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House Engrossed Senate Bill

State of Arizona  
Senate  
Forty-sixth Legislature  
Second Regular Session  
2004

# SENATE BILL 1140

AN ACT

AMENDING SECTIONS 32-2101, 32-2121, 32-2124, 32-2125, 32-2130, 32-2151.01, 32-2153, 32-2157, 32-2163, 32-2173, 32-2174, 32-2194.01, 32-2194.05, 32-2194.10, 32-2194.28, 32-2194.30 AND 32-2197.20, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 20, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 32-2194.14 AND 32-2194.33; RELATING TO REAL ESTATE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-2101, Arizona Revised Statutes, is amended to  
3 read:

4 32-2101. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Acting in concert" means evidence of collaborating to pursue a  
7 concerted plan.

8 2. "Advertising" means the attempt by publication, dissemination,  
9 exhibition, solicitation or circulation, oral or written, or for broadcast on  
10 radio or television to induce directly or indirectly any person to enter into  
11 any obligation or acquire any title or interest in lands subject to the  
12 provisions of this chapter including the land sales contract to be used and  
13 any photographs, drawings or artist's presentations of physical conditions or  
14 facilities existing or to exist on the property. Advertising does not  
15 include:

16 (a) Press releases or other communications delivered to newspapers,  
17 periodicals or other news media for general information or public relations  
18 purposes if no charge is made by the newspapers, periodicals or other news  
19 media for the publication or use of any part of these communications.

20 (b) Communications to stockholders as follows:

21 (i) Annual reports and interim financial reports.

22 (ii) Proxy materials.

23 (iii) Registration statements.

24 (iv) Securities prospectuses.

25 (v) Applications for listing of securities on stock exchanges.

26 (vi) Prospectuses.

27 (vii) Property reports.

28 (viii) Offering statements.

29 3. "Affiliate" means a person who, directly or indirectly through one  
30 or more intermediaries, controls, is controlled by or is under common control  
31 with the person specified.

32 4. "Associate broker" means a licensed broker employed by another  
33 broker. Unless otherwise specifically provided, an associate broker has the  
34 same license privileges as a salesperson.

35 5. "Barrier" means a mountain, cliff, river, canyon, canal or lake  
36 that prevents parcels from being united or reunited and that was not caused  
37 or created by the owner of the parcels during the five years immediately  
38 preceding any sale or lease of the subject property.

39 6. "Blanket encumbrance" means any mortgage, any deed of trust or any  
40 other encumbrance or lien securing or evidencing the payment of money and  
41 affecting more than one lot or parcel of subdivided land, or an agreement  
42 affecting more than one lot or parcel by which the subdivider holds the  
43 subdivision under an option, contract to sell or trust agreement. Blanket  
44 encumbrance does not include taxes and assessments levied by public  
45 authority.

1           7. "Board" means the state real estate advisory board.

2           8. "Broker", when used without modification, means a person who is  
3 licensed as a broker under any of the provisions of this chapter or who is  
4 required to be licensed as a broker under any provision of this chapter.

5           9. "Camping site" means a space designed and promoted for the purpose  
6 of locating any trailer, tent, tent trailer, pickup camper or other similar  
7 device used for camping.

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

11           (a) A burial park, for earth interments.

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

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

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

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

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

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

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

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

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

35           13. "Commissioner" means the state real estate commissioner.

36           14. "Common promotional plan" means a plan, undertaken by a person or a  
37 group of persons acting in concert, to offer lots for sale or lease. If the  
38 land is offered for sale by a person or group of persons acting in concert,  
39 and the land is contiguous or is known, designated or advertised as a common  
40 unit or by a common name, the land is presumed, without regard to the number  
41 of lots covered by each individual offering, as being offered for sale or  
42 lease as part of a common promotional plan. Separate subdividers selling  
43 lots or parcels in separately platted subdivisions within a master planned  
44 community shall not be deemed to be offering their combined lots for sale or  
45 lease as part of a common promotional plan.

1           15. "Compensation" means any fee, commission, salary, money or other  
2 valuable consideration for services rendered or to be rendered as well as the  
3 promise of consideration whether contingent or not.

4           16. "Contiguous" means lots, parcels or fractional interests that share  
5 a common boundary or point. Lots, parcels or fractional interests are not  
6 contiguous if they are separated by either of the following:

7           (a) A barrier.

8           (b) A road, street or highway that has been established by this state  
9 or by any agency or political subdivision of this state, that has been  
10 designated by the federal government as an interstate highway or that has  
11 been publicly maintained by this state or by any agency or political  
12 subdivision of this state and has been used continuously by the public for at  
13 least the last five years.

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

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

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

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

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

26           (b) Doing business as a sole proprietor.

27           21. "Developer" means a person who offers real property in a  
28 development for sale, lease or use, either immediately or in the future, on  
29 the person's own behalf or on behalf of another person, under any of the  
30 provisions of this chapter. Developer does not include a person whose  
31 involvement with a development is limited to the listing of property within  
32 the development for sale, lease or use.

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

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

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

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

42           24. "Fractional interest" means an undivided interest in improved or  
43 unimproved land, lots or parcels of any size created for the purpose of sale  
44 or lease and evidenced by any receipt, certificate, deed or other document  
45 conveying the interest. Undivided interests in land, lots or parcels created

1 in the names of a husband and wife as community property, joint tenants or  
2 tenants in common, or in the names of other persons who, acting together as  
3 part of a single transaction, acquire the interests without a purpose to  
4 divide the interests for present or future sale or lease shall be deemed to  
5 constitute only one fractional interest.

6 25. "Improved lot or parcel" means a lot or parcel of a subdivision  
7 upon which lot or parcel there is a residential, commercial or industrial  
8 building or concerning which a contract has been entered into between a  
9 subdivider and a purchaser that obligates the subdivider directly, or  
10 indirectly through a building contractor, to complete construction of a  
11 residential, commercial or industrial building on the lot or parcel within  
12 two years from the date on which the contract of sale for the lot is entered  
13 into.

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

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

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

22 29. "License period" means the two year period beginning with the date  
23 of original issue or renewal of a particular license.

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

28 31. "Limited liability company licensee" means a lawfully organized  
29 limited liability company that has a member or manager who is a natural  
30 person and who is licensed as the designated broker pursuant to section  
31 32-2125.

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

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

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

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

- 1           (a) Sells, purchases, lists, exchanges or leases membership camping  
2 contracts.
- 3           (b) Offers to sell, purchase, exchange or lease membership camping  
4 contracts.
- 5           (c) Negotiates or offers, attempts or agrees to negotiate the sale,  
6 purchase, exchange or lease of membership camping contracts.
- 7           (d) Advertises or holds himself out as being engaged in the business  
8 of selling, buying, exchanging or leasing membership camping contracts or  
9 counseling or advising regarding membership camping contracts.
- 10          (e) Assists or directs in the procuring of prospects calculated or  
11 intended to result in the sale, purchase, listing, exchange or lease of  
12 membership camping contracts.
- 13          (f) Performs any of the foregoing acts as an employee or on behalf of  
14 a membership camping operator or membership contract owner.
- 15          36. "Membership camping contract" means an agreement offered or sold in  
16 this state evidencing a purchaser's right or license to use the camping or  
17 outdoor recreation facilities of a membership camping operator and includes a  
18 membership that provides for this use.
- 19          37. "Membership camping operator" means an enterprise, other than one  
20 that is tax exempt under section 501(c)(3) of the internal revenue code of  
21 1986, as amended, that solicits membership paid for by a fee or periodic  
22 payments and has as one of its purposes camping or outdoor recreation  
23 including the use of camping sites primarily by members. Membership camping  
24 operator does not include camping or recreational trailer parks that are open  
25 to the general public and that contain camping sites rented for a per use fee  
26 or a mobile home park.
- 27          38. "Membership camping salesperson" means a natural person who acts on  
28 the person's own behalf or through and on behalf of a professional limited  
29 liability company or a professional corporation engaged by or on behalf of a  
30 licensed membership camping or real estate broker, or by or on behalf of a  
31 corporation, partnership or limited liability company that is licensed as a  
32 membership camping or real estate broker, to perform any act or participate  
33 in any transaction in a manner included in the definition of membership  
34 camping broker.
- 35          39. "Partnership licensee" means a partnership with a managing general  
36 partner who is licensed as the designated broker pursuant to section 32-2125.
- 37          40. "Permanent access", as required under article 4 of this chapter,  
38 means permanent access from the subdivision to any federal, state or county  
39 highway.
- 40          41. "Perpetual or endowed-care cemetery" means a cemetery wherein lots  
41 or other burial spaces are sold or transferred under the representation that  
42 the cemetery will receive "perpetual" or "endowed" care as defined in this  
43 section free of further cost to the purchaser after payment of the original  
44 purchase price for the lot, burial space or interment right.

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

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

10           44. "PRIVATE CEMETERY" MEANS A CEMETERY OR PLACE THAT IS NOT LICENSED  
11 UNDER ARTICLE 6 OF THIS CHAPTER, WHERE BURIALS OR INTERMENTS OF HUMAN REMAINS  
12 ARE MADE, IN WHICH SALES OR TRANSFERS OF INTERMENT RIGHTS OR BURIAL PLOTS ARE  
13 NOT MADE TO THE PUBLIC AND IN WHICH NOT MORE THAN TEN INTERMENTS OR BURIALS  
14 OCCUR ANNUALLY.

15           ~~44.~~ 45. "Promotion" or "promotional practice" means advertising and  
16 any other act, practice, device or scheme to induce directly or indirectly  
17 any person to enter into any obligation or acquire any title or interest in  
18 or use of real property subject to the provisions of this chapter, including  
19 meetings with prospective purchasers, arrangements for prospective purchasers  
20 to visit real property, travel allowances and discount, exchange, refund and  
21 cancellation privileges.

22           ~~45.~~ 46. "Real estate" includes leasehold-interests and any estates in  
23 land as defined in title 33, chapter 2, articles 1 and 2, regardless of  
24 whether located in this state.

25           ~~46.~~ 47. "Real estate broker" means a person, other than a salesperson,  
26 who, for another and for compensation:

27           (a) Sells, exchanges, purchases, rents or leases real estate or  
28 timeshare interests.

29           (b) Offers to sell, exchange, purchase, rent or lease real estate or  
30 timeshare interests.

31           (c) Negotiates or offers, attempts or agrees to negotiate the sale,  
32 exchange, purchase, rental or leasing of real estate or timeshare interests.

33           (d) Lists or offers, attempts or agrees to list real estate or  
34 timeshare interests for sale, lease or exchange.

35           (e) Auctions or offers, attempts or agrees to auction real estate or  
36 timeshare interests.

37           (f) Buys, sells, offers to buy or sell or otherwise deals in options  
38 on real estate or timeshare interests or improvements to real estate or  
39 timeshare interests.

40           (g) Collects or offers, attempts or agrees to collect rent for the use  
41 of real estate or timeshare interests.

42           (h) Advertises or holds himself out as being engaged in the business  
43 of buying, selling, exchanging, renting or leasing real estate or timeshare  
44 interests or counseling or advising regarding real estate or timeshare  
45 interests.

1 (i) Assists or directs in the procuring of prospects, calculated to  
2 result in the sale, exchange, leasing or rental of real estate or timeshare  
3 interests.

4 (j) Assists or directs in the negotiation of any transaction  
5 calculated or intended to result in the sale, exchange, leasing or rental of  
6 real estate or timeshare interests.

7 (k) Incident to the sale of real estate negotiates or offers, attempts  
8 or agrees to negotiate a loan secured or to be secured by any mortgage or  
9 other encumbrance upon or transfer of real estate or timeshare interests  
10 subject to the provisions of section 32-2155, subsection C. The provisions  
11 of this subdivision do not apply to mortgage brokers as defined in and  
12 subject to the provisions of title 6, chapter 9, article 1.

13 (l) Engages in the business of assisting or offering to assist another  
14 in filing an application for the purchase or lease of, or in locating or  
15 entering upon, lands owned by the state or federal government.

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

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

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

35 ~~47-~~ 48. "Real estate sales contract" means an agreement in which one  
36 party agrees to convey title to real estate to another party upon the  
37 satisfaction of specified conditions set forth in the contract.

38 ~~48-~~ 49. "Real estate salesperson" means a natural person who acts on  
39 the person's own behalf or through and on behalf of a professional limited  
40 liability company or a professional corporation engaged by or on behalf of a  
41 licensed real estate broker, or by or on behalf of a limited liability  
42 company, partnership or corporation that is licensed as a real estate broker,  
43 to perform any act or participate in any transaction in a manner included in  
44 the definition of real estate broker subject to the provisions of section  
45 32-2155.

1           ~~49.~~ 50. "Sale" or "lease" includes every disposition, transfer or  
2 offer or attempt to dispose of or transfer real property, or an interest, use  
3 or estate in the real property, including the offering of the property as a  
4 prize or gift if a monetary charge or consideration for whatever purpose is  
5 required.

6           ~~50.~~ 51. "Salesperson", when used without modification, means a natural  
7 person who acts on the person's own behalf or through and on behalf of a  
8 professional limited liability company or a professional corporation licensed  
9 under any of the provisions of this chapter or any person required to be  
10 licensed as a salesperson under any of the provisions of this chapter.

11           ~~51.~~ 52. "School" means a person or entity that offers a course of  
12 study towards completion of the education requirements leading to licensure  
13 or renewal of licensure under any of the provisions of this chapter.

14           ~~52.~~ 53. "Stock cooperative" means a corporation to which all of the  
15 following apply:

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

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

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

24           ~~53.~~ 54. "Subdivider" means any person who offers for sale or lease six  
25 or more lots, parcels or fractional interests in a subdivision or who causes  
26 land to be subdivided into a subdivision for the subdivider or for others, or  
27 who undertakes to develop a subdivision, but does not include a public agency  
28 or officer authorized by law to create subdivisions.

29           ~~54.~~ 55. "Subdivision" or "subdivided lands" means improved or  
30 unimproved land or lands divided or proposed to be divided for the purpose of  
31 sale or lease, whether immediate or future, into six or more lots, parcels or  
32 fractional interests. Subdivision or subdivided lands include a stock  
33 cooperative and include lands divided or proposed to be divided as part of a  
34 common promotional plan. This paragraph shall not apply to leasehold  
35 offerings of one year or less or to the division or proposed division of land  
36 located in the state of Arizona into lots or parcels each of which is, or  
37 will be, thirty-six acres or more in area including to the ~~center-line~~  
38 CENTERLINE of dedicated roads or easements, if any, contiguous to the lot or  
39 parcel and provided further that this definition shall not be deemed to  
40 include the leasing of agricultural lands, or of apartments, offices, stores,  
41 hotels, motels, pads or similar space within an apartment building,  
42 industrial building, rental recreational vehicle community, rental  
43 manufactured home community, rental mobile home park or commercial building,  
44 except that residential condominiums as defined in title 33, chapter 9 shall  
45 be included in this definition, nor shall this definition include the

1 subdivision into or development of parcels, plots or fractional portions  
2 within the boundaries of a cemetery that has been formed and approved  
3 pursuant to this chapter.

4 ~~55.~~ 56. "Timeshare" or "timeshare property" means real property  
5 ownership or right of occupancy in real property pursuant to article 9 of  
6 this chapter. For the purposes of this chapter, a timeshare is not a security  
7 unless it meets the definition of a security under section 44-1801.

8 ~~56.~~ 57. "Trustee" means:

9 (a) A person designated under section ~~32-2194.11~~ 32-2194.27 to act as  
10 a trustee for an endowment-care cemetery fund.

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

14 ~~57.~~ 58. "Unimproved lot or parcel" means a lot or parcel of a  
15 subdivision that is not an improved lot or parcel.

16 ~~58.~~ 59. "Unsubdivided lands" means land or lands divided or proposed  
17 to be divided for the purpose of sale or lease, whether immediate or future,  
18 into six or more lots, parcels or fractional interests and the lots or  
19 parcels are thirty-six acres or more each but less than one hundred sixty  
20 acres each, or that are offered, known or advertised under a common  
21 promotional plan for sale or lease, except that agricultural leases shall not  
22 be included in this definition.

23 Sec. 2. Section 32-2121, Arizona Revised Statutes, is amended to read:

24 ~~32-2121.~~ Applicability of article; exemption

25 A. The provisions of this article do not apply to:

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

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

40 3. An attorney in the performance of the attorney's duties as an  
41 attorney. Nothing in this paragraph shall be construed to allow an attorney  
42 to otherwise engage in any acts requiring a license under this article.

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

45 5. A trustee selling under a deed of trust.

1           6. Natural persons who are acting as residential leasing agents or  
2 **ON-SITE** managers of residential rental property, who are performing  
3 residential leasing activities on residential income property at no more than  
4 one location during the period of the agents' or **ON-SITE** managers' regular  
5 workday, who do not receive special compensation for the acts described in  
6 subdivisions (a) through (e) of this paragraph and who are employed by the  
7 owner or the owner's licensed management agent to perform the duties  
8 customarily associated with that employment. A bonus that is paid to a  
9 residential leasing agent or **ON-SITE** manager working under the supervision of  
10 a licensed real estate broker and that is based on performance, that is  
11 received no more frequently than monthly and that does not exceed one-half of  
12 the agent's or **ON-SITE** manager's total compensation for the time period does  
13 not constitute special compensation for the acts described in subdivisions  
14 (a) through (e) of this paragraph. For purposes of this paragraph  
15 "residential leasing agents or **ON-SITE** managers" means natural persons  
16 employed by the owner or the owner's licensed management agent whose normal  
17 duties and responsibilities include any one or a combination of the  
18 following:

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

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

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

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

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

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

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

38           9. Natural persons who are in the employ of an employing broker or of  
39 a person or entity exempt under this section, who perform clerical,  
40 bookkeeping, accounting and other administrative and support duties, who are  
41 not engaged in any other acts requiring a license under this chapter and  
42 whose employment is not conditioned on or designed to perform duties  
43 otherwise requiring a license under this chapter.

44           10. Natural persons who are in the employ of an employing broker and  
45 who perform telemarketing services that are limited to soliciting interest in

1 engaging the services of a licensee or broker or gathering demographic  
2 information that will be used by a licensee or broker to solicit prospective  
3 buyers, sellers, lessees and lessors.

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

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

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

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

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

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

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

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

34 15. A person who, on behalf of another, solicits, arranges or accepts  
35 reservations or money, or both, for occupancies of thirty-one or fewer days  
36 in a dwelling unit in a common interest development.

37 16. An escrow agent in the performance of the escrow agent's duties as  
38 an escrow agent, a title insurer in the performance of the title insurer's  
39 duties as a title insurer or a title insurance agent in the performance of  
40 the title insurance agent's duties as a title insurance agent. Nothing in  
41 this paragraph shall be construed to allow an escrow agent, a title insurer  
42 or a title insurance agent to otherwise engage in acts requiring a license  
43 under this article.

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

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

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

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

11           19. A person who receives a finder fee pursuant to section 32-2176 or  
12 32-2197.21.

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

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

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

22           Sec. 3. Section 32-2124, Arizona Revised Statutes, is amended to read:  
23 32-2124. Qualifications of licensees

24           A. Except as otherwise provided in this chapter, the commissioner  
25 shall require proof, through the application or otherwise, as the  
26 commissioner deems advisable with due regard to the interests of the public,  
27 as to the honesty, truthfulness, good character and competency of the  
28 applicant and shall require that the applicant has:

29           1. If for an original real estate broker's license, at least three  
30 years' actual experience as a licensed real estate salesperson or real estate  
31 broker during the five years immediately preceding the time of application.

32           2. If for an original cemetery broker's license, either a current real  
33 estate broker's license, or if the applicant does not have a current real  
34 estate broker's license, at least three years' actual experience as a  
35 cemetery salesperson or broker or as a licensed real estate salesperson or  
36 broker during the five years immediately preceding the time of application.

37           3. If for an original membership camping broker's license, either a  
38 current real estate broker's license, or if the applicant does not have a  
39 current real estate broker's license, at least three years' actual experience  
40 as a licensed membership camping salesperson or broker or as a licensed real  
41 estate salesperson or broker during the five years immediately preceding the  
42 time of application.

43           4. If for any type of broker's or salesperson's license, not had a  
44 license denied within one year immediately preceding application in this  
45 state pursuant to section 32-2153 or a similar statute in any other state.

1           5. If for any type of broker's or salesperson's license, not had a  
2 license revoked within the two years immediately preceding application in  
3 this state pursuant to section 32-2153 or a similar statute in any other  
4 state.

5           6. If reapplying for a license that expired more than one year before  
6 the date of application, met all current education and experience  
7 requirements and retakes the examination the same as if the applicant were  
8 applying for the license for the first time.

9           7. If for a real estate, cemetery or membership camping broker's  
10 license, other than a renewal application, an equivalent amount of active  
11 experience within the immediately preceding five years in the field in which  
12 the applicant is applying for the broker's license, as a substitute for the  
13 licensed active experience otherwise required in paragraphs 1, 2 and 3 of  
14 this subsection. The licensed active experience required may be met if the  
15 applicant can demonstrate to the commissioner's satisfaction that the  
16 applicant has an equivalent amount of experience in the past five years that,  
17 if the applicant had held a license, would have been sufficient to fulfill  
18 the licensed experience requirement.

19           B. All applicants other than renewal applicants under section 32-2130  
20 for a real estate salesperson's license shall show evidence satisfactory to  
21 the commissioner that they have completed a real estate salesperson's course,  
22 prescribed and approved by the commissioner, of at least ninety classroom  
23 hours, or its equivalent, of instruction in a real estate school certified by  
24 the commissioner and have satisfactorily passed an examination on the  
25 course. In no case shall the real estate salesperson's course completion or  
26 its equivalent be more than ten years before the date of application unless,  
27 at the time of application, the commissioner determines in the commissioner's  
28 discretion that the applicant has work experience in a real estate related  
29 field and education that together are equivalent to the prelicensure  
30 education requirement. The commissioner may waive all or a portion of the  
31 prelicensure course requirement, other than the twenty-seven hour Arizona  
32 specific course, for an applicant who holds a current real estate license in  
33 another state.

34           C. All applicants other than renewal applicants under section 32-2130  
35 for a real estate broker's license shall show evidence satisfactory to the  
36 commissioner that they have completed a real estate broker's course,  
37 prescribed and approved by the commissioner, of at least ninety classroom  
38 hours, or the equivalent, of instruction in a real estate school certified by  
39 the commissioner and have satisfactorily passed an examination on the  
40 course. In no case shall the real estate broker's course completion or its  
41 equivalent be more than ten years before the date of application unless, at  
42 the time of application, the commissioner determines in the commissioner's  
43 discretion that the applicant has work experience in a real estate related  
44 field and education that together are equivalent to the prelicensure  
45 education requirement. The commissioner may waive all or a portion of the

1 prelicensure course requirement, other than the twenty-seven hour Arizona  
2 specific course, for an applicant who holds a current real estate license in  
3 another state.

4 D. Prior to receiving any license provided for by this chapter, an  
5 applicant shall be at least eighteen years of age.

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

8 1. An appropriate knowledge of the English language, including  
9 reading, writing and spelling, and of arithmetical computations common to  
10 real estate practices.

11 2. At a minimum, an understanding of the general purpose and legal  
12 effect of any real estate practices, principles and related forms, including  
13 agency contracts, real estate contracts, deposit receipts, deeds, mortgages,  
14 deeds of trust, security agreements, bills of sale, land contracts of sale  
15 and property management, and of any other areas that the commissioner deems  
16 necessary and proper.

17 3. A general understanding of the obligations between principal and  
18 agent, the principles of real estate and business opportunity practice, the  
19 applicable canons of business ethics, the provisions of this chapter and  
20 rules made under this chapter.

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

24 1. Appropriate knowledge of the English language, including reading,  
25 writing and spelling, and of elementary arithmetic.

26 2. A general understanding of:

27 (a) Cemetery associations, cemetery corporations and duties of  
28 cemetery directors and officers.

29 (b) Plot ownership, deeds, certificates of ownership, contracts of  
30 sale, liens and leases.

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

33 (d) The provisions of this chapter and rules made under this chapter  
34 relating to the organization and regulation of cemeteries and the licensing  
35 and regulation of cemetery brokers and cemetery salespersons.

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

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

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

44 2. A general understanding of:

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

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

5 (c) The provisions of this chapter and rules adopted under this  
6 chapter relating to the organization and regulation of membership campgrounds  
7 and the licensing and regulation of membership camping brokers and membership  
8 camping salespersons.

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

12 H. No renewal applicant for a real estate, cemetery or membership  
13 camping broker's or salesperson's license shall be required to submit to an  
14 examination if the application is made within twelve months after the license  
15 expires and the license is not cancelled, terminated or suspended at the time  
16 of application.

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

20 J. An applicant for a real estate salesperson's or broker's license  
21 who currently holds at least an equivalent license in another state may be  
22 exempt from taking the national portion of the real estate examination if the  
23 applicant can demonstrate having previously passed a national examination  
24 within the past five years that is satisfactorily similar to the one  
25 administered by the department.

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

30 L. An applicant for an original real estate salesperson's license,  
31 after completion of the requirements of subsection B of this section and  
32 before activation of the person's license, shall provide certification to the  
33 department evidencing completion of six hours of instruction in real estate  
34 contract law and contract writing. This instruction shall include  
35 participation by the applicant in the drafting of contracts to purchase real  
36 property, listing agreements and lease agreements.

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

42 N. AN APPLICANT OR LICENSEE WHO WANTS TO OBTAIN A LICENSE SPECIALIZING  
43 IN SALES OF BUSINESSES AFTER COMPLETION OF THE REQUIREMENTS OF SUBSECTION B  
44 OF THIS SECTION AND BEFORE ACTIVATION OF THE PERSON'S LICENSE SHALL PROVIDE  
45 CERTIFICATION TO THE DEPARTMENT EVIDENCING COMPLETION OF TWENTY-FOUR HOURS OF

1 INSTRUCTION IN BUSINESS BROKERAGE. THIS INSTRUCTION SHALL INCLUDE  
2 SATISFACTORY PROOF OF PASSING A TEST THAT IS ACCEPTABLE TO THE DEPARTMENT.

3 Sec. 4. Section 32-2125, Arizona Revised Statutes, is amended to read:

4 32-2125. Licenses for corporations, limited liability companies  
5 or partnerships

6 A. A corporation, limited liability company or partnership applying  
7 for a broker's license for the entity shall designate a natural person who is  
8 licensed as a broker and who is an officer of the corporation, manager of the  
9 limited liability company if management of the limited liability company is  
10 vested in one or more managers, member of the limited liability company if  
11 management is vested in the members or partner of the partnership who shall  
12 act as designated broker. The license shall extend no authority to act as  
13 designated broker to any other person. This subsection does not apply to a  
14 corporation or limited liability company applying for a license under  
15 subsection B of this section. An entity's broker's license issued pursuant  
16 to this subsection shall conform to section 32-2129.

17 B. An employing broker may engage the services of salespersons and  
18 associate brokers who act through and on behalf of professional corporations  
19 or professional limited liability companies that are licensed by the  
20 department. **A DESIGNATED BROKER WHO ACTS ON BEHALF OF AN EMPLOYING REAL**  
21 **ESTATE ENTITY IS PERMITTED TO BECOME A PROFESSIONAL CORPORATION OR A**  
22 **PROFESSIONAL LIMITED LIABILITY CORPORATION.** Any person so engaged shall be  
23 separately licensed. The department shall issue to or renew a license under  
24 this subsection only for a professional corporation or a professional limited  
25 liability corporation whose shareholders, members or managers hold active  
26 real estate licenses. A corporation licensed under this subsection shall  
27 meet the requirements of title 10, chapter 20. A limited liability company  
28 licensed under this subsection shall meet the requirements of title 29,  
29 chapter 4, article 11.

30 C. The license of a corporation or limited liability company licensed  
31 under subsection B of this section terminates only upon the death of a  
32 shareholder, member or manager or any other change of shareholders, members  
33 or managers, except that any remaining shareholder, member or manager who was  
34 an authorized officer and shareholder prior to the change remains authorized  
35 to continue business under the corporation's or limited liability company's  
36 license for up to an additional ninety days pending the issuance of a new  
37 license.

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

1 E. Nothing in this section shall be construed to enlarge the functions  
2 of salespersons, to permit salespersons to assume any of the responsibilities  
3 or functions of brokers or to relieve the commissioner of any regulatory  
4 power or authority over salespersons or brokers.

5 F. A corporation, limited liability company or partnership licensed  
6 under subsection A of this section or a professional corporation or  
7 professional limited liability company licensed under subsection B of this  
8 section is exempt from the education requirements imposed pursuant to this  
9 chapter. The commissioner shall not charge a license fee or a renewal fee  
10 pursuant to section 32-2132 to a corporation, professional corporation,  
11 limited liability company, professional limited liability company or  
12 partnership licensed or approved under this section.

13 G. A corporation, limited liability company or partnership licensed  
14 under this section shall report to the department within ten days:

15 1. Any change in officers, directors, members, managers or partners or  
16 any change of control of the entity.

17 2. Any amendment to its articles of incorporation or organization or  
18 to its partnership agreement.

19 3. If a corporation, when a person becomes an owner of ten per cent or  
20 more of the stock in the corporation.

21 Sec. 5. Section 32-2130, Arizona Revised Statutes, is amended to read:

22 32-2130. Renewal of licenses

23 A. A license may be renewed in a timely manner by filing an  
24 application for renewal on a form provided by the commissioner, by paying the  
25 renewal fee specified in this chapter if that fee is paid on or before the  
26 expiration date of the license, and by presenting evidence of attendance at a  
27 school certified by the commissioner during the preceding license period of  
28 twenty-four clock-hours, or a lesser number of clock-hours prescribed by the  
29 commissioner, of real estate oriented continuing education courses prescribed  
30 and approved by the commissioner. If an applicant is renewing a license  
31 within one year after it expired, the applicant may apply continuing  
32 education hours completed after the expiration toward the continuing  
33 education required for renewal. Each renewal application shall contain, as  
34 applicable, the same information required of an original applicant pursuant  
35 to section 32-2123. The department shall maintain a current list of approved  
36 courses. The commissioner may withdraw or deny certification or approval of  
37 educational courses for good cause. The commissioner may waive all or a  
38 portion of the continuing education requirement for good cause  
39 shown. Cemetery brokers and salespersons and membership camping brokers and  
40 salespersons are exempt from the educational requirements of this  
41 section. Nothing in this section shall require a licensee to attend  
42 department produced or sponsored courses if the approved courses are  
43 otherwise available. IF THE RENEWAL APPLICANT IS RETAINING THE  
44 SPECIALIZATION IN SALES OF BUSINESSES DESIGNATION, THE APPLICANT IS REQUIRED  
45 TO COMPLETE AN ADDITIONAL TWELVE CLOCK-HOURS OF BASIC BUSINESS BROKERAGE

1 COURSES AND PASS A SCHOOL TEST FOR EACH COURSE FOR THE FIRST RENEWAL. THE  
2 TWELVE CLOCK-HOURS ARE IN ADDITION TO THE CLOCK-HOURS PRESCRIBED BY THE  
3 COMMISSIONER FOR LICENSE RENEWAL PURSUANT TO THIS SUBSECTION. SUBSEQUENT  
4 LICENSE RENEWALS FOR APPLICANTS SELLING BUSINESSES DO NOT REQUIRE A TEST.

5 B. Between the expiration date of the license and the date of renewal  
6 of the license, the rights of the licensee under the license expire. While  
7 the license is expired it is unlawful for a person to act or attempt or offer  
8 to act in a manner included in the definition of a real estate, cemetery or  
9 membership camping broker or salesperson. If the license of an employing  
10 broker expires under this subsection, the licenses of persons who are  
11 employed by the employing broker shall be severed from the employing broker  
12 on the license expiration date of the employing broker. These persons may be  
13 rehired on renewal of the employing broker's license. The department shall  
14 terminate a license that has been expired for more than one year.

15 C. No more than one year after the license expiration date, the  
16 department shall renew a license without requiring the applicant to submit to  
17 an examination if the applicant holds a license that is not canceled or  
18 suspended at the time of application. The license period for a license  
19 renewed pursuant to this subsection commences the day after the expiration  
20 date of the expired license. Except as provided in section 32-2131,  
21 subsection A, paragraph 4 or 6, an applicant whose license has been  
22 terminated or revoked does not qualify for license renewal.

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

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

39 Sec. 6. Section 32-2151.01, Arizona Revised Statutes, is amended to  
40 read:

41 32-2151.01. Broker requirements; record keeping requirements

42 A. Each licensed employing broker shall keep records of all real  
43 estate, cemetery, time-share or membership camping transactions handled by or  
44 through the broker and shall keep employment records, including copies of  
45 employment status, for all current and former employees. The records

1 required by this section shall include copies of earnest money receipts,  
2 CONFIRMING THAT THE EARNEST MONEY HAS BEEN HANDLED IN ACCORDANCE WITH THE  
3 TRANSACTION, closing statements showing all receipts, disbursements and  
4 adjustments, sales contracts and, if applicable, copies of ~~listing contracts~~  
5 EMPLOYMENT AGREEMENTS. The records shall be open at all reasonable times for  
6 inspection by the commissioner or the commissioner's representatives. The  
7 records of each transaction and employment records shall be kept by the  
8 broker for a period of at least five years from the date of the termination  
9 of the transaction or employment. The records shall be kept in the employing  
10 broker's principal office or licensed branch office in this state or at an  
11 off-site storage location in this state if the broker provides prior written  
12 notification of the street address of the off-site storage location to the  
13 department.

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

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

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

24 E. The broker shall maintain each real estate purchase contract or  
25 lease agreement and the transaction folder in which it is kept in a  
26 chronological log or other systematic manner that is easily accessible by the  
27 commissioner or the commissioner's representatives.

28 F. Sales transaction folders shall include:

29 1. Confirmation that the earnest monies or other monies handled by or  
30 through the broker were handled according to instructions given by or agreed  
31 to by the parties to the transaction.

32 2. A complete copy of the sales contract, any escrow account receipt,  
33 any closing or settlement statement and, if applicable, a copy of the escrow  
34 instructions, listing agreement, employment agreement and release of escrow  
35 monies.

36 G. The designated broker shall review each listing agreement, purchase  
37 or nonresidential lease agreement or similar instrument within five days of  
38 the date of execution by placing the broker's initials and the date of review  
39 on the instrument on the same page as the signatures of the parties. A  
40 designated broker may authorize in writing an associate broker who the  
41 designated broker employs to review and initial these instruments on the  
42 designated broker's behalf.

1 H. The broker shall retain all real estate purchase and nonresidential  
2 lease contracts and employment agreements, or copies of these documents, in  
3 the employing broker's principal office or licensed branch office or at an  
4 off-site storage location in this state if the broker provides prior written  
5 notification of the street address of the off-site storage location to the  
6 department.

7 I. The broker shall retain an original, a copy or a microfilm copy of  
8 any document evidencing a rejected offer to purchase real property as a  
9 matter of record for at least one year. In instances that result in binding  
10 contracts, the broker shall retain prior rejected offers for at least five  
11 years.

12 J. If real property in a development is sold or leased by a developer  
13 without the services of a listing or selling broker, the developer shall keep  
14 all records required by subsections A and C of this section.

15 Sec. 7. Section 32-2153, Arizona Revised Statutes, is amended to read:

16 32-2153. Grounds for denial, suspension or revocation of  
17 licenses; letters of concern; provisional license;  
18 retention of jurisdiction by commissioner;  
19 definitions

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

26 1. Pursued a course of misrepresentation or made false promises,  
27 either directly or through others, whether acting in the role of a licensee  
28 or a principal in a transaction.

29 2. Acted for more than one party in a transaction without the  
30 knowledge or consent of all parties to the transaction.

31 3. Disregarded or violated any of the provisions of this chapter or  
32 any rules adopted by the commissioner.

33 4. Knowingly authorized, directed, connived at or aided in the  
34 publication, advertisement, distribution or circulation of any material false  
35 or misleading statement or representation concerning the licensee's business  
36 or any land, cemetery property, subdivision or membership campground or  
37 camping contract offered for sale in this or any other state.

38 5. Knowingly used the term "real estate broker", "cemetery broker" or  
39 "membership camping broker" without legal right to do so.

40 6. Employed any unlicensed salesperson or unlicensed associate broker.

41 7. Accepted compensation as a licensee for the performance of any of  
42 the acts specified in this chapter from any person other than the licensed  
43 broker to whom the licensee is licensed, the licensed professional  
44 corporation of which the licensee is an officer and shareholder or the

- 1 licensed professional limited liability company of which the licensee is a  
2 member or manager.
- 3 8. Represented or attempted to represent a broker other than the  
4 broker to whom the salesperson or associate broker is licensed.
- 5 9. Failed, within a reasonable time, to account for or to remit any  
6 monies, to surrender to the rightful owner any documents or other valuable  
7 property coming into the licensee's possession and that belongs to others, or  
8 to issue an appraisal report on real property or cemetery property in which  
9 the licensee has an interest, unless the nature and extent of the interest  
10 are fully disclosed in the report.
- 11 10. Paid or received any rebate, profit, compensation or commission in  
12 violation of this chapter.
- 13 11. Induced any party to a contract to break the contract for the  
14 purpose of substituting a new contract with the same or a different  
15 principal, if the substitution is motivated by the personal gain of the  
16 licensee.
- 17 12. Placed a sign on any property offering it for sale or for rent  
18 without the written authority of the owner or the owner's authorized agent.
- 19 13. Solicited, either directly or indirectly, prospects for the sale,  
20 lease or use of real property, cemetery property or membership camping  
21 contracts through a promotion of a speculative nature involving a game of  
22 chance or risk or through conducting lotteries or contests that are not  
23 specifically authorized under the provisions of this chapter.
- 24 14. Failed to pay to the commissioner the biennial renewal fee as  
25 specified in this chapter promptly and before the time specified.
- 26 15. Failed to keep an escrow or trust account or other record of funds  
27 deposited with the licensee relating to a real estate transaction.
- 28 16. Commingled the money or other property of the licensee's principal  
29 or client with the licensee's own or converted that money or property to the  
30 licensee or another.
- 31 17. Failed or refused upon demand to produce any document, contract,  
32 book, record, information, compilation or report that is in the licensee's  
33 possession or that the licensee is required by law to maintain concerning any  
34 real estate, cemetery or membership camping business, services, activities or  
35 transactions involving or conducted by the licensee for inspection by the  
36 commissioner or the commissioner's representative.
- 37 18. Failed to maintain a complete record of each transaction which  
38 comes within the provisions of this chapter.
- 39 19. Violated the federal fair housing law, the Arizona civil rights law  
40 or any local ordinance of a similar nature.
- 41 20. Tendered to a buyer a wood infestation report in connection with  
42 the transfer of residential real property or an interest in residential real  
43 property knowing that wood infestation exists or that the wood infestation  
44 report was inaccurate or false as of the date of the tender or that an

1 inspection was not done in conjunction with the preparation of the wood  
2 infestation report.

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

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

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

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

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

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

21 1. Procured or attempted to procure a license under the provisions of  
22 this chapter for the holder or applicant or another by fraud,  
23 misrepresentation or deceit, or by filing an original or renewal application  
24 which is false or misleading.

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

28 3. Made any substantial misrepresentation.

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

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

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

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

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

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

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

11           **11. FAILED TO RESPOND IN THE COURSE OF AN INVESTIGATION OR AUDIT BY**  
12 **PROVIDING DOCUMENTS OR WRITTEN STATEMENTS.**

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

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

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

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

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

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

34           F. For the purposes of this section:

35           1. "Letter of concern" means an advisory letter to notify a licensee  
36 that, while the conduct or evidence does not warrant other disciplinary  
37 action, the commissioner believes that the licensee should modify or  
38 eliminate certain practices and that continuation of the activities may  
39 result in further disciplinary action against the licensee.

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



1 C. A LICENSED BROKER IN THIS STATE MAY COOPERATE WITH AN OUT-OF-STATE  
2 BROKER WHO WOULD OTHERWISE REQUIRE LICENSURE IN THIS STATE IF:

3 1. THE LICENSED BROKER AND THE OUT-OF-STATE BROKER ENTER INTO A  
4 WRITTEN COOPERATION AGREEMENT BEFORE THE OUT-OF-STATE BROKER CONDUCTS ANY  
5 ACTIVITY OTHERWISE REQUIRING A BROKER'S LICENSE PURSUANT TO THIS  
6 CHAPTER. THE COOPERATION AGREEMENT SHALL INCLUDE THE FOLLOWING:

7 (a) A LIST OF THE REAL ESTATE ACTIVITIES TO BE CONDUCTED BY THE  
8 OUT-OF-STATE BROKER.

9 (b) A STATEMENT THAT THE OUT-OF-STATE BROKER AGREES TO FULLY COMPLY  
10 WITH THE LAWS OF THIS STATE AND SUBMIT TO THE REGULATORY JURISDICTION OF THE  
11 DEPARTMENT FOR ACTIVITIES SUBJECT TO REAL ESTATE BROKER LICENSURE PURSUANT TO  
12 THIS CHAPTER.

13 (c) A STATEMENT THAT THE LICENSED BROKER IN THIS STATE UNDERSTANDS AND  
14 ACCEPTS RESPONSIBILITY FOR THE ACTS OF THE OUT-OF-STATE BROKER.

15 2. ALL NEGOTIATIONS IN THIS STATE OR WITH PEOPLE WHO OWN PROPERTY IN  
16 THIS STATE SHALL BE CONDUCTED THROUGH THE LICENSED BROKER IN THIS STATE.

17 3. THE LICENSED BROKER IN THIS STATE ASSUMES ALL RESPONSIBILITY FOR  
18 THE ACTS OF THE OUT-OF-STATE BROKER.

19 4. ALL PRINCIPAL FUNDS HANDLED BY EITHER THE LICENSED BROKER IN THIS  
20 STATE OR THE OUT-OF-STATE BROKER SHALL BE SUBJECT TO THE DEPOSIT AND HANDLING  
21 REQUIREMENTS OF SECTION 32-2151.

22 D. THE OFFERING OF REAL ESTATE BROKERAGE SERVICES SPECIFIED BY SECTION  
23 32-2101, PARAGRAPH 47 FOR COMPENSATION OR ANY OTHER THING OF VALUE PERTAINING  
24 TO REAL PROPERTY LOCATED IN THIS STATE THROUGH AN INTERNET WEB SITE  
25 CONSTITUTES ACTIVITY THAT REQUIRES A BROKER'S LICENSE ISSUED BY THE  
26 DEPARTMENT.

27 E. THIS SECTION DOES NOT ALLOW AN OUT-OF-STATE BROKER WHO IS NOT  
28 LICENSED IN THIS STATE TO LIST, MARKET OR ADVERTISE IN THIS STATE REAL  
29 PROPERTY LOCATED IN THIS STATE FOR SALE, LEASE OR EXCHANGE.

30 F. SIGNS SHALL NOT BE PLACED ON REAL PROPERTY IN THIS STATE BY AN  
31 OUT-OF-STATE BROKER. AN OUT-OF-STATE BROKER SHALL NOT USE A COOPERATION  
32 AGREEMENT AS AUTHORITY TO SELL, LEASE, RENT, EXCHANGE OR ATTEMPT TO SELL,  
33 LEASE, RENT OR EXCHANGE REAL PROPERTY TO A RESIDENT OF THIS STATE.

34 Sec. 10. Section 32-2173, Arizona Revised Statutes, is amended to  
35 read:

36 32-2173. Property management agreements; contents, termination

37 A. ~~The~~ A property management firm shall write property management  
38 agreements in clear, unambiguous language, and the property management  
39 agreements:

40 1. Shall:

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

- 1 (b) Be signed by the property owner or his agent and the property  
2 management firm's designated broker or the broker's authorized real estate  
3 licensee.
- 4 (c) Specify a beginning and an ending date.
- 5 (d) Contain cancellation provisions that are agreeable to both  
6 parties.
- 7 (e) Provide for the manner of disposition of all monies collected by  
8 the property management firm, **INCLUDING ANY TENANT DEPOSITS**.
- 9 (f) Specify the type and frequency of status reports to the owner.
- 10 (g) State the amount and purpose of monies the property management  
11 firm holds as an operating reserve for emergency and other purposes.
- 12 (h) Provide for the disposition and allocation of interest earned on  
13 trust account monies.
- 14 (i) State the terms and conditions of compensation the property owner  
15 pays for services pursuant to the property management agreement.
- 16 (j) Not be assigned to another licensee or licensed entity without the  
17 express written consent of the property owner.
- 18 2. May:
- 19 (a) Contain an automatic renewal provision, if the property management  
20 firm sends the owner a reminder notice at least thirty days before the  
21 renewal date. The notice does not negate any other cancellation term  
22 otherwise agreed to.
- 23 (b) Provide for reasonable liquidated damages or cancellation fees for  
24 early termination of the agreement.
- 25 (c) Allow the property management firm's broker to authorize a  
26 licensed or unlicensed person in the direct employment of the broker,  
27 pursuant to section 32-2174, subsection C, to transfer monies from or to be a  
28 signatory on a property management trust account to which the property  
29 management firm deposits the owner's monies.
- 30 (d) Require more than one signature on checks written from a property  
31 management account.
- 32 (e) Contain any other provisions that are agreed to between the  
33 property management firm and the owner and that are not in conflict with the  
34 requirements of this chapter.
- 35 B. Immediately on termination of a property management agreement, the  
36 property management firm shall provide the owner with:
- 37 1. All originals or other copies of all rental agreements or related  
38 documents in the property management firm's possession for current and  
39 previous tenants. These documents shall include any applications, property  
40 inventories, leases, pet permits, default notices, lease amendments or  
41 addenda in the property management firm's possession. The broker is not  
42 required to keep copies of residential rental lease agreements or related  
43 rental lease documents after termination of the property management  
44 agreement.

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

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

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

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

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

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

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

22           Sec. 11. Section 32-2174, Arizona Revised Statutes, is amended to  
23 read:

24           32-2174. Property management accounts

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

28           1. "Trust account".

29           2. "Fiduciary account".

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

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

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

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

37           C. The designated broker for a property management firm may authorize  
38 either a licensee or an unlicensed natural person in the direct employ of the  
39 broker to transfer monies or to be a signatory on the property management  
40 firm's trust accounts. If the person who is designated to sign on behalf of  
41 the designated property management broker is an unlicensed person, that  
42 person shall be a bona fide officer, member, principal or employee of the  
43 property management firm. The broker may require dual signatures on checks  
44 and may use a facsimile signature according to the broker's business policies  
45 and procedures. The designation of a licensed or unlicensed person to

1 transfer monies or to be a signatory on trust accounts does not lessen the  
2 broker's responsibility or liability for any monies handled.

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

9 E. EACH RENTAL AGREEMENT EXECUTED BY A PROPERTY MANAGER SHALL INCLUDE  
10 A PROVISION THAT CLEARLY STATES THE DISPOSITION OF ANY TENANT DEPOSITS.

11 Sec. 12. Section 32-2194.01, Arizona Revised Statutes, is amended to  
12 read:

13 32-2194.01. Notice to commissioner of intention to sell  
14 cemetery property; exceptions; restrictions

15 A. Before offering cemetery plots for sale, the owner or agent shall  
16 notify the commissioner in writing and the notice shall contain:

17 1. The name and address of the owner. If the holder of any ownership  
18 interest in the cemetery is other than an individual, such as a corporation,  
19 partnership or trust, a statement naming the type of legal entity and listing  
20 the interest and the extent of such interest of each principal in the  
21 entity. For the purposes of this paragraph, "principal" means any person or  
22 entity having a ten per cent or more financial interest or, if the legal  
23 entity is a trust, each beneficiary of the trust holding a ten per cent or  
24 more beneficial interest.

25 2. The legal description and area of the lands.

26 3. A true statement of the condition of the title to the land,  
27 including all encumbrances on the land.

28 4. The terms and conditions on which it is intended to dispose of the  
29 land, together with copies of any real estate sales contract, conveyance,  
30 lease, assignment or other instrument intended to be used, and other  
31 information the owner or agent desires to present.

32 5. A map of the cemetery which has been filed in the office of the  
33 county recorder in the county in which the cemetery is located.

34 6. A comprehensive statement describing the land on and the locality  
35 in which the cemetery is located.

36 7. A true statement of the use or uses for which the proposed cemetery  
37 will be offered.

38 8. A true statement of the provisions, if any, limiting the use of the  
39 plots in the cemetery, together with copies of any restrictive covenants  
40 affecting all or part of the cemetery.

41 9. The name and business address of the designated broker selling  
42 within this state plots in the cemetery. If the designated broker is changed  
43 the cemetery shall advise the department in writing without the requirement  
44 of an amended filing.

1           10. A true statement of the approximate amount of indebtedness which is  
2 a lien on the cemetery or any part of the cemetery and which was or will be  
3 incurred to pay for the construction of any on-site or off-site improvement  
4 or other facilities.

5           11. A true statement or reasonable estimate, if applicable, of the  
6 amount of any indebtedness which has been or is proposed to be incurred by an  
7 existing or proposed special district, entity, taxing area or assessment  
8 district within the boundaries of which the cemetery or any part of the  
9 cemetery is located and any amounts which are to be obtained by ad valorem  
10 tax or assessment, or by a special assessment or tax on the cemetery or any  
11 part of the cemetery.

12           12. Proof of financial responsibility for completing the cemetery and  
13 its related facilities for its initial development.

14           13. A true statement of provisions made for financing any related  
15 facilities to be included. The statement shall include evidence of  
16 assurances for delivery of such facilities and a statement of the provisions,  
17 if any, for the continued maintenance of such facilities.

18           14. A true statement that the cemetery is not subject to any known  
19 flooding or drainage hazards.

20           15. A true statement of the nature of any improvements to be installed  
21 in the developed portion of the cemetery, the estimated schedule for  
22 completion and the estimated costs related to such improvements which shall  
23 be borne by the developed portion of the cemetery.

24           16. A true statement of the availability of department of health  
25 services approved water and sewage disposal facilities and other public  
26 utilities including electricity, gas and telephone facilities in the  
27 cemetery, the estimated schedule for their installation and the estimated  
28 costs related to such facilities and utilities which shall be borne by the  
29 cemetery.

30           17. If the subdivider is a subsidiary corporation, a true statement  
31 identifying the parent corporation and any cemeteries in this state in which  
32 the parent or any of its subsidiaries are or have been involved in the last  
33 five years.

34           18. Such other information and such other documents as the commissioner  
35 may reasonably require.

36           19. IF THE CEMETERY HAS BEEN PREVIOUSLY LICENSED IN THIS STATE AND THE  
37 OWNERSHIP OR CONTROL OF THE CEMETERY HAS TRANSFERRED, A STATEMENT FROM A  
38 CERTIFIED PUBLIC ACCOUNTANT CERTIFIED PURSUANT TO CHAPTER 6 OF THIS TITLE,  
39 SHOWING THAT ALL REQUIRED FUNDS HAVE BEEN DEPOSITED IN THE IRREVOCABLE TRUST  
40 FUND AND THAT ONLY LAWFUL WITHDRAWALS WERE MADE. AN AUDIT THAT MEETS  
41 GENERALLY ACCEPTED ACCOUNTING STANDARDS SHALL BE USED BY THE CERTIFIED PUBLIC  
42 ACCOUNTANT TO PREPARE THE STATEMENT REQUIRED BY THIS PARAGRAPH.

43           B. The commissioner may require the owner or agent to supplement the  
44 notice of intention to develop a cemetery and may require the filing of

1 periodic reports to update the information contained in the original notice  
2 of intention to develop a cemetery.

3 C. The conveyance of a plot in a cemetery does not limit the right of  
4 the purchaser or ~~his~~ THE PURCHASER'S representative to appear and testify  
5 before any public body regarding changes or other official acts affecting the  
6 cemetery property. All contractual provisions which conflict with this  
7 subsection are deemed to be against public policy.

8 D. THE COMMISSIONER MAY BY SPECIAL ORDER EXEMPT FROM ANY ONE OR ALL OF  
9 THE PROVISIONS OF THIS ARTICLE CERTAIN CEMETERIES OTHERWISE REQUIRED TO  
10 COMPLY WITH THIS ARTICLE ON WRITTEN PETITION AND ON A SHOWING BY THE  
11 PETITIONER, SATISFACTORY TO THE COMMISSIONER, THAT COMPLIANCE WITH THIS  
12 ARTICLE IS NOT ESSENTIAL TO THE PUBLIC INTEREST OR FOR THE PROTECTION OF  
13 BUYERS BY REASON OF THE SPECIAL CHARACTERISTICS OF THE CEMETERY.

14 Sec. 13. Section 32-2194.05, Arizona Revised Statutes, is amended to  
15 read:

16 32-2194.05. Advertising material; contents; order prohibiting  
17 use; costs of investigation

18 A. ~~Twenty-one~~ WITHIN TEN days ~~before use~~ AFTER REQUEST BY THE  
19 COMMISSIONER, the cemetery owner or agent shall file with the commissioner a  
20 copy of any promotional and advertising material of any kind used directly or  
21 indirectly in connection with the sale of cemetery plots or any material  
22 changes in the material. ~~It is not necessary to make repetitive filings of~~  
23 ~~material which is the same as or varies only in minor details from material~~  
24 ~~which has previously been filed with the commissioner for the cemetery.~~

25 B. No advertising, communication or sales literature of any kind,  
26 including oral statements by salespersons or other persons, may contain:

27 1. Any untrue statement of material fact or any omission of material  
28 fact which would make the statement misleading in light of the circumstances  
29 under which the statement was made.

30 2. Any statement, representation or pictorial presentation of proposed  
31 improvements or nonexistent scenes without clearly indicating that the  
32 improvements are proposed and the scenes do not exist.

33 C. All advertising and sales literature shall be consistent with the  
34 information contained in the notice of intention pursuant to section  
35 32-2194.01 and shall otherwise comply with the rules of the commissioner.

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

43 E. The commissioner may adopt rules and guidelines necessary to  
44 protect the public interest and to assure that all advertising and

1 promotional practices with respect to land subject to the provisions of this  
2 article are not false or misleading.

3 F. It is unlawful for any owner or agent of a cemetery or other person  
4 with intent directly or indirectly to sell plots subject to the provisions of  
5 this article to authorize, use, direct or aid in any advertising,  
6 communication, sales literature or promotional practice which violates this  
7 section.

8 G. Nothing ~~contained~~ in this section applies to the owner or publisher  
9 of a newspaper, magazine or other publication of printed matter in which such  
10 advertisement appears or to the owner or operator of a radio or television  
11 station which disseminates such advertisement if the owner, publisher or  
12 operator has no knowledge of the intent, design or purpose of the advertiser.

13 Sec. 14. Section 32-2194.10, Arizona Revised Statutes, is amended to  
14 read:

15 32-2194.10. Change of cemetery plan after approval by  
16 commissioner; notice

17 A. It is unlawful for any owner or agent, after submitting to the  
18 commissioner the plan under which cemetery plots are to be offered for sale  
19 and securing his approval, to change the plan materially without first  
20 notifying the commissioner in writing of the intended change. Material  
21 changes covered by this section shall be prescribed in the rules of the  
22 commissioner. On receipt of any notice of a material change, the  
23 commissioner, if he determines such action to be necessary for the protection  
24 of purchasers, may suspend his approval of sale pending amendment of the  
25 notice as required by section 32-2194.01.

26 B. A filing fee of ~~five hundred dollars or such lesser fee as~~  
27 ~~determined by the commissioner~~ ONE-HALF OF THE FEE THAT WAS CHARGED FOR THE  
28 INITIAL CERTIFICATE OF AUTHORITY PURSUANT TO SECTION 32-2194.02 BUT NOT LESS  
29 THAN TWO HUNDRED FIFTY DOLLARS shall accompany any amendment required by  
30 subsection A of this section.

31 Sec. 15. Title 32, chapter 20, article 6, Arizona Revised Statutes, is  
32 amended by adding section 32-2194.14, to read:

33 32-2194.14. Cemetery brokers; disclosures

34 BEFORE OFFERING CEMETERY PROPERTY OR INTERMENT RIGHTS FOR SALE IN A  
35 LICENSED CEMETERY, A CEMETERY BROKER WHO IS NOT A DESIGNATED BROKER FOR THE  
36 CEMETERY SHALL OBTAIN AND COMPLY WITH ALL OF THE LICENSED CEMETERY'S RULES  
37 AND SHALL DISCLOSE TO THE PURCHASER ALL FEES AND TIME FRAMES OF TRANSFER AND  
38 RECORDATION OF INTERMENT RIGHTS OR DEEDS ON THE CEMETERY RECORDS.

39 Sec. 16. Section 32-2194.28, Arizona Revised Statutes, is amended to  
40 read:

41 32-2194.28. Deposit in endowed-care fund from sales

42 A. In addition to establishing a trust fund as required by this  
43 article, every perpetual or endowed-care cemetery shall deposit into its  
44 trust fund according to the following schedule for each sale ~~consummated~~

1 WITHIN THIRTY DAYS AFTER THE CONTRACT FOR THE PURCHASE OF CEMETERY PROPERTY  
2 IS PAID IN FULL:

- 3 1. Two dollars seventy-five cents per square foot for each grave.
- 4 2. Thirty-six dollars for each niche.
- 5 3. One hundred twenty dollars for each crypt.

6 B. In addition to the deposits required in subsection A of this  
7 section, a cemetery may deposit in its trust fund up to fifteen per cent of  
8 the gross sales price of a grave, niche or crypt.

9 C. ~~The provisions of~~ This section ~~shall apply~~ APPLIES to every  
10 cemetery which in any way represents that it is a perpetual or endowed-care  
11 cemetery, regardless of whether it operated as a perpetual or endowed-care  
12 cemetery before July 2, 1963.

13 D. In the case of a perpetual or endowed-care cemetery which was in  
14 operation as a perpetual or endowed-care cemetery before July 2, 1963, the  
15 fund created by the deposits which subsection A of this section requires  
16 ~~shall be~~ IS subject to the same restrictions to which the trust funds  
17 required by sections 32-2194.24 and 32-2194.25 are subject.

18 Sec. 17. Section 32-2194.30, Arizona Revised Statutes, is amended to  
19 read:

20 32-2194.30. Restriction on use of care funds

21 Endowment care funds shall not be used for any purpose other than to  
22 provide income for the care of burial spaces as stated above. In investing  
23 these funds the trustee shall exercise the judgment and care OF A PRUDENT  
24 INVESTOR under the circumstances then prevailing ~~which persons of prudence,~~  
25 ~~discretion and intelligence exercise in the management of their own affairs,~~  
26 not in regard to speculation, but in regard to the permanent disposition of  
27 their funds, considering the probable income as well as the probable safety  
28 of their capital. Within the limitations of the foregoing standard, and  
29 subject to any express provisions or limitations contained in any particular  
30 trust instrument, a trustee is authorized to acquire every kind of property,  
31 real, personal or mixed, and every kind of investment, specifically  
32 including, but not by way of limitation, corporate obligations of every kind,  
33 and stocks, preferred or common, ~~which persons of prudence, discretion and~~  
34 ~~intelligence~~ THAT PRUDENT INVESTORS acquire for their own account.

35 Sec. 18. Title 32, chapter 20, article 6, Arizona Revised Statutes, is  
36 amended by adding section 32-2194.33, to read:

37 32-2194.33. Cemetery property owners; address notification  
38 reclamation; abandoned cemetery plot

39 A. FOR THE PURPOSES OF THIS SECTION, AN OWNER OF CEMETERY PROPERTY IN  
40 ANY CEMETERY LICENSED UNDER THIS CHAPTER SHALL KEEP THE CEMETERY INFORMED IN  
41 WRITING OF THE OWNER'S CURRENT RESIDENCE ADDRESS. BEFORE INITIATING A NOTICE  
42 OF ABANDONMENT, THE CEMETERY SHALL NOTIFY EACH CEMETERY PROPERTY OWNER BY  
43 LETTER AT THE OWNER'S LAST KNOWN ADDRESS AND NOTIFY ALL FUTURE CEMETERY  
44 PROPERTY OWNERS, IN THE CONTRACT FOR SALE AND THE CERTIFICATE OF OWNERSHIP,

1 OF THE REQUIREMENT TO KEEP THE CEMETERY INFORMED IN WRITING OF THEIR CURRENT  
2 RESIDENCE ADDRESS.

3 B. THERE IS A PRESUMPTION THAT CEMETERY PROPERTY IN ANY CEMETERY  
4 LICENSED UNDER THIS CHAPTER HAS BEEN ABANDONED WHEN AN OWNER OF UNUSED  
5 CEMETERY PROPERTY HAS FAILED TO PROVIDE THE CEMETERY WITH A CURRENT RESIDENCE  
6 ADDRESS FOR A PERIOD OF FIFTY CONSECUTIVE YEARS AND AS A RESULT THE CEMETERY  
7 IS UNABLE TO COMMUNICATE BY CERTIFIED MAIL WITH THE OWNER OF THE UNUSED  
8 CEMETERY PROPERTY. THERE IS NOT A PRESUMPTION OF ABANDONMENT IF EITHER OF  
9 THE FOLLOWING OCCURS:

10 1. CEMETERY PROPERTY HELD IN COMMON OWNERSHIP IS ADJOINING WHETHER IN  
11 A GRAVE SPACE, PLOT, MAUSOLEUM, COLUMBARIUM OR OTHER PLACE OF INTERMENT AND  
12 IS USED WITHIN COMMON OWNERSHIP.

13 2. ANY TYPE OF MEMORIAL MARKER HAS BEEN PLACED ON OR ATTACHED TO THE  
14 CEMETERY PROPERTY.

15 C. ON THE OCCURRENCE OF A PRESUMPTION OF ABANDONMENT AS PRESCRIBED BY  
16 SUBSECTION B OF THIS SECTION, A CEMETERY MAY FILE WITH THE DEPARTMENT A  
17 CERTIFIED NOTICE ATTESTING TO THE ABANDONMENT OF THE CEMETERY PROPERTY. THE  
18 NOTICE SHALL DO THE FOLLOWING:

19 1. DESCRIBE THE CEMETERY PLOT CERTIFIED TO HAVE BEEN ABANDONED.

20 2. SET FORTH THE NAME OF THE LAST KNOWN OWNER OF THE CEMETERY PLOT OR,  
21 IF THE OWNER IS KNOWN TO THE CEMETERY TO BE DECEASED, THE NAMES, IF KNOWN TO  
22 THE CEMETERY, OF CLAIMANTS THAT ARE HEIRS AT LAW, NEXT OF KIN OR SPECIFIC  
23 DEVISEES UNDER THE WILL OF THE OWNER.

24 3. DESCRIBE THE FAILURE OF THE OWNER OR CLAIMANTS AS PRESCRIBED BY  
25 PARAGRAPH 2 OF THIS SUBSECTION TO KEEP THE CEMETERY INFORMED OF THE OWNER'S  
26 CURRENT RESIDENCE ADDRESS FOR A PERIOD OF FIFTY CONSECUTIVE YEARS OR MORE.

27 4. CERTIFY THAT CEMETERY PROPERTY HAS NOT BEEN INCLUDED THAT IS HELD  
28 IN COMMON OWNERSHIP WITH ANY ABANDONED CEMETERY PROPERTY AS PRESCRIBED BY  
29 SUBSECTION B OF THIS SECTION AND THAT A MEMORIAL MARKER HAS NOT BEEN PLACED  
30 ON OR ATTACHED TO THE CEMETERY PROPERTY.

31 D. IRRESPECTIVE OF DIVERSITY OF OWNERSHIP OF THE CEMETERY PROPERTY, A  
32 CEMETERY MAY INCLUDE IN ITS CERTIFICATION CEMETERY PROPERTIES OF VARIOUS  
33 TYPES.

34 E. THE CEMETERY SHALL PUBLISH A NOTICE OF THE APPROVED ABANDONED  
35 CEMETERY PROPERTY ONCE EACH WEEK FOR TWO CONSECUTIVE WEEKS IN A NEWSPAPER OF  
36 GENERAL CIRCULATION IN THE COUNTY IN WHICH THE CEMETERY PROPERTY IS LOCATED.

37 F. AFTER ONE HUNDRED TWENTY DAYS FROM THE FINAL PUBLICATION OF THE  
38 NOTICE AS PROVIDED IN SUBSECTION E OF THIS SECTION, IF THERE HAS BEEN NO  
39 NOTIFICATION OF THE ADDRESS OF THE CURRENT OWNER, THE CEMETERY SHALL HAVE THE  
40 RIGHT TO RESELL THE CEMETERY PROPERTY AND TRANSFER THE OWNERSHIP OF THE  
41 CEMETERY PROPERTY AS PROVIDED IN THE CEMETERY'S CERTIFICATE OF AUTHORITY.

42 G. ON THE SALE OF EACH LOT, GRAVE, NICHE OR CRYPT RECLAIMED PURSUANT  
43 TO THIS SECTION, THE CEMETERY SHALL CONTRIBUTE TO THE ENDOWED-CARE TRUST FUND  
44 THE AMOUNT CURRENTLY REQUIRED BY SECTION 32-2194.28.

1 H. ON SHOWING OF EVIDENCE OF RIGHT OF OWNERSHIP, PERSONS OR THEIR  
2 HEIRS WHO WERE OWNERS OF CEMETERY PROPERTY THAT WAS SOLD UNDER THIS SECTION  
3 SHALL HAVE THE RIGHT AT ANY TIME TO OBTAIN EQUIVALENT CEMETERY PROPERTY IN  
4 THE CEMETERY WITHOUT ADDITIONAL CHARGE. IF NO CEMETERY PROPERTY IS DESIRED,  
5 THE PERSONS OR THEIR HEIRS MAY OBTAIN AND RECOVER THE AMOUNT ORIGINALLY PAID  
6 TO THE CEMETERY FOR THE CEMETERY PROPERTY.

7 I. THE CEMETERY SHALL MAKE AVAILABLE CEMETERY PROPERTY EQUAL TO TEN  
8 PER CENT OF THE ABANDONED CEMETERY PROPERTY SOLD UNDER THIS SECTION FOR THE  
9 USE OF PERSONS OR THEIR HEIRS WHO WERE OWNERS OF CEMETERY PROPERTY THAT WAS  
10 SOLD UNDER THIS SECTION AND WHO HAVE THE RIGHT AT ANY TIME TO OBTAIN CEMETERY  
11 PROPERTY IN THE CEMETERY UNDER THIS SECTION.

12 J. PERSONS WHO PURCHASE CEMETERY PROPERTY RECLAIMED PURSUANT TO THIS  
13 SECTION SHALL HAVE THE RIGHT TO SELL, ALIENATE OR OTHERWISE TRANSFER THE  
14 CEMETERY PROPERTY SUBJECT TO AND IN ACCORDANCE WITH THE RULES OF THE CEMETERY  
15 AND PAYMENT OF ANY APPLICABLE TRANSFER FEE.

16 Sec. 19. Section 32-2197.20, Arizona Revised Statutes, is amended to  
17 read:

18 32-2197.20. Civil penalty

19 A. Any developer who is subject to the jurisdiction of the department  
20 and who has violated any provision of this article or any rule or order  
21 ~~promulgated~~ ADOPTED by the commissioner, who has deviated substantially from  
22 the provisions of a public report or who has engaged in any unlawful  
23 practices defined in section 44-1522 with respect to the sale or lease of  
24 timeshare interests may be assessed a civil penalty by the commissioner,  
25 after a hearing, in an amount ~~not to exceed five hundred dollars for each~~  
26 ~~infraction~~ OF AT LEAST ONE THOUSAND DOLLARS AND NOT MORE THAN FIVE THOUSAND  
27 DOLLARS PER INFRACTION.

28 B. Actions to recover penalties pursuant to this section shall be  
29 brought by the attorney general in the name of this state in the superior  
30 court in the county in which the violation occurred or in a county in which  
31 the commissioner maintains an office.