August 28, 2015

The Honorable Douglas A. Ducey
Governor
State of Arizona
1700 W. Washington Street.
Phoenix, Arizona 85007

Governor Ducey,

The Arizona Department of Real Estate (ADRE) is pleased to provide the enclosed evaluation of the department's rules as prescribed by Executive Order 2015-01. Under my leadership as the Commissioner of ADRE, we have worked with industry stakeholders over the past several years to discuss real estate rules, regulations, and policies with the intent of receiving permission to make rule modifications that adhere to statutory changes, reduce regulatory burden, and account for technology advancements in the real estate industry.

Although these discussions have not resulted in a rulemaking package being presented to the Governor's Regulatory Review Council (GRRC), they have been productive in that the issues and areas where improvement would benefit the public, real estate industry, and department have been identified.

The enclosed report will also address licensing timeframes set forth in rule and how the department meets or beats each one. As an early adopter of the principles of LEAN Management, ADRE began meeting with the Government Transformation Office (GTO) in late 2013 to address its disciplinary action disclosure statement requirements. Since the success of that project bringing the timeframe down 95%, we continue to identify new areas in each division for improvement. The ADRE is now involved in our third LEAN project in the last nine months.

Lastly, included in the agency's ongoing discussions of our rules is to streamline and reduce burdensome requirements of our licenses. While the agency has not identified an opportunity to replace a license with a general permit, there has been agreement that there are requirements of individual licensees that should be eliminated or reduced because of changes in the real estate industry and due to emerging technology.

I encourage you or your office to contact me directly should you have any questions on the information in this report. Thank you for your support.

Sincerely,


Judy Lowe
Commissioner

| | Arizona Department of Real Estate Regulatory Review Recommendations | | | |
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| | **RULES RECOMMENDED FOR AMENDMENT** | | | |
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| **Section** | **Description** | **Comments** | **Recommendation** | **Rationale** |
| *Chapter 28. STATE REAL ESTATE DEPARTMENT* | | | | |
| *Article 1. General Provisions* | | | | |
| R4-28-101 | **Definitions**<br>The objective of this rule is to clarify terms used in the industry by giving definition and meaning to those terms generally used, but not otherwise defined by statute. | The rule is outdated and lacks definitional clarity that would benefit the consumer, industry, and Department. | Amend | Antiquated |
| R4-28-103 | **Licensing Time-frames**<br>This rule establishes time-frames for the Department's review of license applications. The rule provides timeframes for completing licensing procedures. | ADRE currently operates faster than the timeframes in rule. The business community would benefit from more realistic and reduced timeframes being clarified in rule. | Amend | Antiquated - Needs update to reflect the current speed of agency |
| R4-28-104 | **Development Inspection Fees**<br>The objective of the rule is to clarify that developers will be charged an inspection fee and provides statutory references. Statutory authority: A.R.S § 32-2182, 32-2194, 32-2195, and 32-2198. | The rule does not reflect statute which allows the developer to use a third party for inspections. This option is a benefit to the developer and needs to be reflected in rule. | Amend | Antiquated, needs update to reflect state law |
| *Article 3. Licensure* | | | | |
| R4-28-301 | **General License Requirements; Non-resident License**<br>The objective of this rule is to clarify what licensing information shall be provided to the Department and licensing requirements of an employing broker, partnership, corporation, Limited Liability Company, foreign entity, self-employed broker, and nonresident brokers as well as guidance to the designated broker that a supplemental statement shall be filed with the Department 10-days after a change. Statutory authority: A.R.S §§ 32-2108, 32-2123, 32-2124, 32-2125, and 41-1080. | The rule does not address statutory requirements of the fingerprint clearance card and legal presence requirements; references the subdivision recovery fund that is no longer. Some documents required of disclosures are burdensome and cause administrative delays. These burdens should be addressed immediately. | Amend | Antiquated, Reduce Regulatory Burden, needs update to reflect state law |

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| R4-28-302 | **Employing Broker's License; Non-resident Broker**<br>The objective of the rule is to clarify what licensing information shall be provided to the Department and license requirements of an employing broker, partnership, corporation, Limited Liability Company, foreign entity, self-employed broker, and nonresident brokers. <u>Statutory authority: A.R.S §§ 10-401, 29-602, 32-2123, 32-2124, 32-2153.</u> | The rule needs to be amended to remove outdated statutory references and to add current electronic needs and capabilities. | Amend | Antiquated - Needs update |
| R4-28-303 | **License Renewal; Reinstatement Changes in PersonalInformation, License, or License Status;Professional Corporation or Professional LimitedLiability Company Licensure; AdministrativeSeverance**The rule establishes the requirements for filing for license renewal,  license reinstatement, and notice of changes in a licensee's information with the Department, the timing of such notice, and whether Department approval is required before the licensee implements the change. It also identifies the information required when a person has conducted activities requiring licensure while that person is not holding a current and active-status license. | The rule can be made more effective by codifying the fingerprint clearance card requirements in statute for licensees that submit a criminal conviction disclosure past the 10 day notification period in the rule. These changes would accommodate current electronic capabilities. | Amend | Antiquated - Needs update |
| R4-28-305 | **Temporary License, Certificate of Convenience**<br>The objective of the rule is to establish the information to be provided and the procedure to be followed by an applicant seeking a temporary license as a broker, or as a cemetery salesperson or membership camping salesperson. | The rule could be amended to include the individuals email address to alleviate administrative delays. | Amend | Antiquated |
| *Article 4. Education* | | | | |
| R4-28-401 | **Prelicensure Education Requirements; Waiver**<br>This rule specifies that a real estate candidate must complete required prelicense education or, if requesting a waiver of the prelicense courses, the information the candidate seeking a waiver must provide to the agency. | The rule does not reflect legislative intent regarding military spouse eligibility for certain exemptions pursuant to A.R.S. § 32-4302. | Amend | Antiquated - Reduce Administrative Delays |

| R4-28-402 | **Continuing Education Requirements; Waiver; Distance Learning**<br>This rule establishes that a real estate applicant must take specified hours in various categories of approved courses to receive continuing education credit for license renewal. <u>Statutory authority: A.R.S §§ 32-2130, 32-2135, 32-2151, 32-2151.01, and 32-4301.</u> | The rule should be amended to allow for the addition of new delivery methods and qualified continuing education courses. This would benefit the real estate industry and public. Some references need to be updated to be consistent with statute and allow for expanded continuing education topics, including distance learning and remote delivery. | Amend | Antiquated - Encourage Industry Growth |
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| R4-28-404 | **Real Estate School Requirements, Course and Instructor Approval**<br>The objective of this rule is to establish the information and/or qualifications required for school approval, course approval, and instructor approval. It establishes what records a school must maintain and for how long, what information a school shall make available to students before enrollment, and identifies what activities may be considered job placement services that may be offered by a prelicensing school. <u>Statutory authority: A.R.S § 32-2135.</u> | Additional clarity could be added in rule of the requirements already set forth in statute. Additionally, the rule should reflect electronic documents delivery and allow for email. | Amend | Antiquated |
| *Article 5. Advertising* | | | | |
| R4-28-502 | **Advertising by a Licensee**<br>The objective of the rule is to establish advertising guidelines for real estate and real estate schools. <u>Statutory authority: A.R.S §§ 32-2101, 32-2126, 32-2153, and 32-2165.</u> | Minor revisions are needed to the rule to delete irrelevant items and to address electronic methods of advertising. | Amend | Minor revisions |
| R4-28-504 | **Development Advertising**<br>The objective of the rule is to establish guidelines for developers pursuant to statute of the various types of developments regulated by the Department with respect to advertising, and prohibit false and misleading advertisements. <u>Statutory authority: A.R.S § 32-2183.01, 32-2181.03, 32-2194.05, 32-2197.17 and 32-2198.01.</u> | Minor revisions are needed to reflect the statutory changes and standards of the developers/builders. | Amend | Antiquated |

## Article 8. Documents

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| R4-28-802 | **Conveyance Documents** <br> The objective of the rule is to implement procedures to reflect statutory requirements that all parties have copies of transaction documents, require that all offers be presented in accordance with a contract, and identify documents that must be maintained in Broker transaction files pursuant to statute. <u>Statutory authority: A.R.S §§ 32-2108, 32-2151.01, 32-2153, and 32-2175.</u> | Needs amending to codify long standing Commissioner's advisories and substantive policy statements on standards for electronic and web based document preparation, distribution, and storage and transaction management systems. Update to be consistent with CFPB - TRID requirements. | Amend | Antiquated, Alleviate Regulatory Burden |

## Article 12. Developments

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| R4-28-A1201 | **Development Name; Lot Sales; Applicant** <br> The objective of the rule is to provide required information and procedures for filing applications for a public report, certificate of authority, or special order of exemption. | Needs amended to reference the Interstate Land Sales Full Disclosure Act. The rule has several areas where references need to be updated to be consistent with statute and allow for electronic application/reporting. | Amend | Antiquated, Alleviate Regulatory Burden, Reduce Admin Delays |
| R4-28-A1220 | **Foreign Developments** <br> The objective of the rule is to establish guidelines by which a developer may obtain approval to advertise and/or sell interests in a development located outside of Arizona to Arizona residents. | The rule needs to be amended to reference the Interstate Land Sales Full Disclosure Act. Further, the rule has several areas where references need to be updated to be consistent with statute and allow for electronic reporting. | Amend | Antiquated - Needs update |
| R4-28-B1206 | **Filing with HUD** <br> Rule clarifies that developers must comply with the United States Housing and Urban Development (HUD) mandates if the development is certified by HUD. | The rule is no longer consistent with federal law. The Consumer Financial Protection Bureau (CFPB) is now tasked with the responsibilities previously held by HUD. The rule and title should be amended to accommodate and clarify this change. | Amend | Antiquated - Needs update to reflect federal law |

| Section | Description | Comments | Recommendation | Rationale |
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| R4-28-B1207 | **Subsequent Owner**<br>Rule requires a developer who acquires six or more lots in a subdivision, or twelve or more shares in a time-share development to obtain a new public report before reselling the lots or shares. | The rule does not reflect Laws 2014, Chapter 187 relating to unsubdivided land which allows for lots, parcels, or fractional interests sold more than ten years after the first sale to be excluded in the count of six lots. | Amend | Antiquated - Needs update to reflect state law |
| R4-28-A1217 | **ADEQ Approval**<br>The objective of the rule is to inform developers that approval of their subdivision or timeshare project by the Arizona Department of Environmental Quality (ADEQ) is required. | The rule should be amended to add clarity and remove the requirement to provide an ADEQ Certificate of Approval if one developer purchases six or more lots. | Amend | Antiquated, Reduce Regulatory Burden |
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## RULES RECOMMENDED FOR REPEAL

| Section | Description | Comments | Recommendation | Rationale |
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| | | | | |
| *Chapter 28. State Real Estate Department* | | | | |
| *Article 1. General Provisions* | | | | |
| R4-28-401 | *Prelicensure Education Requirements; Waiver*<br>The rule provides guidance on the waiver process for prelicense courses, and the information the candidate seeking a waiver must provide to the agency. | This provision is no longer necessary as the ADRE no longer approves these waivers. The real estate industry supports this position. | Repeal | Repeal |
| R4-28-402(5)(g) | **Continuing Education Requirements; Waiver; Distance Learning**<br>The objective of this rule is to establish that a real estate renewal<br>applicant must take specified hours in various categories of approved courses. | R4-28-402(5)(g) is no longer necessary as the statutes and rules around business brokerage have been repealed. | Repeal | Repeal |
| R4-28-405 | **Business Brokerage Specialist Designation**This rule prescribed guidelines around the business brokerage specialist designation under A.R.S. § 32-2124(N) to a real estate salesperson or broker. | This rule was allowed to expire with the Department's five-year rule review submitted to GRRC in February 2015. The underlying statute no longer exists. | Repealed | Repealed - 2015 |

# LICENSING TIMEFRAME ANALYSIS

| Section | Description | Licensing Timeframe Comparison | Recommendation | General Permit |
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| *Chapter 28. State Real Estate Department* | | | | |
| *Article 4. Education* | | | | |
| R4-28-Table 1. Time-frames (Calendar Days) | **Broker or Salesperson (Individual)** | **Defined Timeframe**: 60 days<br>**Real Timeframe**: 1 day if there is no disciplinary action disclosure.<br>**Ability to Reduce**: Have already implemented changes to reduce timeframe significantly; recommend a rule change to 30 days to account for complicated applications that cannot be completed in one day. | Amend | No |
| | **Individual Real Estate Salesperson and Broker Renewal** | **Defined Timeframe**: 60 days<br>**Real Timeframe**: 1 day if there is no disciplinary action disclosure.<br>**Ability to Reduce**: Have already implemented changes to reduce timeframe significantly; recommend a rule change to 30 days to account for complicated applications that cannot be completed in one day. | Amend | No |
| | **Modified/Amended (Change of Name, Address, or License Status)** | **Defined Timeframe**: 60 days<br>**Real Timeframe**: 1 day<br>**Ability to Reduce**: Have already implemented changes to reduce timeframe significantly; recommend a rule change to 30 days to account for complicated applications that cannot be | Amend | No |

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| | | completed in one day. | | |
| | **Individual Reinstatement** | **Defined Timeframe**: 60 days**Real Timeframe**: 1 day**Ability to Reduce**: Have already implemented changes to reduce timeframe significantly; recommend a rule change to 30 days to account for complicated applications that cannot be completed in one day. | Amend | No |
| | **Corp/LLC/Partnership/PC/PLC/Designated Broker Status Change** | **Defined Timeframe**: 120 days **Real Timeframe:** 1 day **Ability to Reduce:** Have already implemented changes to reduce timeframe significantly; recommend a rule change to 30 days to account for complicated applications that cannot be completed in one day. | Amend | No |
| | **Branch Office** | **Defined Timeframe**: 120 days **Real Timeframe**: 1 day **Ability to Reduce**: Have already implemented changes to reduce timeframe significantly; recommend a rule change to 30 days to account for complicated applications that cannot be completed in one day. | Amend | No |

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| | **Entity/DB Status Renewal** | **Defined Timeframe**: 120 days<br>**Real Timeframe**: 1 day<br>**Ability to Reduce**: Have already implemented changes to reduce timeframe significantly; recommend a rule change to 30 days to account for complicated applications that cannot be completed in one day. | Amend | No |
| | **Modified/Amended (Change of Name, Address, or License Status)** | **Defined Timeframe**: 120 days<br>**Real Timeframe**: 1 day<br>**Ability to Reduce**: Have already implemented changes to reduce timeframe significantly; recommend a rule change to 30 days to account for complicated applications that cannot be completed in one day. | Amend | No |
| | **Entity Reinstatement** | **Defined Timeframe**: 120 days**Real Timeframe**: 1 day**Ability to Reduce**: Have already implemented changes to reduce timeframe significantly; recommend a rule change to 30 days to account for complicated applications that cannot be completed in one day. | Amend | No |
| | **Temporary Broker** | **Defined Timeframe**: 120 days<br>**Real Timeframe**: 1 day<br>**Ability to Reduce**: Have already implemented changes to reduce timeframe significantly; recommend a rule change to 30 days to account for complicated applications that cannot be completed in one day. | Amend | No |

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| | **Temporary Cemetery Salesperson** | **Defined Timeframe**: 120 days<br>**Real Timeframe**: 1 day<br>**Ability to Reduce**: Have already implemented changes to reduce timeframe significantly; recommend a rule change to 30 days to account for complicated applications that cannot be completed in one day. | Amend | No |
| | **Membership Camping Cert. of Convenience** | **Defined Timeframe**: 120 days<br>**Real Timeframe**: 1 day<br>**Ability to Reduce**: Have already implemented changes to reduce timeframe significantly; recommend a rule change to 30 days to account for complicated applications that cannot be completed in one day. | Amend | No |
| | **School Approval** | **Defined Timeframe**: 30 days<br>**Real Timeframe**: 7 days<br>**Ability to Reduce**: Through LEAN could be reduced to 5 days. | Amend | No |
| | **Course Approval: New (Live Instruction)** | **Defined Timeframe**: 30 days<br>**Real Timeframe**: 7 days<br>**Ability to Reduce**: Through LEAN could be reduced to 5 days. | Amend | No |
| | **Course Approval: New (Distance Learning)** | **Defined Timeframe**: 120 days**Real Timeframe**: 30 days**Ability to Reduce**: Through LEAN could be reduced to 25 days. | Amend | No |
| | **Instructor Approval** | **Defined Timeframe**: 15 days<br>**Real Timeframe**: 7 days<br>**Ability to Reduce**: Through LEAN could be reduced to 5 days. | Amend | No |

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| | **Membership Campground Application** | **Defined Timeframe**: 100 days<br>**Real Timeframe**: 35 days<br>**Ability to Reduce**: The real time could be reduced more through LEAN. | Amend | No |
| | **Subdivision Application** | **Defined Timeframe**: 100 days<br>**Real Timeframe**: 30 days<br>**Ability to Reduce**: The real time could be reduced more through LEAN. | Amend | No |
| | **Timeshare Application** | **Defined Timeframe**: 100 days<br>**Real Timeframe**: 30 days<br>**Ability to Reduce**: The real time could be reduced more through LEAN. | Amend | No |
| | **Certificate of Authority - Cemetery Application** | **Defined Timeframe**: 100 days<br>**Real Timeframe**: 35 days<br>**Ability to Reduce**: The real time could be reduced more through LEAN. | Amend | No |
| | **Amended Certificate of Authority - Cemetery Application** | **Defined Timeframe**: 60 days<br>**Real Timeframe**: 15 days<br>**Ability to Reduce**: The real time could be reduced more through LEAN. | Amend | No |
| | **Waivers (Prelicense)** | **Defined Timeframe**: 45 days<br>**Real Timeframe**: 15<br>**Ability to Reduce**: The real time could be reduced more through LEAN. | Amend | No |
| | **Waivers (Continuing Education)** | **Defined Timeframe**: 12 days<br>**Real Timeframe**: 12 days<br>**Ability to Reduce**: The real time could be reduced more through LEAN. | Amend | No |

| | Exemptions (Subdivision) | **Defined Timeframe**: 80 days<br>**Real Timeframe**: 30 days<br>**Ability to Reduce**: The real time could be reduced more through LEAN. | Amend | No |
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| | Exemptions (Unsubdivided) | **Defined Timeframe**: 80 days**Real Timeframe**: 30 days**Ability to Reduce**: The real time could be reduced through LEAN. | Amend | No |
| | Exemption (Timeshare) | **Defined Timeframe**: 80 days<br>**Real Timeframe**: 30<br>**Ability to Reduce**: The real time could be reduced through LEAN. | Amend | No |
| | Exemption (membership Campground) | **Defined Timeframe**: 80 days<br>**Real Timeframe**: 30 days<br>**Ability to Reduce**: The real time could be reduced more through LEAN. | Amend | No |