**Effective Date:** 6/18/99; Revised & Renumbered 5/28/04; Renumbered 4/01/05.

#### **No. 2005.07. Short Title: Department Investigation of Cases Involving Civil Litigation**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy

statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

**Description of Practice/Procedure:** A Complainant's filing of a civil suit has no bearing on whether the Department will pursue an alleged violation of a statute or rule within the Department's jurisdiction. The Department shall commit the appropriate resources to investigate possible violations.

The Department monitors and regulates real estate licensees, but does not determine a licensee's civil liability to third parties. A finding by the Department that a violation warranting administrative action did or did not occur, is not dispositive of liability and does not create any presumption regarding whether or not civil liability exists.

The Department's investigations shall not be utilized for the purpose of circumventing the Arizona Rules of Civil Procedure or as a means of discovery of evidence for use in civil litigation. The Department will not intentionally place itself in the position of providing discovery and building a prima facie case for a Complainant, only to have the Complainant use the Department's investigative file as evidence in a civil suit. It is not the Department's role to assist a Complainant to develop a case that will assist them pursuing damages.

The Department shall not delay an investigation to await the outcome of a civil court proceeding. Such a delay may discourage or financially inhibit a Complainant's pursuit of a civil cause of action. Such a delay might also encourage a licensee to assert the Department's inaction as an argument in the licensee's favor.

**Authority:** The Department's authority to investigate alleged or perceived violations of Arizona Revised Statutes Title 32, Chapter 20, and Title 4, Chapter 28 of the Arizona Administrative Code, is found at A.R.S. § 32-2108.

**Policy Program:** Enforcement.

**Effective Date:** 6/18/99; Revised & Renumbered 5/28/04; Renumbered 4/01/05.

#### **No. 2005.06. Short Title: Electronic Record Keeping**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

**Description of Practice/Procedure:** Licensees of the Department (brokers, property management companies and cemetery owners) are required to retain copies of transactions<sup>1</sup>. Brokers and management companies are also required to keep employment records<sup>2</sup>. Records pertaining to trust accounts, if kept electronically, must be able to be reconstructed ". . . in the event of destruction of electronic data."

A licensee may retain the required transaction and employment records by electronic means, providing that all of the following conditions are met:

- 1) The records are maintained in a manner allowing reconstruction in the event of destruction of electronic data.

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<sup>1</sup> Transaction records, referenced herein, include records of all real estate, cemetery, time-share and membership camping transactions handled by or through a broker, property management firm, or cemetery owner or agent, including contracts and addenda, earnest money receipts, closing statements showing all receipts, disbursements and adjustments, lease contracts, employment agreements (including property management, listing, and buyer-broker agreements), residential and nonresidential leasing or rental agreements.

<sup>2</sup> Employment records include forms evidencing hiring, severing (terminating), or license renewal of employed licensees.

- 2) The records can be produced, at the broker's expense, in legible, written form ("hard copy") upon request by the Commissioner, or the Commissioner's representative, for auditing, inspection, or investigation purposes.
- 3) The electronic records are exact duplicates of the original.
- 4) The stored records are legible.

**Authority:** Brokers are required to retain records pursuant to A.R.S. §§ 32-2151(B)(2), 32-2151.01(A), 32-2151.01(H), 32-2175(A), 32-2175(B) and 32-2194.06(A) and (B). A.R.S. § 32-2151(B)(2) requires that trust account records that are maintained electronically be able to be reconstructed. A.R.S. § 32-2194.03(E) requires a cemetery owner or the owner's agent to keep and maintain records of all sales transactions and monies received, and authorizes examination of the books and records of the cemetery owner or agent. A.R.S. §§ 32-2108(A), 32-2175(H) and 32-2194.06 (B) authorize the Commissioner to examine the books and records of any natural person or entity engaged in the business or acting in the capacity of a broker, salesperson or developer. Pursuant to A.R.S. § 32-2107, the Commissioner is authorized to administer the Department and the provisions under its jurisdiction.

**Policy Program:** Licensing

**Effective Date:** 8/15/2000; Revised & Renumbered 5/28/04; Renumbered 4/01/05.

**No. 2005.05. Short Title: Access to Arizona Real Estate Law Book on the World Wide Web**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

**Description of Practice/Procedure:** A.R.S. § 32-2123(E) states, in part: "Each person licensed pursuant to this article, whether the license is active or inactive, shall have available for the licensee's use a current copy of the department's statutes, rules and annotations pertaining to real estate laws."

The Commissioner considers unrestricted access to the World Wide Web, and thus to the on-line edition of the Arizona Real Estate Law Book on the Department's Web site at <http://www.re.state.az.us>, to satisfy the requirements of this statute.

"Unrestricted access" is defined as access to the Department Web Site at any time without the permission or assistance of others.

**Authority:** Pursuant to A.R.S. § 32-2107, the Commissioner has charge of the Department and authority to administer the laws and rules adopted pursuant to Arizona Revised Statutes, Title 32, Chapter 20.

**Policy Program:** Education

**Effective Date:** December 6, 1999; Renumbered 5/28/04; Renumbered 4/01/05.

**No. 2005.04. Short Title: Unlicensed Assistants**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

**Description of Practice/Procedure:** In looking at the issue of unlicensed assistants, various aspects must be considered, including what activities the individual will perform and how the individual is paid. If an unlicensed assistant is paid on any basis that relies on the ultimate sale of a property, then that person **must** be licensed.

**An unlicensed assistant in the employ of a licensed real estate broker *may*:**

- 1) Perform telephone duties, to include calls to:



- a. collect demographic information
  - b. solicit interest in engaging the services of a licensee or brokerage
  - c. set or confirm appointments (with no other discussion) for:
    - i. A licensee to list or show property
    - ii. A buyer with a loan officer
    - iii. A property inspector to inspect a home
    - iv. A repair/maintenance person to perform repairs/maintenance
    - v. An appraiser to appraise property
  - d. mortgage and/or title companies to track the status of a file, check daily interest rates and points, whether buyer has been qualified, confirm closing appointment for licensee, and so forth
- 2) Assist a licensee at an open house
  - 3) Unlock a home for a licensee so that licensee can show a buyer the property or preview the property (no discussion about the property)
  - 4) Deliver documents (as a mail or delivery service only)

**An unlicensed assistant *shall not* perform the following activities:**

- 1) Hold/host an open house without an agent being present
- 2) Perform a walk-through inspection
- 3) Answer questions relating to a transactional document
- 4) Give instructions to inspectors, appraisers or maintenance/repair people. Because these instructions are part of the licensee's regular duties and there is a direct relationship to the (potential) transaction, a license is required in order to give instructions to inspectors appraisers or repair/maintenance people

**Authority:** A.R.S. § 32-2101(46) defines the activities of a real estate broker, for which licensure is required pursuant to A.R.S. § 32-2122. See also A.R.S. § 32-2121.

**Policy Program:** Enforcement

**Effective Date:** Revised April 3, 2000; Revised & Renumbered 5/28/04; Renumbered 4/01/05.

**No. 2005.03. Short Title: Disclosure of Licensee's Home Address**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

**Description of Practice/Procedure:** Only the business addresses and telephone numbers of active-status licensees are disclosed to the public. Requests for the residential address and telephone number of an active status licensee shall be denied, except in the cases of those self-employed brokers whose business and residential addresses are the same. State law requires the Department to make available to the public the residential address and telephone number of an inactive licensee unless the inactive licensee provides the Department with a current and valid alternative mailing address and alternative telephone number. A licensee who has obtained an Order of Protection may provide the Department with a current and valid alternative mailing address and alternative telephone number.

All licensees are required to provide and maintain their current residential address on file with the Department. All licensees are required to notify the Department within 10 days of any changes to their personal licensing data, including personal (residence) address.

**Authority:** A.R.S. § 32-3801, adopted April 4, 1997, states that a licensee's residential address and telephone number shall not be available unless that is the only address on file. At the Department, a business address is available when the license held is current and an employing broker employs the licensee. This law superseded the 1996 provision that authorizes the Commissioner to keep confidential a licensee's home address and telephone number for good cause upon a request by the licensee. A.R.S. §

32-2123 requires an applicant to provide the applicant's residential address. A.A.C. R4-28-301 (E) & R4-28-303 require the residential address be kept current.

**Policy Program:** Licensing

Effective Date: Revised 12/6/01; Revised & Renumbered 5/28/04; Renumbered 4/01/05.

**No. 2005.02. Short Title: Attendance Requirements for Credit & Enforcement**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

**Description of Practice/Procedure:** A.R.S. § 32-2124(B) and (C) and § 32-2130(A) require licensees to attend a prescribed amount of time in pre-licensure and continuing education classes. Tardiness may preclude a student from receiving credit for the course. Commissioner's Rule R4-28-101(3) defines "credit hour" as a fifty minute period of instruction, which allows students a 10-minute break for each sixty minutes and still receive an "hour" of credit for each 50 minutes spent under instruction.

When a course sponsor schedules a class, the customary practice is to schedule just enough time to cover breaks and meet the "fifty-minutes-of-instruction" definition (standard) to award each approved credit hour. The course instructor and the real estate school providing the course are responsible for enforcing the above standard.

**Authority:** The authority to approve or disapprove courses and course sponsors exists in A.R.S. § 32-2135 and Title 4, Chapter 28, Article 4 of the Arizona Administrative Code. Attendance is required in order for Department-approved credit is issued pursuant to A.R.S. §§ 32-2124 (B) and (C), 32-2130 and A.A.C. R4-28-101.

**Policy Program:** Education

Effective Date: June 18, 1999; Revised & Renumbered 5/28/04; Renumbered 4/01/05.

**No. 2005.01.Short Title: Acceptable Forms of Payment**

This substantive policy statement is 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 the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

**Description of Practice/Procedure:** The Department will only accept payment for fees and for any other purposes when made by cash, check or money order, or by acceptable credit card for specified on-line transactions.

Acceptable checks include pre-printed personal or business account checks or drafts, either in-state or out-of-state. The Department will not accept two-party checks, counter checks or any check not pre-printed with the name and address of the account holder, the name of the subject financial institution and the account number.

Payment of a civil penalty shall be paid by money order, certified check, cashier's check or cash<sup>1</sup>. If an individual or entity has an outstanding "bad check," no further checks or payment of any other kind for any purpose will be accepted by the Department from that individual or entity until the outstanding check is redeemed, including returned check costs, using a cashier's check, money order, certified check or cash.

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<sup>1</sup> Cash normally may be accepted only at the front counter, not through the mail; however, if cash is received by mail, it shall be accepted and receipted. The licensee assumes all risk for transmitting cash by mail.

On-Line transactions, including license renewals, hire or sever requests, and transfers of employment, may be paid using a Discover, Visa, MasterCard or American Express credit card at the conclusion of the on-line session, after the user has been automatically redirected to a secure website.

**Authority:** A.R.S. §§ 32-2125.01, -2129, -2130, -2186, -2194.02, -2195.02, -2196, -2197.05 and -2198.09 authorize the Commissioner to assess fees and prescribe the amounts to be charged. A.R.S. § 35-142(l) authorizes state agency acceptance of credit card payments pursuant to § 35-315.

**Policy Program:** Business Office/Administration

**Effective Date:** June 18, 1999; Renumbered 5/28/04; Revised and Renumbered 4/01/05.

## **Title 11, Chapter 8 DEVELOPMENT FEES**

### **Article 2 Real Estate Transfer Affidavit and Fee**

#### **11-1131. Definitions**

In this article, unless the context otherwise requires:

1. "Department" means the department of revenue.
2. "Value" means:
  - (a) In any case other than a gift, the amount of the full actual consideration that is paid or to be paid, including the amount of any lien or liens.
  - (b) In the case of a gift or a contract or deed with nominal consideration or without stated consideration, the estimated price the property would bring in an open market and under the prevailing market conditions in a sale between a willing seller and a willing buyer, both of whom are conversant with the property and with prevailing general price levels.

#### **11-1132. Real estate transfer fee; collection; disposition of proceeds**

A. Before recording a deed or contract relating to the sale or transfer of real property, the county recorder shall collect a fee of two dollars for the deed or contract, in addition to the fee collected pursuant to section 11-475.

B. The county shall retain all monies collected pursuant to this section in the same manner as monies collected under section 11-475.

#### **11-1133. Affidavit of legal value**

A. Each deed evidencing a transfer of title and any contract relating to the sale of real property shall have appended at the time of recording an affidavit of the seller and the buyer to the transaction, or the agent of either the seller or buyer, or both, in a form approved by the department of revenue, who shall declare and jointly certify the following information:

1. The name and address of the buyer and seller.
2. The name and address where a tax statement may be sent.
3. The complete legal description of the property.
4. The situs address, if any, of the property.
5. The date of sale.
6. The total consideration paid for the property, the amount of cash down payment and whether or not the type of financing included cash, a new third party loan, a new loan from the seller, an assumption of an existing loan or an exchange or trade of property.
7. Whether or not the estimated market value of personal property received by the buyer equals five per cent or more of the total consideration.
8. The assessor's parcel number or numbers assigned to the real property by the county assessor or, in the case of a new parcel or parcels not yet assigned a parcel number, the parcel number or numbers of the previous parcel or parcels from which the new parcel or parcels are created.
9. The conditions of the transaction including the relationship, if any, of the parties.
10. The use and description of the property and, in the case of a residential dwelling, whether the property is to be owner-occupied or rented.

11. The name and address of the person to contact regarding information contained on the affidavit.
- B. If a beneficiary of a foreclosed trustee's deed receives payment based on private mortgage insurance covering the sale that is in addition to the proceeds of the sale, the beneficiary shall submit, in a form approved by the department of revenue, to the county recorder in the county where the property is located within four months after the date of the trustee's sale a beneficiary's declaration of additional funds received that contains the following:
1. The county assessor's parcel number or numbers assigned as of the date of the trustee's sale.
  2. The name and address of the beneficiary submitting the declaration.
  3. The date of the trustee's sale.
  4. The highest bid amount received by the trustee at the trustee's sale.
  5. The recording number of the trustee's deed on sale.
  6. The amount of any additional compensation received by the beneficiary within three months after the date of the trustee's sale.
- C. The county recorder shall refuse to record any deed and any contract relating to the sale of real property if a complete affidavit of legal value is not appended unless the instrument bears a notation indicating an exemption pursuant to section 11-1134.
- D. An affidavit is complete for purposes of this section if all of the required information is stated on the affidavit form or is indicated on the form as "not applicable".

#### **11-1134. Exemptions**

- A. The affidavit and fee required by this article do not apply to the following instruments:
1. A deed that represents the payment in full or forfeiture of a recorded contract for the sale of real property.
  2. A lease or easement on real property, regardless of the length of the term.
  3. A deed, patent or contract for the sale or transfer of real property in which an agency or representative of the United States, this state, a county, city or town of this state or any political subdivision of this state is the named grantor, and authorized seller, or purchaser.
  4. A quitclaim deed to quiet title as described in section 12-1103, subsection B or otherwise executed for no monetary consideration.
  5. A conveyance of real property that is executed pursuant to a court order.
  6. A deed to an unpatented mining claim.
  7. A deed of gift.
- B. The affidavit and fee required by this article do not apply to a transfer of title:
1. Solely in order to provide or release security for a debt or obligation, including a trustee's deed pursuant to power of sale under a deed of trust.
  2. That confirms or corrects a deed that was previously recorded.
  3. When the transfer of title has only nominal actual consideration for the transfer of residential property between:
    - (a) Husband and wife or ancestor of the husband and wife.
    - (b) Parent and child, including natural or adopted children and their descendants.
    - (c) Grandparent and grandchild.
    - (d) Natural or adopted siblings.
  4. On a sale for delinquent taxes or assessments.
  5. On partition.
  6. Pursuant to a merger.
  7. For no consideration or nominal consideration:
    - (a) By a subsidiary to its parent or from a parent to a subsidiary.
    - (b) Among commonly controlled entities.
    - (c) From a member to its limited liability company or from a limited liability company to a member.
    - (d) From a partner to its partnership.
    - (e) From a partnership to a partner.
    - (f) From a joint venturer to its joint venture.
    - (g) From a joint venture to a joint venturer.
    - (h) From a trust beneficiary to its trustee.

- (i) From a trustee to its trust beneficiary.
    - (j) From any of the entities in subdivisions (a) through (i) of this paragraph to a single purpose entity in order to obtain financing.
  - 8. From a person to a trustee or from a trustee to a trust beneficiary with only nominal actual consideration for the transfer.
  - 9. To and from an intermediary for the purpose of creating a joint tenancy estate or some other form of ownership.
  - 10. From a husband and wife or one of them to both husband and wife to create an estate in community property with right of survivorship.
  - 11. From two or more persons to themselves to create an estate in joint tenancy with right of survivorship.
  - 12. Pursuant to a beneficiary deed with only nominal actual consideration for the transfer.
  - 13. From an owner to itself or a related entity for no or nominal consideration solely for the purpose of consolidating or splitting parcels.
  - 14. Due to a legal name change.
- C. Any instrument that describes a transaction that is exempt under this section shall note the exemption on the face of the instrument at the time of recording, indicating the specific exemption that is claimed.

**11-1135. Transmitting affidavit or data to county assessor, Arizona state library, archives and public records and department of revenue**

- A. The county recorder shall:
- 1. Place the fee or recording number of the deed and the date of recording on the original affidavit.
  - 2. Scan the affidavit and transmit an electronic copy to the department and the Arizona state library, archives and public records, and transmit either the original or an electronic copy of the original to the county assessor.
- B. The county assessor shall transmit the data contained within the affidavit to the department.
- C. The county shall transmit the original affidavit, when no longer in active use, to the Arizona state library, archives and public records.

**11-1136. Administrative and enforcement powers of department**

- A. The department may prescribe rules that are reasonably necessary to facilitate and expedite the imposition, collection and administration of the fee imposed pursuant to this article.
- B. The department or its authorized agents may:
- 1. Examine books, papers, records or other data bearing on the correctness of any affidavit that is filed or fee that is collected pursuant to this article.
  - 2. Require the attendance of any person and administer oaths and take testimony with respect to these matters.

**11-1137. Violations; classification**

- A. A county recorder or employee of the recorder who knowingly records any deed or contract for which a fee is charged by this article without collecting the additional fee is guilty of a class 2 misdemeanor.
- B. Any person who knowingly fails to provide or knowingly falsifies the information that is required by this article on the affidavit of legal value is guilty of a class 2 misdemeanor.

## **Title 32, Chapter 36 STATE BOARD OF APPRAISAL**

### **Article 1 General Provisions**

**32-3601. Definitions**

In this chapter, unless the context otherwise requires:

- 1. "Appraisal" or "real estate appraisal" means a statement that is independently and impartially prepared by an individual setting forth an opinion as to the market value of real property as of a specific date and supported by the presentation and analysis of relevant market information.

2. "Appraisal assignment" means an engagement for which a real estate appraiser is employed or retained to act, or would be perceived by third parties or the public in acting, as a disinterested third party in rendering an unbiased analysis, opinion or conclusion relating to the nature, quality, value or utility of specified interests in or aspects of identified real estate.
3. "Appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987.
4. "Appraisal report" means any communication, written or oral, of an appraisal.
5. "Appraisal review" means the act of reviewing or the report that follows a review of an appraisal assignment or appraisal report in which a real estate appraiser forms an opinion as to the adequacy and appropriateness of the report being reviewed.
6. "Appraisal standards board" means the appraisal standards board appointed by the board of trustees of the appraisal foundation to develop, interpret and amend the uniform standards of professional appraisal practice.
7. "Appraisal subcommittee" means the subcommittee of the federal financial institutions examination council created pursuant to 12 United States Code section 3310 and chapter 34A, as amended.
8. "Appraiser qualifications board" means the appraiser qualifications board that is appointed by the board of trustees of the appraisal foundation to establish the minimum education, experience and examination requirements for real estate appraisers.
9. "Complex one to four residential units" means property that is atypical for the marketplace. Atypical factors may include architectural style, age of improvements, size of improvements, size of lot, neighborhood land use, potential environmental hazard liability, leasehold interests, limited readily available comparable sales data or other unusual factors.
10. "Course approval" means the act of the Superintendent reviewing course materials to form an opinion as to the adequacy and appropriateness of the course for licensing pursuant to section 32-3613, certification pursuant to section 32-3614 and continuing education as prescribed in section 32-3625 in accordance with the appraiser qualifications board and this chapter.
11. "Federal financial institutions examination council" means that agency of the federal government created pursuant to 12 United States Code chapters 34 and 34A, as amended.
12. "Federally related transaction" means any real estate related financial transaction that a federal financial institution's regulatory agency or the resolution trust corporation engages in, contracts for or regulates and that requires an appraisal.
13. "Property tax agent" means an individual who is designated by a person or is an employee of an entity designated as an agent pursuant to section 42-16001, who acts on behalf of a person who owns, controls or possesses property valued by a county assessor and who receives a fee for the analysis of any matter relating to the review of the valuation of the person's property before the assessor. Property tax agent does not include a person who is admitted to practice law in this state, an employee of the person owning, controlling or possessing the property or an employee of an entity designated pursuant to section 42-16001, if the employee is performing a secretarial, clerical or administrative support function.
14. "Real estate" means an identified parcel or tract of land, including improvements, if any.
15. "Real estate related financial transaction" means any transaction involving the sale of, lease of, purchase of, investment in or exchange of real property, including interests in property or the financing of property, the refinancing of real property or interests in real property and the use of real property or interests in property as security for a loan or investment including mortgage-backed securities.
16. "Real property" means one or more defined interests, benefits and rights inherent in the ownership of real estate.
17. "Registered trainee appraiser" means a person who meets both of the following requirements:
  - (a) Is registered with the Superintendent and meets the appraiser qualifications board's qualifications for trainee appraisers to perform appraisal services only under the direct supervision of a certified appraiser who has met the minimum criteria to be a supervisory appraiser.
  - (b) Accepts assignments only from the registered trainee appraiser's supervisory appraiser.
18. "Review appraiser" means a person who engages in the activity of reviewing and evaluating the appraisal work of others from the perspective of an appraiser, generally for compensation as a separate skill. This includes the function of reviewing an appraisal report or a file memorandum setting forth the results of the review process.

19. "Standards of professional appraisal practice" means the uniform standards of professional appraisal practice adopted by the Superintendent.
20. "State licensed or state certified appraiser" means a person who develops and communicates appraisals and who holds a current, valid license or certificate issued under this chapter.
21. "Superintendent" means the Superintendent of Financial Institutions.
22. "Supervisory appraiser" means a state certified appraiser who has a supervisory appraiser designation and who:
- (a) Has been in good standing for the last three years in the jurisdiction in which the registered trainee appraiser practices.
  - (b) Has not been disciplined in a manner that affects the supervisory appraiser's eligibility to engage in appraisal practice in any jurisdiction in the last three years.
  - (c) Directly supervises registered trainee appraisers by doing the following:
    - (i) Accepting responsibility for an appraisal by signing and certifying that the appraisal complies with the uniform standards of professional appraisal practice.
    - (ii) Reviewing and signing all registered trainee appraiser reports.
    - (iii) Personally inspecting each appraised property with the registered trainee appraiser.
23. "Value" means the monetary relationship between properties and those who buy, sell or use those properties.

### **32-3602. Applicability of chapter**

This chapter does not apply to:

1. A real estate broker or salesperson who is licensed in this state and who, when acting as such, gives an opinion as to the price of real estate if this opinion is not referred to as an appraisal.
2. A natural person, a corporation through its officers or a partnership through its partners that gives an opinion of value of that person's or its own property and does not receive special compensation for the transaction if this opinion is not referred to as an appraisal.
3. An attorney in the performance of that person's duties as an attorney.
4. A mortgage banker, mortgage broker or commercial mortgage banker who is licensed in this state and who, when acting as such, prepares a report analyzing real property if the report is not made for the primary purpose of establishing the sale or market value of the property.
5. An individual who is otherwise subject to licensing or certification by law and whose duties require appraisal of real property for purposes of tax assessment.
6. An engineer or architect registered in this state or a contractor or insurance producer licensed in this state who, when acting as such, prepares a report analyzing real property if the report utilizes the specialized knowledge of the registered engineer or architect or the licensed contractor or insurance producer.
7. A property tax agent who is registered in this state and who, when acting as such, prepares a report analyzing real estate if the report is made for purposes of tax assessment or tax valuation of the real estate.
8. An individual appraising real property only for the purpose of providing an opinion in a judicial proceeding or an individual providing an opinion in a judicial proceeding. An individual providing an opinion under the exemption of this paragraph shall not represent or imply in any report or testimony that the individual testifying is licensed or certified under this chapter.
9. A person who produces a statement that is provided to any other person concerning the estimated value of real property through an internet website, automated valuation or other software program or other means of comparative market analysis and who discloses that the estimate is not an appraisal.

### **32-3603. Registration, license or certificate use; exception**

A. All real estate appraisals and appraisal reviews performed on real property in this state shall be performed only by individuals who are registered, licensed or certified in accordance with the requirements of this chapter. No person, other than a registered trainee appraiser or a state licensed or state certified appraiser, may assume or use that title or any title, designation or abbreviation likely to create the impression of registration as a trainee appraiser or licensure or certification as an appraiser by this state.

B. No person other than a state licensed or state certified appraiser may receive a fee for a real estate appraisal or an appraisal review of real property in this state. This subsection does not prohibit a

supervisory appraiser from remitting compensation to a registered trainee appraiser during the course of training.

**32-3605. Superintendent; duties; powers; immunity**

A. The Superintendent shall adopt rules in aid or in furtherance of this chapter.

B. Superintendent shall:

1. In prescribing standards of professional appraisal practice, adopt standards that at a minimum are equal to the standards prescribed by the appraisal standards board.
2. In prescribing criteria for certification, adopt criteria that at a minimum are equal to the minimum criteria for certification adopted by the appraiser qualifications board.
3. In prescribing criteria for licensing and registration, adopt criteria that at a minimum are equal to the minimum criteria for licensing and registration adopted by the appraiser qualifications board.
4. Further define by rule with respect to state licensed or state certified appraisers appropriate and reasonable educational experience, appraisal experience and equivalent experience that meets the statutory requirement of this chapter.
5. Adopt the national examination as approved by the appraiser qualifications board for state certified appraisers.
6. Adopt the national examination as approved by the appraiser qualifications board for state licensed appraisers.
7. Establish administrative procedures for approving or disapproving applications for registration, licensure and certification and issuing licenses and certificates, including registration certificates.
8. Define by rule, with respect to state licensed and certified appraisers, the continuing education requirements for the renewal of licenses or certificates that satisfy the statutory requirements provided in this chapter.
9. Periodically review the requirements for the development and communication of appraisals provided in this chapter and adopt rules explaining and interpreting the requirements.
10. Define and explain by rule each stage and step associated with the administrative procedures for the disciplinary process pursuant to this chapter, including:
  - (a) Prescribing minimum criteria for accepting a complaint against a registered trainee appraiser or a licensed or certified appraiser. The Superintendent may not consider a complaint for administrative action if the complaint either:
    - (i) Relates to an appraisal that was completed more than five years before the complaint was submitted to the Superintendent or more than two years after final disposition of any judicial proceeding in which the appraisal was an issue, whichever period of time is greater.
    - (ii) Is filed against a person who is a staff person of the Department of Financial Institutions and the person is a licensed or certified appraiser and the complaint is against the person's license or certificate and relates to the person's performance of duties. This item does not apply to a contract investigator who is under contract with the Department for the performance of an appraisal review as defined by the uniform standards of professional appraisal practice. This item does not remove the requirement that the staff person is subject to the ethics rules section of the uniform standards of professional appraisal practice.
  - (b) Defining the process and procedures used in investigating the allegations of the complaint. The Superintendent shall consolidate complaints that are filed within a six-month period of time if the complaints are against the same appraiser, relate to the same appraisal and property and are filed by an entity that is subject to the mandatory reporting provisions of the Dodd Frank Wall Street reform and consumer protection act (P.L. 111 203; 124 Stat. 1376). Complaints that are consolidated pursuant to this subdivision must be considered and adjudicated as one complaint.
  - (c) Defining the process and procedures used in hearings on the complaint, including a description of the rights of the Superintendent and any person who is alleged to have committed the violation.
  - (d) Establishing criteria to be used in determining the appropriate actions for violations.



11. Communicate information that is useful to the public and appraisers relating to actions for violations.
  12. Issue decrees of censure, fix periods and terms of probation and suspend and revoke licenses and certificates pursuant to the disciplinary proceedings provided for in section 32 3631.
  13. At least monthly transmit to the appraisal subcommittee a roster listing individuals who have received a state certificate or license in accordance with this chapter.
  14. Report on the disposition of any matter referred by the appraisal subcommittee or any other federal agency or instrumentality or federally recognized entity reporting any action of a state licensed or state certified appraiser that is contrary to this chapter.
  15. Make a determination and finding if there exists a scarcity of state certified or state licensed appraisers to perform appraisals in connection with federally related transactions in this state and issue resident temporary licenses and certificates pursuant to section 32 3626.
  16. Transmit the national registry fee collected pursuant to section 32 3607 to the appraisal subcommittee.
  17. Establish the fees in accordance with section 32 3607.
- C. The Superintendent may accept and spend federal monies and grants, gifts, contributions and devises from any public or private source to assist in carrying out the purposes of this chapter. These monies do not revert to the state general fund at the end of the fiscal year.
- D. The Superintendent may impose a civil penalty pursuant to section 32 3632.

### **32-3606. Executive director; duties**

The executive director shall:

1. Receive applications for state licenses and certificates.
2. Establish the administrative procedures for processing applications for state licenses and certificates.
3. Maintain a registry of the names and addresses of people who are registered, licensed or certified under this chapter.
4. Retain records and all application materials submitted to the board.
5. Assist the board in such other matters as the board may require.
6. Publish on the board's website a current list of supervisory appraisers and registered trainee appraisers.

### **32-3607. Fees; use of credit cards**

A. The board shall charge and collect fees that are sufficient to fund the activities necessary to carry out this chapter. These include:

1. An application fee for licensure or certification of not more than four hundred dollars.
2. An application fee for a resident temporary license or certificate of not more than four hundred dollars.
3. An examination fee in an amount to be determined by the board.
4. A fee for renewal of a license, certificate or resident temporary license or certificate of not more than four hundred twenty-five dollars.
5. A delinquent renewal fee in addition to the renewal fee of not more than twenty-five dollars.
6. A two-year national registry fee of not to exceed the actual cost of twice the current annual national registry fee.
7. A nonresident temporary licensure or certification fee of not more than one hundred fifty dollars.
8. A course approval fee of not more than five hundred dollars.
9. An application fee to be a registered trainee appraiser in an amount to be determined by the board.

B. If the appraisal subcommittee raises the national registry fee during the second year of a biennial license or certificate, state licensed and state certified appraisers shall pay the additional national registry fee on demand by the board. Failure to pay the additional fee within thirty days of notice by the board subjects the license or certificate holder to a penalty of twice the amount owed but not to exceed twenty dollars. The board shall not renew a license or certificate until all outstanding obligations of the license or certificate holder are paid.

C. Pursuant to section 35-142, subsection I, the board may accept a credit card or debit card for the payment of fees established by this section. The board may impose a convenience fee for payment made pursuant to this subsection in an amount to be determined by the board.

### **32-3608. Board of appraisal fund**

A. A board of appraisal fund is established. Except as provided in subsection C of this section, pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of the monies in the state general fund and deposit the remaining ninety per cent in the board of appraisal fund.

B. Except as provided in subsection C of this section, all monies deposited in the board of appraisal fund are subject to section 35-143.01.

C. The national registry fee collected pursuant to section 32-3607, subsection A, paragraph 6 shall be deposited in the board of appraisal fund pending transmittal to the appraisal subcommittee. These monies are not subject to section 35-143.01.

### **32-3609. Confidential records**

Except as otherwise provided by law, the following records are confidential:

1. Questions contained in any examination administered by or for the board or in any examination submitted to the board for course approval.
2. Questions asked and the answers of individual examinees, except that the board shall provide the grades of each examinee for public inspection and copying.
3. Appraisal reports or appraisal reviews and supporting documentation deemed confidential under the uniform standards of professional appraisal practice edition adopted by the board.
4. All documents associated with a complaint until the complaint is resolved.

### **32-3610. Uniform standards of professional appraisal practice; state standards; exception**

The uniform standards of professional appraisal practice as published by the appraisal standards board are the standards for the appraisal practice in this state unless the board objects.

## **Article 2 Registration, Licensure, and Certification**

### **32-3611. Registration, licensure and certification process**

A. Applications for original registration, licensure or certification, renewals and examinations shall be made in writing to the executive director on forms approved by the board.

B. Appropriate fees, as fixed by the board pursuant to section 32-3607, shall accompany all applications for original registration, licensure or certification, renewal and examination.

C. At the time of filing an application for registration, licensure or certification, each applicant shall sign a pledge to comply with the standards set forth in this chapter and shall state that the applicant understands the types of misconduct for which disciplinary proceedings may be initiated against a registered trainee appraiser or a state licensed or state certified appraiser, as set forth in this chapter.

D. Except as otherwise provided in this chapter, the executive director shall require such other proof and request such documents, through the application or otherwise, as the board deems necessary for the interests of the public and to verify the honesty, truthfulness, reputation and competency of the applicant and shall require that the applicant for registration, licensure or certification:

1. Be at least eighteen years of age and a citizen of the United States or a qualified alien as defined in 8 United States Code section 1641.
2. Not have had a license or certificate denied pursuant to this chapter within one year immediately preceding the application.
3. Not have had a license or certificate revoked pursuant to this chapter within two years immediately preceding the application.
4. State whether or not the applicant has ever been convicted in a court of competent jurisdiction in this or any other state of a felony or of forgery, theft, extortion or conspiracy to defraud or any other crime involving dishonesty or moral turpitude.

E. Applications for registration, licensure or certification by persons who are charged or under indictment for fraud involving appraisal of real property may be denied pending final disposition of the charge or indictment. On final disposition, the board shall review the proceedings and act on the application.

### **32-3612. Classifications of licensure, registration and certification**

The following classifications are established:

1. State certified general real estate appraisers consisting of those persons meeting the requirements for certification relating to the appraisal or appraisal review of all types of real property.
2. State certified residential real estate appraisers consisting of those persons meeting the requirements for certification relating to the appraisal or appraisal review of one to four residential units without regard to value or complexity. The classification includes the appraisal for federally and nonfederally related transactions of vacant or unimproved land that is used for one to four family purposes or for which the highest and best use is for one to four family purposes. This classification does not include the appraisal of a subdivision for which a development analysis or appraisal is necessary.
3. State licensed real estate appraisers consisting of those persons meeting the requirements for licensing relating to appraisal or appraisal review of noncomplex one to four residential units having a value of less than one million dollars and complex one to four residential units having a value of less than two hundred fifty thousand dollars. The classification includes the appraisal for nonfederally related transactions of vacant or unimproved land that is used for one to four family purposes or for which the highest and best use is for one to four family purposes. This classification does not include the appraisal of subdivisions for which a development analysis or appraisal is necessary.
4. Registered trainee appraisers who may not appraise any property type without being subject to the direct control and supervision of the registered trainee appraiser's designated supervisory appraiser.
5. Supervisory appraisers.

### **32-3613. Application and qualification requirements for issuance of license**

- A. An application for licensing and examination shall be made on forms as prescribed by the board and accompanied by the required fees.
- B. Those persons filing for licensing shall meet the minimum criteria for licensing established by the board under section 32-3605, subsection B, paragraph 3.
- C. No person may be a state licensed appraiser unless the person has achieved a passing grade on the national examination approved by the appraiser qualifications board.

### **32-3614. Application and qualification requirements for certification**

- A. An application for certification and examination shall be made on forms prescribed by the board and accompanied by the required fees.
- B. Those persons filing for certification shall meet the minimum criteria for certification established by the board under section 32-3605, subsection B, paragraph 2 and section 32-3615.
- C. No person may be a state certified real estate appraiser unless the person has achieved a passing grade on the national examination approved by the appraiser qualifications board.
- D. Persons presenting evidence showing successful completion of the requirements of this section shall be recognized as having met the qualifications as a state certified real estate appraiser.

#### **32-3614.01. Application for registered trainee appraiser certificates**

- A. An application for a registered trainee appraiser certificate shall be made on a form prescribed by the board and accompanied by the fees prescribed by section 32-3607. An applicant must complete education requirements as outlined by the appraiser qualifications board. The applicant must submit proof that the applicant has successfully passed the required courses that are specifically oriented to the requirements and responsibilities of supervisory appraisers and trainee appraisers and that comply with the specifications established by the appraiser qualifications board.
- B. A criminal background check may be conducted pursuant to section 41-1750. The state board of appraisal may charge the cost of a criminal background check to the applicant.

#### **32-3614.02. Application for supervisory appraiser designation**

- A. An application for a supervisory appraiser designation shall be made on a form prescribed by the board. The applicant must submit proof of successful completion of a course that is specifically oriented

to the requirements and responsibilities of supervisory appraisers and trainee appraisers and that complies with the specifications established by the appraiser qualifications board.

B. A criminal background check may be conducted pursuant to section 41-1750. The state board of appraisal may charge the cost of a criminal background check to the applicant.

### **32-3615. Experience requirement for licensure or certification**

A. Each applicant for licensure or certification shall have experience that was acquired within ten years immediately preceding the filing of the application for licensure or certification.

B. Each applicant for licensure or certification shall furnish under oath a detailed listing of the real estate or other appraisal reports, review reports or filed memoranda for each year for which experience is claimed by the applicant. On request, the applicant shall make available to the board for examination copies of appraisal reports which the applicant has prepared in the course of the applicant's appraisal experience.

### **32-3616. Terms of license or certificate**

A. Except as provided in subsection B of this section, a license or certificate issued under this chapter is valid for two years from the date of issuance. The expiration date of the license or certificate shall appear on the license or certificate.

B. A registration certificate issued for registered trainee appraisers shall be valid for three years from the date of issuance. The expiration date of the registration shall appear on the registration certificate.

### **32-3617. Nonresident temporary licensure or certification**

A. Every applicant for nonresident temporary licensure or certification under this chapter who is not a resident of this state shall submit, with the application for nonresident temporary licensure or certification, an irrevocable consent that service of process on the applicant may be made by delivery of the process to the secretary of state if, in an action against the applicant in a court of this state arising out of the applicant's activities as a nonresident temporary state licensed or state certified appraiser, the plaintiff cannot effect, in the exercise of due diligence, personal service on the applicant.

B. A nonresident of this state who has complied with subsection A of this section may obtain a nonresident temporary license or certificate as a nonresident temporary state licensed or state certified appraiser by conforming to all of the requirements of this chapter relating to state licensed or state certified appraisers.

C. A nonresident of this state who is licensed or certified in another state is entitled to nonresident temporary licensure or certification from the board, which shall be valid until the completion of each appraisal assignment but not for a period of more than one year from the date of issuance, if:

1. The nonresident appraiser's business in this state is of a temporary nature.
2. The nonresident appraiser applies with the board on forms prepared by the board.
3. The nonresident appraiser pays the nonresident temporary licensure or certification fee required by the board.

D. The board shall adopt rules in furtherance of this section to avoid the abuse of the temporary practice rights in this state.

### **32-3618. Reciprocity**

Reciprocity shall be granted to an appraiser if all of the following conditions apply:

1. The appraiser holds a credential from a state that is in compliance with 12 United States Code sections 3310, 3332, 3333, 3335, 3338, 3339, 3341, 3342, 3345, 3346, 3347, 3348, 3350, 3351, 3353, 3354 and 3355.

2. The credential requirements for the state described in paragraph 1 of this section meet or exceed those of this state.

3. The appraiser has completed an application for licensure or certification on a form as prescribed by the board and submitted the fees prescribed pursuant to section 32-3607.

### **32-3619. Renewal of license or certificate; fees**

A. Except as otherwise provided in this section and in section 32-4301, to renew a registration certificate as a registered trainee appraiser or a license or certificate as a state licensed or state certified appraiser, the holder of a current, valid license or certificate shall make an application and pay the prescribed fee to

the board not earlier than ninety days nor later than thirty days before the expiration date of the license or certificate then held. With the application for renewal, the registered trainee appraiser or the state licensed or state certified appraiser shall present evidence in the form prescribed by the board of having completed the continuing education requirements for renewal specified in section 32-3625. The renewal application shall be mailed to the last known address of record not more than ninety days nor less than sixty days before the renewal date.

B. The board may accept a renewal application after the expiration date and within ninety days of the date of expiration but shall assess a delinquent renewal fee in addition to the renewal fee.

C. An appraiser or registered trainee appraiser who fails to seek renewal within the time period specified in subsection A or B of this section must reapply for licensure or certification and meet all of the requirements of this chapter.

D. An appraiser or registered trainee appraiser shall not engage in, advertise or purport to engage in real estate appraisal activity in this state after a license or certificate has expired and before the renewal of the expired license or certificate.

E. Notwithstanding section 41-1092.11, a license or certificate expires on its expiration date.

### **32-3620. Basis for denial of a license or certificate**

A. The board may deny the issuance of a license or certificate as a registered trainee appraiser, a supervisory appraiser or a state licensed or state certified appraiser to an applicant who has been convicted of a felony or on any of the grounds prescribed in this chapter.

B. To assist in determining whether grounds exist to deny the issuance of a license or certificate to an applicant, the board may require a criminal background check including the fingerprinting of every applicant for an original license and certificate. The criminal background check may be conducted pursuant to section 41-1750 or in any other manner deemed suitable by the board. The board may charge the cost of each criminal background check to the applicant.

C. A person who is denied the issuance of a license or certificate may request, and if requested shall receive, a hearing in accordance with title 41, chapter 6, article 10.

### **32-3621. Addresses; telephone numbers; notification of change**

A. Each registered trainee appraiser or state licensed or state certified appraiser shall advise the board of the address of the person's principal place of business and all other addresses at which the person is currently engaged in the business of preparing real property appraisal reports.

B. Every registered trainee appraiser or state licensed or state certified appraiser shall notify the board of the person's current residence address. Residence addresses on file with the board are exempt from disclosure as public records.

C. Every registered trainee appraiser or state licensed or state certified appraiser shall provide the person's e-mail address if one exists and a daytime telephone number to the board.

D. If a registered trainee appraiser or a state licensed or state certified appraiser changes the person's place of business or residence, e-mail address or daytime telephone number, the person shall give the board written notification of the change within ten days after the change.

### **32-3622. Licenses and certificates**

A. A license or certificate issued under this chapter shall be signed on behalf of the board and shall bear the license or certificate number assigned by the board.

B. Each state licensed or state certified appraiser shall place the appraiser's license or certificate number adjacent to or immediately below the title "state licensed appraiser" or "state certified appraiser" and the number shall be included in an appraisal report or in a contract or other instrument used by the license or certificate holder in conducting appraisal activities.

### **32-3623. Use of term**

A. The term "state licensed appraiser" or "state certified appraiser" may only be used to refer to individuals who hold the license or certificate and may not be used after or immediately in connection with the name or signature of a firm, partnership, corporation or group or in such a manner that it might be interpreted as referring to a firm, partnership, corporation or group or anyone other than the individual holder of the license or certificate.

B. A license or certificate shall not be issued under this chapter to a corporation, partnership, firm or group. This subsection shall not be construed to prevent a state licensed or state certified appraiser from signing an appraisal report on behalf of a corporation, partnership, firm or group.

### **32-3624. Professional corporations and partnerships**

A corporation, partnership or other business entity may provide appraisal services in connection with transactions related to this chapter if the appraisal is prepared by individuals licensed or certified in accordance with this chapter. An individual who is not a state licensed or state certified appraiser may assist in the preparation of an appraisal if both of the following apply:

1. The assistant is under the direct supervision of a state licensed or state certified appraiser.
2. The final appraisal document is approved and signed by an individual who is licensed or certified.

### **32-3625. Continuing education**

A. As a prerequisite to renewal of a license or certificate, a state registered trainee appraiser or a licensed or state certified appraiser shall present evidence satisfactory to the board of having met the continuing education requirements of either subsection B or C of this section.

B. The basic continuing education requirement for renewal of a license or certificate is the completion by the applicant, during the immediately preceding term of the license or certificate, of courses or seminars that are approved by the board.

C. An applicant for reregistering, relicensing or recertification may satisfy all or part of the continuing education requirements by presenting evidence of the following, which shall be approved by the board:

1. Completion of an education program of study determined by the board to be equivalent, for continuing education purposes, to courses approved by the board pursuant to subsection B of this section.
2. Participation other than as a student in educational processes and programs that are approved by the board and that relate to appropriate appraisal theory, practices or techniques, including teaching, program development and preparation of textbooks, monographs, articles and other instructional materials, not to exceed fifty per cent of an applicant's continuing education requirements and not for the same course in consecutive renewal periods.

D. The board shall adopt rules to assure that persons renewing their licenses or certificates as state licensed or state certified appraisers follow practices and techniques that provide a high degree of service and protection to those members of the public with whom they deal in the professional relationship under the authority of the license or certificate. The rules shall include the following:

1. Policies and procedures for obtaining board approval of courses and instruction pursuant to subsection B of this section.
2. Standards, policies and procedures to be applied by the board in evaluating an applicant's claims of equivalency in accordance with subsection C of this section.
3. Standards, monitoring methods and systems for recording attendance to be employed by course sponsors as a prerequisite to board approval of courses for credit.

E. In adopting rules pursuant to subsection D, paragraph 1 of this section, the board shall give consideration to courses of instruction, seminars and other appropriate appraisal educational courses or programs previously or hereafter developed by or under the auspices of professional appraisal organizations and utilized by those associations for purposes of designation, or indicating compliance with the continuing education requirements of such organizations. No person who offers these courses may discriminate in the opportunity to participate in these courses on the basis of membership or nonmembership in an appraisal organization.

F. No amendment or repeal of a rule adopted by the board pursuant to this section may operate to deprive a state registered trainee appraiser or a state licensed or state certified appraiser of credit toward renewal of a license or certificate for any course of instruction either completed by the applicant or enrolled in by the applicant before the amendment or repeal of the rule that would have qualified for continuing education credit under the rule as it existed before the repeal or amendment.

G. A license or certificate as a state registered trainee appraiser or a state licensed or state certified appraiser that has been suspended as a result of disciplinary action by the board shall not be reinstated unless the applicant presents evidence of completion of the continuing education required by this chapter.

H. A license or certificate that has been revoked by the board shall not be reinstated unless the applicant successfully completes the appropriate requirements of the appraisal qualifications board, including education and passage of the current national examination.

**32-3626. Scarcity determination; resident temporary licenses and certificates; exemption**

A. No later than November 1 of each year, the board shall determine and make a finding whether there is a scarcity of state certified or state licensed appraisers in an area within the state to perform appraisals in federally related transactions.

B. In determining whether a scarcity exists, the board shall follow procedures in accordance with the provisions governing scarcity in 12 United States Code section 3348 and regulations adopted pursuant to that section as of September 30, 1992.

C. If the board makes a finding of scarcity, within fifteen days after the finding, the board shall apply to the appropriate federal agency for a temporary waiver of the state certification or licensing requirements.

D. If a waiver request has been approved by the federal agency authorized to issue waivers, the board may thereafter issue resident temporary licenses or certificates to applicants consistent with the reduction in application requirements of this chapter for licenses and certificates as authorized by the waiver. A resident temporary license or certificate shall be subject to all provisions of this chapter not inconsistent with the provisions of the waiver.

E. A person obtaining a resident temporary license or certificate under this section is required to comply with all of the provisions of this chapter except for those provisions of this chapter for which a temporary waiver has been approved and shall indicate on all appraisals performed by the person that the appraisal is not an appraisal done by a state certified or state licensed appraiser and the person performing the appraisal is a resident temporary license or certificate holder. A person holding a resident temporary license or certificate may perform appraisals only in areas within the state where it has been determined by the board that a scarcity exists.

F. The board is exempt from title 41, chapter 6, article 10 in making the determination and finding and in issuing resident temporary licenses and certificates in accordance with the waiver in subsection D of this section and section 32-3605, subsection B, paragraph 14.

**32-3627. Inactive license or certificate status; reactivation application; renewal application and fee; continuing education**

A. Any license or certificate holder may request that the license or certificate be placed on inactive status by filing with the board an application that includes all of the following:

1. The license or certificate holder's name.
2. The license or certificate number.
3. A request for inactive status.

B. The period a license or certificate is on inactive status under this section may not exceed two years.

C. A license or certificate holder who is on inactive status shall not do either of the following:

1. Represent that the license or certificate holder is an active appraiser licensed or certified in this state.
2. Perform real estate appraisals or appraisal reviews on real estate in this state.

D. A license or certificate holder on inactive status under this section must file with the board an application for reactivation of the license or certificate before resuming real estate appraisal activity.

E. To return to active status, an inactive license or certificate holder shall do both of the following:

1. File with the board an application for reactivation of the license or certificate.
2. Provide evidence of completion of the required continuing education that the license or certificate holder would have been required to meet during the period when the license or certificate holder's license or certificate was on inactive status.

F. If the holder of an inactive license or certificate under this section does not file an application for reactivation within a two year period, that person must reapply for licensure or certification pursuant to the requirements of this chapter.

G. A license or certificate holder who is on inactive status pursuant to this section remains on inactive status until the board approves the application for reactivation of the license or certificate.

H. The board may take disciplinary or remedial action against a license or certificate holder who is on inactive status pursuant to this section.

I. A license or certificate holder who places the holder's license or certificate on inactive status must pay the renewal fee and complete an application for renewal as prescribed in section 32-3619. A license or certificate holder on inactive status is not required to provide evidence of completion of the continuing education requirements until the application for reactivation is filed pursuant to subsection E of this section.

**32-3628. Inactive license or certificate status during military duty; reactivation application; renewal application and fee; continuing education**

A. A license or certificate holder who is ordered to active military duty with the United States armed forces may request that the license or certificate be placed on inactive status by filing with the board an application that includes all of the following:

1. The license or certificate holder's name.
2. The license or certificate number.
3. The date that the active military duty begins.
4. A request for inactive status.

B. The license or certificate is deemed to be on inactive status while the license or certificate holder is on active military duty, but the period of inactive status may not exceed three years.

C. A license or certificate holder who is on inactive status pursuant to this section shall not do either of the following:

1. Represent that the holder is an active appraiser licensed or certified in this state.
2. Perform real estate appraisals or appraisal reviews on real estate in this state.

D. A license or certificate holder on inactive status must file with the board an application for reactivation of the license or certificate within one hundred eighty days after returning home from active military duty.

E. If the holder of an inactive license or certificate timely files an application for reactivation of the license or certificate, the license or certificate is returned to active status on the board's approval of the application for reactivation. The time period for completion of the continuing education requirements that the license or certificate holder would otherwise have been required to meet during the period when the license or certificate was on inactive status is extended for a period not to exceed ninety days after return from active military duty. The license or certificate holder must submit proof of completion of any continuing education requirements to the board no later than one hundred twenty days after completion.

F. If the holder of an inactive license or certificate under this section does not make a timely application for reactivation as required by subsection D of this section, the holder must reapply for licensure or certification meeting all of the requirements of this chapter.

G. A license or certificate holder who is on inactive status pursuant to this section remains on inactive status until the board approves the application for reactivation of the license or certificate.

H. The holder of an inactive license or certificate applying for reactivation of the license or certificate under this section shall include with the application for reactivation a copy of the documentation from the armed forces showing the period of time that the holder of the inactive license or certificate was on active military duty.

I. Any license or certificate holder who places the holder's license or certificate on inactive status under this section must pay the renewal fee prescribed in section 32-3607 and complete an application for renewal pursuant to section 32-3619. A license or certificate holder on inactive status pursuant to this section who files an application for reactivation is required to provide evidence of completion of the continuing education requirements pursuant to subsection E of this section.

J. For the purposes of this section, active military duty does not include service persons performing weekend drill and annual training.

## **Article 3 Regulation**

**32-3631. Disciplinary proceedings**

A. The rights of an applicant or holder under a license or certificate as a registered trainee appraiser or a state licensed or state certified appraiser may be revoked or suspended or the holder of the license or certificate may otherwise be disciplined in accordance with this chapter on any of the grounds set forth in this section. The board may investigate the actions of a registered trainee appraiser or a state licensed or state certified appraiser and may revoke or suspend the rights of a license or certificate holder or



otherwise discipline a registered trainee appraiser or a state licensed or state certified appraiser for any of the following acts or omissions:

1. Procuring or attempting to procure a license or certificate pursuant to this chapter by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for a license or certificate or committing any form of fraud or misrepresentation.
2. Failing to meet the minimum qualifications established by this chapter.
3. Paying or offering to pay money or other considerations other than as provided by this chapter to any member or employee of the board to procure a license or certificate under this chapter.
4. A conviction, including a conviction based on a plea of guilty, of a crime that is substantially related to the qualifications, functions and duties of a person developing appraisals and communicating appraisals to others, or a conviction for any felony or any crime involving moral turpitude.
5. An act or omission involving dishonesty, fraud or misrepresentation with the intent to substantially benefit the license or certificate holder or another person or with the intent to substantially injure another person.
6. Violation of any of the standards of the development or communication of appraisals as provided in this chapter.
7. Negligence or incompetence by the state licensed or state certified appraiser in developing an appraisal, in preparing an appraisal report or in communicating an appraisal.
8. Wilfully disregarding or violating any of the provisions of this chapter or the rules of the board for the administration and enforcement of this chapter.
9. Accepting an appraisal assignment if the employment itself is contingent on the appraiser reporting a predetermined estimate, analysis or opinion or if the fee to be paid is contingent on the opinion, conclusion or value reached or on the consequences resulting from the appraisal assignment.
10. Violating the confidential nature of any records to which the registered trainee appraiser or the state licensed or state certified appraiser gains access through employment or engagement as a registered trainee appraiser or an appraiser.
11. Entry of a final civil judgment against the person on grounds of fraud, misrepresentation or deceit in the making of any appraisal.

B. In a disciplinary proceeding based on a civil judgment, a registered trainee appraiser or state licensed or state certified appraiser shall be afforded an opportunity to present matters in mitigation and extenuation.

C. The board may issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence necessary and relevant to an investigation or hearing.

D. The lapsing or suspension of a license or certificate by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license or certificate by a license or certificate holder, shall not deprive the board of jurisdiction to do any of the following within twenty-four months after the expiration of the license or certificate pursuant to section 32-3616:

1. Proceed with any investigation of or action or disciplinary proceeding against the license or certificate holder.
2. Render a decision suspending or revoking the license or certificate or denying the renewal or right of renewal of the license or certificate.

### **32-3632. Hearing and judicial review**

A. The hearing on the charges shall be at a time and place prescribed by the board and shall be in accordance with title 41, chapter 6, article 10.

B. If the board determines that a state licensed or state certified appraiser is guilty of a violation of this chapter, it shall prepare a finding of fact and take disciplinary or remedial action.

C. Except as provided in section 41-1092.08, subsection H, any final decision or order of the board may be appealed to the superior court pursuant to title 12, chapter 7, article 6.

### **32-3633. Undue influence; classification**

A person who induces or influences the actions of an appraiser for purposes of securing an appraisal that is grossly misleading, or fraudulent, is guilty of a class 6 felony.

**32-3634. Prohibition against discrimination**

If appraisal users require specific appraiser qualifications or experience for certain transactions necessary to carry out or to meet the responsibilities of the appraisal user, these requirements shall be related to the special skills that are required of an individual in connection with the specific appraisal assignment and shall not exclude an appraiser for consideration for such assignment solely by membership or lack of membership in any particular professional appraisal organization or association.

**32-3635. Standards of practice**

- A. A registered trainee appraiser or a state licensed or state certified appraiser shall comply with the standards of professional appraisal practice adopted by the board.
- B. An appraisal or appraisal report shall not be issued by a real estate appraiser unless it meets the appraisal standards established by this chapter and rules adopted pursuant to this chapter.
- C. An appraisal review report shall clearly indicate the nature of the review process undertaken and shall separate the review function from any other functions.
- D. All federally related appraisals shall be in writing.

**32-3636. Contingent fees**

A state licensed or state certified appraiser may not accept a fee for an appraisal assignment that is contingent on the appraiser reporting a predetermined estimate, analysis or opinion or that is contingent on the opinion, conclusion or value reached or on the consequences resulting from the appraisal assignment.

**32-3637. Retention of records; definition**

- A. A state licensed or state certified appraiser shall retain a work file for at least five years after preparation of the work file or at least two years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the work file, whichever period of time is greater.
- B. A state licensed or state certified appraiser shall do either of the following:
  - 1. Have custody of the appraiser's work file.
  - 2. Make appropriate work file retention, access and retrieval arrangements with the party having custody of the work file.
- C. The board may inspect all records required to be maintained under this chapter by the state licensed or state certified appraiser on reasonable notice to the appraiser.
- D. For the purposes of this section, "work file" includes documentation that is necessary to support an appraiser's analyses, opinions and conclusions and that demonstrates compliance with the uniform standards of professional appraisal practice.

**32-3638. Violation; classification**

Any person who performs a real estate appraisal or appraisal review, who is not licensed or certified under this chapter and who knowingly assumes or uses any title, designation or abbreviation likely to create the impression of licensure or certification by this state or any person who knowingly provides false or fraudulent information to the board is guilty of a class 1 misdemeanor.

**32-3639. Damages; injunctive relief**

If the board has a reasonable basis to believe, after investigation, that any person is violating any provision of this chapter, the board may bring an action in superior court for appropriate injunctive or other equitable relief, damages sustained and taxable costs and reasonable attorney fees.

**32-3640. Prohibition; indemnification agreement**

- A. Any person, party or entity who hires, engages or communicates with an appraiser directly or through an agent shall not require or attempt to require the appraiser to sign any indemnification agreement that would hold harmless the hiring person, party or entity, its owners, agent's employees or independent contractors from any liability, damage, loss or claim arising from the services performed by the person, party or entity, its owners, agent's employees or independent contractors.
- B. This section does not limit liability for services performed by the appraiser.

## **Article 4 Property Tax Agents**

### **32-3651. Definitions**

In this article, unless the context otherwise requires:

1. "Analysis" means the review of a property valuation or legal classification established by a county assessor in the representation of a person in appealing the property valuation to the county assessor.
2. "Appraisal" means the development of real or personal property value or legal classification opinions or conclusions.
3. "Board" means the state board of appraisal.
4. "Property tax agent" means an individual who is designated by a person or is an employee of an entity designated as an agent pursuant to section 42-16001, who acts on behalf of a person who owns, controls or possesses property valued by a county assessor or the department of revenue and who receives a fee for the analysis of any matter relating to the review of the valuation or legal classification of the person's property before the assessor, the county or state board of equalization or the department of revenue. Property tax agent does not include a person who is admitted to practice law in this state, an employee of the person owning, controlling or possessing the property or an employee of an entity designated pursuant to section 42-16001, if such employee is performing a secretarial, clerical or administrative support function.

### **32-3652. Registration; renewal; fees**

- A. An individual who wishes to act as a property tax agent shall apply for registration by submitting to the board a completed application form prescribed by the board with the initial registration fee. The applicant shall also file with the board an affidavit stating whether the applicant has been convicted of a felony or any misdemeanor involving dishonesty or moral turpitude in this or any other state within the last ten years. The board may review the affidavit and issue or deny the registration based on its findings.
- B. Except as provided in section 32-4301, registration is valid for two years. An individual may renew a registration by submitting to the board a renewal form prescribed by the board with the renewal fee on or before the date the registration expires.
- C. An appraiser licensed or certified pursuant to this chapter may register and renew registration as a property tax agent without paying the fee prescribed by this section.
- D. The board shall issue a certificate of registration to an individual, if the individual complies with this section and the individual is not prohibited from registering pursuant to section 32-3654.
- E. A person shall not act as a property tax agent if the person is not registered pursuant to this section.
- F. The board shall collect from each individual a fee of:
  1. Two hundred dollars for an initial registration.
  2. One hundred dollars for a renewal.
  3. Five dollars for a duplicate registration certificate.
- G. The board shall deposit, pursuant to sections 35-146 and 35-147, monies collected pursuant to subsection F of this section in the board of appraisal fund.

### **32-3653. Property tax agent conduct**

A property tax agent:

1. Shall not knowingly misrepresent any information or act in a fraudulent manner.
2. Shall not prepare documents or provide evidence in a property valuation or legal classification appeal unless the agent is authorized by the property owner to do so and any required agency authorization form has been filed.
3. Shall not knowingly submit false or erroneous information in a property valuation or legal classification appeal.
4. Shall use appraisal standards and methods that are adopted by the board when the agent submits appraisal information in a property valuation or legal classification appeal.

### **32-3654. Disciplinary actions**

- A. On the complaint of any person or on its own motion, the board shall investigate any suspected violation of this article by a property tax agent. If the board finds a violation it may issue a letter of concern.

B. If the board finds that the property tax agent committed any of the following violations, it shall revoke or suspend the agent's registration:

1. Secured registration by fraud or deceit.
2. Committed an act or is responsible for an omission involving fraud or knowing misrepresentation with the intent to obtain a benefit.
3. Knowingly violated section 32-3653.

C. The board shall:

1. Suspend the agent's registration for not less than six months on the first finding of a violation pursuant to subsection B of this section.
2. Suspend the agent's registration for not less than twelve months on the second finding of a violation pursuant to subsection B of this section.
3. Revoke the agent's registration on a third or subsequent finding of a violation pursuant to subsection B of this section.

D. The board shall not impose discipline until the agent has been provided an opportunity for a hearing before the board pursuant to title 41, chapter 6, article 10. The board shall notify the agent of the charges and the date and time of the hearing. The notice may be personally served or sent by certified mail to the agent's last known address. Except as provided in section 41-1092.08, subsection H, the final decision of the board is subject to judicial review pursuant to title 12, chapter 7, article 6.

E. The board shall not renew an agent's registration during the time the registration is suspended or revoked.

### **32-3655. Rules**

The board may adopt rules for the purpose of administering this article.

### **32-3656. Confidential records**

Except as otherwise provided by law, all documents associated with a complaint pursuant to this article are confidential until the complaint is resolved.

## **Article 5 Appraisal Management Companies**

### **32-3661. Definitions**

In this article, unless the context otherwise requires:

1. "Appraisal" means the act or process of developing an opinion of the value of real property in conformance with the uniform standards of professional appraisal practice published by the appraisal foundation, or any other definition used in state or federal laws.
2. "Appraisal management company" means a corporation, partnership, sole proprietorship, subsidiary or other business entity that directly or indirectly performs appraisal management services, regardless of the use of the term "appraisal management company", "mortgage technology provider", "lender processing services", "lender services", "loan processor", "mortgage services", "real estate closing services provider", "settlement services provider", "vendor management company" or any other term, and that does any of the following:
  - (a) Administers an appraiser panel of independent contract appraisers to perform real property appraisal services in this state for clients.
  - (b) Receives requests for real property appraisal services from clients and, for a fee paid by the client, enters into an agreement with one or more independent appraisers to perform the real property appraisal services contained in the request.
  - (c) Otherwise serves as a third party liaison of appraisal management services between clients and appraisers.
3. "Appraisal management services" means the process of receiving a request for the performance of real property appraisal services from a client and, for a fee paid by the client, entering into an agreement with one or more independent appraisers who are part of an appraiser panel to perform the real property appraisal services contained in the request.
4. "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment, but does not include an examination of an appraisal for grammatical, typographical or other similar errors that do not

communicate an opinion related to the appraiser's data collection, analysis, opinions, conclusions, estimate of value or compliance with the uniform standards of professional appraisal practice.

5. "Appraiser" means a person who is licensed or certified as an appraiser pursuant to this chapter and who performs valuation services competently and in a manner that is independent, impartial and objective.

6. "Appraiser panel" means a group of independent appraisers that has been selected by an appraisal management company to perform real property appraisal services for the appraisal management company.

7. "Client" means a person that contracts with, or otherwise enters into an agreement with, an appraisal management company for the performance of real property appraisal services.

8. "Controlling person" means any of the following:

(a) An owner, officer or director of a corporation, partnership or other business entity seeking to offer appraisal management services in this state.

(b) An individual who is employed, appointed or authorized by an appraisal management company and who has the authority to enter into a contractual relationship with clients for the performance of appraisal management services and to enter into agreements with independent appraisers for the performance of real property appraisal services.

(c) An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

9. "Real property appraisal services" means the practice of developing an opinion of the value of real property in conformance with the uniform standards of professional appraisal practice published by the appraisal foundation.

10. "Relocation management company" means a business entity whose exclusive business services are not for mortgage purposes and include the relocation of employees as an agent or contractor for the employer or the employer's agent for the purposes of determining an anticipated sales price, as defined by the worldwide employee relocation council, of the residence of an employee being relocated by the employer in the course of its business.

11. "Uniform standards of professional appraisal practice" means the uniform standards of professional appraisal practice promulgated by the appraisal foundation and adopted pursuant to this chapter.

### **32-3662. Registration**

A. A person shall not directly or indirectly engage or attempt to engage in business as an appraisal management company, directly or indirectly perform or attempt to perform appraisal management services or advertise or hold itself out as engaging in or conducting business as an appraisal management company without first obtaining a registration issued by the board pursuant to this article, regardless of the entity's use of appraisal management company, mortgage technology company or any other name.

B. A person who wishes to be registered as an appraisal management company in this state must file a written application with the board on a form prepared and furnished by the board and pay a fee in an amount to be determined by the board. The registration required by subsection A shall include:

1. The name, residence address, business address and telephone number of the applicant and the location of each principal office and branch office at which the appraisal management company will conduct business in this state.

2. The name under which the applicant will conduct business as an appraisal management company.

3. The name, residence address, business address and telephone number of each person who will have an interest in the appraisal management company as a principal, partner, officer, director or trustee, specifying the capacity and title of each person.

4. If the person seeking registration is a corporation that is not domiciled in this state, the name and contact information for the company's agent for service of process in this state.

5. A certification that the person seeking registration has a system and process in place to verify that a person being added to the appraiser panel for the appraisal management company's appraisal management services in this state holds a license or certification in good standing in this state.

6. A certification that the person seeking registration has a system in place to review the work of all independent appraisers that are performing real property appraisal services for the appraisal

management company on a periodic basis to confirm that the real property appraisal services are being conducted in accordance with uniform standards of professional appraisal practice.

7. A certification that the person maintains a detailed record of each service request that it receives and the independent appraiser that performs the real property appraisal services for the appraisal management company.

8. A certification that the person seeking registration has a system in place to train those who select individual appraisers for real property services in this state, to ensure that the selectors have appropriate training in placing appraisal assignments.

9. An irrevocable consent to service of process.

10. Any other information required by the board deemed reasonable in scope and content and necessary for the implementation and administration of this chapter.

### **32-3663. Exemptions**

This article does not apply to:

1. A department or unit within a financial institution that is subject to direct regulation by an agency of the United States government or of this state and that receives requests for the performance of real estate appraisals from the financial institution and then assigns such requests to an appraiser who is part of the financial institution's appraiser panel.

2. A corporation, partnership, sole proprietorship, subsidiary or other business entity that employs real estate appraisers exclusively on an employer and employee basis for the performance of all real property appraisal services in the normal course of its business and that is responsible for ensuring that the real property appraisal services being performed by its employees are being performed in accordance with uniform standards of professional appraisal practice and federal and state law.

3. A relocation management company in the course of employee relocation pursuant to its relocation policy.

### **32-3664. Registration forms**

An applicant for initial and renewal registration as an appraisal management company shall submit to the board an application on a form prescribed by the board.

### **32-3665. Expiration of registration**

An initial registration granted by the board pursuant to this article is valid for one year from the date on which it is issued. Registration renewals are valid for two years.

### **32-3666. Consent to service of process**

Each entity applying for registration as an appraisal management company shall complete and execute an irrevocable consent to service of process form as prescribed by the board.

### **32-3667. Fee; bond**

A. The board shall establish the fee for appraisal management company registration by rule.

B. The appraisal management company is required to show proof of a surety bond of twenty thousand dollars.

### **32-3668. Owner requirements**

A. An appraisal management company applying for registration may not be owned by a person or have any principal of the company who has had any financial, real estate or mortgage lending industry license or certificate refused, denied, canceled, revoked or voluntarily surrendered in this state or in any other state. This requirement may be waived by appeal and at the discretion of the board.

B. Each person that owns, is an officer of or has a financial interest in an appraisal management company in this state shall:

1. Be of good moral character.

2. Submit to a criminal background check conducted pursuant to section 41-1750. The board may charge the cost of a criminal background check to the applicant.

3. Certify to the board that the person has never had any financial, real estate or mortgage lending industry license or certificate refused, denied, canceled, revoked or voluntarily

surrendered in this state or in any other state. This requirement may be waived by appeal and at the discretion of the board.

### **32-3669. Controlling person**

A. Each appraisal management company applying to the board for registration in this state shall designate one controlling person that will be the main contact for all communication between the board and the appraisal management company.

B. To serve as a controlling person of an appraisal management company, a person shall:

1. Certify to the board that the person has never had any financial, real estate or mortgage lending industry license or certificate issued by this state, or any other state, refused, denied, canceled, revoked or voluntarily surrendered. This requirement may be waived by appeal and at the discretion of the board.
2. Be of good moral character.
3. Submit to a criminal background check conducted pursuant to section 41-1750. The board may charge the cost of a criminal background check to the applicant.

### **32-3670. Employee requirements**

Any employee of an appraisal management company, or any person working on behalf of an appraisal management company, who has the responsibility of selecting independent appraisers for the performance of real property appraisal services for the appraisal management company or providing appraisal review services on a completed appraisal, shall be appropriately trained and qualified in compliance with this chapter.

### **32-3671. Agreements with independent appraisers; limitations**

An appraisal management company registered in this state pursuant to this article may not enter into contracts or agreements with an independent appraiser for the performance of real property appraisal services in this state unless that person is licensed or certified in good standing with the board.

### **32-3672. Annual certifications**

A. Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis on a form prescribed by the board that the appraisal management company has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds a license or certificate in good standing in this state pursuant to the board.

B. Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that it has a system in place to review the quality of appraisals of all independent appraisers that are performing real property appraisal services for the appraisal management company on a periodic basis to confirm that the real property appraisal services are being conducted in accordance with uniform standards of professional appraisal practice.

C. Each appraisal management company seeking to be registered shall certify to the board on an annual basis that it maintains a detailed record of each service request that it receives and the name of the independent appraiser that performs the real property appraisal services for the appraisal management company. An appraisal management company shall maintain a detailed record for the same time period that an appraiser is required to maintain an appraisal record for the same real property appraisal activity.

D. Each appraisal management company seeking to be registered shall certify to the board on an annual basis that it has a system in place to train those who select individual appraisers for real property services in this state, to ensure that the selectors have appropriate training in placing appraisal assignments.

### **32-3673. Disclosure of fees**

A. The appraisal management company shall not prohibit the appraiser from reporting in the appraisal report the fee paid to the appraiser.

B. The appraiser shall disclose the fee paid for an appraisal report ordered by an appraisal management company in the scope of work section in the appraisal report.

**32-3674. Appraiser independence; prohibitions**

A. Any employee, director, officer or agent of an appraisal management company registered pursuant to this article shall not influence or attempt to influence the development, reporting or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery or any other manner, including:

1. Withholding or threatening to withhold timely payment for an appraisal.
2. Withholding or threatening to withhold future business for an independent appraiser or demoting or terminating, or threatening to demote or terminate, an independent appraiser.
3. Expressly or impliedly promising future business, promotions or increased compensation for an independent appraiser.
4. Conditioning the request for an appraisal service or the payment of an appraisal fee or salary or bonus on the opinion, conclusion or valuation to be reached or on a preliminary estimate or opinion requested from an independent appraiser.
5. Requesting that an independent appraiser provide an estimated, predetermined or desired valuation in an appraisal report or provide estimated values or comparable sales at any time before the independent appraiser's completion of an appraisal service.
6. Providing to an independent appraiser an anticipated, estimated, encouraged or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided.
7. Providing to an independent appraiser, or any entity or person related to the appraiser, stock or other financial or nonfinancial benefits.
8. Allowing the removal of an independent appraiser from an appraiser panel, without prior written notice to the appraiser.
9. Obtaining, using or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction, unless there is a reasonable basis to believe that the initial appraisal was flawed or tainted and the basis is clearly and appropriately noted in the loan file or unless the appraisal or automated valuation model is done pursuant to a bona fide prefunding or postfunding appraisal review or quality control process.
10. Engaging in any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity or impartiality.

B. An appraisal fee offered or paid may not be based on the predetermined value or range of value of the subject property or the amount of the transaction price.

C. Subsections A and B do not prohibit an appraisal management company from requesting that an independent appraiser either:

1. Provide additional information about the basis for a valuation.
2. Correct objective factual errors in an appraisal report.

**32-3675. Payment**

Except in cases of breach of contract or substandard performance of services, each appraisal management company shall make payment to an independent appraiser for the completion of an appraisal or valuation assignment within forty-five days after the date on which the independent appraiser transmits or otherwise provides the completed appraisal or valuation study to the appraisal management company or its assignee.

**32-3676. Appraisal reports; alteration; use**

An appraisal management company shall not:

1. Alter, modify, revise or otherwise change a completed appraisal report submitted by an independent appraiser, including removing the signature of the appraiser.
2. Use an appraisal report submitted by an independent appraiser for any purpose other than the intended use stated in the report.

**32-3677. Adjudication of disputes**

A. Except within the first sixty days after an independent appraiser is first added to the appraiser panel of an appraisal management company, an appraisal management company shall not remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real property appraisal services to an



independent appraiser, without notifying the appraiser in writing of the reasons for the appraiser being removed from the appraiser panel of the appraisal management company.

B. An independent appraiser that is removed from the appraiser panel of an appraisal management company for alleged illegal conduct, violation of the uniform standards of professional appraisal practice or violation of state licensing standards may file a complaint with the board for a review of the decision of the appraisal management company, except that in no case shall the board make any determination regarding the nature of the business relationship between the appraiser and the appraisal management company that is unrelated to the actions specified in subsection A.

C. If an independent appraiser files a complaint against an appraisal management company pursuant to subsection B, the board shall adjudicate the complaint within a reasonable time.

D. If after opportunity for a hearing and review, the board determines that an independent appraiser did not commit a violation of law, a violation of the uniform standards of professional appraisal practice or a violation of state licensing standards, the board shall order that the appraiser be added to the appraiser panel of the appraisal management company that was the subject of the complaint without prejudice. The board shall furnish the appraisal management company with all written documentation and investigation records that support the board's findings.

### **32-3678. Enforcement**

The board may censure an appraisal management company, conditionally or unconditionally suspend or revoke any registration issued under this article or impose civil penalties not to exceed fifteen thousand dollars per violation if, in the opinion of the board, an appraisal management company is attempting to perform, has performed or has attempted to perform any of the following acts:

1. Committing any act in violation of this article.
2. Violating any rule adopted by the board in the interest of the public and consistent with this article.
3. Knowingly making or causing to be made to the board any false representation of material fact.
4. Suppressing or withholding from the board any information that the applicant possesses and that, if submitted by the applicant, would have rendered the applicant ineligible to be registered pursuant to rules adopted by the board.
5. Violating the federal financial institutions reform, recovery and enforcement act of 1989 (P.L. 101-73; 103 Stat. 183).

### **32-3679. Disciplinary hearings**

A. The board may conduct disciplinary proceedings in accordance with title 41, chapter 6, article 10.

B. Before censuring any registrant, or suspending or revoking any registration, the board shall notify the registrant in writing of any charges made at least forty-five days before the date set for the hearing and shall afford the registrant an opportunity to be heard in person or by counsel.

C. The written notice shall be satisfied by personal service on the controlling person of the registrant or the registrant's agent for service of process in this state or by sending the notice by certified mail to the controlling person of the registrant to the registrant's address on file with the board.

D. The hearing shall be at a time and place prescribed by the board. Any reasonable request for a delay of a hearing shall not exceed ninety days.

E. The board may make findings of fact and shall deliver or mail the findings to the registrant charged with a violation of this article.

### **32-3680. Rule making authority**

The board shall adopt rules that are reasonably necessary to implement, administer and enforce this article, including rules for obtaining copies of appraisals and other documents necessary to audit compliance with this article and rules requiring a surety bond to be posted with each application.

## **Arizona Administrative Code, Title 4. Professions and Occupations, Chapter 46. Board of Appraisal.**

### **Article 1. General Provisions**

#### **R4-46-101. Definitions**

In these rules, unless the context otherwise requires:

“Arizona or State Certified General Appraiser” means a person classified by the Board as a State Certified General Real Estate Appraiser in accordance with A.R.S. § 32-3612(A)(1).

“Arizona or State Certified Residential Appraiser” means a person classified by the Board as a State Certified Residential Real Estate Appraiser in accordance with A.R.S. § 32-3612(A)(2).

“Arizona or State Licensed Appraiser” means a person classified by the Board as a State Licensed Real Estate Appraiser in accordance with A.R.S. § 32-3612(A)(3).

“Appraisal Foundation” means the educational organization, defined in A.R.S. § 32-3601(3), which is the parent organization of the Appraiser Qualifications Board and the Appraisal Standards Board.

“Appraiser” means a person licensed or certified by the Board to complete real estate appraisals or consulting assignments in accordance with A.R.S. § 32-3612(A)(1), (2), and (3).

“Board” means the Arizona Board of Appraisal established by A.R.S. § 32-3604.

“Board counsel” means the assistant attorney general who provides legal advice to the Board.

“Board staff” means the executive director and the executive director’s designees.

“Complaint” means a written communication to the Board that meets the minimum criteria established in R4-46-301(A)(1) and alleges violations of A.R.S. Title 32, Chapter 36 or this Chapter.

“Consent agreement” means a written agreement between the Board and a respondent that concerns disciplinary or remedial action.

“Consulting assignment” means a real estate appraisal advisory engagement, the purpose of which is to develop, without advocacy, an analysis, recommendation, or opinion where at least one opinion of value is a component of the analysis leading to the assignment results.

“Conviction” means a judgment by any state or federal court of competent jurisdiction in a criminal case, regardless of whether an appeal is pending or could be taken, and includes any judgment or order based upon a plea of no contest.

“Course provider” means any organization or individual that offers qualifying or continuing education courses.

“Direct supervision” means that a supervising appraiser of a trainee is directing and overseeing the production of each appraisal assignment and is personally and physically present during the entire inspection of each appraised property.

“Disciplinary action” means any regulatory sanction imposed by the Board, including a letter of due diligence, a consent agreement, probation, suspension, revocation, or an acceptance of surrender of a license or certificate.

“Dismissal” means termination of a complaint without further hearing.

“Distance education” means any educational process based on the geographical separation of learner and instructor (for example, CD ROM, on-line learning, correspondence courses, video conferencing). For qualifying education, distance education must provide interaction between learner and instructor and include testing.

“Due diligence” means the diligence reasonably expected from, and ordinarily exercised by, a person regulated by the Board, in accordance with A.R.S. Title 32, Chapter 36 and this Chapter.

“Formal complaint” means a notice of allegations issued by the Board under R4-46-302.

“Formal hearing” means an adjudication of a disputed matter, conducted by the Office of Administrative Hearings (OAH) or the Board, under R4-46-302.

“Informal hearing” means a voluntary hearing before the Board in which a respondent is asked to respond to a complaint under R4-46-301(D).

“Informational interview” means a voluntary appearance by a respondent at a public meeting before the Board to discuss a complaint that has been filed against the respondent.

“Initial review” means the Board’s first review of a complaint, the response to the complaint, if any, the relevant appraisal report or work product, and workfile.

“Investigation” means a fact-finding process initiated by a complaint concerning the practice of a named respondent.

“Investigator” means an appraiser or property tax agent operating under a contract with the Board to carry out independent investigations of alleged violations.

“Jurisdictional criteria” means the statutory standards used by the Board to determine whether a complaint falls within the Board’s jurisdiction.

“Letter of concern” means a nondisciplinary advisory letter to notify a respondent that the action that is the basis of a complaint does not warrant disciplinary action, but is nonetheless cause for concern on the part of the Board and that its continuation may result in disciplinary action.

“Letter of due diligence” means a disciplinary letter of agreement between the Board and a respondent that may or may not include remedial action when minor violations of A.R.S. Title 32, Chapter 36 or Articles 1, 2, or 3 of this Chapter have been found.

“Letter of remedial action” means a nondisciplinary letter issued by the Board that requires a respondent to take remedial action when any minor violation of A.R.S. Title 32, Chapter 36 or Articles 1, 2, or 3 of this Chapter has been found.

“Mentor” means a certified appraiser authorized by the Board to supervise the work product of an appraiser subject to disciplinary action.

“Order” means an administrative order that contains findings of fact, conclusions of law, and disciplinary action, issued by the Board after a formal hearing or by consent.

“Party” means each person or agency named or admitted as a party or properly seeking and entitled to participate in any proceeding before the Board.

“Practicing appraiser” means a state licensed or certified appraiser who is actively engaged in performing appraisal assignments.

“Probation” means a term of oversight by the Board, imposed upon a respondent as part of a disciplinary action, which may include submission of logs, working under the supervision of a mentor, or other conditions intended to protect the public and educate the respondent.

“Property tax agent” has the meaning in A.R.S. § 32-3651.

“Remedial action” means any corrective remedy ordered by the Board that is designed to assist the respondent in improving the respondent’s professional practice.

“Respondent” means appraiser, course provider, or property tax agent against whom a complaint has been filed, or any other party responding to a motion or a proceeding before the Board.

“Rules” means the requirements established under A.R.S. Title 32, Chapter 36, and found in the Arizona Administrative Code, Title 4, Chapter 46.

“Summary suspension” means an immediate suspension of a license, certificate, or registration by the Board based on a finding that the public health, safety, or welfare imperatively requires emergency action.

“Supervising appraiser” means a state certified appraiser in good standing with a minimum of four years of experience within the last four years as a practicing appraiser who engages in direct supervision of a trainee pursuing a state license or certificate and provides training for work included within the supervising appraiser’s classification.

“Trainee” means an individual who is being taught to become a state licensed or certified appraiser under the direct supervision of a supervising appraiser.

“USPAP” means the Uniform Standards of Professional Appraisal Practice, issued and updated by The Appraisal Foundation and incorporated by reference in the rules of the Board.

“Workfile” means the documentation necessary to support the analysis, opinions, and conclusions of an appraisal, a consulting assignment, or a tax appeal.

#### **R4-46-102. Powers of Board**

The Board may appoint advisory committees as the Board deems appropriate. The committees shall make advisory recommendations to the Board. The Board, in its discretion, may accept, reject, or modify the advisory recommendations.

#### **R4-46-103. Board Records; Public Access; Copying Fees**

A. The Board shall keep all records reasonably necessary or appropriate to maintain an accurate knowledge of its official activities including, but not limited to: applications for an initial license or certificate; renewal applications; examination results; documents, transcripts, and pleadings relating to disciplinary proceedings and to hearings on the denial of a license or certificate; investigative reports; staff memoranda; and general correspondence between any person and the Board, members of the Board, or staff members.

B. A person shall not remove Board records from the office of the Board unless the records are in the custody and control of a Board member, a member of the Board's staff, or the Board's attorney. The Executive Director may designate a staff member to observe and monitor any examination of Board records.

C. The Board shall provide copies of all records available for public inspection and copying according to the procedures described in A.R.S. Title 39, Chapter 1, Article 2.

#### **R4-46-106. Fees**

A. The Board shall charge and collect fees for the following:

1. Initial Application: \$400
2. Examination: \$100
3. Biennial Renewal of a License or Certificate: \$425
4. Delinquent Renewal (in addition to the Renewal fee): \$25
5. Biennial National Registry: \$80
6. Nonresident Temporary License or Certificate: \$150
7. Course Approval:
  - a. Qualifying Education
    - i. Initial Course Approval: \$400
    - ii. Renewal of Course Approval: \$100
    - iii. Renewal of Course Approval to Change Instructor: \$50
  - b. Continuing Education
    - i. Initial Course Approval: \$200
    - ii. Renewal of Course Approval: \$100
    - iii. Renewal of Course Approval to Change Instructor: \$50

B. A person shall pay fees by cash, certified check, cashier's check, or money order payable to the Arizona Board of Appraisal.

C. A person making a public record request shall pay the Board the reasonable cost of reproduction consistent with A.R.S. Title 39, Chapter 1, Article 2. The person shall pay for the Board's cost of reproduction by cash, certified check, cashier's check, or money order.

## **Article 2 Licensing and Certification**

#### **R4-46-201. Appraiser Qualification Criteria**

A. Except as provided in subsections (B), (C), and (D), an applicant for the applicable classification of license or certificate shall meet that classification's criteria established by the Appraiser Qualifications Board (AQB) in either The Real Property Appraiser Qualification Criteria and Interpretations of the

Criteria (Real Property Appraiser Qualification Criteria adopted February 16, 1994, effective January 1, 1998; Includes all Interpretations and Supplementary Information as of January 1, 2002; Appendix I Criteria Revisions effective January 1, 2003) referred to as the "1998 Criteria," or The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria (Real Property Appraiser Qualification Criteria Effective January 1, 2008; Appendix, Real Property Appraiser Qualification Criteria Prior to January 1, 2008; Includes All Interpretations and Supplementary Information as of February 1, 2007) referred to as the "2008 Criteria," as follows:

1. The requirements are divided into three components: education, experience and examination. An applicant shall meet the criteria in effect at the time the applicant completes a particular component.
  2. The Board shall give credit for completion of a component if the applicant meets either the 1998 Criteria or the 2008 Criteria for any component completed prior to January 1, 2008.
  3. The Board shall give credit for completion of a component only if the applicant meets the 2008 Criteria for any component completed on or after January 1, 2008.
  4. On and after November 1, 2008, an applicant shall meet the 2008 Criteria for all components, regardless of when the component was completed. Both the 1998 Criteria and the 2008 Criteria are incorporated by reference and are on file with the Board. These incorporated criteria include no future editions or amendments. A copy of the incorporated criteria may be obtained from the Board or The Appraisal Foundation, 1155 15th Street, NW, Suite 1111, Washington, DC 20005; (202) 347-7722; fax (202) 347-7727; or web site [www.appraisalfoundation.org](http://www.appraisalfoundation.org).
- B. Regardless of whether a transaction is federally related:
1. A State Licensed Residential Appraiser is limited to the scope of practice in A.R.S. § 32-3612(A)(3), and
  2. A State Certified Residential Appraiser is limited to the scope of practice in A.R.S. § 32-3612(A)(2).
- C. Notwithstanding the criteria incorporated by reference in subsection (A),
1. An applicant shall not obtain more than 75% of required qualifying education through distance education;
  2. An applicant shall not obtain the 15-hour National USPAP Course, or its equivalent, approved through the AQB Course Approval Program, through distance education;
  3. Qualifying education credit may be obtained at any time before the date of application, except the 15-hour National USPAP Course or its AQB approved equivalent shall be obtained within two years preceding the date of application; and
  4. Seventy-five percent of the applicant's quantitative experience requirements shall include work product where the applicant inspected the subject property.
- D. Notwithstanding the criteria incorporated by reference in subsection (A), there is no Trainee Real Property Appraiser Classification.
1. A supervising appraiser shall instruct and directly supervise a trainee for any classification of license or certificate in the entire preparation of each appraisal. A supervising appraiser shall provide direct supervision, being personally and physically present during the entire inspection of each appraised property with the trainee. The supervising appraiser shall approve and sign all final appraisal documents, certifying the appraisals are in compliance with the Uniform Standards of Professional Appraisal Practice.
  2. A trainee may have more than one supervising appraiser, but a supervising appraiser shall not supervise more than three trainees at any one time. A trainee shall maintain an appraisal log for each supervising appraiser and, at a minimum, include the following in the log for each appraisal:
    - a. Type of property,
    - b. Date of report,
    - c. Property description,
    - d. Description of work performed by the trainee and scope of review and supervision by the supervising appraiser,
    - e. Number of actual work hours by the trainee on the assignment, and
    - f. The signature and state certificate number of the supervising appraiser.
  3. A supervising appraiser shall provide to the Board in writing the name and address of each trainee within 10 days of engagement, and notify the Board in writing immediately upon termination of the engagement. A state certified appraiser is not eligible to be a supervising

appraiser unless the appraiser's certificate is in good standing and the appraiser has not been subject to license or certificate suspension, probation, or mentorship within the last two years.

4. An appraiser who wishes to act as a supervising appraiser shall submit proof of completion of a minimum of four hours of continuing education approved by the Board, regarding the role of a supervising appraiser, before supervision begins. The required course shall not be taken through distance education.

5. Each supervising appraiser shall submit to the Board proof of completion of a minimum of four hours of continuing education approved by the Board regarding the role of a supervising appraiser within 60 days of the effective date of this subsection. The required course shall not be taken through distance education. If the supervising appraiser does not take the course within 60 days of the effective date of this subsection, the supervising appraiser shall not act as a supervising appraiser until the class is taken and proof has been submitted to the Board.

6. In the event that an appraiser or a supervising appraiser does not comply with the applicable requirements of subsection (D):

a. The appraiser or the supervising appraiser may be subject to disciplinary action pursuant to A.R.S. § 32-3631(A)(8), and

b. A trainee shall not receive experience credit for hours logged during the period that the appraiser or supervising appraiser failed to comply with the applicable requirements of subsection (D).

#### **R4-46-202. Application for License or Certificate**

A. An applicant for a state certificate or license shall submit a completed application accompanied by the required application fee. Once the application has been filed, fees are nonrefundable, unless A.R.S. § 41-1077 is applicable.

B. To be eligible for a license or certificate, an applicant shall:

1. Meet the qualification criteria contained in A.R.S. Title 32, Chapter 36, Article 2 and these rules;

2. Achieve a passing score on the applicable examination required by R4-46-204(B), unless exempted under A.R.S. § 32-3626;

3. Pay all required application and examination fees; and

4. Pay the biennial national registry fee.

C. In addition to the requirements listed in subsection (B), an applicant for licensure shall demonstrate 2,000 hours of experience earned in not less than 18 months.

D. An applicant shall meet all requirements for a license or certificate within one year of filing the application or the applicant's file will be closed and the applicant shall reapply, meeting the requirements of R4-46-202(B). The Board shall notify an applicant whose application has been closed by certified mail or personal service at the applicant's last known address of record. Notice is complete upon deposit in the U.S. mail or by service as permitted under the Arizona Rules of Civil Procedure.

#### **R4-46-203. Procedures for Processing Applications**

A. To comply with A.R.S. Title 41, Chapter 6, Article 7.1, the Board establishes the following time-frames for processing license and certificate applications, including renewal applications:

1. The Board shall notify the applicant within 45 days of receipt of the application that it is either administratively complete or incomplete. If the application is incomplete, the notice shall specify what information is missing.

2. The Board shall not substantively review an application until the applicant has fully complied with the requirements of R4-46-202(A). The Board shall render a final decision not later than 45 days after the applicant successfully completes all requirements of R4-46-202(A).

3. Although the applicant may have up to one year to comply with requirements of R4-46-202, the overall time-frame for Board action is 90 days, 45 days for administrative completeness review and 45 days for substantive review.

B. If the Board denies a license, the Board shall send the applicant written notice explaining:

1. The reason for denial, with citations to supporting statutes or rules;

2. The applicant's right to seek a hearing to challenge the denial; and

3. The time periods for appealing the denial.

**R4-46-204. Appraiser Examinations**

- A. An applicant may schedule an examination once the applicant has completed the experience and education components specified in R4-46-201.
- B. An applicant shall successfully complete the Appraiser Qualifications Board endorsed uniform state appraiser examination or its equivalent for the applicable classification approved by the Board.
- C. An applicant for a license or certificate who fails to pass an examination or fails to appear for a scheduled examination may schedule another examination by filing a new examination application and paying the examination fee.

**R4-46-205. Issuance of a License or Certificate**

An applicant who has met the appraiser qualification criteria prescribed in R4-46-202 shall be issued a license or certificate which entitles the applicant to practice as an appraiser for the term of the license or certificate.

**R4-46-206. Hearing on Denial of a License or Certificate**

Any applicant denied a license or certificate by the Board may file a written request for hearing pursuant to A.R.S. § 41-1092.03. Any hearing shall be conducted under the formal hearing procedures prescribed in Article 3 of these rules; A.R.S. Title 41, Chapter 6, Article 10; and 2 A.A.C. 19.

**R4-46-207. Renewal of a License or Certificate**

- A. An appraiser seeking to renew a license or certificate shall submit a completed application accompanied by the required renewal application fees pursuant to A.R.S. § 32-3619 and R4-46-106. Once the application has been filed, fees are nonrefundable, unless A.R.S. § 41-1077 is applicable. To be eligible for renewal of a license or certificate, an applicant shall:
  - 1. Meet the requirements of A.R.S. Title 32, Chapter 36, and these rules;
  - 2. Meet the continuing education requirements in The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria, which is incorporated by reference in R4-46-201(A), except:
    - a. The Board shall not grant credit toward the classroom hour requirement unless the length of the educational offering is at least three hours,
    - b. A renewal applicant shall not obtain the seven-hour National USPAP Update Course, or its equivalent, approved through the AQB course approval program, through distance education; and
    - c. A renewal applicant shall not obtain more than 75% of required continuing education through distance education; and
  - 3. Pay the renewal and biennial national registry fees.
- B. The same course cannot be repeated for use as continuing education within a renewal period, with the exception of USPAP.
- C. Appraisers may receive up to 50% of continuing education credit for course instruction of Board approved course(s) per renewal period.
- D. If the last day for filing falls on a Saturday, Sunday, or legal holiday, an appraiser may file the renewal form on the next business day.
- E. An appraiser who fails to seek renewal within the time periods specified in A.R.S. § 32-3619 shall reapply and meet the requirements of R4-46-202.

**R4-46-209. Replacement License or Certificate**

If an original license or certificate has been lost, damaged, or destroyed, or if the name of a licensee or certificate holder has been legally changed, the appraiser may obtain a replacement license or certificate by filing the applicable form and paying the applicable fee to the Board.

**Article 3 Hearings and Disciplinary Proceedings****R4-46-301. Complaints; Investigations; Informal Proceedings; Summary Suspensions; Refusal to Appear**

- A. Complaints

1. The Board shall investigate a written complaint, including an anonymous complaint or a complaint made on the Board's own motion, alleging violations of A.R.S. Title 32, Chapter 36, or this Chapter, if the complaint provides information that meets the minimum criteria. Minimum criteria for a complaint include but are not limited to:

- a. The name of the respondent against whom allegations are being made;
- b. The action that is the basis of the complaint;
- c. The time-frame in which the action occurred;
- d. Each violation alleged to have been committed by the respondent; and
- e. A copy of the report, if the complaint includes allegations concerning an appraisal, consulting assignment, or property tax appeal.

2. Upon receipt of a complaint:

- a. Board staff shall review the complaint and determine, in consultation with Board counsel if necessary, whether the complaint meets jurisdictional criteria and if so, which edition of USPAP is applicable.
- b. Within 14 days after receipt of a complaint the Board shall notify the respondent, as prescribed in A.R.S. § 41-1092.04, of the complaint and the requirement that the respondent file a written response within 30 days from the date on the notice. The Board shall provide a copy of the complaint with the notice and request that the respondent address the issues in the complaint. In the notice, the Board shall require that the respondent additionally provide all of the following to the Board: the appraisal report, appraisal review, consulting assignment, or property tax appeal at issue; and the workfile.
- c. If the respondent requests more time to respond, the Board shall grant a single extension of time that does not exceed 30 days.

**B. Initial Review and Investigation**

1. Within 75 days after receipt of a response or expiration of the time for response, the Board shall conduct an initial review of the matter to determine whether further investigation is necessary. If the Board determines further investigation is necessary, the Board may employ an investigator or investigators and shall notify the respondent of the pending investigation.

2. If a respondent's name is placed on a public meeting agenda, the Board shall mail a letter to the respondent not less than seven days before the scheduled meeting, providing the respondent with a copy of the posted notice of the public meeting.

3. If the respondent is present at the initial review, the Board may request that the respondent participate in an informational interview. A respondent may refuse to participate in an informational interview. The Board may use any information presented at the informational interview in other proceedings related to the complaint.

4. At the initial review, the Board shall consider the complaint; any response; the appraisal report, appraisal review, consulting assignment, or property tax appeal; and the workfile. The Board may dismiss the matter, request or subpoena additional information, order a limited or full investigation, or invite the respondent to an informal hearing, based on the information reviewed.

5. Board staff shall assign each investigator according to the investigator's experience, expertise, contract terms, and availability. Board staff shall select an investigator who does not have a business or familial relationship with the respondent. Each investigative report shall contain the signed certification specified in subsection (B)(6). An investigator's draft report is considered work product and is, therefore, confidential. The Board may ask for clarification or additional information after review of a draft report. Upon acceptance by the Board, an investigative report is considered final. The Board may adopt any or all of the findings in the final report at a public meeting and may consider any additional, relevant information that is discovered before the matter is resolved. The investigative report becomes nonconfidential upon resolution of the complaint involved.

6. The following certification shall be included in every investigative report prepared for the Board and signed by the investigator; I certify that, to the best of my knowledge and belief:

- a. The statements of fact contained in this report are true and correct.
- b. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and they are my personal, impartial and unbiased professional analyses, opinions, conclusions, and recommendations.



- c. I have no present or prospective interest in the property that is the subject of this investigation, and I have no personal interest with respect to the parties involved in this investigation.
  - d. I have no bias with respect to any property that is the subject of this investigation or to the parties involved in this investigation.
  - e. My engagement for this investigation was not contingent upon developing or reporting any predetermined result or outcome.
  - f. My compensation for this investigation is not contingent upon developing or reporting any predetermined result or outcome, nor have I been instructed as to any predetermined result or outcome by the Board, the Board staff, or other parties.
  - g. I have (or have not) made a personal inspection of the property that is the subject of this investigation.
- C. Settlement. Any time after a complaint has been filed against a respondent, the matter may be resolved by a settlement in which the respondent agrees to accept disciplinary or remedial action by consent. If the Board determines that the proposed settlement will adequately protect the public, the Board may enter into a consent agreement with the respondent. A statement made for the purpose of settlement is not admissible in a formal hearing.
- D. Informal Hearing; Disciplinary Action
1. If, based on the initial review or its review of the investigative report, the Board determines that the respondent is or may be in violation of the Board's statutes or rules, the Board may request a voluntary informal hearing with the respondent. The Board shall provide the respondent with a copy of any final investigative report in the matter, any supporting documentation, and notice of the date, time, and location of the informal hearing, as prescribed in A.R.S. § 41-1092.04, at least 30 days before the informal hearing. The notice of informal hearing shall include all of the following:
    - a. A statement of the matters asserted and issues involved;
    - b. Any request for additional information needed by the Board to prepare for the hearing;
    - c. An explanation of the respondent's right to appear voluntarily with or without legal counsel; and
    - d. An explanation of the respondent's right to a formal hearing under R4-46-302.
  2. The Board shall provide a copy of the informational material "Introduction to Informal Hearing," which explains the rights and responsibilities of the Board and respondent during the informal hearing. (A copy is also available at the Board office).
  3. The respondent may request and the Board may grant a continuance upon a showing of good cause. During the informal hearing the Board shall swear witnesses, question the respondent and witnesses, and deliberate. The respondent may respond to the Board's questions, present witnesses, and ask questions of the Board and all witnesses regarding the matter before it.
  4. If the Board finds a violation of the statutes or rules, but the violation is not of sufficient seriousness to merit suspension or revocation, it may take one or more of the following actions:
    - a. Issue a letter of concern;
    - b. Issue a letter of remedial action;
    - c. Offer a letter of due diligence, which may or may not include remedial action;
    - d. Offer a consent agreement including an order of discipline that sets a time period and terms of probation sufficient to protect the public welfare and safety and educate the respondent. The Board may require one or more of the following as terms of probation:
      - i. Training or education;
      - ii. Supervision or mentor review;
      - iii. Restriction on the nature and scope of the respondent's practice; or
      - iv. Other reasonable measures designed to protect the public and educate the respondent.
  5. For any Board action other than a letter of concern or a letter of remedial action, the Board shall request that the respondent sign a consent agreement, which may include findings of fact and conclusions of law, depending on the severity of the violation, but shall identify and explain each violation found. If the respondent is aggrieved by the Board's decision to issue a letter of concern or letter of remedial action, the respondent may request a formal hearing in writing, within 30 days from the date the written notice of the outcome of the informal hearing is received.

6. In resolving a complaint, the Board shall consider mitigating and aggravating circumstances, including but not limited to:

- a. Whether a violation is intentional;
- b. Whether the respondent has a prior disciplinary history;
- c. The time that has elapsed since the violation, and any prior violation;
- d. Whether any prior violation is similar to the present violation;
- e. The complexity of the assignment;
- f. Whether the assignment was outside the respondent's competence; and
- g. Whether the respondent has taken courses after a violation to prevent future violations.

E. Summary Suspension. If the Board finds that the public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the Board may order a summary suspension pending proceedings for revocation or other action. If an order of summary suspension is issued, the Board shall serve the respondent with a written notice of summary suspension and formal hearing, listing the charges against the respondent and setting the date for the formal hearing as soon as is reasonably possible, but in no event more than 60 days from service of the written notice.

F. Refusal to Appear. A respondent may refuse a request to appear at an informal hearing. If the respondent refuses to appear or does not appear, the Board may schedule the matter for a formal hearing.

G. 12-Month Review. If a matter is not resolved within 12 months from receipt of the response, the Board shall schedule the matter for review at each regularly scheduled Board meeting to determine whether good cause exists to continue the investigation. If, after completing its investigation, the Board finds that further action against the respondent is not warranted, the Board shall dismiss the matter.

#### **R4-46-302. Formal Hearing Procedures**

A. The Board shall issue a notice of hearing and formal complaint for formal disciplinary proceedings if:

1. After an informal hearing, the Board determines that suspension or revocation may be warranted;
2. After an informal hearing, the respondent refuses to sign a letter of due diligence or consent agreement offered by the Board;
3. The respondent is aggrieved by the Board's decision in an informal hearing; or
4. After completing its investigation, the Board finds that suspension or revocation may be warranted.

B. Except as provided in R4-46-301(E), the Board shall provide notice of a formal hearing to a respondent at least 30 days before the date set for the hearing. The Board shall notify the respondent by certified mail or personal service at the respondent's last known address of record. Unless otherwise specified, any notice provided for in these rules is complete upon deposit in the U.S. mail or by service as permitted under A.R.S. § 41-1092.04.

C. On its own motion or the motion of a party, the Board may hear a case or have the case heard by an administrative law judge. The Board may accept, reject, or modify the administrative law judge's recommended decision as prescribed by A.R.S. § 41-1092.08, and shall issue a final order.

D. Board Hearings

1. The Board may conduct a hearing without adherence to the rules of evidence used in civil proceedings. The Board shall include the respondent's application and disciplinary records as evidence in the hearing record.
2. In all hearings required or permitted by statute, order of the Board, or these rules, the party seeking relief has the burden of proof and will present evidence first.
3. The Board shall conduct each formal hearing according to A.R.S. Title 41, Chapter 6, Article 10.

E. If a party fails to appear for a formal hearing without good cause, the Board shall act upon the evidence without further notice.

F. The Board shall make and keep a record of the hearing and, in the case of disciplinary hearings or if requested by a party or ordered by the Board, a transcript shall be prepared and filed with the

Board. If the transcript is prepared at the request of a party, the party making the request shall pay for the cost of the transcript, unless the Board, for good cause shown waives assessment of this cost.

G. A party may request and the Board may grant a continuance of a hearing date or any other deadline imposed by R4-46-302 upon a showing of good cause.

#### **R4-46-303. Rehearing or Review of the Board's Decisions**

A. Any party in a contested case or appealable agency action before the Board may file a motion for rehearing or review within 30 days after service of the final administrative decision. Service is complete upon personal service or five days after the date the decision is mailed by certified mail to the party's last known address of record. The party shall attach a full supporting memorandum specifying the grounds for the motion.

B. The opposing party may file a response within 15 days after service of the motion for rehearing or review, or by a date ordered by the Board, whichever is later. The party shall support the response with a memorandum discussing legal and factual issues.

C. Either party may request or the Board may order oral argument.

D. The Board may grant rehearing or review for any of the following causes materially affecting a party's rights:

1. Irregularity in the administrative proceedings of the Board or any other abuse of discretion which deprived the moving party of a fair hearing;
2. Misconduct of the Board or any party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
5. Excessive or insufficient sanction;
6. Error in the admission or rejection of evidence or other errors of law at the administrative hearing or during the progress of the proceedings or;
7. Unjustified decision based upon the evidence, or a decision that is contrary to law.

E. The Board may affirm or modify the decision or grant a rehearing to any party on all or part of the issues for any of the reasons set forth in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order. The rehearing, if granted, shall be limited to matters specified by the Board.

F. Not later than 30 days after a decision is rendered, the Board may order a rehearing or review on its own initiative, for any reason which it might have granted relief on motion of a party.

G. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may submit opposing affidavits with the response. Reply affidavits may be permitted.

#### **R4-46-304. Conviction and Judgment Disclosure**

A. When an appraiser or property tax agent is convicted of any act which is or would be punishable as a felony, crime involving moral turpitude, or any crime which is substantially related to the respective qualifications, functions, and duties of an appraiser or property tax agent, the convicted person shall notify the Board within 20 days of entry of a plea of guilty or conviction.

B. When a civil judgment based on fraud, misrepresentation, or deceit in the making of any appraisal is entered against an appraiser or property tax agent, the person against whom the judgment entered shall notify the board within 20 days of entry of judgment.

#### **R4-46-305. Terms and Conditions of Reapplication After Revocation**

A. An applicant who reapplies after revocation of a license, certificate, or course approval, shall submit an application for license, certificate, or course approval consistent with these rules. The applicant shall attach substantial evidence to the application that the issuance of a license, certificate, or course approval will no longer constitute a threat to the public welfare and safety.

B. The Board shall make a determination of each application that is consistent with the public safety and welfare.

#### **R4-46-306. Complaint Information Availability**

A. Every six months, the Board shall generate a report for publication on the Board's web site or in a newsletter that indicates for that period the number of:

1. Complaints received,
2. Complaints dismissed,
3. Complaints referred for investigation, and
4. Complaints referred for informal or formal hearing.

B. In preparing the report, the Board shall include the severity level of violations with reference to the Board Complaint Resolution Chart (a copy is available at the Board office); the actual complaint resolution implemented by the Board; and any other information that the Board deems useful to appraisers, property tax agents, and the public.

### **Article 4 Standards of Practice**

#### **R4-46-401. Standards of Appraisal Practice**

Every appraiser, in performing the acts and services of an appraiser, shall comply with the Uniform Standards of Professional Appraisal Practice (USPAP), 2012-2013 edition, published by The Appraisal Foundation, which is incorporated by reference and on file with the Board. This incorporation by reference contains no future editions or amendments. A copy of the USPAP 2012-2013 edition may be obtained from The Appraisal Foundation, 1155 15th St., NW, Suite 1111, Washington, DC 20005; (202) 347-7722; fax (202) 347-7727; or web site [www.appraisalfoundation.org](http://www.appraisalfoundation.org).

### **Article 5 Course Approval**

#### **R4-46-501. Course Approval**

A. A course shall be approved under these rules as either qualifying or continuing education. In order to be approved as qualifying or continuing education, the course must be found to satisfy all the respective criteria set forth in the real property appraiser qualification criteria and interpretations of the criteria in R4-46-201(A), except:

1. The 15-hour National USPAP Course or its equivalent approved through the AQB Course Approval Program shall not be in the form of distance education;
2. Only continuing education courses of at least three hours shall be considered for approval.

B. Each approved course shall be assigned an index number and shall be assigned a maximum number of hours of instruction (including examination time if applicable).

C. Upon receipt of course approval, the course provider may represent in any materials that the course is a Board approved course. If the number of hours approved by the Board are less than the number of scheduled hours, the number of approved hours must be clearly indicated.

D. Any school, organization, person or other entity that owns the proprietary rights to a course is eligible to apply for course approval as a course provider. All applications for course approval shall be submitted by a course provider. For the purposes of these rules, the following are considered to be a course provider:

1. An entity that owns a course and that conducts the course directly or through affiliated entities.
2. An affiliated entity of a course provider having Board approval where such affiliated entity conducts the same course.
3. An entity that has purchased or otherwise lawfully acquired from the course provider of a Board approved course, the course materials for such course and that has the right to independently conduct a course using such acquired course materials.

E. Course approval granted to a course provider shall apply to any affiliated entity subject to the following conditions:

1. The course provider required the affiliated entity to conduct the course:
  - a. Utilizing the course provider's course materials (including textbook and examinations, if any);
  - b. Allowing the same number of approved hours as the course provider;
  - c. The instructor is approved by the Board;

- d. In accordance with the course provider's policies relating to student attendance, course scheduling and course prerequisites (if applicable).
2. The course provider assumes full responsibility in the event the affiliated entity violates any provisions of these rules.
- F. Course approval commences on the date initial approval is granted by the Board. Course approval by the Board shall not be granted for courses which have been offered by the course provider prior to the Board's review of the course approval application.
- G. A course provider seeking course approval shall apply to the Board on the applicable form and pay the appropriate fee. Once the application has been filed, fees are nonrefundable. An application must be complete before it will be placed on an agenda for approval.
- H. A course provider shall not misrepresent Board approval status in advertising.
- I. The course provider shall submit with the application an outline and other written materials. In order to be approved, the course must be found to satisfy the following requirements:
  1. Course description: the course materials must include a course description which clearly describes the content of the course.
  2. Summary outline: the course materials shall include a summary outline of major topics and the number of classroom hours devoted to each.
  3. Learning objectives: the course materials shall include specific learning objectives which:
    - a. Clearly state the specific knowledge and/or skills students are expected to acquire by completing the course;
    - b. Are consistent with the course description;
    - c. Are consistent with the instructional materials;
    - d. Are reasonably achievable within the number of classroom hours allotted for the course;
    - e. For qualifying education courses, shall clearly identify the required core curriculum, the module subtopic, and the number of course hours; and
    - f. For continuing education courses, shall clearly identify the appraisal topic and the number of course hours.
  4. Instructional materials: instructional materials to be used by students in the course shall:
    - a. Cover the subject matter in sufficient depth to achieve the stated course learning objectives;
    - b. Provide appropriately balanced coverage of the subject matter in view of the stated course learning objectives;
    - c. Reflect current knowledge and practice;
    - d. Contain no significant errors;
    - e. Reflect correct grammatical usage and spelling;
    - f. Effectively communicate and explain the information presented;
    - g. Be suitable in layout and format; and
    - h. Be suitably bound/packaged and be produced in a quality manner.
  5. Examinations for qualifying education: course examinations shall consist either of a series of examinations or a comprehensive final examination or both. The course examination(s) shall comply with the following requirements:
    - a. Contain a sufficient number of questions to adequately test the subject matter covered in the course;
    - b. The amount of time devoted to the examination(s) is appropriate for the course;
    - c. The examination questions, individually and collectively, test at a difficulty level appropriate to measure student achievement of the stated course learning objectives;
    - d. The subject matter tested by examination questions is adequately addressed in the course instructional materials;
    - e. The examination questions are written in a clear and unambiguous manner; and
    - f. The examination questions are accurate and the intended correct answer is clearly the best answer choice.
  6. Prerequisites: the course provider must have established appropriate prerequisites for any course other than an introductory course on basic real estate appraisal principles and practices or a course on appraisal standards and ethics.
  7. Instructor qualifications: an instructor must be approved by the Board to teach a specific Board-approved course. An instructor must meet one or more of the following qualifications:

- a. A baccalaureate degree in any field and three years of experience directly related to the subject matter to be taught; or
  - b. A masters degree in any field and two years of experience directly related to the subject matter to be taught; or
  - c. A baccalaureate degree in a field that is directly related to the subject matter to be taught and one year of experience directly related to the subject matter to be taught; or
  - d. An associate degree in a field that is directly related to the subject matter to be taught and three years of experience directly related to the subject matter to be taught; or
  - e. A masters or higher degree in a field that is directly related to the subject matter to be taught; or
  - f. Five years of real estate appraisal teaching experience directly related to the subject matter to be taught; or
  - g. Seven years of real estate appraisal experience directly related to the subject matter to be taught.
  - h. The national USPAP courses must be taught by an AQB certified USPAP instructor and equivalent USPAP courses must be taught by an instructor approved by the AQB.
8. Current classroom offering: conduct the course in a setting physically suitable to the educational activity of the course. Courses presented by distance education must comply with the criteria adopted in these rules;
9. Attendance policy: the course provider must have a written attendance policy that requires student attendance to be verified. Policy must:
- a. Stipulate that the student must be present for the entire course;
  - b. Include on the attendance records form the name of the instructor(s);
  - c. Provide that nonmembers of the course provider's association or organization may apply for the course without membership in the association or organization;
  - d. Provide for retention of attendance records for a minimum of five years.
10. Course scheduling policy: the course provider shall have an established policy on course scheduling that provides a maximum of nine classroom hours of instruction in any given day and appropriate breaks during each class session.
11. Course completion certificate policy: the course provider shall have an established policy assuring prompt issuance of signed course completion certificates to attendees which shall include all information required on the form of certification provided by the Board.
12. Audit policy: the course provider shall permit the executive director or the executive director's representative to audit the course at no cost to the Board in order to evaluate the instruction. The course provider shall permit the executive director or the executive director's representative to review records appropriate to selected course offerings.
13. Instructor change: if a course provider wishes to use an instructor other than the instructor approved by the Board as part of the initial course approval, the course provider must apply to the Board for approval of any new or substitute instructor and pay the applicable fee. Any new or substitute instructor must meet the instructor qualifications set out in this Section.
- J. Course approval is valid for a period of one year, expiring at the end of the month in which approval was granted if there have been no substantive changes to the materials to be addressed in the course, including but not limited to changes in the course outline, text, or other written material. No later than 30 days prior to the expiration date, a course provider may apply for renewal of the course approval and pay the appropriate fee. If there have been substantive changes in the materials to be addressed in the course, including but not limited to changes in the course outline, text, or other written material, the course shall be considered as a new course and the course provider shall file an application for course approval meeting all the requirements of this Section and pay the appropriate fee.
- K. A course approved for credit hours at a community college, college or university in this state need not be approved by the Board if the course is substantially the same as required by the criteria. The applicant for licensure, certification or renewal shall submit documentation prepared by the course provider identifying the required core curriculum, the module subtopic and the number of course hours for qualifying education or the appraisal topic and the number of course hours for continuing education.

L. If a course is offered outside of Arizona, the course has been approved by the licensure/certification board in the state in which the course is offered, and the course is substantially the same as required by the criteria, the Board will accept the course. However, the course shall not be in the form of distance education taught before May 3, 2005. The applicant for licensure, certification or renewal must submit documentation to show approval.

M. The Board shall investigate and may deny, revoke, or suspend course approval for any of the following acts or omissions:

1. Failure to comply with or meet any requirements set forth in this Section.
2. Failure to use an instructor approved by the Board as part of the course approval application or otherwise.
3. Failure to instruct in a manner consistent with the outline and materials previously approved by the Board.

N. If the Board finds that the public welfare or safety requires emergency action and incorporates a finding to that effect in its order, the Board shall order a summary suspension of course approval pending proceedings for revocation or other action. If an order of summary suspension is issued, the Board shall serve the course provider with a written notice of summary suspension and formal hearing, listing the charges against the course provider and setting a formal hearing within 30 days.

#### **R4-46-503. Hearing on Denial of Course Approval**

Any applicant or course provider denied course approval or any course provider whose course approval is revoked or suspended may file a written request for a hearing within 30 days after service of the notice of denial. The Board shall process all hearings and disciplinary matters involving course approval in a manner consistent with the formal hearing procedures prescribed in Article 3.

### **Article 6 Property Tax Agents**

#### **R4-46-601. Standards of Practice**

The Board may revoke or suspend an agent's registration or otherwise discipline a property tax agent to the extent permitted by A.R.S. § 32-3654 for any of the following acts or omissions:

1. Engaging in an activity that leads to a conviction for a crime involving the tax profession;
2. Operating beyond the boundaries of an agreed relationship with an employer or a client;
3. Inferring or implying representation of a person or firm that the agent does not represent, or filing a document on behalf of a taxpayer without specific authorization of the taxpayer;
4. Violating the confidential nature of the property tax agent-client relationship, except as required by law;
5. Inappropriately offering or accepting anything of value with the intent of inducing or in return for a specific action;
6. Assigning, accepting, or performing a tax assignment that is contingent upon producing a predetermined analysis or conclusion;
7. Issuing an appraisal analysis or opinion, in the performance of a tax assignment, that fails to disclose bias or the accommodation of a personal interest;
8. Willfully furnishing inaccurate, deceitful, or misleading information, or willfully concealing material information in the performance of a tax assignment;
9. Preparing or using, in any manner, a resume or statement of professional qualifications that is misleading or false;
10. Promoting a tax agent practice and soliciting assignments by using misleading or false advertising;
11. Soliciting a tax assignment by assuring a specific result or by stating a conclusion regarding that assignment without prior analysis of the facts;
12. Performing an appraisal as defined by A.R.S. § 32-3601 unless licensed or certified by the Board as an appraiser.

#### **R4-46-602. Disciplinary Proceedings; Board Action; Notice Requirements**

The Board shall process all hearings and disciplinary matters involving property tax agents in a manner consistent with the formal hearing procedures prescribed by Article 3 and consistent with A.R.S. § 32-3654.

## **Article 7 General Provisions- Fees**

### **R4-46-704. Fee**

The fee to apply for initial registration is \$2,500 regardless of the number of appraisers on the appraiser panel. Upon expiration of the initial registration the fee to apply for a two year renewal registration is \$2,500 regardless of the number of appraisers on the appraiser panel.

## **Title 33, Chapter 7 LIENS**

### **Article 10 Commercial Real Estate Broker Liens**

#### **33-1071. Commercial real estate broker lien; definition**

A. Except as prescribed by subsection C, an employing real estate broker pursuant to title 32, chapter 20 has a lien against real property for the amount of compensation that is agreed to be paid to the broker by the owner of the real property for the broker's services in the lease or rental of the real property. The lien is created only if all of the following apply:

1. There is a written agreement between the broker and the owner of the real property that provides for the payment of a commission or other compensation to that broker for the broker's services in a real estate transaction and that agreement discloses in the same size type as the majority of the remainder of the agreement above the portion of the agreement calling for the signature of the owner of the real property that the failure to pay the agreed upon commission or compensation may give rise to lien rights as provided by this article.
2. The broker produces a person or entity that is ready, willing and able to lease or rent the real property on the terms provided in the written agreement between the broker and the owner of the real property or on terms that are otherwise acceptable to the owner as evidenced by a written instrument that is signed by the owner.
3. The broker fully complies with sections 33-1072 and 33-1073.
4. All of the conditions for the payment of the commission or other compensation described in the written agreement have been satisfied.

B. Mechanics' and materialmen's lien rights established pursuant to title 33, chapter 7, article 6 have priority over the lien rights created by this article.

C. Consensual liens, mortgages and deeds of trust that are recorded before the recordation of the broker's preliminary notice of intent to lien have priority over the lien rights created by this article and over the notice of commercial real estate broker lien recorded pursuant to this article.

D. Real property is not subject to a commercial real estate broker lien pursuant to this article if either of the following apply:

1. The real property is conveyed to a bona fide purchaser for value before the recordation of a broker's preliminary notice of intent to lien.
2. It is encumbered by a bona fide lender for value before the recordation of a broker's preliminary notice of intent to lien.

E. Except as provided in subsection D of this section, the lien rights provided by this article apply to all commercial real property and do not apply to any transaction involving either of the following:

1. Residential real property with fewer than five residential units.
2. Real property on which single family mobile home lots, manufactured housing lots, residences or condominiums are sold unit by unit.

F. For purposes of this article, "real property" or "subject real property" means the real property interest that is owned by the person who is the party to the agreement with the broker as prescribed by this section.

#### **33-1072. Lien attachment; notice of commercial real estate broker lien; notice to owner**

A. A lien pursuant to this article attaches to the subject real property when all of the following occur:

1. The broker produces a person or entity that is ready, willing and able to lease or rent the real property on the terms provided in the written agreement between the broker and the owner of the



real property or on terms that are otherwise acceptable to the owner as evidenced by a written instrument that is signed by the owner.

2. The broker fully complies with subsection B of this section.

3. The broker records a document entitled "notice of commercial real estate broker lien" in the office of the county recorder in the county or counties in which the subject real property is located.

The notice of commercial real estate broker lien shall be recorded as follows:

(a) Except as provided in subdivision (b), if the notice of commercial real estate broker lien is based on a lease or rental of the real property, the notice of commercial real estate broker lien shall be recorded within ninety days after the tenant takes possession of the leased premises.

(b) If the notice of commercial real estate broker lien is based on compensation that is to be paid in installments and any of those installments are due after the lease or rental of the real property, the notice of commercial real estate broker lien shall be recorded within ninety days after the tenant takes possession of the real property and is valid only to the extent that monies remain unpaid by the owner of the real property to the broker.

B. On recording the notice of commercial real estate broker lien, the broker's lien is perfected.

C. Not later than fifteen days before the date that the tenant takes possession of the leased premises, the broker shall record a document entitled "broker's preliminary notice of intent to lien" in the office of the county recorder in the county in which the real property is located and shall deliver personally or by first class mail a copy of the broker's preliminary notice of intent to lien to the owner of the real property interest. The broker's preliminary notice of intent to lien shall state that the broker is entitled to compensation under the terms set forth in the written agreement between the broker and the owner and that the broker intends to claim a lien on the real property. The broker's preliminary notice of intent to lien shall include all of the information prescribed by section 33-1073, subsection A and shall be entitled "broker's preliminary notice of intent to lien". The broker's failure to record the broker's preliminary notice of intent to lien within the time prescribed by this subsection extinguishes the broker's lien rights.

### **33-1073. Contents of notice of lien; verification**

A. The notice of commercial real estate broker lien shall include all of the following:

1. The name and the address of the principal place of business of the broker who claims the lien and the broker's real estate license number.
2. The name and the mailing address of the owner of the real property.
3. The real property interest that is owned by the owner.
4. The amount of the lien.
5. The legal description of the real property that is the subject of the lien.
6. The street address of the real property, if any.
7. The statement that the broker who claims the lien is entitled to compensation from the owner of the real property.
8. The notarized signature of the real estate broker that avows that based on information and belief the contents of the notice of commercial real estate broker lien are true and accurate.

B. The words "unknown" or "not available" and similar terms may not be used in lieu of the information prescribed by subsection A, and any use of those terms in the notice of commercial real estate broker lien or broker's preliminary notice of intent to lien invalidates the commercial real estate broker lien.

### **33-1074. Foreclosure; limitation of action; attorney fees**

A. A commercial real estate broker lien recorded pursuant to this article is enforceable by foreclosure action in superior court as if the lien were a mortgage.

B. A lien pursuant to this article is only valid for two years after the date that it is recorded unless an action is brought within that two years to enforce the lien and a notice of pendency of the action is recorded pursuant to section 12-1191 in the office of the county recorder in the county in which the property is located within five days after filing the action.

C. In any action to foreclose a commercial real estate broker lien, the prevailing party shall be awarded costs and reasonable attorney fees.

### **33-1075. Satisfaction of lien; damages**

A. On satisfaction of any lien established pursuant to this article, the lienholder shall record a satisfaction of the lien within thirty days. The satisfaction shall be in the form prescribed by section 11-480. A lienholder who fails to record a satisfaction of lien pursuant to this section is subject to the penalties prescribed by section 33-712.

B. A broker shall record a waiver and release of claim of lien that extinguishes the broker's lien rights on either of the following:

1. Within thirty days after satisfaction of a broker's claim of lien arising pursuant to this article if satisfaction occurs before recording a notice of commercial real estate broker lien.
2. Within ten days after receipt of a written request from the owner and if the broker fails to record a notice of commercial real estate broker lien within the time period prescribed by section 33-1072, subsection A, paragraph 3, subdivision (a) or (b).

C. A broker who is required to record a waiver and release of claim of lien by subsection B of this section and who fails to record a waiver is subject to the penalties prescribed by section 33-712.

D. A waiver and release of claim of lien is sufficient if it complies with other applicable laws and if it is in substantially the following form:

Waiver and Release of Claim of Lien

I (we) hereby unconditionally waive and release any claim of lien evidenced by the recording of a "broker's preliminary notice of intent to lien" or "notice of commercial real estate broker lien", or both, recorded on (date) in docket or book \_\_\_\_\_ at page \_\_\_\_\_, or instrument number \_\_\_\_\_, records of \_\_\_\_\_ county, Arizona.

Dated:

Signature

(Acknowledgment)

### **33-1076. Discharge of commercial real estate broker's liens; bond; limitations of actions; discharge of surety; judgment**

A. After perfection of a lien pursuant to this article, an owner, including any person who has a legal or equitable interest in the land that is subject to the lien, a mortgagee or any other lien creditor may, either before or after the commencement of an action to foreclose the lien, cause to be recorded in the office of the county recorder in the county in which the land is located a surety bond in the form described in subsection B of this section, together with a power of attorney disclosing the authority of the person executing the bond on behalf of the surety. On the recordation of the bond, the property shall be discharged of the lien whether or not a copy of the bond is served on the claimant or the claimant perfects the claimant's rights against the bond.

B. A surety bond to discharge a lien perfected under this article shall be executed by the person seeking to discharge the lien, as principal, and by a surety company or companies holding a certificate of authority to transact surety business in this state that is issued by the director of the department of insurance pursuant to title 20, chapter 2, article 1. The bond is for the sole protection of the claimant who perfected the lien. Notwithstanding any other statute, the surety bond shall not be executed by individual surety or sureties, even if the requirements of section 7-101 are satisfied. The bond shall be in an amount equal to one and one-half times the claim secured by the lien and shall be conditioned for the payment of the judgment that would have been rendered against the property for the enforcement of the lien. The legal description of the property and the docket and page of the lien sought to be discharged shall be set forth in the bond.

C. On recordation of the bond with the county recorder, the principal on the bond shall cause a copy of the bond to be served within a reasonable time on the lien claimant, and if a suit is then pending to foreclose the lien, the claimant, within ninety days after receipt of the bond, shall cause proceedings to be instituted to add the surety and the principal as parties to the lien foreclosure suit.

D. The bond shall be discharged and the principal and sureties shall be released on any of the following:

1. The failure of the lien claimant to commence a suit within the time allowed pursuant to section 33-1074.
2. Failure of the lien claimant to name the principal and sureties as parties to the action seeking foreclosure of the lien if a copy of the bond has been served on the claimant. If the bond is served on the claimant fewer than ninety days after the date the claimant would be required to commence an action pursuant to section 33-1074, the claimant has ninety days from the date of

receiving a copy of the bond to add the principal and the sureties as parties to the lien foreclosure suit.

3. The dismissal of the foreclosure suit with prejudice as to the claimant or the entry of judgment in a suit against the claimant.

E. In an action to foreclose a lien under this article, if a bond has been filed and served as prescribed by this section a judgment for the claimant on the bond shall be against the principal and the principal's sureties and shall not be against the property.

F. If a copy of the bond is not served on the claimant as provided in subsection C of this section, the claimant has six months after the discovery of the bond to commence an action on the bond, except that no action may be commenced on the bond after two years from the date it was recorded as provided in this section.

G. The county recorder of the county in which the bond and contract are recorded shall index the bond and contract under the index classification in which commercial real estate broker liens are recorded.

## **Title 33, Chapter 9 CONDOMINIUMS**

### **Article 1 General Provisions**

#### **33-1201. Applicability**

This chapter applies to all condominiums created within this state without regard to the date the condominium was created.

#### **33-1202. Definitions**

In the condominium documents, unless specifically provided otherwise or the context otherwise requires, and in this chapter:

1. "Affiliate of a declarant" means any person who controls, is controlled by or is under common control with a declarant.
2. "Allocated interests" means the undivided interests in the common elements, the common expense liability and votes in the association allocated to each unit.
3. "Articles of incorporation" means the instrument by which an incorporated association or unit owners' association is formed and organized under this state's corporate statutes.
4. "Association" or "unit owners' association" means the unit owners' association organized under section 33-1241.
5. "Board of directors" means the body, regardless of its name, designated in the declaration and given general management powers to act on behalf of the association.
6. "Bylaws" means the bylaws required by section 33-1246.
7. "Common elements" means all portions of a condominium other than the units.
8. "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section 33-1217.
9. "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.
10. "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.
11. "Condominium documents" means the declaration, bylaws, articles of incorporation, if any, and rules, if any.
12. "Declarant" means any person or group of persons who reserves, is granted or succeeds to any special declarant right.
13. "Declaration" means any instruments, however denominated, that create a condominium and any amendments to those instruments.
14. "Development rights" means any right or combination of rights reserved by or granted to a declarant in the declaration to do any of the following:
  - (a) Add real estate to a condominium.

- (b) Create easements, units, common elements or limited common elements within a condominium.
  - (c) Subdivide units, convert units into common elements or convert common elements into units.
  - (d) Withdraw real estate from a condominium.
  - (e) Make the condominium part of a larger condominium or planned community.
  - (f) Amend the declaration during any period of declarant control, pursuant to section 33-1243, subsection E, to comply with applicable law or to correct any error or inconsistency in the declaration, if the amendment does not adversely affect the rights of any unit owner.
  - (g) Amend the declaration during any period of declarant control, pursuant to section 33-1243, subsection E, to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments.
15. "Identifying number" means a symbol or address that identifies one unit in a condominium.
16. "Leasehold condominium" means a condominium in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size.
17. "Limited common element" means a portion of the common elements specifically designated as a limited common element in the declaration and allocated by the declaration or by operation of section 33-1212, paragraph 2 or 4 for the exclusive use of one or more but fewer than all of the units.
18. "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity. In the case of a subdivision trust, as defined in section 6-801, person means the beneficiary of the trust who holds the right to subdivide, develop or sell the real estate rather than the trust or trustee.
19. "Real estate" means any legal, equitable, leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. Real estate includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water.
20. "Rules" means the provisions, if any, adopted pursuant to the declaration or bylaws governing maintenance and use of the units and common elements.
21. "Special declarant rights" means any right or combination of rights reserved by or granted to a declarant in the declaration to do any of the following:
- (a) Construct improvements provided for in the declaration.
  - (b) Exercise any development right.
  - (c) Maintain sales offices, management offices, signs advertising the condominium, and models.
  - (d) Use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium.
  - (e) Appoint or remove any officer of the association or any board member during any period of declarant control.
22. "Unit" means a portion of the condominium designated for separate ownership or occupancy.
23. "Unit owner" means a declarant or other person who owns a unit or, unless otherwise provided in the lease, a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium but does not include a person having an interest in a unit solely as security for an obligation. In the case of a contract for conveyance, as defined in section 33-741, of real property, unit owner means the purchaser of the unit.

### **33-1203. Variation**

Except as expressly provided in this chapter, the provisions of this chapter shall not be varied by agreement and rights conferred by this chapter shall not be waived. A person shall not use any device to evade the limitations or prohibitions of this chapter.

### **33-1204. Separate titles and taxation**

A. If there is a unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

B. Except as provided in subsection C, if there is a unit owner other than a declarant, each unit shall be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements.

C. Any portion of the common elements which the declarant reserves the right to withdraw from the condominium shall be separately taxed and assessed against the declarant and the declarant alone is liable for payment of those taxes, as long as the declarant retains this right to withdraw.

D. If there is no unit owner other than a declarant, the real estate comprising the condominium shall be taxed and assessed as a single parcel.

### **33-1205. Applicability of local ordinances, rules and building codes**

A. A zoning, subdivision or building code or other real estate use law, ordinance or rule shall not prohibit a condominium form of ownership or impose any requirement on a condominium which it would not impose on a physically identical development under a different form of ownership.

B. Except as provided in subsection A, this chapter does not invalidate or modify any provision of any zoning, subdivision or building code or other real estate use law, ordinance or rule.

### **33-1206. Eminent domain**

A. If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for his unit and its interest in the common elements, regardless of whether any common elements are acquired. On acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection becomes a common element.

B. Except as provided in subsection A of this section, if part of a unit is acquired by eminent domain the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements, regardless of whether any common elements are acquired. On acquisition, unless the decree otherwise provides, all of the following apply:

1. The unit's allocated interests are reduced in proportion to the reduction in the size of the unit or on any other basis specified in the declaration.
2. The portion of the allocated interests divested from the partially acquired unit is automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

C. If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken shall be paid to the association for the benefit of the unit owners. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element shall be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

D. The court decree shall be recorded in every county in which any portion of the condominium is located.

E. If all of the units of the condominium are acquired by eminent domain, the condominium is terminated and the provisions of section 33-1228 apply.

F. This section does not restrict the rights of lessees, mortgagees, declarants or any other person holding an interest in a unit or its common elements from receiving separate compensation or a portion of the compensation payable, or both, pursuant to this section.

### **33-1207. Severability**

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are severable.

## **Article 2 Creation, Alteration, and Termination of Condominiums**

### **33-1211. Creation of condominium**

A condominium may only be created pursuant to this chapter by recording a declaration in the same manner as a deed in each county in which any portion of the condominium is located. The declaration

shall be indexed in the name of the condominium, the name of the association and otherwise as required by law.

### **33-1212. Unit boundaries**

Except as provided by the declaration:

1. If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces are a part of the unit, and all other portions of the walls, floors or ceilings are a part of the common elements.
2. If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a unit, any portion serving only that unit is a limited common element allocated solely to that unit and any portion serving more than one unit or any portion of the common elements is a part of the common elements.
3. Subject to the provisions of paragraph 2, all spaces, interior partitions and other fixtures and improvements within the boundaries of a unit are a part of the unit.
4. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, entryways or patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

### **33-1213. Construction and validity of declaration and bylaws**

- A. All provisions of the condominium documents are severable.
- B. The rule against perpetuities shall not be applied to defeat any provision of the condominium documents.
- C. Except to the extent inconsistent with this chapter:
  1. If a conflict exists between the provisions of the declaration and the other condominium documents, the declaration prevails.
  2. If a conflict exists between the provisions of the articles of incorporation and the bylaws or rules, the articles of incorporation prevail.
  3. If a conflict exists between the provisions of the bylaws and the rules, the bylaws prevail.
- D. Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of any condominium documents to comply with this chapter.

### **33-1214. Description of units**

A description of a unit which sets forth the name of the condominium, the recording data for the declaration, the county or counties in which the condominium is located and the identifying number of the unit is a sufficient legal description of that unit and all common elements, rights, obligations and interests appurtenant to that unit.

### **33-1215. Contents of declaration**

- A. The declaration shall contain:
  1. The name of the condominium, which shall include the word "condominium" or be followed by the words "a condominium", and the name of the association.
  2. The name of every county in which any portion of the condominium is located.
  3. A legal description of the real estate included in the condominium.
  4. A description of the boundaries of each unit created by the declaration, including each unit's identifying number.
  5. A description of any limited common elements, other than those specified in section 33-1212, paragraphs 2 and 4, but the declaration shall contain a description of any porches, balconies, patios and entryways, if any, as provided in section 33-1219, subsection B, paragraph 11.
  6. A description of any development rights and other special declarant rights, together with a legal description of the real estate to which each of those rights applies, any time limit within which each of those rights must be exercised and any other conditions or limitations under which the rights described in this paragraph may be exercised or will lapse.
  7. An allocation to each unit of the allocated interests in the manner described in section 33-1217.

8. Any restrictions on use, occupancy and alienation of the units.
  9. All matters required by sections 33-1216, 33-1217, 33-1218, 33-1219 and 33-1226 and section 33-1243, subsection E.
  10. A statement that the assessment obligation of the unit owner under section 33-1255 is secured by a lien on the owner's unit in favor of the association pursuant to section 33-1256.
  11. If the condominium is a conversion from multifamily rental to condominiums, a statement containing all of the following:
    - (a) A statement that the property is a conversion from multifamily rental to condominiums.
    - (b) The date original construction was completed.
    - (c) The name and address of the original owner, builder, developer and general contractor as shown on the applicable city, town or county building permit.
    - (d) The name and address of each subsequent owner as determined by a search of the county recorder's records in the county in which the property is located.
    - (e) The subdivider's agreement to provide the following information on request:
      - (i) The name and address of any builder, developer, general contractor, subcontractor, architect and engineer who designed or made improvements to the property immediately before the first condominium was sold.
      - (ii) A specific description of all improvements made.
- B. If a city, town or county is unable to produce a building permit as required in subsection A, paragraph 11, subdivision (c) of this section, the subdivider shall submit a letter from the applicable city, town or county stating that the information required by subsection A, paragraph 11, subdivision (c) of this section is not available.
- C. The declaration may contain any other matters the declarant deems appropriate.

### **33-1216. Leasehold condominiums**

- A. Any lease, the expiration or termination of which may terminate the condominium or reduce its size, shall be recorded. Unless the lease otherwise specifically provides for the creation of a leasehold condominium and the rights and benefits set forth in this section, each lessor of those leases shall sign or otherwise consent to the provisions of the declaration. The declaration shall state all of the following:
1. The recording data for the lease.
  2. The date on which the lease is scheduled to expire.
  3. A legal description of the real estate subject to the lease.
  4. Any right of the unit owners to acquire title to their units free of the lease or a statement that they do not have this right.
  5. Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease or that they do not have this right.
  6. Any rights of the unit owners to renew the lease and the conditions of any renewal or that they do not have those rights.
- B. After the declaration for a leasehold condominium is recorded, neither the lessor nor his successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of his share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.
- C. Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.
- D. If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with section 33-1206, subsection A as though those units had been taken by eminent domain.

### **33-1217. Allocation of common element interests, votes and common expense liabilities**

- A. The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. Except as otherwise provided in this chapter, the allocations shall not discriminate in favor of units owned by the declarant.

B. If units may be added to or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

C. The declaration may provide:

1. That different allocations of votes shall be made to the units on particular matters specified in the declaration.
2. For cumulative voting only for the purpose of electing members of the board of directors.
3. For class voting on specified issues affecting the class if necessary to protect valid interests of the class.

D. Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as fractions or one hundred per cent if stated as percentages. If a discrepancy exists between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

E. Except as otherwise permitted by the provisions of this chapter, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.

### **33-1218. Limited common elements**

A. Except for the limited common elements described in section 33-1212, paragraphs 2 and 4, other than porches, balconies, patios and entryways, the declaration shall specify to which unit or units each limited common element is allocated. The allocation shall not be altered without the consent of the unit owners whose units are affected.

B. Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration. The amendment shall be executed by the unit owners between or among whose units the reallocation is made, shall state the manner in which the limited common elements are to be reallocated and, before recording the amendment, shall be submitted to the board of directors. Unless the board of directors determines within thirty days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the association shall execute its approval and record the amendment.

C. A common element not previously allocated as a limited common element shall not be so allocated except pursuant to provisions in the declaration. The allocations shall be made by amendments to the declaration.

### **33-1219. Plat**

A. The plat is a part of the declaration. The plat must be clear and legible.

B. The plat shall show:

1. The name of the condominium.
2. The boundaries of the condominium and a legal description of the real estate included in the condominium.
3. The extent of any encroachments on any portion of the condominium.
4. To the extent feasible, the location and dimensions of all easements serving or burdening any portion of the condominium.
5. The location and dimensions of the vertical boundaries of each unit, and each unit's identifying number.
6. Any horizontal unit boundaries, with reference to an established datum, and each unit's identifying number.
7. Any units with respect to which the declarant has reserved the right to create additional units or common elements, identified appropriately.
8. The location and dimensions of all real estate subject to the development right of withdrawal identified as such.
9. The location and dimensions of all real estate in which the unit owner will only own an estate for years labeled as a "leasehold condominium".
10. The distance between noncontiguous parcels of real estate comprising the condominium.



11. The location and dimensions of limited common elements, including porches, balconies, patios and entryways, other than the limited common elements described in section 33-1212, paragraphs 2 and 4.

12. Any other matters the declarant deems appropriate.

C. Unless the declaration provides otherwise, the horizontal boundaries of a part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plat.

D. On exercising any development right, the declarant shall record a new plat conforming to the requirements of subsections A and B of this section. No new plat need be recorded if the development right exercised was clearly depicted on the original plat and a document is recorded which references the declaration and original plat and declares that the development right has been exercised.

### **33-1220. Exercise of development rights**

A. To exercise a development right the declarant shall prepare, execute and record an amendment to the declaration which shall include a new plat conforming to the requirements of section 33-1219, subsections A and B, if the previously recorded plat does not show the boundaries of the parcel or parcels as to which the development right is exercised. The amendment to the declaration shall assign an identifying number to each new unit created and, except in the case of subdivision or conversion of units described in subsection C of this section, reallocate the allocated interests among all units. The amendment shall describe any common elements and any limited common elements created and, in the case of limited common elements, designate the unit to which each is allocated as required by section 33-1218.

B. Development rights may be reserved within any real estate added to the condominium if the amendment adding that real estate includes all matters required by section 33-1215 or 33-1216, whichever is applicable, and the plat includes all matters required by section 33-1219. This subsection does not extend any time limit on the exercise of development rights imposed by the declaration pursuant to section 33-1215, subsection A, paragraph 6.

C. Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units or common elements, or both:

1. If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain.

2. If the declarant subdivides the unit into two or more units, whether any part of the unit is converted into common elements, the amendment to the declaration shall reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

D. If the declaration provides that all or a portion of the real estate is subject to the development right of withdrawal:

1. If all the real estate is subject to withdrawal and the declaration does not describe separate portions of the real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser without the written consent of all unit owners in the condominium and any mortgagees or beneficiaries of deeds of trust or sellers under a contract, as defined in section 33-741, for conveyance of real property encumbering the units.

2. If a portion or portions are subject to withdrawal, a portion shall not be withdrawn after a unit in that portion has been conveyed to a purchaser without the written consent of all unit owners in the condominium and any mortgagees or beneficiaries of deeds of trust or sellers under contract, as defined in section 33-741, for conveyance of real property encumbering the units.

E. No development right shall be exercised in any manner which would eliminate or materially reduce in size any tennis court, swimming pool, clubhouse or other recreational facility which is part of the common elements and which was specified in the public report issued on the condominium by the commissioner of the state real estate department, unless the exercise of the development right is approved by an affirmative vote of the unit owners to which at least eighty per cent of the votes in the association are allocated.

### **33-1221. Alterations of units**

Subject to the provisions of the declaration and other provisions of law, a unit owner:

1. May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium.
2. Shall not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the condominium, without written permission of the association.
3. After acquiring an adjoining unit or, if the declaration expressly permits, an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures in intervening partitions, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

### **33-1222. Relocation of boundaries between adjoining units**

If the declaration expressly permits, the boundaries between or among adjoining units may be relocated by an amendment to the declaration. The owners of the units shall prepare an amendment to the declaration, including the plat, that identifies the units involved, specifies the altered boundaries of the units and their dimensions and includes the units' identifying numbers. If the owners of the adjoining units have specified a reallocation between their units of the allocated interests, the amendment shall state the proposed reallocation in a reasonable manner. The amendment shall be executed by the owners of those units, shall contain words of conveyance between or among them and, before recording the amendment, shall be submitted to the board of directors. Unless the board of directors determines within thirty days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the association shall execute its approval and record the amendment.

### **33-1223. Subdivision of units**

If the declaration expressly permits, a unit may be subdivided into two or more units. A unit owner shall prepare an amendment to the declaration, including the plat, which identifies the unit involved, specifies the boundaries of each unit created and its dimensions, assigns an identifying number to each unit created and allocates the allocated interests formerly allocated to the subdivided unit to the new units in a reasonable manner. The amendment shall be executed by the owner of the unit to be subdivided and, before recording, submitted to the board of directors. Unless the board of directors determines within thirty days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the association shall execute its approval and record the amendment.

### **33-1224. Easement for encroachments**

To the extent that any unit or common element encroaches on any other unit or common element as a result of original construction, shifting or settling, or alteration or restoration authorized by the declaration, a valid easement for the encroachment exists.

### **33-1225. Use for sale purposes**

A declarant may maintain sales offices, management offices and models in units or on common elements in the condominium unless:

1. The declaration provides otherwise.
2. Such use is prohibited by another provision of law or local ordinances.

### **33-1226. Easement to facilitate exercise of special declarant rights**

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration.

### **33-1227. Amendment of declaration**

A. Except in cases of amendments that may be executed by a declarant under section 33-1220, by the association under section 33-1206 or section 33-1216, subsection D, or by certain unit owners under section 33-1218, subsection B, section 33-1222, section 33-1223 or section 33-1228, subsection B, and except to the extent permitted or required by other provisions of this chapter, the declaration, including the plat, may be amended only by a vote of the unit owners to which at least sixty-seven per cent of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration

may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use. The declaration may also provide that the consent of the declarant is required to an amendment during any period of declarant control pursuant to section 33-1243. Within thirty days after the adoption of any amendment pursuant to this subsection, the association shall prepare, execute and record a written instrument setting forth the amendment.

B. An action to challenge the validity of an amendment adopted by the association pursuant to this section shall not be brought more than one year after the amendment is recorded.

C. An amendment to the declaration shall be recorded in each county in which any portion of the condominium is located and is effective only on recordation in the same manner as required for the declaration under section 33-1211.

D. Except to the extent expressly permitted or required by other provisions of this chapter, an amendment shall not create or increase special declarant rights, increase the number of units or change the boundaries of any unit, the allocated interests of a unit or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

E. An amendment shall not terminate or decrease any unexpired development right, special declarant right or period of declarant control unless the declarant approves.

F. Amendments to the declaration required by this chapter to be executed by the association shall be executed on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

### **33-1228. Termination of condominium**

A. Except in the case of a taking of all the units by eminent domain, a condominium may be terminated only by agreement of unit owners of units to which at least eighty per cent of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

B. An agreement to terminate shall be evidenced by the execution or ratifications of a termination agreement, in the same manner as a deed, by the requisite number of unit owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications of a termination agreement shall be recorded in each county in which a portion of the condominium is situated and is effective only on recordation.

C. A termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

D. The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections A and B. If any real estate in the condominium is to be sold following termination, title to that real estate on termination vests in the association as trustee for the holders of all interest in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection G. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each unit owner and his successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

E. If the real estate constituting the condominium is not to be sold following termination, title to all the real estate in the condominium vests in the unit owners on termination as tenants in common in proportion to their respective interests as provided in subsection G, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit.

F. Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units which were recorded before termination may enforce those liens in the same manner as any lienholder.

G. The respective interests of unit owners referred to in subsections D, E and F are as follows:

1. Except as provided in paragraph 2, the respective interests of unit owners are the fair market values of their units, limited common elements and common element interests immediately before the termination, as determined by an independent appraiser selected by the association. The determination of the independent appraiser shall be distributed to the unit owners and becomes final unless disapproved within thirty days after distribution by unit owners of units to which fifty per cent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.

2. If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value of the unit or element before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

H. Except as provided in subsection I, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the condominium, but the person taking title may require from the association, on request, an amendment excluding the real estate from the condominium.

I. If a lien or encumbrance against a portion of the real estate comprising the condominium has priority over the declaration, and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may, on foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the condominium.

J. The provisions of subsections C through I do not apply if the original declaration, an amendment to the original declaration recorded before the conveyance of any unit to an owner other than the declarant or an agreement by all of the unit owners contain provisions inconsistent with such subsections.

### **33-1229. Rights of secured lenders**

The declaration may require that all or a specified number or percentage of the mortgagees, beneficiaries of deeds of trust or sellers under contracts, as defined in section 33-741, for conveyance of real property encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but requirement for approval shall not operate to either:

1. Deny or delegate control over the general administrative affairs of the association by the unit owners or the board of directors.
2. Prevent the association or the board of directors from commencing, intervening in or settling any litigation or proceeding, or receiving and distributing any insurance proceeds pursuant to section 33-1253.

### **33-1230. Merger or consolidation of condominiums**

A. Any two or more condominiums, by agreement of the unit owners as provided in subsection B, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all preexisting associations.

B. An agreement of two or more condominiums to merge or consolidate pursuant to subsection A shall be evidenced by an agreement prepared, executed, recorded and certified by the president of the association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement shall be recorded in each county in which a portion of the condominium is located and is not effective until recorded. A merger or consolidation of two or more condominiums shall be considered an amendment to the declaration of each of the condominiums merged or consolidated.

C. Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either by stating:

1. The reallocations or the formulas on which they are based.

2. The percentage of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominiums.

## **Article 3 Management of the Condominium**

### **33-1241. Organization of unit owners' association**

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under section 33-1228, or their heirs, successors or assigns. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association.

### **33-1242. Powers of unit owners' association; notice to unit owner of violation**

A. Subject to the provisions of the declaration, the association may:

1. Adopt and amend bylaws and rules.
2. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners.
3. Hire and discharge managing agents and other employees, agents and independent contractors.
4. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium.
5. Make contracts and incur liabilities.
6. Regulate the use, maintenance, repair, replacement and modification of common elements.
7. Cause additional improvements to be made as a part of the common elements.
8. Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that common elements may be conveyed or subjected to a security interest only pursuant to section 33-1252.
9. Grant easements, leases, licenses and concessions through or over the common elements.
10. Impose and receive any payments, fees or charges for the use, rental or operation of the common elements other than limited common elements described in section 33-1212, paragraphs 2 and 4 and for services provided to unit owners.
11. Impose charges for late payment of assessments and, after notice and an opportunity to be heard, impose reasonable monetary penalties upon unit owners for violations of the declaration, bylaws and rules of the association.
12. Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of unpaid assessments.
13. Provide for the indemnification of its officers and executive board of directors and maintain directors' and officers' liability insurance.
14. Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly provides.
15. Be a member of a master association or other entity owning, maintaining or governing in any respect any portion of the common elements or other property benefitting or related to the condominium or the unit owners in any respect.
16. Exercise any other powers conferred by the declaration or bylaws.
17. Exercise all other powers that may be exercised in this state by legal entities of the same type as the association.
18. Exercise any other powers necessary and proper for the governance and operation of the association.

B. A unit owner who receives a written notice that the condition of the property owned by the unit owner is in violation of a requirement of the condominium documents without regard to whether a monetary penalty is imposed by the notice may provide the association with a written response by sending the response by certified mail within ten business days after the date of the notice. The response shall be

sent to the address contained in the notice or in the recorded notice prescribed by section 33-1256, subsection J.

C. Within ten business days after receipt of the certified mail containing the response from the unit owner, the association shall respond to the unit owner with a written explanation regarding the notice that shall provide at least the following information unless previously provided in the notice of violation:

1. The provision of the condominium documents that has allegedly been violated.
2. The date of the violation or the date the violation was observed.
3. The first and last name of the person or persons who observed the violation.
4. The process the unit owner must follow to contest the notice.

D. Unless the information required in subsection C, paragraph 4 of this section is provided in the notice of violation, the association shall not proceed with any action to enforce the condominium documents, including the collection of attorney fees, before or during the time prescribed by subsection C of this section regarding the exchange of information between the association and the unit owner. At any time before or after completion of the exchange of information pursuant to this section, the unit owner may petition for a hearing pursuant to section 41-2198.01 if the dispute is within the jurisdiction of the department of fire, building and life safety as prescribed in section 41-2198.01, subsection B.

### **33-1243. Board of directors and officers; conflict; powers; limitations; removal; annual audit; applicability**

A. Except as provided in the declaration, the bylaws, subsection B or other provisions of this chapter, the board of directors may act in all instances on behalf of the association.

B. The board of directors shall not act on behalf of the association to amend the declaration, terminate the condominium, elect members of the board of directors or determine the qualifications, powers and duties or terms of office of board of directors members. The board of directors may fill vacancies in its membership for the unexpired portion of any term.

C. If any contract, decision or other action for compensation taken by or on behalf of the board of directors would benefit any member of the board of directors or any person who is a parent, grandparent, spouse, child or sibling of a member of the board of directors or a parent or spouse of any of those persons, that member of the board of directors shall declare a conflict of interest for that issue. The member shall declare the conflict in an open meeting of the board before the board discusses or takes action on that issue and that member may then vote on that issue. Any contract entered into in violation of this subsection is void and unenforceable.

D. Except as provided in the declaration, within thirty days after adoption of any proposed budget for the condominium, the board of directors shall provide a summary of the budget to all the unit owners. Unless the board of directors is expressly authorized in the declaration to adopt and amend budgets from time to time, any budget or amendment shall be ratified by the unit owners in accordance with the procedures set forth in this subsection. If ratification is required, the board of directors shall set a date for a meeting of the unit owners to consider ratification of the budget not fewer than fourteen nor more than thirty days after mailing of the summary. Unless at that meeting a majority of all the unit owners or any larger vote specified in the declaration rejects the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the board of directors.

E. The declaration may provide for a period of declarant control of the association, during which period a declarant or persons designated by the declarant may appoint and remove the officers and members of the board of directors. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of:

1. Ninety days after conveyance of seventy-five per cent of the units which may be created to unit owners other than a declarant.
2. Four years after all declarants have ceased to offer units for sale in the ordinary course of business.

F. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of the period prescribed in subsection E, but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

G. Not later than the termination of any period of declarant control the unit owners shall elect a board of directors of at least three members, at least a majority of whom must be unit owners. The board of directors shall elect the officers. The board members and officers shall take office upon election.

H. Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a majority vote of members entitled to vote and voting on the matter at a meeting of the members called pursuant to this section at which a quorum is present, may remove any member of the board of directors with or without cause, other than a member appointed by the declarant. For purposes of calling for removal of a member of the board of directors, other than a member appointed by the declarant, the following apply:

1. In an association with one thousand or fewer members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are entitled to cast at least twenty-five per cent of the votes in the association or one hundred votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association as prescribed by section 33-1248, subsection B.

2. Notwithstanding section 33-1248, subsection B, in an association with more than one thousand members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are entitled to cast at least ten per cent of the votes in the association or one thousand votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association. The board shall provide written notice of a special meeting as prescribed by section 33-1248, subsection B.

3. The special meeting shall be called, noticed and held within thirty days after receipt of the petition.

4. For purposes of a special meeting called pursuant to this subsection, a quorum is present if the number of owners to whom at least twenty per cent of the votes or one thousand votes, whichever is less, are allocated is present at the meeting in person or as otherwise permitted by law.

5. If a civil action is filed regarding the removal of a board member, the prevailing party in the civil action shall be awarded its reasonable attorney fees and costs.

6. The board of directors shall retain all documents and other records relating to the proposed removal of the member of the board of directors for at least one year after the date of the special meeting and shall permit members to inspect those documents and records pursuant to section 33-1258.

7. A petition that calls for the removal of the same member of the board of directors shall not be submitted more than once during each term of office for that member.

I. For an association in which board members are elected from separately designated voting districts, a member of the board of directors, other than a member appointed by the declarant, may be removed only by a vote of the members from that voting district, and only the members from that voting district are eligible to vote on the matter or be counted for purposes of determining a quorum.

J. Unless any provision in the condominium documents requires an annual audit by a certified public accountant, the board of directors shall provide for an annual financial audit, review or compilation of the association. The audit, review or compilation shall be completed no later than one hundred eighty days after the end of the association's fiscal year and shall be made available upon request to the unit owners within thirty days after its completion.

K. This section does not apply to timeshare plans or associations, or the period of declarant control under timeshare instruments, that are subject to chapter 20 of this title.

#### **33-1244. Transfer of special declarant rights**

A. A special declarant right created or reserved under this chapter shall not be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.

B. On transfer of any special declarant right, the liability of a transferor declarant is as follows:

1. A transferor is not relieved of any obligation or liability arising before the transfer.

2. If a transferor retains any special declarant right, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.

3. A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant.
- C. Unless otherwise provided in a mortgage or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, forfeiture of interest of a purchaser under a contract for conveyance of real property or sale under bankruptcy code or receivership proceedings, of any units owned by a declarant or real estate in a condominium subject to development rights, a person acquiring title to all the real estate being foreclosed or sold succeeds to all special declarant rights related to that real estate held by that declarant whether or not the judgment or instrument conveying title provides for transfer of the special declarant rights.
- D. The liabilities and obligations of a person who succeeds to special declarant rights are as follows:
1. A successor to any special declarant right, other than a successor described in paragraph 2 of this subsection, is subject to all liabilities and obligations imposed by this chapter or the declaration:
    - (a) On a declarant which relate to his exercise or nonexercise of special declarant rights.
    - (b) On his transferor, other than:
      - (i) Misrepresentations by any previous declarant.
      - (ii) Warranty obligations on improvements made by any previous declarant or made before the condominium was created.
      - (iii) Breach of any fiduciary obligation by any previous declarant or his appointees to the board of directors.
      - (iv) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.
  2. A successor to special declarant rights under subsection C is subject to liability only for his own acts in the exercise of those special declarant rights.

### **33-1245. Termination of contracts and leases of declarant; applicability**

- A. A contract for any of the following, if entered into before the board of directors elected by the unit owners pursuant to section 33-1243, subsection G takes office, shall contain a provision in the contract that the contract may be terminated without penalty by the association at any time after the board of directors elected by the unit owners takes office:
1. Any management contract or employment contract.
  2. Any other contract or lease between the association and a declarant or an affiliate of a declarant.
  3. Any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing.
- B. The board of directors shall notify the appropriate contractual party of the termination at least thirty days before termination.
- C. This section does not apply to any lease if the termination of the lease would terminate the condominium or reduce its size.
- D. If a contract covered by this section fails to contain the provisions required by subsection A of this section, the contract is voidable at the option of the association.
- E. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

### **33-1246. Bylaws**

- A. At the time the unit owners' association is organized, the association shall adopt bylaws which provide for each of the following:
1. The number of members of the board of directors and the titles of the officers of the association.
  2. Election by the board of directors of a president, treasurer, secretary and any other officers of the association which the bylaws specify.
  3. The qualifications, powers and duties, terms of office and manner of electing and removing board members and officers and filling vacancies.
  4. Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent.



5. Which of its officers may execute, certify and record amendments to the declaration on behalf of the association.
  6. The method of amending the bylaws.
- B. Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

### **33-1247. Upkeep of the condominium**

- A. Except to the extent provided by the declaration, subsection C of this section or section 33-1253, subsection B, the association is responsible for maintenance, repair and replacement of the common elements and each unit owner is responsible for maintenance, repair and replacement of the unit. On reasonable notice, each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through the unit reasonably necessary for those purposes. If damage is inflicted on the common elements or any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair of the damage.
- B. For any residential rental units that have been declared a slum property by the city or town pursuant to section 33-1905 and that are in the condominium complex, the association is responsible for enforcing any requirement for a licensed property management firm that is imposed by a city or town pursuant to section 33-1906.
- C. In addition to the liability borne by the declarant as a unit owner under this chapter, the declarant alone is liable for the maintenance, repair and replacement of any portion of the common elements which the declarant reserves the right to withdraw from the condominium, as long as the unit owner maintains that right.

### **33-1248. Open meetings; exceptions**

- A. Notwithstanding any provision in the declaration, bylaws or other documents to the contrary, all meetings of the unit owners' association and the board of directors, and any regularly scheduled committee meetings, are open to all members of the association or any person designated by a member in writing as the member's representative and all members or designated representatives so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings. The board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a member or a member's designated representative to speak once after the board has discussed a specific agenda item but before the board takes formal action on that item in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue. Persons attending may audiotape or videotape those portions of the meetings of the board of directors and meetings of the members that are open. The board of directors of the association may adopt reasonable rules governing the audiotaping or videotaping of open portions of the meetings of the board and the membership, but such rules shall not preclude such audiotaping or videotaping by those attending. Any portion of a meeting may be closed only if that portion of the meeting is limited to consideration of one or more of the following:

1. Legal advice from an attorney for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.
  2. Pending or contemplated litigation.
  3. Personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.
  4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.
  5. Discussion of a unit owner's appeal of any violation cited or penalty imposed by the association except on request of the affected unit owner that the meeting be held in an open session.
- B. Notwithstanding any provision in the condominium documents, all meetings of the unit owners' association and the board shall be held in this state. A meeting of the unit owners' association shall be

held at least once each year. Special meetings of the unit owners' association may be called by the president, by a majority of the board of directors or by unit owners having at least twenty-five per cent, or any lower percentage specified in the bylaws, of the votes in the association. Not fewer than ten nor more than fifty days in advance of any meeting of the unit owners, the secretary shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting of the unit owners shall state the time and place of the meeting. The notice of any special meeting of the unit owners shall also state the purpose for which the meeting is called, including the general nature of any proposed amendment to the declaration or bylaws, any changes in assessments that require approval of the unit owners and any proposal to remove a director or officer. The failure of any unit owner to receive actual notice of a meeting of the unit owners does not affect the validity of any action taken at that meeting.

C. Notwithstanding any provision in the declaration, bylaws or other condominium documents, for meetings of the board of directors that are held after the termination of declarant control of the association, notice to unit owners of meetings of the board of directors shall be given at least forty-eight hours in advance of the meeting by newsletter, conspicuous posting or any other reasonable means as determined by the board of directors. An affidavit of notice by an officer of the association is prima facie evidence that notice was given as prescribed by this section. Notice to unit owners of meetings of the board of directors is not required if emergency circumstances require action by the board before notice can be given. Any notice of a board meeting shall state the time and place of the meeting. The failure of any unit owner to receive actual notice of a meeting of the board of directors does not affect the validity of any action taken at that meeting.

D. Notwithstanding any provision in the declaration, bylaws or other condominium documents, for meetings of the board of directors that are held after the termination of declarant control of the association, all of the following apply:

1. The agenda shall be available to all unit owners attending.
2. An emergency meeting of the board of directors may be called to discuss business or take action that cannot be delayed until the next regularly scheduled board meeting. The minutes of the emergency meeting shall state the reason necessitating the emergency meeting. The minutes of the emergency meeting shall be read and approved at the next regularly scheduled meeting of the board of directors.
3. A quorum of the board of directors may meet by means of a telephone conference if a speakerphone is available in the meeting room that allows board members and unit owners to hear all parties who are speaking during the meeting.
4. Any quorum of the board of directors that meets informally to discuss association business, including workshops, shall comply with the open meeting and notice provisions of this section without regard to whether the board votes or takes any action on any matter at that informal meeting.

E. It is the policy of this state as reflected in this section that all meetings of a condominium, whether meetings of the unit owners' association or meetings of the board of directors of the association, be conducted openly and that notices and agendas be provided for those meetings that contain the information that is reasonably necessary to inform the unit owners of the matters to be discussed or decided and to ensure that unit owners have the ability to speak after discussion of agenda items, but before a vote of the board of directors is taken. Toward this end, any person or entity that is charged with the interpretation of these provisions shall take into account this declaration of policy and shall construe any provision of this section in favor of open meetings.

F. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

### **33-1249. Quorums; applicability**

A. Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast at least twenty-five per cent of the votes in the association are present in person or by proxy at the beginning of the meeting.

B. Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the board of directors if persons entitled to cast at least fifty per cent of the votes on that board are present at the beginning of the meeting.

C. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

**33-1250. Voting; proxies; absentee ballots; applicability; definition**

A. If only one of the multiple owners of a unit is present at a meeting of the association, the owner is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

B. During the period of declarant control, votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. The proxy is revoked on presentation of a later dated proxy executed by the same unit owner. A proxy terminates one year after its date, unless it specifies a shorter term or unless it states that it is coupled with an interest and is irrevocable.

C. Notwithstanding any provision in the condominium documents, after termination of the period of declarant control, votes allocated to a unit may not be cast pursuant to a proxy. The association shall provide for votes to be cast in person and by absentee ballot and, in addition, the association may provide for voting by some other form of delivery, including the use of e-mail and fax delivery. Notwithstanding section 10-3708 or the provisions of the condominium documents, any action taken at an annual, regular or special meeting of the members shall comply with all of the following if absentee ballots or ballots provided by some other form of delivery are used:

1. The ballot shall set forth each proposed action.
2. The ballot shall provide an opportunity to vote for or against each proposed action.
3. The ballot is valid for only one specified election or meeting of the members and expires automatically after the completion of the election or meeting.
4. The ballot specifies the time and date by which the ballot must be delivered to the board of directors in order to be counted, which shall be at least seven days after the date that the board delivers the unvoted ballot to the member.
5. The ballot does not authorize another person to cast votes on behalf of the member.

D. Votes cast by absentee ballot or other form of delivery, including the use of e-mail and fax delivery, are valid for the purpose of establishing a quorum.

E. Notwithstanding subsection C of this section, an association for a timeshare plan as defined in section 32-2197 may permit votes by a proxy that is duly executed by a unit owner.

F. If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units all of the following apply:

1. The provisions of subsections A and B of this section apply to lessees as if they were unit owners.
2. Unit owners who have leased their units to other persons shall not cast votes on those specified matters.
3. Lessees are entitled to notice of meetings, access to records and other rights respecting those matters as if they were unit owners. Unit owners shall also be given notice, in the manner prescribed in section 33-1248, of all meetings at which lessees may be entitled to vote.

G. Unless the declaration provides otherwise, votes allocated to a unit owned by the association shall not be cast.

H. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

I. For the purposes of this section, "period of declarant control" means the time during which the declarant or persons designated by the declarant may elect or appoint the members of the board of directors pursuant to the condominium documents or by virtue of superior voting power.

**33-1251. Tort and contract liability**

- A. An action alleging a wrong done by the association shall be brought against the association and not against any unit owner.
- B. A statute of limitation affecting any right of action of the association against the declarant is tolled until the period of declarant control terminates.
- C. A unit owner is not precluded from bringing an action against the association because he is a unit owner or a member or officer of the association.
- D. Liens resulting from judgments against the association are governed by section 33-1256.

**33-1252. Conveyance or encumbrance of common elements**

- A. Portions of the common elements may be conveyed or subjected to a mortgage, deed of trust or security interest by the association if persons entitled to cast at least eighty per cent of the votes in the association, or any larger percentage the declaration specifies, agree to that action in the manner prescribed in subsection B, except that all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a mortgage, deed of trust or security interest. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses. Proceeds of the sale or encumbrance of the common elements are an asset of the association.
- B. An agreement to convey common elements or subject them to a mortgage, deed of trust or security interest shall be evidenced by the execution of an agreement, or ratifications of the agreement, in the same manner as a deed, by the requisite number of unit owners. The agreement shall specify a date after which the agreement will be void unless previously recorded. The agreement and all ratifications of the agreement shall be recorded in each county in which a portion of the condominium is situated and are effective only on recordation.
- C. The association, on behalf of the unit owners, may contract to convey common elements or subject them to a mortgage, deed of trust or security interest, but the contract is not enforceable against the association until approved pursuant to subsections A and B. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.
- D. Except as permitted in this chapter, any purported conveyance, encumbrance, judicial sale or other voluntary transfer of common elements is void.
- E. A conveyance or encumbrance of common elements pursuant to this section does not deprive any unit of its rights of access and support.
- F. A conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

**33-1252.01. Conveyance of certain real property**

- A. Real property that is held as an asset of the association and that is not held as a common element of the condominium may be conveyed by the association if persons entitled to cast at least eighty per cent of the votes in the association, or any larger percentage the declaration specifies, agree to the conveyance in the manner prescribed in subsection B.
- B. An agreement to convey real property that is held as an asset of the association and that is not held as a common element of the condominium shall be evidenced by the execution of an agreement, or ratifications of the agreement, in the same manner as a deed and by the requisite number of unit owners. The agreement shall specify a date after which the agreement will be void unless previously recorded. The agreement and all ratifications of the agreement shall be recorded in each county in which a portion of the condominium is situated and are effective only on recordation.
- C. The association, on behalf of the unit owners, may contract to convey the real property but the contract is not enforceable against the association until approved pursuant to subsections A and B. Thereafter, the association has all powers necessary and appropriate to effect the conveyance, including the power to execute deeds or other instruments.
- D. Except as permitted in this chapter, any purported conveyance or other voluntary transfer of real property is void.
- E. A conveyance of real property pursuant to this section does not affect the priority or validity of preexisting encumbrances.
- F. Property an association acquires in an assessment lien foreclosure action shall not be considered real property held as an asset of the association for the purpose of this section.

### **33-1253. Insurance**

A. Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available, both:

1. Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against or, as determined by the board of directors against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty per cent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.
2. Liability insurance in an amount determined by the board of directors but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the common elements.

B. To the extent available, the insurance maintained under subsection A, paragraph 1 of this section, if determined by the board, includes the units or any portion of those units but need not include improvements and betterments installed by unit owners or the personal property of unit owners.

C. If the insurance described in subsection A of this section is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

D. Insurance policies carried pursuant to subsection A of this section shall provide the following:

1. Each unit owner is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association.
2. The insurer waives its right to subrogation under the policy against any unit owner or members of his household.
3. No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy.
4. If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same property covered by the policy, the association's policy provides primary insurance.

E. Any loss covered by the property policy under subsection A, paragraph 1 and subsection B of this section shall be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection H of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

F. An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for his own benefit.

G. An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, on written request, to any unit owner, mortgagee or beneficiary under a deed of trust. The insurer issuing the policy shall not cancel or refuse to renew it until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

H. Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless any of the following apply:

1. The condominium is terminated.
2. Repair or replacement would be illegal under any state or local health or safety statute or ordinance.
3. Eighty per cent of the unit owners, including every owner of a unit or allocated limited common element which will not be rebuilt, vote not to rebuild.

I. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire condominium is not repaired or replaced:

1. The insurance proceeds attributable to the damaged common elements in proportion to their common element interests or as otherwise provided in the declaration shall be used to restore the damaged area to a condition compatible with the remainder of the condominium.
2. The insurance proceeds attributable to units and allocated limited common elements which are not rebuilt shall be distributed in proportion to their common element interests or as otherwise provided in the declaration to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders as their interests may appear.
3. The remainder of the proceeds shall be distributed to all the unit owners or lienholders as their interests may appear in proportion to the common element interests of all the units.

J. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated on the vote as if the unit had been condemned under section 33-1206, subsection A, and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations.

K. Notwithstanding the provisions of subsections H, I and J of this section, section 33-1228 governs the distribution of insurance proceeds if the condominium is terminated.

L. If all units are restricted to nonresidential use, the provisions of a subsection or paragraph of this section do not apply if the declaration, articles of incorporation or amended bylaws contain provisions inconsistent with such subsection or paragraph.

M. This section does not prohibit the declaration from requiring additional or greater amounts of insurance coverage or does not prohibit the board of directors from acquiring additional or greater amounts of coverage as it reasonably deems appropriate.

### **33-1254. Surplus monies**

Unless otherwise provided in the declaration, any surplus monies of the association remaining after payment of or provision for common expenses and any prepayment of reserves shall be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

### **33-1255. Assessments for common expenses; applicability**

A. Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments shall be made at least annually, based on a budget adopted at least annually by the association.

B. Except for assessments under subsections C, D, E and F of this section, all common expenses shall be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to section 33-1217, subsection A. Any past due common expense assessment or installment bears interest at the rate established by the board subject to the condominium documents.

C. Unless otherwise provided for in the declaration all of the following apply:

1. Any common expense associated with the maintenance, repair or replacement of a limited common element shall be equally assessed against the units to which the limited common element is assigned.
2. Any common expense or portion of a common expense benefitting fewer than all of the units shall be assessed exclusively against the units benefitted.

D. Assessments to pay a judgment against the association may be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities.

E. If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against that unit.

F. If the declaration so provides, the common expense assessment for any unit on which construction has not been substantially completed may be an amount which is not less than twenty-five per cent of the common expense assessment for units which have been substantially completed. However, this reduced common expense assessment shall not be permitted, unless the declarant is obligated under the declaration to pay to the association any deficiency in monies due to the declarant having paid a reduced common assessment and necessary for the association to be able to timely pay all common expenses.

G. If common expense liabilities are reallocated, common expense assessments and any installment on the assessments not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

H. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

**33-1256. Lien for assessments; priority; mechanics' and materialmen's liens; applicability**

A. The association has a lien on a unit for any assessment levied against that unit from the time the assessment becomes due. The association's lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may be foreclosed in the same manner as a mortgage on real estate but may be foreclosed only if the owner has been delinquent in the payment of monies secured by the lien, excluding reasonable collection fees, reasonable attorney fees and charges for late payment of and costs incurred with respect to those assessments, for a period of one year or in the amount of one thousand two hundred dollars or more, whichever occurs first. Fees, charges, late charges, monetary penalties and interest charged pursuant to section 33-1242, subsection A, paragraphs 10, 11 and 12, other than charges for late payment of assessments, are not enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due. The association has a lien for fees, charges, late charges, other than charges for late payment of assessments, monetary penalties or interest charged pursuant to section 33-1242, subsection A, paragraphs 10, 11 and 12 after the entry of a judgment in a civil suit for those fees, charges, late charges, monetary penalties or interest from a court of competent jurisdiction and the recording of that judgment in the office of the county recorder as otherwise provided by law. The association's lien for monies other than for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may not be foreclosed and is effective only on conveyance of any interest in the real property.

B. A lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments under this section is prior to all other liens, interests and encumbrances on a unit except:

1. Liens and encumbrances recorded before the recordation of the declaration.
2. A recorded first mortgage on the unit, a seller's interest in a first contract for sale pursuant to chapter 6, article 3 of this title on the unit recorded prior to the lien arising pursuant to subsection A of this section or a recorded first deed of trust on the unit.
3. Liens for real estate taxes and other governmental assessments or charges against the unit.

C. Subsection B of this section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. The lien under this section is not subject to chapter 8 of this title.

D. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

E. Recording of the declaration constitutes record notice and perfection of the lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments. Further recordation of any claim of lien for assessments under this section is not required.

F. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

G. This section does not prohibit actions to recover sums for which subsection A of this section creates a lien or does not prohibit an association from taking a deed in lieu of foreclosure.

H. A judgment or decree in any action brought under this section shall include costs and reasonable attorney fees for the prevailing party.

I. The association on written request shall furnish to a lienholder, escrow agent, unit owner or person designated by a unit owner a statement setting forth the amount of unpaid assessments against the unit. The statement shall be furnished within ten days after receipt of the request and the statement is binding on the association, the board of directors and every unit owner if the statement is requested by an escrow agency that is licensed pursuant to title 6, chapter 7. Failure to provide the statement to the escrow agent

within the time provided for in this subsection shall extinguish any lien for any unpaid assessment then due.

J. The association shall record in the office of the county recorder in the county in which the condominium is located a notice stating the name of the association or designated agent or management company for the association, the address for the association and the telephone number of the association or its designated agent or management company. The notice shall include the name of the condominium community, the date of the recording and the recorded instrument number or book and page for the main document that constitutes the declaration. If an association's address, designated agent or management company changes, the association shall amend its notice or record a new notice within ninety days after the change.

K. Notwithstanding any provision in the condominium documents or in any contract between the association and a management company, unless the member directs otherwise, all payments received on a member's account shall be applied first to any unpaid assessments, for unpaid charges for late payment of those assessments, for reasonable collection fees and for unpaid attorney fees and costs incurred with respect to those assessments, in that order, with any remaining amounts applied next to other unpaid fees, charges and monetary penalties or interest and late charges on any of those amounts.

L. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

### **33-1257. Other liens affecting the condominium**

A. Except as provided in subsection B of this section, a legally recorded judgment for money against the association is not a lien on the common elements but is a lien in favor of the judgment lienholder against all of the units in the condominium at the time the judgment was entered. Other property of a unit owner is not subject to the claims of creditors of the association.

B. If the association has granted a mortgage, deed of trust or security interest in the common elements to a creditor of the association pursuant to section 33-1252, the holder of that security interest must exercise its right against the common elements before its judgment lien on any unit may be enforced.

C. Whether perfected before or after the creation of the condominium, if a lien other than a deed of trust or mortgage becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his unit, and the lienholder, on receipt of payment, shall promptly deliver a release of the lien covering that unit. The amount of the payment shall be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association shall not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

D. A judgment against the association shall be indexed in the name of the condominium and the association and shall include the legal description of the unit subject to the lien. When so indexed, the judgment is notice of the lien against the units.

### **33-1258. Association financial and other records; applicability**

A. Except as provided in subsection B of this section, all financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. The association shall not charge a member or any person designated by the member in writing for making material available for review. The association shall have ten business days to fulfill a request for examination. On request for purchase of copies of records by any member or any person designated by the member in writing as the member's representative, the association shall have ten business days to provide copies of the requested records. An association may charge a fee for making copies of not more than fifteen cents per page.

B. Books and records kept by or on behalf of the association and the board may be withheld from disclosure to the extent that the portion withheld relates to any of the following:

1. Privileged communication between an attorney for the association and the association.
2. Pending litigation.
3. Meeting minutes or other records of a session of a board meeting that is not required to be open to all members pursuant to section 33-1248.
4. Personal, health or financial records of an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association,



including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.

5. Records relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

C. The association shall not be required to disclose financial and other records of the association if disclosure would violate any state or federal law.

D. This section does not apply to an association for a timeshare plan that is subject to chapter 20 of this title.

### **33-1259. Association as trustee**

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

### **33-1260. Resale of units; information required; fees; civil penalty; applicability; definition**

*(Amended by Laws 2014, Ch. 94)*

A. For condominiums with fewer than fifty units, a unit owner shall mail or deliver to a purchaser or a purchaser's authorized agent within ten days after receipt of a written notice of a pending sale of the unit, and for condominiums with fifty or more units, the association shall mail or deliver to a purchaser or a purchaser's authorized agent within ten days after receipt of a written notice of a pending sale that contains the name and address of the purchaser, all of the following in either paper or electronic format:

1. A copy of the bylaws and the rules of the association.

2. A copy of the declaration.

3. A dated statement containing:

- (a) The telephone number and address of a principal contact for the association, which may be an association manager, an association management company, an officer of the association or any other person designated by the board of directors.

- (b) The amount of the common expense assessment for the unit and any unpaid common expense assessment, special assessment or other assessment, fee or charge currently due and payable from the selling unit owner. If the request is made by a lienholder, escrow agent, unit owner or person designated by a unit owner pursuant to section 33-1256, failure to provide the information pursuant to this subdivision within the time provided for in this subsection shall extinguish any lien for any unpaid assessment then due against that unit.

- (c) A statement as to whether a portion of the unit is covered by insurance maintained by the association.

- (d) The total amount of money held by the association as reserves.

- (e) If the statement is being furnished by the association, a statement as to whether the records of the association reflect any alterations or improvements to the unit that violate the declaration. The association is not obligated to provide information regarding alterations or improvements that occurred more than six years before the proposed sale. Nothing in this subdivision relieves the seller of a unit from the obligation to disclose alterations or improvements to the unit that violate the declaration, nor precludes the association from taking action against the purchaser of a unit for violations that are apparent at the time of purchase and that are not reflected in the association's records.

- (f) If the statement is being furnished by the unit owner, a statement as to whether the unit owner has any knowledge of any alterations or improvements to the unit that violate the declaration.

- (g) A statement of case names and case numbers for pending litigation with respect to the unit filed by the association against the unit owner or filed by the unit owner against

the association. The unit owner or the association shall not be required to disclose information concerning the pending litigation that would violate any applicable rule of attorney-client privilege under Arizona law.

(h) A statement that provides "I hereby acknowledge that the declaration, bylaws and rules of the association constitute a contract between the association and me (the purchaser). By signing this statement, I acknowledge that I have read and understand the association's contract with me (the purchaser). I also understand that as a matter of Arizona law, if I fail to pay my association assessments, the association may foreclose on my property." The statement shall also include a signature line for the purchaser and shall be returned to the association within fourteen calendar days.

4. A copy of the current operating budget of the association.

5. A copy of the most recent annual financial report of the association. If the report is more than ten pages, the association may provide a summary of the report in lieu of the entire report.

6. A copy of the most recent reserve study of the association, if any.

7. A statement summarizing any pending lawsuits, except those relating to the collection of assessments owed by unit owners other than the selling unit owner, in which the association is a named party, including the amount of any money claimed.

B. A purchaser or seller who is damaged by the failure of the unit owner or the association to disclose the information required by subsection A of this section may pursue all remedies at law or in equity against the unit owner or the association, whichever failed to comply with subsection A of this section, including the recovery of reasonable attorney fees.

C. The association may charge the unit owner a fee of no more than an aggregate of four hundred dollars to compensate the association for the costs incurred in the preparation of a statement or other documents furnished by the association pursuant to this section for purposes of resale disclosure, lien estoppel and any other services related to the transfer or use of the property. In addition, the association may charge a rush fee of no more than one hundred dollars if the rush services are required to be performed within seventy-two hours after the request for rush services, and may charge a statement or other documents update fee of no more than fifty dollars if thirty days or more have passed since the date of the original disclosure statement or the date the documents were delivered. The association shall make available to any interested party the amount of any fee established from time to time by the association. If the aggregate fee for purposes of resale disclosure, lien estoppel and any other services related to the transfer or use of a property is less than four hundred dollars on January 1, 2010, the fee may increase at a rate of no more than twenty per cent per year based on the immediately preceding fiscal year's amount not to exceed the four hundred dollar aggregate fee. The association may charge the same fee without regard to whether the association is furnishing the statement or other documents in paper or electronic format.

D. The fees prescribed by this section shall be collected no earlier than at the close of escrow and may only be charged once to a unit owner for that transaction between the parties specified in the notice required pursuant to subsection A of this section. An association shall not charge or collect a fee relating to services for resale disclosure, lien estoppel and any other services related to the transfer or use of a property except as specifically authorized in this section. An association that charges or collects a fee in violation of this section is subject to a civil penalty of no more than one thousand two hundred dollars.

E. This section applies to a managing agent for an association that is acting on behalf of the association.

F. The following are exempt from this section:

1. A sale in which a public report is issued pursuant to sections 32-2183 and 32-2197.02.

2. A sale pursuant to section 32-2181.02.

3. A conveyance by recorded deed that bears an exemption listed in section 11-1134, subsection B, paragraph 3 or 7. On recordation of the deed and for no additional charge, the unit owner shall provide the association with the changes in ownership including the unit owner's name, billing address and phone number. Failure to provide the information shall not prevent the unit owner from qualifying for the exemption pursuant to this section.

G. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

H. For the purposes of this section, unless the context otherwise requires, "unit owner" means the seller of the condominium unit title and excludes any real estate salesperson or real estate broker who is licensed under title 32, chapter 20 and who is acting as a salesperson or broker, any escrow agent who is

licensed under title 6, chapter 7 and who is acting as an escrow agent and also excludes a trustee of a deed of trust who is selling the property in a trustee's sale pursuant to chapter 6.1 of this title.

**33-1260.01. Rental property; unit owner and agent information; fee; disclosure**

*(Added by Laws 2014, Ch. 83)*

A. A unit owner may use the unit owner's unit as a rental property unless prohibited in the declaration and shall use it in accordance with the declaration's rental time period restrictions.

B. A unit owner may designate in writing a third party to act as the unit owner's agent with respect to all association matters relating to the rental unit, except for voting in association elections and serving on the board of directors. The unit owner shall sign the written designation and shall provide a copy of the written designation to the association. On delivery of the written designation, the association is authorized to conduct all association business relating to the unit owner's rental unit through the designated agent. Any notice given by the association to a unit owner's designated agent on any matter relating to the unit owner's rental unit constitutes notice to the unit owner.

C. Notwithstanding any provision in the condominium documents, on rental of a unit an association shall not require a unit owner or a unit owner's agent to disclose any information regarding a tenant other than the name and contact information for any adults occupying the unit, the time period of the lease, including the beginning and ending dates of the tenancy, and a description and the license plate numbers of the tenants' vehicles. If the condominium is an age restricted condominium, the unit owner, the unit owner's agent or the tenant shall show a government issued identification that bears a photograph and that confirms that the tenant meets the condominium's age restrictions or requirements.

D. On request of an association or its managing agent for the disclosures prescribed in subsection C of this section, the managing agent or, if there is no managing agent, the association may charge a fee of not more than twenty-five dollars, which shall be paid within fifteen days after the postmarked request. The fee may be charged for each new tenancy for that unit but may not be charged for a renewal of a lease. Except for the fee permitted by this subsection and fees related to the use of recreational facilities, the association or its managing agent shall not assess, levy or charge a fee or fine or otherwise impose a requirement on a unit owner's rental unit any differently than on an owner-occupied unit in the association.

E. Notwithstanding any provision in the condominium documents, the association is prohibited from doing any of the following:

1. Requiring a unit owner to provide the association with a copy of the tenant's rental application, credit report, lease agreement or rental contract or other personal information except as prescribed by this section. This paragraph does not prohibit the association from acquiring a credit report on a person in an attempt to collect a debt.
2. Requiring the tenant to sign a waiver or other document limiting the tenant's due process rights as a condition of the tenant's occupancy of the rental unit.
3. Prohibiting or otherwise restricting a unit owner from serving on the board of directors based on the owner's not being an occupant of the unit.
4. Imposing on a unit owner or managing agent any fee, assessment, penalty or other charge in an amount greater than fifteen dollars for incomplete or late information regarding the information requested pursuant to subsection C of this section

F. Any attempt by an association to exceed the fee, assessment, penalty or other charge authorized by subsection D or E of this section voids the fee, assessment, penalty or other charge authorized by subsection D or E of this section. This section does not prevent an association from complying with the housing for older persons act of 1995 (P.L. 104-76; 109 Stat. 787).

G. An owner may use a CRIME free addendum as part of a lease agreement. This section does not prohibit the owner's use of a crime free addendum.

H. This section does not prohibit and an association may lawfully enforce a provision in the condominium documents that restricts the residency of persons who are required to be registered pursuant to section 13-3821 and who are classified as level two or level three offenders.

I. An owner of rental property shall abate criminal activity as authorized in section 12-991.

**33-1261. Flag display; for sale, rent or lease signs; political signs and activities; applicability**  
(Amended by Laws 2014, Ch. 83)

A. Notwithstanding any provision in the condominium documents, an association shall not prohibit the outdoor display of any of the following:

1. The American flag or an official or replica of a flag of the United States army, navy, air force, marine corps or coast guard by a unit owner on that unit owner's property if the American flag or military flag is displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code sections 4 through 10).
2. The POW/MIA flag.
3. The Arizona state flag.
4. An Arizona Indian nations flag.
5. The Gadsden flag.

B. The association shall adopt reasonable rules and regulations regarding the placement and manner of display of the American flag, the military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian nations flag. The association rules may regulate the location and size of flagpoles but shall not prohibit the installation of a flagpole.

C. Notwithstanding any provision in the condominium documents, an association shall not prohibit or charge a fee for the use of, the placement of or the indoor or outdoor display of a for sale, for rent or for lease sign and a sign rider by a unit owner on that owner's property in any combination, including a sign that indicates the unit owner is offering the property for sale by owner. The size of a sign offering a property for sale, for rent or for lease shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches. This subsection applies only to a commercially produced sign and an association may prohibit the use of signs that are not commercially produced. With respect to real estate for sale, for rent or for lease in the condominium, an association shall not prohibit in any way other than as is specifically authorized by this section or otherwise regulate any of the following:

1. Temporary open house signs or a unit owner's for sale sign. The association shall not require the use of particular signs indicating an open house or real property for sale and may not further regulate the use of temporary open house or for sale signs that are industry standard size and that are owned or used by the seller or the seller's agent.
2. Open house hours. The association may not limit the hours for an open house for real estate that is for sale in the condominium, except that the association may prohibit an open house being held before 8:00 a.m. or after 6:00 p.m. and may prohibit open house signs on the common elements of the condominium.
3. An owner's or an owner's agent's for rent or for lease sign unless an association's documents prohibit or restrict leasing of a unit or units. An association shall not further regulate a for rent or for lease sign or require the use of a particular for rent or for lease sign other than the for rent or for lease sign shall not be any larger than the industry standard size sign of eighteen by twenty-four inches and on or in the unit owner's property. If rental or leasing of a unit is allowed, the association may prohibit an open house for rental or leasing being held before 8:00 a.m. or after 6:00 p.m.

D. Notwithstanding any provision in the condominium documents, an association shall not prohibit door to door political activity, including solicitations of support or opposition regarding candidates or ballot issues, and shall not prohibit the circulation of political petitions, including candidate nomination petitions or petitions in support of or opposition to an initiative, referendum or recall or other political issue on property normally open to visitors within the association, except that an association may do the following:

1. Restrict or prohibit door to door political activity regarding candidates or ballot issues from sunset to sunrise.
2. Require the prominent display of an identification tag for each person engaged in the activity, along with the prominent identification of the candidate or ballot issue that is the subject of the support or opposition.

E. Notwithstanding any provision in the condominium documents, an association shall not prohibit the indoor or outdoor display of a political sign by a unit owner by placement of a sign in the common element ground that is adjacent to the unit or on that unit owner's property, including any limited common elements for that unit, except that an association may prohibit the display of political signs earlier than seventy-one days before the day of an election and later than three days after an election day. An

association may regulate the size and number of political signs that may be placed in the common element ground, on a unit owner's property or on a limited common element for that unit if the association's regulation is no more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential property. If the city, town or county in which the property is located does not regulate the size and number of political signs on residential property, the association shall not limit the number of political signs, except that the maximum aggregate total dimensions of all political signs on a unit owner's property shall not exceed nine square feet. An association shall not make any regulations regarding the number of candidates supported, the number of public officers supported or opposed in a recall or the number of propositions supported or opposed on a political sign. For the purposes of this subsection, "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer.

F. An association shall not require political signs to be commercially produced or professionally manufactured or prohibit the utilization of both sides of a political sign.

G. A condominium is not required to comply with subsection D of this section if the condominium restricts vehicular or pedestrian access to the condominium. Nothing in this section requires a condominium to make its common elements other than roadways and sidewalks that are normally open to visitors available for the circulation of political petitions to anyone who is not an owner or resident of the community.

H. An association or managing agent that violates subsection C of this section forfeits and extinguishes the lien rights authorized under section 33-1256 against that unit for a period of six consecutive months from the date of the violation.

I. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

## **Article 4 Administration of the Condominium Act**

### **33-1270. Department of real estate; enforcement**

A. Nothing in this chapter shall be construed to increase or decrease or otherwise affect any rights or powers granted to the commissioner of the department of real estate under title 32, chapter 20 with respect to the issuance of public reports.

B. The commissioner of the department of real estate shall require compliance with section 33-1215 and section 33-1219 in connection with the administration of the subdivision laws of this state under title 32, chapter 20, article 4. The commissioner shall not be required to administer or enforce any other provisions of this chapter.