

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

SENATE BILL 1350

AN ACT

AMENDING SECTIONS 32-2101, 32-2129, 32-2130, 32-2131, 32-2132, 32-2136 AND 32-2153, ARIZONA REVISED STATUTES; RELATING TO THE STATE REAL ESTATE DEPARTMENT.

(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 chapter.
30 Developer does not include a person whose involvement with a development is
31 limited to the listing of property within the development for sale, lease or
32 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.

1 (h) Advertises or holds himself out as being engaged in the business
2 of buying, selling, exchanging, renting or leasing real estate or timeshare
3 interests or counseling or advising regarding real estate or timeshare
4 interests.

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

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

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

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

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

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

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

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

41 49. "Real estate salesperson" means a natural person who acts on the
42 person's own behalf or through and on behalf of a professional limited
43 liability company or a professional corporation engaged by or on behalf of a
44 licensed real estate broker, or by or on behalf of a limited liability
45 company, partnership or corporation that is licensed as a real estate broker,

1 to perform any act or participate in any transaction in a manner included in
2 the definition of real estate broker subject to section 32-2155.

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

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

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

16 53. "Stock cooperative" means a corporation to which all of the
17 following apply:

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

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

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

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

31 55. "Subdivision" or "subdivided lands":

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

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

38 (c) Does not include:

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

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

44 (iii) The leasing of agricultural lands or apartments, offices, stores,
45 hotels, motels, pads or similar space within an apartment building,

1 industrial building, rental recreational vehicle community, rental
2 manufactured home community, rental mobile home park or commercial building.

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

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

10 57. "Trustee" means:

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

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

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

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

25 Sec. 2. Section 32-2129, Arizona Revised Statutes, is amended to read:

26 32-2129. Advance payment of license fees

27 A. All license fees shall be paid in advance, ~~and~~ and shall be the same
28 regardless of the time of the year ~~when~~ the license is issued.

29 B. If the license fees or other fees that relate to licensure are paid
30 with a check that is not honored by the financial institution on which it is
31 written, the department may deny or cancel the license.

32 ~~C. There is established a two year staggered license period.~~

33 ~~D.~~ C. An original license shall be for a period of two years up to
34 and including the last day of the month in which the license was granted. A
35 renewal license shall be ~~for a period commencing on~~ EFFECTIVE AS OF the date
36 of issuance, but no earlier than the first day after the expiration of the
37 previous license. REGARDLESS OF THE DATE OF ISSUANCE, THE RENEWED LICENSE IS
38 FOR A FOUR YEAR PERIOD BEGINNING ON THE FIRST DAY AFTER THE EXPIRATION OF THE
39 PREVIOUS LICENSE.

40 ~~E.~~ D. License applicants shall pay fees as specified in this chapter.

41 Sec. 3. Section 32-2130, Arizona Revised Statutes, is amended to read:

42 32-2130. Renewal of licenses

43 A. A license may be renewed in a timely manner by filing an
44 application for renewal ~~on a form provided~~ IN THE MANNER PRESCRIBED by the
45 commissioner, by paying the renewal fee specified in this chapter ~~if that fee~~

1 ~~is paid on or before the expiration date of the license,~~ and by presenting
2 evidence of attendance at a school certified by the commissioner during the
3 preceding license period of twenty-four ~~clock hours~~ CREDIT HOURS IN THE FIRST
4 RENEWAL AND FORTY-EIGHT CREDIT HOURS IN SUBSEQUENT RENEWALS, or a lesser
5 number of ~~clock hours~~ CREDIT HOURS prescribed by the commissioner, of real
6 estate oriented continuing education courses prescribed and approved by the
7 commissioner. ~~If an applicant is renewing a license within one year after it~~
8 ~~expired, the applicant may apply continuing education hours completed after~~
9 ~~the expiration toward the continuing education required for renewal. Each~~
10 ~~renewal application shall contain, as applicable, the same information~~
11 ~~required of an original applicant pursuant to section 32-2123. THE TOTAL~~
12 ~~NUMBER OF CREDIT HOURS SHALL BE ACCRUED AT A RATE OF TWENTY-FOUR CREDIT HOURS~~
13 ~~DURING EACH TWENTY-FOUR MONTH PERIOD OF LICENSURE. The department shall~~
14 ~~maintain a current list of approved courses. The commissioner may withdraw~~
15 ~~or deny certification or approval of educational courses for good cause. The~~
16 ~~commissioner may waive all or a portion of the continuing education~~
17 ~~requirement for good cause shown. Cemetery brokers and salespersons and~~
18 ~~membership camping brokers and salespersons are exempt from the educational~~
19 ~~requirements of this section. Nothing in this section shall require a~~
20 ~~licensee to attend department produced or sponsored courses if the approved~~
21 ~~courses are otherwise available. If the renewal applicant is retaining the~~
22 ~~specialization in sales of businesses designation, the applicant is required~~
23 ~~to complete an additional twelve clock hours of basic business brokerage~~
24 ~~courses and pass a school test for each course for the first renewal. The~~
25 ~~twelve clock hours are in addition to the clock hours prescribed by the~~
26 ~~commissioner for license renewal pursuant to this subsection. Subsequent~~
27 ~~license renewals for applicants selling businesses do not require a test.~~

28 B. IF AN APPLICANT IS RENEWING A LICENSE WITHIN ONE YEAR AFTER IT
29 EXPIRED, THE APPLICANT MAY APPLY CONTINUING EDUCATION HOURS COMPLETED AFTER
30 THE EXPIRATION TOWARD THE CONTINUING EDUCATION REQUIRED FOR RENEWAL.

31 C. EACH RENEWAL APPLICATION SHALL CONTAIN, AS APPLICABLE, THE SAME
32 INFORMATION REQUIRED IN AN ORIGINAL APPLICATION PURSUANT TO SECTION 32-2123.

33 D. CEMETERY BROKERS AND SALESPERSONS AND MEMBERSHIP CAMPING BROKERS
34 AND SALESPERSONS ARE EXEMPT FROM THE EDUCATIONAL REQUIREMENTS OF THIS
35 SECTION.

36 E. NOTHING IN THIS SECTION REQUIRES A LICENSEE TO ATTEND DEPARTMENT
37 PRODUCED OR SPONSORED COURSES IF APPROVED COURSES ARE OTHERWISE AVAILABLE.

38 F. IF A RENEWAL APPLICANT IS RETAINING THE SPECIALIZATION IN SALES OF
39 BUSINESSES DESIGNATION, THE APPLICANT IS REQUIRED TO COMPLETE BUSINESS
40 BROKERAGE COURSES FOR ONE-HALF OF THE CREDIT HOURS PRESCRIBED BY THE
41 COMMISSIONER FOR LICENSE RENEWAL PURSUANT TO THIS SECTION.

42 ~~B.~~ G. Between the expiration date of the license and the date of
43 renewal of the license, the rights of the licensee under the license expire.
44 While the license is expired it is unlawful for a person to act or attempt to
45 offer to act in a manner included in the definition of a real estate,

1 cemetery or membership camping broker or salesperson. If the license of an
2 employing broker expires under this subsection, the licenses of persons who
3 are employed by the employing broker shall be severed from the employing
4 broker on the license expiration date of the employing broker. These persons
5 may be rehired on renewal of the employing broker's license. The department
6 shall terminate a license that has been expired for more than one year.

7 ~~C.~~ H. No more than one year after the license expiration date, the
8 department shall renew a license without requiring the applicant to submit to
9 an examination if the applicant ~~holds~~ HELD a license that ~~is~~ WAS not canceled
10 or suspended at the time of ~~application~~ EXPIRATION. The license period for a
11 license renewed pursuant to this subsection commences the day after the
12 expiration date of the expired license. Except as provided in section
13 32-2131, subsection A, paragraph 4 or 6, an applicant whose license has been
14 terminated or revoked does not qualify for license renewal.

15 ~~D.~~ I. Any employee or immediate family member of any employee of this
16 state who, pursuant to section 32-2110 or any other law, rule or requirement,
17 is prohibited from using a license issued under this chapter shall have, on
18 the request of the employee or family member, the license placed on inactive
19 status, shall have the right to renew the license and shall not be required
20 to pay further fees until the employee or family member is again eligible to
21 use the license. Renewal fees for the license shall not be required for only
22 as long as the employee or family member is prohibited from using the
23 license.

24 ~~E.~~ J. The department shall not renew the license of a person who has
25 been convicted of a felony offense and who is currently incarcerated for the
26 conviction, paroled or under community supervision and under the supervision
27 of a parole or community supervision officer or who is on probation as a
28 result of the conviction. This subsection does not limit the commissioner's
29 authority and discretion to deny the renewal for any other reason pursuant to
30 this chapter.

31 Sec. 4. Section 32-2131, Arizona Revised Statutes, is amended to read:

32 32-2131. Reinstatement of license

33 A. The commissioner may reinstate a license that was issued under this
34 article and that expired or was canceled, terminated, suspended or revoked as
35 follows:

36 1. For a license that expired pursuant to section 32-2130, subsection
37 ~~B.~~ G, by renewal application pursuant to this article.

38 2. For a license canceled pursuant to section 32-2126, subsection A or
39 section 32-2129, subsection B or any other lawful authority:

40 (a) If within the license period, by reapplication and payment of
41 applicable fees.

42 (b) If after expiration of the license, by original or renewal
43 application, as appropriate, pursuant to this article.

1 3. For a license terminated pursuant to section 32-2188, subsection I,
2 by:
3 (a) Repayment in full to the real estate recovery fund.
4 (b) Original application pursuant to this article.
5 (c) Providing evidence that the judgment that caused the recovery fund
6 payment has been fully satisfied.
7 4. For a license terminated pursuant to section 32-2130, subsection ~~B-~~
8 ~~G~~, by original application pursuant to this article.
9 5. For a license suspended pursuant to section 32-2153, 32-2154 or
10 32-2157 or any other lawful authority:
11 (a) If suspended for failure on the part of the licensee to meet
12 procedural or educational requirements for maintaining the license, and the
13 requirements have subsequently been fully met, and the suspension has been
14 vacated:
15 (i) If within the license period, by reapplication and payment of
16 applicable fees.
17 (ii) If after expiration of the license, by original or renewal
18 application, as appropriate, pursuant to this article.
19 (b) If suspended by order of the commissioner for a specified length
20 of time, and the suspension period has ended:
21 (i) If within the license period, by reapplication and payment of
22 applicable fees.
23 (ii) If after expiration of the license, by original or renewal
24 application, as appropriate, pursuant to this article.
25 6. For a license revoked pursuant to section 32-2153 or any other
26 lawful authority, by original application pursuant to this article.
27 7. For a license suspended or revoked by order of the commissioner and
28 this order is subsequently vacated as to the licensee, by reapplication only.
29 No fees may be assessed. The reapplication may be initiated by the
30 department on behalf of the licensee.
31 B. Except for canceled licenses, reinstatement of a license pursuant
32 to subsection A of this section shall not be made for any licensee who is the
33 subject of a department investigation into alleged violations of this chapter
34 or of a pending administrative proceeding pursuant to article 3 of this
35 chapter.
36 C. This section shall not be interpreted to lessen or reduce the
37 qualifications otherwise required of license applicants under this article or
38 the department's authority to deny a person's application for license
39 reinstatement who does not otherwise meet all of the requirements.
40 Sec. 5. Section 32-2132, Arizona Revised Statutes, is amended to read:
41 32-2132. Fees
42 A. Except as provided in subsection D, the following fees shall be
43 charged which shall not be refunded by the commissioner after issuance of a
44 receipt for payment:

- 1 1. Broker's examination application fee, not less than thirty-five
2 dollars and not more than one hundred twenty-five dollars.
- 3 2. Broker's examination fee, not less than thirty-five dollars and not
4 more than one hundred dollars.
- 5 3. Broker's license, not less than seventy-five dollars and not more
6 than two hundred fifty dollars.
- 7 4. Broker's renewal fee, not less than ~~seventy-five~~ ONE HUNDRED
8 dollars and not more than ~~two~~ FOUR hundred ~~fifty~~ dollars.
- 9 5. Salesperson's examination application fee, not less than fifteen
10 dollars and not more than seventy-five dollars.
- 11 6. Salesperson's examination fee, not less than fifteen dollars and
12 not more than fifty dollars.
- 13 7. Salesperson's license fee, not less than thirty-five dollars and
14 not more than one hundred twenty-five dollars.
- 15 8. Salesperson's renewal fee, not less than ~~thirty-five~~ SIXTY dollars
16 and not more than ~~one~~ TWO hundred ~~twenty-five~~ dollars.
- 17 9. Branch office broker's license fee or renewal thereof, not less
18 than ~~thirty-five~~ SIXTY dollars and not more than ~~one~~ TWO hundred ~~twenty-five~~
19 dollars.
- 20 10. Change of name and address of licensee on records of the
21 department, not more than twenty dollars.
- 22 11. Duplicate license fee, five dollars.
- 23 12. Reinstatement of license within license period, five dollars.
- 24 13. Each certificate of correctness of copy of records or documents on
25 file with the department, one dollar, plus the cost to the department for
26 reproducing the records or documents.
- 27 14. Temporary broker's license fee, not less than fifteen dollars and
28 not more than fifty dollars.
- 29 15. Temporary cemetery salesperson's license fee, not less than fifteen
30 dollars and not more than fifty dollars.
- 31 16. Membership camping salesperson certificate of convenience fee, not
32 less than fifteen dollars and not more than fifty dollars.
- 33 B. No corporation, partnership or limited liability company shall be
34 assessed a fee for the issuance of a broker's license.
- 35 C. The commissioner may contract for the processing of applications
36 and the examination of applicants for licensure. The contract may provide
37 for specific fees or a reasonable range for fees as determined by the
38 commissioner for examination applications and examinations to be paid
39 directly to the contractor by the applicant. These fees may not exceed the
40 amounts prescribed in subsection A, paragraphs 1, 2, 5 and 6.
- 41 D. For good cause shown the commissioner may refund fees previously
42 collected.

1 Sec. 6. Section 32-2136, Arizona Revised Statutes, is amended to read:
2 32-2136. Broker management clinic

3 A. The department shall determine the instructor qualifications for
4 teaching broker management clinics and the course content of broker
5 management clinics for persons required to attend these clinics pursuant to
6 subsection C of this section.

7 B. A broker management clinic shall include instruction on department
8 audits and on the obligations and responsibilities of designated brokers. A
9 broker management clinic shall address record keeping requirements, trust
10 fund accounts, advertising and promotions, listing agreements, contracts,
11 fiduciary duties, material disclosures, department investigations and
12 employee supervision and broker responsibilities. A broker management clinic
13 may be designed to address property management activities or sales
14 activities, or both.

15 C. An applicant for an original real estate broker's license shall
16 attend a broker management clinic before activating the license. A broker
17 shall attend a broker management clinic before becoming a designated broker,
18 unless the broker has attended a broker management clinic during the
19 preceding twenty-three months. All active designated real estate brokers
20 shall attend a broker management clinic once during ~~every two-year licensing~~
21 ~~period~~ EACH TWENTY-FOUR MONTHS OF LICENSURE after their initial attendance.

22 D. Attendance at a broker management clinic constitutes three
23 ~~clock-hours~~ CREDIT HOURS of real estate oriented education pursuant to
24 section 32-2130, subsection A.

25 Sec. 7. Section 32-2153, Arizona Revised Statutes, is amended to read:
26 32-2153. Grounds for denial, suspension or revocation of

27 licenses; letters of concern; provisional license;
28 retention of jurisdiction by commissioner;
29 definitions

30 A. 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 if it appears that the holder or applicant,
34 within five years immediately preceding, in the performance of or attempt to
35 perform any acts authorized by the license or by this chapter, has:

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

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

41 3. Disregarded or violated any of the provisions of this chapter or
42 any rules adopted by the commissioner.

43 4. Knowingly authorized, directed, connived at or aided in the
44 publication, advertisement, distribution or circulation of any material false
45 or misleading statement or representation concerning the licensee's business

1 or any land, cemetery property, subdivision or membership campground or
2 camping contract offered for sale in this or any other state.

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

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

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

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

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

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

22 11. Induced any party to a contract to break the contract for the
23 purpose of substituting a new contract with the same or a different
24 principal, if the substitution is motivated by the personal gain of the
25 licensee.

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

28 13. Solicited, either directly or indirectly, prospects for the sale,
29 lease or use of real property, cemetery property or membership camping
30 contracts through a promotion of a speculative nature involving a game of
31 chance or risk or through conducting lotteries or contests that are not
32 specifically authorized under the provisions of this chapter.

33 14. Failed to pay to the commissioner the ~~biennial~~ renewal fee as
34 specified in this chapter promptly and before the time specified.

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

37 16. Commingled the money or other property of the licensee's principal
38 or client with the licensee's own or converted that money or property to the
39 licensee or another.

40 17. Failed or refused upon demand to produce any document, contract,
41 book, record, information, compilation or report that is in the licensee's
42 possession or that the licensee is required by law to maintain concerning any
43 real estate, cemetery or membership camping business, services, activities or
44 transactions involving or conducted by the licensee for inspection by the
45 commissioner or the commissioner's representative.

1 18. Failed to maintain a complete record of each transaction which
2 comes within the provisions of this chapter.

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

5 20. Tendered to a buyer a wood infestation report in connection with
6 the transfer of residential real property or an interest in residential real
7 property knowing that wood infestation exists or that the wood infestation
8 report was inaccurate or false as of the date of the tender or that an
9 inspection was not done in conjunction with the preparation of the wood
10 infestation report.

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

17 22. Demonstrated negligence in performing any act for which a license
18 is required.

19 23. Sold or leased a property to a buyer or lessee that was not the
20 property represented to the buyer or lessee.

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

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

24 B. The commissioner may suspend or revoke a license, deny the issuance
25 of a license, issue a letter of concern to a licensee, issue a provisional
26 license or deny the renewal or the right of renewal of a license issued under
27 the provisions of this chapter when it appears that the holder or applicant
28 has:

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

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

36 3. Made any substantial misrepresentation.

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

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

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

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

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

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

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

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

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

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

32 E. The lapsing or suspension of a license by operation of law or by
33 order or decision of the commissioner or a court of law or the voluntary
34 surrender of a license by a licensee shall not deprive the commissioner of
35 jurisdiction to do any of the following:

36 1. Proceed with any investigation of or action or disciplinary
37 proceeding against the licensee.

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

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

41 F. For the purposes of this section:

42 1. "Letter of concern" means an advisory letter to notify a licensee
43 that, while the conduct or evidence does not warrant other disciplinary
44 action, the commissioner believes that the licensee should modify or

1 eliminate certain practices and that continuation of the activities may
2 result in further disciplinary action against the licensee.

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

7 Sec. 8. Retroactivity

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