

2004/2005 LAWBOOK SUPPLEMENT #1 Arizona Department of Real Estate

The following sections of the Real Estate Commissioner's Rules (Arizona Administrative Code) have changed and take effect March 5, 2005. If a section is not included in this supplement, it was not amended in this rulemaking package; please refer to the rules contained in your copy of the Arizona Real Estate Lawbook.

The Arizona Secretary of State issues the official version of Arizona Administrative Code.

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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." or "dba" 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. 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. 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. 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. 1. The Department may schedule an inspection.
2. 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. 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. 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. 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 to 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. §§ 322182, 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.

Note: Specific license fees have been removed from R4-28-104. Fees will be determined annually in accordance with ARS § 32-2103(B) within the ranges established in ARS § 32-2132. A schedule of current fees will be available from the Department on its website, www.re.state.az.us, and at the Department's offices.

Table 1. Time-frames (Calendar Days) ARTICLE 3. LICENSURE

		Administrative Completeness Review 30	Response to Completion Request		Response to Additional Information 30	
		30 30 30 60	30 30 30		30 30 30	
		60 60 60 60	30 30 30		30 60 60	
		60 60 60 10	30 30 30		60 60 60	
		10	30 30 30		60 60 60	
			15 15		15 15	
License Broker or Salesperson (Individual) Individual Renewal Modified/Amended (Change of Name, Address, or License Status) Individual Reinstatement Corp/LLC/ Partnership/ PC/PLC/Desig. Broker Status Branch Office Entity/DB status Renewal Modified/Amended (Change of Name, Address, or License Status) Entity Reinstatement Temporary Broker Temp Cemetery Salesperson Membership Camping Cert. of Convenience School Approval Course Approval: New (Live Instruction)	Authority A.R.S. § 32-2122 A.A.C. R4- 28-301 A.A.C. R4- 28-303 A.A.C. R4- 28-303 A.A.C. R4- 28-303 A.R.S. § 32- 2125 A.A.C. R4-28- 302 A.R.S. § 32- 2127 A.A.C. R4-28- 303 A.A.C. R4-28- 303 A.A.C. R4-28- 303 A.R.S. § 32- 2133 A.R.S. § 32- 2134 A.R.S. § 32- 2134.01 A.A.C. R4- 28-305 A.R.S. § 32- 2135(A) A.A.C. R4-28-404 A.R.S. § 32-2135			Substantive Review		Over Time fram 60 60 120 1 120 1 120 1 120 1 30 30
				30 30		60 60
				30 30		120 1
				60 60		120 1
				60 60		120 1
				60 60		120 1
				20 20		30 30

New (Distance Learning) A.A.C. R4-28-404 A.A.C. R4-28-402, R4-28-404 30 Instructor Approval A.R.S. § 32-2135 A.A.C. R4-28-404 10 ADVERTISING Membership Campground (only for lottery or drawing) Subdivision (only for drawing or contest) Time-Share (only for drawing or contest) Time-Share (the offer of a premium) A.R.S. § 32-2198.10(D) A.R.S. § 32-2198.14 A.A.C. R4-28-503(D) A.R.S. § 32-2183.01(I) A.A.C. R4-28-503(D) A.R.S. § 32-2197.17(I) A.A.C. R4-28-503(D) A.R.S. § 32-2197.17(K) 15 15 15 15 Development Application Amended Report Certificate of Authority Amended Certificate 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-B1203 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 A.R.S. § 32-2194.03(A) A.R.S. § 32-2194.10 A.A.C. R4-28-B1204 40 30 40 30 WAIVERS Pre-license Continuing Education A.R.S. § 32-2124 A.A.C. R4-28-401 A.R.S. § 32-2130 15 5	30 15 5 5 5 5 40 30 40 60 10 30 60 10 30 7 0 0 0 0 60 0 0 0 40 5 15 100 6 30 60 30 30 40 30 100 60 45 30 15 0 120 30 15 0 0 0 40 5 15 100 6 30 60 30 30 40 30 100 60 45 30 7 0 0
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EXEMPTIONS	A.R.S. R4-28-402 A.R.S. § 2181.01 A.A.C. R4-28-B1202 A.R.S. § 32-2195.01 A.A.C. R4-28-B1202 A.R.S. § 32-2197.13 A.R.S. § 32-3198.03	40	40	40	40	40	40	40	40	80	80	80	80
Subdivision													
Unsubdivided Land													
Time-Share		40	40	40	40	40	40	40	40	40	40	40	40
Membership Camping		40			40			40			80	80	80

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. Three written 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 receipt of the application;
 - .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 document of a payment against, or repayment by, the applicant as a judgment debtor by 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.
- .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. Any other documentation that the applicant believes supports the applicant's qualifications for licensure.

- 1. 3. A full set of fingerprints as prescribed in A.R.S. § 32-2108.01;
- 2. 4. The appropriate license application and fee; and
- 3. 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. 1. The name, business address, telephone number, fax number and email address, if any, and designated broker's name, license number and expiration date, and the signature of the designated broker;
 - 2. 2. Whether the broker is an individual, a sole proprietorship, corporation, partnership, limited liability company, professional corporation or professional limited liability company;
 - 3. 3. The mailing address, if different than the business address;
 - 4. 4. The d.b.a. name, if applicable;
 - 5. 5. The bank name and location of each of the broker's trust accounts, if any;and
 - 6. 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 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. 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. 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. 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. 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;
2. 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.
1. 5. A copy of the operating agreement and any amendments; and
2. 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. 1. The agreement and plan of merger;
2. 2. The Certificate of Good Standing;
3. 3. The Certificate of Merger on file in the state in which the applicant is domiciled;
4. 4. The Certificate of Merger on file with the Arizona Corporation Commission;
5. 5. A filed and stamped Articles of Merger;
6. 6. A filed and stamped application for registration of the foreign limited liability company, foreign corporation, or partnership; and
7. 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. 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. 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. 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. 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 nonapplicability 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. § 322131 shall, in addition to the requirements in R4-28-301(A), submit the following information on the Application for Reinstatement:
 - .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. 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. 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. 3. If changing residence address or residential mailing address, written notice stating the prior address, new address and the date of the change;
4. 4. If changing residence telephone number or providing an additional telephone number or email address, written notice of the prior and current number or email address; or
5. 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% or more beneficial interest, stockholder owning 10% 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 email 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;

1. 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;
2. 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;
3. 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;
4. If severing a licensee employed by the employing broker, written notice and return of the employee's license within 10 days of the severance;
5. 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;
6. 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
7. 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 that 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. 1. The name, date, and signature of the designated broker;

2. 2. The license number and license expiration date of the employing broker;

3. 3. The name, address, telephone, and license number of the main office;

4. 4. The type of employing broker's license;

5. 5. The employing broker's dba name, if applicable;

6. 6. The address, telephone number, and fax number, if any, of the branch office; and

7. 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. 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. 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. 1. The type of license requested;
2. 2. The name, address, telephone number, and date of birth of the applicant;
3. 3. The mailing address if different from the address in subsection (A)(2);
4. 4. The name, business address, telephone number, fax number, if any, and license number of the employing broker; and
5. 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. 1. An applicant for temporary cemetery license stating that the applicant has been trained in cemetery and contract law; or
2. 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. 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. 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. 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. 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. 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. 1. A written explanation of why the unlawful license activity occurred;
2. 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. 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

R4-28-402. Continuing Education Requirements; Waiver; Distance Learning

A. Continuing education requirements.

1. 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. 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. 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. 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.

1. 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.

2. 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.

3. 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).

4. 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 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. 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.

R4-28-405. 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. 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. 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. 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. 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. 1. The name, address, telephone number, and fax number, if any, of the subdivider, time-share developer, or operator;
 - 2. 2. The legal name of the broker;
 - 3. 3. The public report number;
 - 4. 4. The time and location for collecting entries for the lottery, contest, or drawing;
 - 5. 5. The date, time, and site for selection of a winner; and
 - 6. 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. 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. 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

affect 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.
 - . 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 8. DOCUMENTS

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.

ARTICLE 10. REPEALED

R4-28-1001. Repealed

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. 1. Any information that the seller or lessor is or may be unable to perform;
 - 2. 2. Any information that the buyer or lessee is, or may be, unable to perform;
 - 3. 3. Any material defect existing in the property being transferred; and
 - 4. 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. 1. Salesperson or broker has a license and is acting as a principal;
 2. 2. Purchaser or seller is a member of the salesperson's, broker's, or designated broker's immediate family;
 3. 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. 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

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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. 1. Permit or facilitate occupancy in a person's real property by a third party without prior written authorization from the person; or
2. 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.

R4-28-1103. 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;

1. 3. Oversee delegation of authority to others to act on behalf of the broker;

2. 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 broker shall establish a system for monitoring compliance with statutes, rules, and the 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.

ARTICLE 12. DEVELOPMENTS

PART A. APPLICATION FOR PUBLIC REPORT, CERTIFICATE OF AUTHORITY, OR SPECIAL ORDER OF EXEMPTION

R4-28-A1215. Development Sales

The applicant shall provide a description of the sales offering and:

1. 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. 2. Indicate whether cash sales are allowed and when the purchaser takes title;
3. 3. Indicate where the purchaser's deposit and earnest monies will be deposited and held;
4. 4. If the deposit monies are available for use by the seller, when and under what conditions the monies will be refunded;
5. 5. Indicate when the lot purchaser will be permitted to use and occupy the lot;
6. 6. An explanation if the purchaser will not receive title free and clear of all liens;
7. 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.
1. 9. The name, address, and telephone number of the Arizona broker who will be responsible for sales. If none, explain why;
2. 10. The name and telephone number of the custodian of the development records and the physical location where the records will be kept;
3. 11. Indicate whether the property has been or will be offered for sale before the date of the development application. If yes, explain; and
4. 12. Indicate whether the sales documents contain all contract disclosures required by rule and statute.

ARTICLE 13. ADMINISTRATIVE PROCEDURES

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 not 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.

R4-28-1310. 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. 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. 2. Misconduct by the Department, administrative law judge, or the prevailing party;
 - 3. 3. Accident or surprise that could not have been prevented by ordinary prudence;
 - 4. 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 - 5. 5. Excessive or insufficient penalties;
 - 6. 6. Error in the admission or rejection of evidence or other errors of law occurring during the proceeding;
 - 7. 7. That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
 - 8. 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. 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. 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. 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.