Attached is the final report of the sunset review of the Arizona Department of Real Estate (ADRE), which was conducted by the Senate Commerce Committee of Reference. A performance audit of ADRE was conducted by the Office of the Auditor General (Report No. 21-102).

This report has been distributed to the following individuals and agencies:

Governor of the State of Arizona
The Honorable Douglas A. Ducey

President of the Senate
Senator Karen Fann

Speaker of the House of Representatives
Representative Russell Bowers

Senate Members
Senator J.D. Mesnard, Chair
Senator Sonny Borrelli
Senator Sean Bowie
Senator Rosanna Gabaldon
Senator Theresa Hatathlie
Senator David Livingston
Senator Tyler Pace
Senator Raquel Terán
Senator Michelle Ugenti-Rita

Arizona Department of Real Estate
Office of the Auditor General
Arizona State Library, Archives and Public Records

Senate Resource Center
Senate Republican Staff
Senate Democratic Staff
Senate Research Staff

Office of the Chief Clerk
House Republican Staff
House Democratic Staff
House Research Staff
Background

Pursuant to A.R.S. § 41-2953, the Joint Legislative Audit Committee assigned the sunset review of the Arizona Department of Real Estate (ADRE) to the Senate Commerce Committee of Reference and the House Commerce Committee of Reference.

ADRE was established in 1921 to ensure the safety and protection of Arizona citizens through licensure and regulation of the real estate profession in Arizona. The Governor must appoint a Commissioner to direct ADRE and a 10-member Real Estate Advisory Board to advise the Commissioner and provide an annual evaluation of the Department to the Governor.

ADRE licenses and regulates real estate, cemetery and membership camping brokers and salespersons and real estate schools and instructors. ADRE also regulates the sale of subdivided and unsubdivided lands, timeshares, membership campgrounds and cemeteries and administers the Homeowners Association Dispute Process (A.R.S. Title 32, Chapter 20).

ADRE is statutorily set to terminate on July 1, 2022, unless legislation is enacted for its continuation (A.R.S. § 41-3022.05).

Committee of Reference Sunset Review Activity

Pursuant to A.R.S. § 41-2954, the Senate Commerce Committee of Reference met on Wednesday, January 12, 2022, to review the Auditor General's Performance Audit and Sunset Review Report, consider ADRE's responses to the statutorily-outlined sunset factors and receive public testimony.

Committee of Reference Recommendations

The Senate Commerce Committee of Reference recommended that ADRE be continued for eight years until July 1, 2030.

Appendices

1. Meeting Notice
2. Minutes of the Senate Commerce Committee of Reference
   Attachment C: Presentation by the Office of the Auditor General
   Attachment D: Presentation by ADRE
3. ADRE's response to additional sunset factors
ARIZONA STATE SENATE

INTERIM MEETING NOTICE
OPEN TO THE PUBLIC

SENATE COMMERCE COMMITTEE OF REFERENCE

Date:       Wednesday, January 12, 2022
Time:       2:00 P.M. or Upon Adjournment of Floor
Place:      SHR 1

This meeting will be held via teleconference software. Members of the public may access a livestream of the meeting here:  https://www.azleg.gov/videoplayer/?clientID=6361162879&eventID=2022011012

AGENDA

1. Call to Order
2. Roll Call
3. Introductions
4. Sunset Review of the Arizona Commission on the Arts
   • Presentation by the Arizona Commission on the Arts
   • Public Testimony
   • Discussion and Recommendations
5. Sunset Review of the Arizona Department of Real Estate
   • Presentation by the Office of the Auditor General
   • Response by the Arizona Department of Real Estate
   • Public Testimony
   • Discussion and Recommendations
6. Sunset Review of the Arizona Office of Tourism
   • Presentation by the Office of the Auditor General
   • Response by the Arizona Office of Tourism
   • Public Testimony
   • Discussion and Recommendations
7. Sunset Review of the Arizona State Board of Funeral Directors and Embalmers
   • Presentation by the Office of the Auditor General
   • Response by the Arizona State Board of Funeral Directors and Embalmers
   • Public Testimony
   • Discussion and Recommendations
8. Adjourn
Members:

Senator J.D. Mesnard, Co-Chair
Senator Sonny Borrelli
Senator Sean Bowie
Senator Rosannna Gabaldon
Senator Theresa Hatathlie
Senator David Livingston
Senator Tyler Pace
Senator Raquel Terán
Senator Michelle Ugenti-Rita

04/06/2022
01/10/2022
sa
Is

For questions regarding this agenda, please contact Senate Research Department. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting the Senate Secretary’s Office: (602) 926-4231 (voice). Requests should be made as early as possible to allow time to arrange the accommodation.
ARPONNA STATE SENATE
SENATE COMMERCE COMMITTEE OF REFERENCE

Minutes of the Meeting
January 12, 2022
2:00 P.M., SHR 1

This meeting will be held via teleconference software.
Members of the public may access a livestream of the meeting here:
https://www.azleg.gov/videoplayer/?clientID=6361162879&eventID=2022011012

Members Present:
Senator J.D. Mesnard, Chair
Senator Sonny Borrelli
Senator Sean Bowie
Senator Rosanna Gabaldon
Senator Theresa Hatathlie
Senator David Livingston
Senator Tyler Pace
Senator Raquel Terán
Senator Michelle Ugenti-Rita

Staff:
Jason Theodorou, Senate Research Analyst

Chairman Mesnard called the meeting to order at 2:00 p.m. and attendance was noted.

INTRODUCTIONS

Senator Mesnard requested staff to introduce themselves as follows:

Jason Theodorou, Senate Research Analyst
Caila Young, Senate Research Intern
Ashton McGee, Democratic Staff Intern
Brooke White, Senior Policy Advisor, Majority Staff
Tracey Gardner, Committee Secretary
Evan Handeland, Senate Page
Alyssa Koury, Senate Page
Ava Brown, Senate Page
Natalie Murphy, Senate Page
SUNSET REVIEW OF THE ARIZONA COMMISSION ON THE ARTS

Presentation by the Arizona Commission on the Arts

Alex Nelson, Director, Arizona Commission on the Arts, distributed and provided an overview on a handout entitled "Arizona Commission on the Arts" (Attachment A).

Public Testimony

Carrie Kelly, Executive Director, Arizona Association for Economic Development, spoke in support of the Arizona Commission on the Arts.

Rose Ann Forte, representing self, spoke in support of the Arizona Commission on the Arts.

Dianne McCallister, representing Arizona Citizens for the Arts, spoke in support of the Arizona Commission on the Arts.

Ms. McCallister distributed a letter dated January 7, 2022 from Meals on Wheels (Attachment B) in support for the Arizona Commission on the Arts.

Discussion and Recommendations

Senator Mesnard requested a motion on the recommendation.

Senator Ugenti-Rita moved that the Senate Commerce Committee of Reference make the recommendation to continue the Arizona Commission on the Arts for eight years until July 1, 2030. The motion CARRIED by a voice vote.

SUNSET REVIEW OF THE ARIZONA DEPARTMENT OF REAL ESTATE

Presentation by the Office of the Auditor General

Marc Owen, Performance Audit Manager, Office of the Auditor General, distributed and explained a PowerPoint presentation entitled "Arizona Department of Real Estate" (Attachment C).

Response by the Arizona Department of Real Estate

Louis Dettorre, Commissioner, Arizona Department of Real Estate, distributed and explained a PowerPoint presentation entitled "Arizona Department of Real Estate Overview" (Attachment D).

Mr. Dettorre answered questions posed by the Committee.
Mr. Owen returned to the podium to answer questions posed by the Committee.

Public Testimony

No public testimony took place.

Discussion and Recommendations

Senator Mesnard requested a motion on the recommendation.

Senator Ugenti-Rita moved that the Senate Commerce Committee of Reference make the recommendation to continue the Arizona Department of Real Estate for eight years until July 1, 2030. The motion CARRIED by a voice vote.

Attached is a list noting the individuals who registered their position on the agenda items (Attachment E).

There being no further business, the meeting was adjourned at 2:36 p.m.

Respectfully submitted,

Tracey Gardner
Committee Secretary

(Audio recordings and attachments are on file in the Secretary of the Senate’s Office/Resource Center, Room 115. Audio archives are available at http://www.azleg.gov)
Arizona Department of Real Estate

Presenter: Marc Owen
Date: January 12, 2022

Department responsibilities

- Licensing of salespersons, brokers, and brokerages
  - 89,000 total licensees

- Complaint handling
  - 584 complaints

- Auditing brokerages
  - 140 audits
Problems identified

- Selection process did not ensure high-risk brokerages were audited
- Department audited some brokerages that did not meet its reported selection criteria
- Selection criteria were not documented

Department made improvements during audit

- Developed new audit selection process
- Documented risk factors
- Established an ongoing review of selection process
Key recommendations

- Use risk-based approach for selecting brokerages
- Evaluate selection process

Additional problems identified

- Did not investigate complaints in accordance with its policies and procedures
  - No supervisory review
- Did not consistently administer discipline
  - Did not use disciplinary matrix
Key recommendations

- Resolve complaints according to policy and procedure
- Modify policies and procedures to ensure supervisory review of all complaints and that staff use disciplinary matrix

Other recommendations

- Fee collection for subdivision inspections
- Confirm validity of fingerprint clearance cards
- Conflict-of-interest policies and procedures
Arizona Department of Real Estate

Presenter: Marc Owen
Date: January 12, 2022
ADRE Overview

The Department of Real Estate licenses and regulates real estate, cemetery and membership camping brokers and salespersons. It approves and monitors pre-licensing instruction, examinations, and continuing education courses. It maintains oversight of approved schools to ensure the quality content of their courses, the competence of their instructors, and the quality and timeliness of the materials being taught.

The Department oversees the activities of licensees, investigates complaints against licensees and land developers, participates in administrative hearings, and administers the Homeowners Association Dispute Process.

The Department also receives applications for the issuance of subdivision approvals and regulates the sale of subdivisions, unsubdivided lands, timeshares, condominiums, membership campgrounds and cemeteries.
ADRE Overview

<table>
<thead>
<tr>
<th></th>
<th>FY 2018</th>
<th>FY 2019</th>
<th>FY 2020</th>
<th>FY 2021</th>
<th>FY 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appropriation</td>
<td>$3,029,000</td>
<td>$2,911,700</td>
<td>$2,909,500</td>
<td>$2,907,600</td>
<td>$2,922,100</td>
</tr>
<tr>
<td>Revenue – GF Contribution</td>
<td>$3,877,929</td>
<td>$4,133,162</td>
<td>$3,845,385</td>
<td>$3,904,008</td>
<td>TBD</td>
</tr>
<tr>
<td>Avg. Filled FTE</td>
<td>31.25</td>
<td>26</td>
<td>27</td>
<td>25</td>
<td>25</td>
</tr>
</tbody>
</table>

Online Services Usage

Includes:
- Message Center – Public
- Licensee Login – Licensees
- Educator Portal – School Administrators
ADRE Overview

<table>
<thead>
<tr>
<th>Timeframes</th>
<th>Statute Allows</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original License</td>
<td>60 days</td>
<td>Avg. 1 day</td>
</tr>
<tr>
<td>Renewal License</td>
<td>60 days</td>
<td>Avg. 1 day</td>
</tr>
<tr>
<td>Entity</td>
<td>120 days</td>
<td>Avg. &lt; 5 days</td>
</tr>
<tr>
<td>Subdivision Public Report</td>
<td>100 days</td>
<td>Avg. 2 days</td>
</tr>
<tr>
<td>Amended Public Report</td>
<td>60 days</td>
<td>Avg. 3 days</td>
</tr>
</tbody>
</table>

The Department of Real Estate will continue to:
- Focus on implementing the remaining recommendations in progress
- Focus on delivering quality timely services to our customers
- Focus on improving online services available
- Focus on the Department’s statutory purpose to protect the public interest through licensure and regulation of the real estate profession in this state.
August 17, 2021

Representative Jeff Weninger
House Commerce Committee, Chair
Arizona State House of Representatives
1700 West Washington
Phoenix, Arizona 85007

Re: Arizona Department of Real Estate – Sunset Factors

Dear Representative Weninger,

The Arizona Department of Real Estate (ADRE) would like to thank the Committee of Reference in advance for its sunset review of the Department as required by Arizona law, and for providing the opportunity to provide answers to the sunset factors below.

1. An identification of the problem or the needs the agency is intended to address

The Arizona Department of Real Estate oversees the administration of licensing examinations and issuance of licenses, as well as the activities of licensees to ensure compliance with the Arizona Revised Statutes and the Commissioner’s Rules. Within the purview of the Department are builder/development regulation of the sale of subdivided and certain unsubdivided lands, timeshares, condominiums, membership campgrounds, and cemeteries, administration of the Homeowner’s Association Dispute Process, and conducting investigations of consumer complaints, and audits of real estate brokerages.

The Department also regulates real estate schools and educators, monitoring prelicensing and continuing education courses to ensure the quality of the content of courses and the competence of the instructors, as well as the quality and timeliness of materials being taught.

2. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of such agency and its anticipated accomplishments.

The broad objective of the agency is to professionally and efficiently license and regulate the real estate profession, issue public reports and other approvals to subdividers and homebuilders, and ensure the delivery of quality real estate education in order to protect the public from potential harm. Objectives and anticipated accomplishments include, but are not limited to the following:

- While averaging 519 new licensing applications each month in fiscal year 2021, we were able to process and approve them in an average of one day. Arizona has seen a 14% increase in total real estate licensees since June 2015. There are 90,484 total real estate licensees as of July 31, 2021. 484 salesperson and broker licenses have been approved through out-of-state license recognition from August 2019 to July 31, 2021.
• Fairly enforce existing regulation for the purpose of enhancing the protection of the public in their real estate transactions.

• Promote and enhance quality online services. The majority of services, such as renewing a real estate license, applying for an original license, transferring a license, and filing a complaint can be completed online through a licensee’s online personal page or through the online Message Center. Nearly 99% of individuals renew their license online. Nearly all developers/ homebuilders and real estate schools submit their applications online as well. The Department implemented the Online Licensing System (Licensee Personal Page) for applicants across the state to process original license applications, as well as other licensing services, so they would not have to drive to the office and/or wait for mailing delivery delays. The online Message Center allows real estate licensees and the public to submit applications and questions to all agency divisions, and provides them with a timely response from ADRE staff.

• Strengthen real estate education. Enhancing the educational opportunities and quality of the real estate licensees protects the public. As of June 30, 2021, there were 231 active real estate schools, 714 active instructors, and 2,325 active continuing education and pre-licensing courses available. In Fiscal Year 2021, approximately 10,435 salesperson, broker, and out-of-state license recognition examinations were provided to new applicants by the Department’s testing vendor, Pearson Vue.

• Complete investigations of complaints timely – The Department maintained an average of under 30 days to investigate complaints from the public and real estate licensees regarding real estate, land development transactions, illegal subdivisions, and real estate education.

• ADRE’s Development Services Division received over 1,100 applications last fiscal year, a ten-year high record, from developers and homebuilders providing housing to Arizonans. Where statutorily required timeframes allow for 100 days to approve the Public Reports required for subdivision communities, the agency was able to review and approve them in under two days on average.

• Continuing attitude of T.E.A.M. – Together Everyone Achieves More— with accountability to the department’s goals and objectives

3. An identification of any other agencies having similar, conflicting or duplicative objectives, and an explanation of the manner in which the agency avoids duplication or conflict with the other such agency.

There are no other state agencies that have similar, conflicting or duplicative objectives to the Arizona Department of Real Estate. There are other state agencies that are responsible for the licensing and regulation of professional industries i.e Arizona Department of Insurance and Financial Institutions and the Registrar of Contractors. While their overarching objective to protect the public is the same, the specific objectives of the agencies are different.

4. An assessment of the consequences of eliminating the agency or of consolidating it with another agency.

Eliminating the Arizona Department of Real Estate would eliminate the licensing requirement for over 90,000 real estate professionals in Arizona. This would eliminate any
original or renewal education requirement, and reduce accountability for when consumers are harmed. Eliminating the requirement for subdivision developers (six or more lots or parcels) would eliminate a critical consumer protection requirement found in the Public Disclosure Report. This consumer protection was put in place many years ago during a time when real estate professionals, and others, were selling land other than what was advertised, and without any disclosures.

The Association of Real Estate License Law Officials (ARELLO), an association comprised of representatives from state and global real estate jurisdictions that issue licenses or registrations in addition to regulating real estate practice and enforcing real estate law published a report titled "Is Real Estate Licensing Necessary?" The report noted the following: As early as 1912 states began to see the need to license real estate salespeople and brokers, and by 1950 two-thirds of the states had real estate license laws, and by the early 1970's all states had adopted license laws and implemented licensing for salespeople and brokers. Real estate requires considerable specialized knowledge. Applicants for real estate licenses must demonstrate proficiency in the principles and practices of the profession; state real estate and license law; professional standards; state agency law; real estate financing; real estate settlement procedures; escrow; responsibilities; state record-keeping requirements; government regulations applicable to real estate; the basics of real estate appraisal and a familiarity with state contract law. Real estate licensure imposes important fiduciary duties meant to minimize the danger of financial harm: The duty to fully disclose all material facts to the client; a duty to fully disclose all purchase offers to sellers; a duty to handle client information and affairs with loyalty and confidentiality; and the duty to act honestly and in good faith, and without self-dealing and conflicts of interest.

5. **The extent to which the agency potentially creates unexpected negative consequences that might require additional review by the committee of reference, including increasing the price of goods, affecting the availability of services, limiting the abilities of individuals to operate efficiently and increasing the cost of government.**

In 2009, the Arizona Department of Real Estate oversaw the licensure and regulation of approximately 90,000 real estate licensees while appropriated nearly $4.5 million, and had 72 FTEs. Today, the Department serves Arizona’s over 90,000 real estate licensees with 37 appropriated FTE’s (25 filled to date), and a stable budget of approximately $3 million for the past several fiscal years.

The Department does not see any area where unexpected negative consequences are created. Fees to obtain and renew a real estate license are among the lowest in the western United States, if not the lowest. There may be a misperception between licensing fees paid to the state through the Department, and service or membership fees paid to the local and state REALTOR® trade associations.

All fees received by the Department are deposited in the State General Fund. The Department is the only state agency with a 95/110 budget model which restricts the agency to collect between 95% and 110% of the total appropriation allocated to the Department.
If the legislature desired to suspend or eliminate this appropriation model to become more market dictated, the Department could potentially contribute more revenue to the General Fund. When there is an increase in new license applications and license renewals, fees must be adjusted down to reduce revenue. The Department has reduced or eliminated fees over the past many years to comply with the budget requirement, however, with a stable increase in licensees and limited options to reduce fees because of statutory fee minimums, compliance with the 95/110 will continue to be a challenge.

The Department does not increase the cost of government, as the revenues generated are greater than the appropriation allotted to the Department, thus making it a net contributor to the State General Fund.

6. The ability of the agency to timely investigate and resolve complaints within its jurisdiction.

The Department receives complaints from the public and real estate professionals alleging violations of Arizona real estate law. In fiscal year 2021, the Department received 376 complaints within the agency’s jurisdiction, with an average review and completion timeframe of approximately 26 days, below the agency goal of 30 days. Complaints received outside of the Department’s jurisdiction totaled 93, with a one day average response time. Forms and information about the complaint process are available online, and can be submitted through the online Message Center for Department review.

During fiscal year 2021, the Department completed within an average of 49 days, 138 Audits, with violations that had been reviewed by the Enforcement and Compliance Division.

Following an established and intentional management system to set timeframes and track metrics, the Department is able to oversee performance goals each month to manage the timely review and completion of complaint investigations and financial trust account audits.

1. The extent to which the occupational regulation meets the requirements of A.R.S. § 41-3502, as amended, transferred and renumbered by Laws 2021, Chapter 176.

The purchase of a home is likely the largest purchase an individual or family makes in their lifetime. At this time, there are over 90,000 real estate licensed professionals in the state of Arizona. While it is difficult to measure the number of Arizona residents that utilize the services of an Arizona real estate licensed professional, it is a safe assumption that most households have used these services. The general public expects that the real estate professional representing them in the purchase or sale of property is protecting them in their real estate transaction. A real estate licensee may drive clients in their vehicle to view homes, and has access to the key box that holds the key to their home. A buyer or seller, and general public place a high level of trust in the licensed real estate professional representing their interests.
The Department’s statutes outline the process to review and approve a real estate license, and the requirements of the individual licensee and entity to operate. The Department is often contacted, including through the complaint process, when the general public and real estate professionals are not certain their transaction was handled effectively, correctly, or if there was harm done.

Eliminating the Department would severely affect the public’s well-being, including financial interests, in real estate transactions, as there would be no accountability on the part of the agents to comply with the law and deal fairly with all parties in the real estate transaction. The Arizona laws, as they relate to real estate, are intended to ensure that the real estate licensees are knowledgeable, educated, and know what is required to represent, and protect the public in their transactions, and to be held accountable for their actions when they harm the consumer.

The Department receives anywhere between 400 and 700 complaints per year. These complaints come from individuals that allege that a real estate licensee has caused them financial harm, as well as, from other real estate professionals who are aware of unlawful practices occurring in the industry. The Department must exist in order to protect the unsuspecting public from licensees who have been proven to violate the law, and to prevent these licensees from further harming the public by their continued unlawful actions.

As described in question 5, the Department is a net contributor to the State General Fund, while maintaining the lowest licensing fees in the western United States. There are no private enterprises that perform similar, or duplicate functions as the Department. There are professional real estate trade organizations in Arizona that support members through resources and advocacy of real estate professionals.

2. The extent to which the failure to regulate a profession or occupation will result in:
   a. The loss of insurance.
      While the Department does not require real estate individuals or brokerages to carry errors and omissions insurance, many businesses and individuals elect to do so. Eliminating real estate licensure would likely impact an individual or brokerages ability to carry such insurance, or would raise costs.

   b. An impact to the ability to practice in other states or as required by federal law.
      An Arizona real estate license, and other approvals granted by the Arizona Department of Real Estate, are not requirements to practice real estate in another state.

   c. An impact to the required licensure or registration with the federal government.
      An Arizona real estate license, and other approvals granted by the Arizona Department of Real Estate, are not requirements with the federal government.
d. The loss of constitutionally afforded practices.
   No constitutionally afforded practices would be impacted to our knowledge.

If you have any questions, please feel free to contact me at (602) 771-7779 or jlowe@azre.gov, or Louis Dettorre, Deputy Commissioner, at (602) 771-7769 or ldeatorre@azre.gov.

Sincerely,

Judy Lowe
Commissioner

cc: Senator J.D. Mesnard, Senate Commerce Committee, Chair
Laura Benitez, Senate Commerce Committee, Analyst