

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SENATE BILL 1349

AN ACT

AMENDING SECTIONS 32-2101, 32-2124, 32-2125, 32-2153 AND 32-2160.01, ARIZONA
REVISED STATUTES; RELATING TO THE DEPARTMENT OF REAL ESTATE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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 this
12 chapter including the land sales contract to be used and any photographs,
13 drawings or artist's presentations of physical conditions or facilities
14 existing or to exist on the property. Advertising does not include:

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

19 (b) Communications to stockholders as follows:

20 (i) Annual reports and interim financial reports.

21 (ii) Proxy materials.

22 (iii) Registration statements.

23 (iv) Securities prospectuses.

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

25 (vi) Prospectuses.

26 (vii) Property reports.

27 (viii) Offering statements.

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

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

34 5. "Barrier" means a natural or man-made geographical feature that
35 prevents parcels of land from being practicably, reasonably and economically
36 united or reunited and that was not caused or created by the owner of the
37 parcels.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 14. "Common promotional plan" means a plan, undertaken by a person or a
36 group of persons acting in concert, to offer lots for sale or lease. If the
37 land is offered for sale by a person or group of persons acting in concert,
38 and the land is contiguous or is known, designated or advertised as a common
39 unit or by a common name, the land is presumed, without regard to the number
40 of lots covered by each individual offering, as being offered for sale or
41 lease as part of a common promotional plan. Separate subdividers selling
42 lots or parcels in separately platted subdivisions within a master planned
43 community shall not be deemed to be offering their combined lots for sale or
44 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 regularly 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 this
30 chapter. Developer does not include a person whose involvement with a
31 development is limited to the listing of property within the development for
32 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 **AND ENDING ON THE**
24 **EXPIRATION DATE, IF ANY.**

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

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

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

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

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

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

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

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

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

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

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

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

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

21 37. "Membership camping operator" means an enterprise, other than one
22 that is tax exempt under section 501(c)(3) of the internal revenue code of
23 1986, as amended, that solicits membership paid for by a fee or periodic
24 payments and has as one of its purposes camping or outdoor recreation
25 including the use of camping sites primarily by members. Membership camping
26 operator does not include camping or recreational trailer parks that are open
27 to the general public and that contain camping sites rented for a per use fee
28 or a mobile home park.

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

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

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

42 41. "Perpetual or endowed-care cemetery" means a cemetery wherein lots
43 or other burial spaces are sold or transferred under the representation that
44 the cemetery will receive "perpetual" or "endowed" care as defined in this

1 section free of further cost to the purchaser after payment of the original
2 purchase price for the lot, burial space or interment right.

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

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

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

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

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

27 47. "Real estate broker" means a person, other than a salesperson, who,
28 for another and for compensation:

29 (a) Sells, exchanges, purchases, rents or leases real estate or
30 timeshare interests.

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

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

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

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

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

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

44 (h) Advertises or holds himself out as being engaged in the business
45 of buying, selling, exchanging, renting or leasing real estate or timeshare

1 interests or counseling or advising regarding real estate or timeshare
2 interests.

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

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

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

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

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

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

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

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

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

1 50. "Sale" or "lease" includes every disposition, transfer, option 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 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 this chapter or any person required to be licensed as a salesperson
10 under this chapter.

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

14 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~~ RECEIVE 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 54. "Subdivider" means any person who offers for sale or lease six or
25 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 55. "Subdivision" or "subdivided lands":

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

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

36 (c) Does not include:

37 (i) Leasehold offerings of one year or less.

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

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

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

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

8 57. "Trustee" means:

9 (a) A person designated under section 32-2194.27 to act as a trustee
10 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 this chapter.

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

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

23 Sec. 2. Section 32-2124, Arizona Revised Statutes, is amended to read:

24 32-2124. Qualifications of licensees

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

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

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

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

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

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

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

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

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

37 C. All applicants other than renewal applicants under section 32-2130
38 for a real estate broker's license shall show evidence satisfactory to the
39 commissioner that they have completed a real estate broker's course,
40 prescribed and approved by the commissioner, of at least ninety classroom
41 hours, or the equivalent, of instruction in a real estate school certified by
42 the commissioner and have satisfactorily passed an examination on the
43 course. In no case shall the real estate broker's course completion or its
44 equivalent be more than ten years before the date of application unless, at
45 the time of application, the commissioner determines in the commissioner's

1 discretion that the applicant has work experience in a real estate related
2 field and education that together are equivalent to the prelicensure
3 education requirement. The commissioner may waive all or a portion of the
4 prelicensure course requirement, other than the twenty-seven hour Arizona
5 specific course, for an applicant who holds a current real estate license in
6 another state.

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

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

11 1. An appropriate knowledge of the English language, including
12 reading, writing and spelling, and of arithmetical computations common to
13 real estate practices.

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

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

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

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

29 2. A general understanding of:

30 (a) Cemetery associations, cemetery corporations and duties of
31 cemetery directors and officers.

32 (b) Plot ownership, deeds, certificates of ownership, contracts of
33 sale, liens and leases.

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

36 (d) The provisions of this chapter and rules made under this chapter
37 relating to the organization and regulation of cemeteries and the licensing
38 and regulation of cemetery brokers and cemetery salespersons.

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

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

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

3 2. A general understanding of:

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

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

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

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

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

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

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

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

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

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

1 N. An applicant or licensee who wants to obtain a license specializing
2 in sales of businesses after completion of the requirements of subsection B
3 OR C of this section and before activation of the person's license shall
4 provide certification to the department evidencing completion of twenty-four
5 hours of instruction in business brokerage. This instruction shall include
6 satisfactory proof of passing a test that is acceptable to the department.

7 Sec. 3. Section 32-2125, Arizona Revised Statutes, is amended to read:
8 32-2125. Licenses for corporations, limited liability companies
9 or partnerships

10 A. A corporation, limited liability company or partnership applying
11 for a broker's license for the entity shall designate a natural person who is
12 licensed as a broker and who is an officer of the corporation, manager of the
13 limited liability company if management of the limited liability company is
14 vested in one or more managers, member of the limited liability company if
15 management is vested in the members or partner of the partnership who shall
16 act as designated broker. The license shall extend no authority to act as
17 designated broker to any other person. This subsection does not apply to a
18 corporation or limited liability company applying for a license under
19 subsection B of this section. An entity's broker's license issued pursuant
20 to this subsection shall ~~conform to section 32-2129~~ RUN CONCURRENTLY WITH THE
21 CORPORATION'S, LIMITED LIABILITY COMPANY'S OR PARTNERSHIP'S DESIGNATED
22 BROKER'S LICENSE.

23 B. An employing broker may engage the services of salespersons and
24 associate brokers who act through and on behalf of professional corporations
25 or professional limited liability companies that are licensed by the
26 department. A designated broker who acts on behalf of an employing real
27 estate entity is permitted to become a professional corporation or a
28 professional limited liability corporation. Any person so engaged shall be
29 separately licensed. The department shall issue to or renew a license under
30 this subsection only for a professional corporation or a professional limited
31 liability corporation whose shareholders, members or managers hold active
32 real estate licenses. A corporation licensed under this subsection shall
33 meet the requirements of title 10, chapter 20. A limited liability company
34 licensed under this subsection shall meet the requirements of title 29,
35 chapter 4, article 11. A PROFESSIONAL CORPORATION OR PROFESSIONAL LIMITED
36 LIABILITY COMPANY SHALL NOT BE LICENSED AS AN EMPLOYING BROKER.

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

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

7 E. Nothing in this section shall be construed to enlarge the functions
8 of salespersons, to permit salespersons to assume any of the responsibilities
9 or functions of brokers or to relieve the commissioner of any regulatory
10 power or authority over salespersons or brokers.

11 F. A corporation, limited liability company or partnership licensed
12 under subsection A of this section or a professional corporation or
13 professional limited liability company licensed under subsection B of this
14 section is exempt from the education requirements imposed pursuant to this
15 chapter. The commissioner shall not charge a license fee or a renewal fee
16 pursuant to section 32-2132 to a corporation, professional corporation,
17 limited liability company, professional limited liability company or
18 partnership licensed or approved under this section.

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

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

23 2. Any amendment to its articles of incorporation or organization or
24 to its partnership agreement.

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

27 4. THE DISSOLUTION OF THE CORPORATION, LIMITED LIABILITY COMPANY OR
28 PARTNERSHIP.

29 Sec. 4. Section 32-2153, Arizona Revised Statutes, is amended to read:

30 32-2153. Grounds for denial, suspension or revocation of
31 licenses; letters of concern; provisional license;
32 retention of jurisdiction by commissioner;
33 definitions

34 A. The commissioner may suspend or revoke a license, deny the issuance
35 of a license, issue a letter of concern to a licensee, issue a provisional
36 license or deny the renewal or the right of renewal of a license issued under
37 ~~the provisions of~~ this chapter if it appears that the holder or applicant,
38 within five years immediately preceding, in the performance of or attempt to
39 perform any acts authorized by the license or by this chapter, has:

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

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

1 3. Disregarded or violated any of the provisions of this chapter or
2 any rules adopted by the commissioner.

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

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

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

11 7. Accepted compensation as a licensee for the performance of any of
12 the acts specified in this chapter from any person other than the licensed
13 broker to whom the licensee is licensed, the licensed professional
14 corporation of which the licensee is an officer and shareholder or the
15 licensed professional limited liability company of which the licensee is a
16 member or manager.

17 8. Represented or attempted to represent a broker other than the
18 broker to whom the salesperson or associate broker is licensed.

19 9. Failed, within a reasonable time, to account for or to remit any
20 monies, to surrender to the rightful owner any documents or other valuable
21 property coming into the licensee's possession and that belongs to others, or
22 to issue an appraisal report on real property or cemetery property in which
23 the licensee has an interest, unless the nature and extent of the interest
24 are fully disclosed in the report.

25 10. Paid or received any rebate, profit, compensation or commission in
26 violation of this chapter.

27 11. Induced any party to a contract to break the contract for the
28 purpose of substituting a new contract with the same or a different
29 principal, if the substitution is motivated by the personal gain of the
30 licensee.

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

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

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

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

42 16. Commingled the money or other property of the licensee's principal
43 or client with the licensee's own or converted that money or property to the
44 licensee or another.

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

7 18. Failed to maintain a complete record of each transaction which
8 comes within ~~the provisions of~~ this chapter.

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

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

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

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

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

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

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

30 B. The commissioner may suspend or revoke a license, deny the issuance
31 of a license, issue a letter of concern to a licensee, issue a provisional
32 license or deny the renewal or the right of renewal of a license issued under
33 ~~the provisions of~~ this chapter when it appears that the holder or applicant
34 has:

35 1. Procured or attempted to procure a license under ~~the provisions of~~
36 this chapter for the holder or applicant or another by fraud,
37 misrepresentation or deceit, or by filing an original or renewal application
38 which is false or misleading.

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

42 3. Made any substantial misrepresentation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 F. For the purposes of this section:

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

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

14 Sec. 5. Section 32-2160.01, Arizona Revised Statutes, is amended to
15 read:

16 32-2160.01. Civil penalties

17 A. Any ~~broker or salesperson~~ LICENSEE who is subject to the
18 jurisdiction of the department and who has violated any provision of this
19 chapter or any rule or order adopted or issued by the commissioner, who has
20 deviated substantially from the provisions of a public report, ~~—~~ or who has
21 engaged in any unlawful practices defined in section 44-1522 with respect to
22 the sale or lease of either subdivided lands or unsubdivided lands may be
23 assessed a civil penalty by the commissioner, after a hearing, in an amount
24 not to exceed one thousand dollars for each infraction. **A CIVIL PENALTY
25 ASSESSED AGAINST A SCHOOL PURSUANT TO THIS SUBSECTION MAY BE FOR THE ACTS OF
26 THE SCHOOL OR OF AN OWNER, DIRECTOR, ADMINISTRATOR, INSTRUCTOR OR OTHER AGENT
27 OF THE SCHOOL.**

28 B. Actions to recover penalties assessed pursuant to this chapter
29 shall be brought by the attorney general in the name of the state in the
30 superior court in the county in which the violation occurred or in a county
31 in which the commissioner maintains an office. When the commissioner has
32 revoked a license **OR WITHDRAWN CERTIFICATION OR APPROVAL OF A SCHOOL,
33 EDUCATIONAL COURSE OR REAL ESTATE INSTRUCTOR** and assessed civil penalties
34 that remain unpaid, if judicial review has not been sought under title 12,
35 chapter 7, article 6, a certified copy of any such commissioner's order
36 requiring the payment of civil penalties may be filed in the office of the
37 clerk of the superior court. The clerk shall treat the commissioner's order
38 in the same manner as a judgment of the superior court. A commissioner's
39 order so filed has the same effect as a judgment of the superior court and
40 may be recorded, enforced or satisfied in like manner. No filing fee is
41 required under this section.

42 Sec. 6. Retroactivity

43 This act is effective retroactively to from and after June 30, 2007.