

REFERENCE TITLE: real estate; education; broker requirements

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SB 1292

Introduced by
Senator Griffin

AN ACT

AMENDING SECTION 32-2124, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 20, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-2124.01; AMENDING SECTION 32-2135, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 20, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-2138; AMENDING SECTION 32-2151.01, ARIZONA REVISED STATUTES; RELATING TO 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 32-2124, Arizona Revised Statutes, is amended to
3 read:

4 32-2124. Qualifications of licensees

5 A. Except as otherwise provided in this chapter, the commissioner
6 shall require proof, through the application or otherwise, as the
7 commissioner deems advisable with due regard to the interests of the public,
8 as to the honesty, truthfulness, good character and competency of the
9 applicant and shall require that the applicant has:

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

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

18 3. If for an original membership camping broker's license, either a
19 current real estate broker's license, or if the applicant does not have a
20 current real estate broker's license, at least three years' actual experience
21 as a licensed membership camping salesperson or broker or as a licensed real
22 estate salesperson or broker during the five years immediately preceding the
23 time of application.

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

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

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

35 7. If for a real estate, cemetery or membership camping broker's
36 license, other than a renewal application, an equivalent amount of active
37 experience within the immediately preceding five years in the field in which
38 the applicant is applying for the broker's license, as a substitute for the
39 licensed active experience otherwise required in paragraphs 1, 2 and 3 of
40 this subsection. The licensed active experience required may be met if the
41 applicant can demonstrate to the commissioner's satisfaction that the
42 applicant has an equivalent amount of experience in the past five years that,
43 if the applicant had held a license, would have been sufficient to fulfill
44 the licensed experience requirement.

1 B. All applicants other than renewal applicants under section 32-2130
2 for a real estate salesperson's license shall show evidence satisfactory to
3 the commissioner that they have completed a real estate salesperson's course,
4 prescribed and approved by the commissioner, of at least ninety classroom
5 hours, or its equivalent, of instruction in a real estate school certified by
6 the commissioner and have satisfactorily passed an examination on the
7 course. In no case shall the real estate salesperson's course completion or
8 its equivalent be more than ten years before the date of application unless,
9 at the time of application, the commissioner determines in the commissioner's
10 discretion that the applicant has work experience in a real estate related
11 field and education that together are equivalent to the prelicensure
12 education requirement. The commissioner may waive all or a portion of the
13 prelicensure course requirement, other than the twenty-seven hour Arizona
14 specific course, for an applicant who holds a current real estate license in
15 another state.

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

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

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

35 1. An appropriate knowledge of the English language, including
36 reading, writing and spelling, and of arithmetical computations common to
37 real estate practices.

38 2. At a minimum, an understanding of the general purpose and legal
39 effect of any real estate practices, principles and related forms, including
40 agency contracts, real estate contracts, deposit receipts, deeds, mortgages,
41 deeds of trust, security agreements, bills of sale, land contracts of sale
42 and property management, and of any other areas that the commissioner deems
43 necessary and proper.

44 3. A ~~general~~ THOROUGH understanding of the obligations between
45 principal and agent, the principles of real estate and business opportunity

1 practice, the applicable canons of business ethics, the provisions of this
2 chapter and rules made under this chapter.

3 4. AN APPROPRIATE KNOWLEDGE OF OTHER REAL ESTATE PRACTICES AND
4 PRINCIPLES AS DETERMINED BY THE COMMISSIONER.

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

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

10 2. A general understanding of:

11 (a) Cemetery associations, cemetery corporations and duties of
12 cemetery directors and officers.

13 (b) Plot ownership, deeds, certificates of ownership, contracts of
14 sale, liens and leases.

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

17 (d) The provisions of this chapter and rules made under this chapter
18 relating to the organization and regulation of cemeteries and the licensing
19 and regulation of cemetery brokers and cemetery salespersons.

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

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

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

28 2. A general understanding of:

29 (a) The general purposes and legal effect of contracts and agency
30 contracts.

31 (b) Establishing, maintaining, managing and operating a membership
32 campground.

33 (c) The provisions of this chapter and rules adopted under this
34 chapter relating to the organization and regulation of membership campgrounds
35 and the licensing and regulation of membership camping brokers and membership
36 camping salespersons.

37 3. A general understanding of the obligations between principal and
38 agent and the canons of business ethics pertaining to the operation and
39 promotion of membership campgrounds.

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

1 I. The examination for a broker's license shall be more exacting and
2 stringent and of a broader scope than the examination for a salesperson's
3 license.

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

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

14 L. An applicant for an original real estate salesperson's license,
15 after completion of the requirements of subsection B of this section, shall
16 provide certification to the department at the time of application evidencing
17 completion of six hours of instruction in real estate contract law and
18 contract writing. This instruction shall include participation by the
19 applicant in the drafting of contracts to purchase real property, listing
20 agreements and lease agreements.

21 M. The commissioner shall not issue a license to a person who has been
22 convicted of a felony offense and who is currently incarcerated for the
23 conviction, paroled or under community supervision and under the supervision
24 of a parole or community supervision officer or who is on probation as a
25 result of the conviction.

26 Sec. 2. Title 32, chapter 20, article 2, Arizona Revised Statutes, is
27 amended by adding section 32-2124.01, to read:

28 32-2124.01. Salesperson education

29 A. WITHIN THE INITIAL TWO YEAR LICENSURE PERIOD, EACH REAL ESTATE
30 SALESPERSON SHALL COMPLETE TWENTY-FOUR CREDIT HOURS OF DESIGNATED DEPARTMENT
31 APPROVED EDUCATION COURSES THAT ADDRESS THE PRACTICAL APPLICATION OF REAL
32 ESTATE PRINCIPLES IN THE CONTEXT OF THE TRANSACTION, BASED ON EXAMPLES,
33 EXERCISES AND CASE STUDIES. THE TWENTY-FOUR CREDIT HOURS OF EDUCATION SHALL
34 APPLY TO THE LICENSEE'S CONTINUING EDUCATION REQUIREMENTS FOR THAT RENEWAL
35 PERIOD.

36 B. IF EDUCATION COURSES THAT ARE RELEVANT TO THE SALESPERSON'S REAL
37 ESTATE PRACTICE ARE NOT AVAILABLE, THE SALESPERSON SHALL COMPLETE AVAILABLE
38 COURSES THAT MOST CLOSELY MATCH THE SALESPERSON'S REAL ESTATE PRACTICE.

39 Sec. 3. Section 32-2135, Arizona Revised Statutes, is amended to read:

40 32-2135. Real estate schools; courses of study; instructors;
41 certification

42 A. Except as provided in section 32-4301, before offering a course of
43 study towards completion of the education requirement for real estate
44 licensure or renewal of licensure, a school shall obtain from the
45 commissioner a certificate of approval or renewal to operate a school for a

1 period of at least four years. A school shall also obtain a certificate of
2 course approval for each course offered for credit that is not currently
3 approved for another school. Each school is responsible for the content of
4 any course it offers and for the professional administration and teaching of
5 the course. Live classroom prelicensure education, live classroom continuing
6 education and distance learning continuing education courses are subject to
7 approval pursuant to this section.

8 B. Each approved school shall issue a certificate of real estate
9 course attendance to each person who completes an approved prelicensure or
10 continuing education course. An applicant for renewal of licensure as
11 provided by section 32-2130 shall file evidence of the certificates issued by
12 the school with the commissioner showing the number of credit hours and
13 course of study required for renewal.

14 C. The commissioner may withdraw or deny certification or approval of
15 real estate schools, educational courses or real estate instructors for any
16 acts inconsistent with the requirements of this chapter, including:

17 1. The commission of or the failure to report a violation by an
18 approved school or instructor of any provision of this chapter or rules
19 adopted pursuant to this chapter.

20 2. Improper certification of student attendance or performance.

21 3. Any act that is grounds for discipline under section 32-2153.

22 4. Teaching information or using course materials that have not been
23 approved by the commissioner.

24 5. Failing to attend any continuing education course required by the
25 commissioner.

26 6. Filing any false or misleading application, report or documentation
27 with the department.

28 7. TEACHING COURSE CONTENT THAT IS NOT CURRENT OR THAT HAS
29 SUBSTANTIALLY CHANGED FROM THE COURSE AS APPROVED.

30 D. A real estate school, through any owner, director, administrator,
31 instructor or other agent, shall not:

32 1. Offer a course of study for credit that is not approved by the
33 department, except that the school may advertise a course as pending approval
34 before its approval.

35 2. Promote or advertise the school using false or misleading
36 statistics or testimonials or any other form of deceptive advertisement.

37 E. The commissioner may determine minimal content requirements for
38 approving educational courses and appropriate professional qualifications for
39 approving instructors to teach individual educational courses.

40 F. At least thirty days before holding a course of study for
41 completion of the education requirements leading to licensure of real estate
42 applicants or for license renewal requirements, an application for a
43 certificate of course approval or renewal must be filed with the department.
44 For a live classroom course, the application shall include a course outline
45 with sufficient detail to clearly identify the scope and content of the

1 course. The outline shall state a desired instructional outcome for the
2 course. A prelicensure education course outline that is submitted for
3 approval shall be divided into estimated fifty minute instructional
4 segments. Course approval shall not be unreasonably withheld and shall not
5 be issued later than thirty days after filing with the department for a live
6 classroom course. A continuing education distance learning course approval
7 shall not be issued later than ninety days after filing with the
8 department. If the approvals under this subsection are not granted within
9 the time frames prescribed by this subsection, the course shall be
10 automatically approved on a provisional basis for one hundred eighty days,
11 unless the department has otherwise notified the applicant of specific
12 deficiencies or unfulfilled requirements for the course submission. A
13 provisional approval may be withdrawn by the department upon fifteen days'
14 advance notice if the department's review of the course subsequently reveals
15 course deficiencies or unfulfilled course requirements. If not withdrawn,
16 the course approval shall remain approved for the entire course approval
17 period. Course approval shall be for a period of at least four years if the
18 contents of the course remain current and substantially unchanged. The
19 course may not be taught if the content ceases to be current or is
20 substantially changed. The department may establish by rule additional
21 appropriate requirements for approval of a distance learning course.

22 G. For a currently approved course:

23 1. The school shall submit notice to the department at least fourteen
24 days before holding the course to permit department employees to monitor the
25 course. The notice is not otherwise subject to review and approval by the
26 department.

27 2. With the permission of the school that received original approval
28 for the course, another school that desires to offer the course is subject
29 only to the fourteen day notice requirement before holding the same course.
30 No additional review and approval by the department is required.

31 H. The department shall approve for continuing education credit any
32 course of study proposed by a real estate school if the course satisfies the
33 commissioner's requirements and is held in this state.

34 I. The department may approve for continuing education credit any
35 course of study proposed by a real estate school if the course satisfies the
36 commissioner's requirements and is held outside this state. Upon the
37 commissioner's request, the school shall either:

38 1. Provide the department with a videotape or videotapes of the
39 course.

40 2. Make arrangements that are approved by the department for
41 monitoring the course.

42 J. An instructor shall file with the department an application for
43 instructor approval or renewal. Instructor approval shall be for at least
44 four years from the date of approval and is subject to amendment during the
45 license period only if information material to the instructor's

1 qualifications has changed. A person holding instructor approval to teach
2 specific subject matter is not subject to additional or duplicate approval
3 requirements during the original approval period, except that an additional
4 instructor competency area may be added during the license period on
5 submission by the instructor of evidence of competency in such additional
6 competency area.

7 K. BEGINNING JANUARY 1, 2012, IN THE TWENTY-FOUR MONTHS BEFORE
8 APPLICATION, EACH INSTRUCTOR ORIGINAL OR RENEWAL APPLICANT, OTHER THAN A
9 PANELIST, GUEST SPEAKER OR OUT-OF-STATE INSTRUCTOR, SHALL ATTEND AT LEAST A
10 THREE HOUR PROFESSIONAL SEMINAR OR WORKSHOP, APPROVED BY THE DEPARTMENT,
11 EMPHASIZING INSTRUCTION METHODS, TECHNIQUES AND SKILLS. AT THE DISCRETION OF
12 THE COMMISSIONER THIS REQUIREMENT MAY BE WAIVED BASED ON INDIVIDUAL REQUEST
13 REVIEW.

14 ~~K.~~ L. The thirty day and fourteen day course filing time frames
15 prescribed in this section may be waived by the department for good cause
16 shown.

17 ~~L.~~ M. Unless subject to a violation or suspected violation listed in
18 subsection C of this section, the department's approval of a school, school
19 official, instructor or course shall be processed in a time frame consistent
20 with the time frames set forth in this section.

21 ~~M.~~ N. This section does not affect the department's ability to
22 withdraw or deny certification or approval of real estate schools, education
23 courses or real estate instructors for a violation of this chapter.

24 Sec. 4. Title 32, chapter 20, article 2, Arizona Revised Statutes, is
25 amended by adding section 32-2138, to read:

26 32-2138. Broker supervision course: definition

27 A. FOR THE INITIAL TWENTY-FOUR RENEWAL HOURS REQUIRED BY SECTION
28 32-2130, A SUPERVISING BROKER SHALL COMPLETE TWENTY-FOUR CREDIT HOURS OF
29 INSTRUCTION IN BROKER SUPERVISION, AS DETERMINED AND APPROVED BY THE
30 DEPARTMENT.

31 B. THE BROKER SUPERVISION COURSES SHALL BE REQUIRED ONLY ONCE FOR A
32 SUPERVISING BROKER AND SHALL COUNT TOWARD FULFILLMENT OF THE CONTINUING
33 EDUCATION REQUIREMENT PURSUANT TO SECTION 32-2130. THE COURSE SHALL INCLUDE
34 A WRITTEN TEST OF SUFFICIENT DIFFICULTY THAT A SEVENTY PER CENT PASS RATE
35 REFLECTS PROFICIENCY IN THE COURSE CONTENT.

36 C. THE DEPARTMENT SHALL DETERMINE THE INSTRUCTOR QUALIFICATIONS FOR
37 TEACHING THE BROKER SUPERVISION COURSE, EXCEPT THAT AN INSTRUCTOR SHALL BE
38 CURRENTLY APPROVED TO TEACH THE BROKER MANAGEMENT CLINIC AND MUST HAVE HELD
39 AN ACTIVE BROKER'S LICENSE PURSUANT TO THIS CHAPTER FOR AT LEAST THE LAST
40 FIVE YEARS.

41 D. A LICENSEE WHO IS A SUPERVISING BROKER ON THE EFFECTIVE DATE OF
42 THIS SECTION SHALL HAVE ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION TO
43 COMPLETE THE COURSE. A DELEGATED SUPERVISING BROKER FOR LESS THAN THIRTY
44 DAYS OR A DEPARTMENT APPOINTED BROKER IS EXEMPT FROM THIS REQUIREMENT.

1 E. FOR THE PURPOSES OF THIS SECTION, "SUPERVISING BROKER" MEANS A REAL
2 ESTATE DESIGNATED BROKER WHO HAS TWO OR MORE REAL ESTATE LICENSEES UNDER THE
3 BROKER'S SUPERVISION AND ANY LICENSEE DELEGATED THE AUTHORITY TO ACT ON
4 BEHALF OF A DESIGNATED BROKER PURSUANT TO SECTION 32-2127, SUBSECTION C OR D
5 OR SECTION 32-2151.01, SUBSECTION G.

6 Sec. 5. Section 32-2151.01, Arizona Revised Statutes, is amended to
7 read:

8 32-2151.01. Broker requirements; record keeping requirements;
9 definition

10 A. Each licensed employing broker shall keep records of all real
11 estate, cemetery, time-share or membership camping transactions handled by or
12 through the broker and shall keep employment records, including copies of
13 employment status, for all current and former employees. The records
14 required by this section shall include copies of earnest money receipts,
15 confirming that the earnest money has been handled in accordance with the
16 transaction, closing statements showing all receipts, disbursements and
17 adjustments, sales contracts and, if applicable, copies of employment
18 agreements. The records shall be open at all reasonable times for inspection
19 by the commissioner or the commissioner's representatives. The records of
20 each transaction and employment records shall be kept by the broker for a
21 period of at least five years from the date of the termination of the
22 transaction or employment. The records shall be kept in the employing
23 broker's principal office or licensed branch office in this state or at an
24 off-site storage location in this state if the broker provides prior written
25 notification of the street address of the off-site storage location to the
26 department.

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

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

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

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

41 F. Sales transaction folders shall include:

42 1. Confirmation that the earnest monies or other monies handled by or
43 through the broker were handled according to instructions given by or agreed
44 to by the parties to the transaction.

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

5 G. The designated broker shall review each listing agreement, purchase
6 or nonresidential lease agreement or similar instrument within ~~five~~ TEN
7 BUSINESS days of the date of execution by placing the broker's initials and
8 the date of review on the instrument on the same page as the signatures of
9 the parties. A designated broker may authorize in writing an associate
10 broker who the designated broker employs to review and initial these
11 instruments on the designated broker's behalf.

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

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

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

26 K. FOR THE PURPOSES OF THIS SECTION, "BUSINESS DAY" MEANS A DAY THAT
27 IS NOT A SATURDAY, A SUNDAY OR ANY OTHER LEGAL HOLIDAY IN THIS STATE.

28 Sec. 6. Effective date

29 Sections 32-2124.01 and 32-2138, Arizona Revised Statutes, as added by
30 this act, are effective from and after December 31, 2011.