

House Engrossed

escrow accounts; manufactured homes; requirements

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
First Regular Session  
2021

**CHAPTER 132**  
**HOUSE BILL 2446**

AN ACT

AMENDING SECTION 41-4030, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 37, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-4030.01; AMENDING SECTIONS 41-4042 AND 41-4043, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA DEPARTMENT OF HOUSING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-4030, Arizona Revised Statutes, is amended to  
3 read:

4 41-4030. Trust and escrow requirements for dealers that are  
5 not also owners of mobile home parks; rules;  
6 exemptions

7 A. Each dealer licensed pursuant to this article shall establish an  
8 independent escrow account with an independent financial institution or  
9 escrow agent authorized to handle such an account in this state as  
10 prescribed by title 6, chapter 7 or 8, for each transaction involving:

11 1. A new manufactured home.

12 2. A new factory-built building designed for use as a residential  
13 dwelling.

14 3. A manufactured home, mobile home or factory-built building  
15 designed for use as a residential dwelling that is previously owned and  
16 that has a purchase price of ~~fifty thousand dollars~~ \$50,000 or more.

17 B. For the purposes of subsection A of this section, a financial  
18 institution or escrow agent is independent if the individual or entity is  
19 not controlled by the licensee, a family member of the licensee or a  
20 business affiliated with the licensee and the licensee, family member or  
21 business affiliate does not have a majority interest in the financial  
22 institution or escrow agent.

23 ~~C. The owner of a mobile home park who also is or owns a dealership~~  
24 ~~licensed pursuant to this article to sell new units may sell a new~~  
25 ~~manufactured home or a new factory-built building designed for use as a~~  
26 ~~residential dwelling as a licensee without complying with subsection A of~~  
27 ~~this section if all of the following apply:~~

28 ~~1. The home will be sited in a mobile home park that is owned by~~  
29 ~~the park owner.~~

30 ~~2. At the time of the sale, the park owner has on file at the~~  
31 ~~department the name and address of all mobile home parks owned by the park~~  
32 ~~owner, the name, address and license number of the licensed dealership and~~  
33 ~~documentation showing to the satisfaction of the department that the park~~  
34 ~~owner either holds the license, owns a majority interest in the license or~~  
35 ~~is controlled by an entity that holds a controlling interest in the~~  
36 ~~license.~~

37 ~~3. At the time of the sale, the licensed dealership has posted with~~  
38 ~~the department a dealer bond in an amount of at least one hundred thousand~~  
39 ~~dollars in a form satisfactory to the department covering sales by parks~~  
40 ~~sharing common control.~~

41 ~~D.~~ C. Each dealer ~~who~~ THAT sells new manufactured homes or  
42 factory-built buildings designed for use as residential dwellings or a  
43 manufactured home, mobile home or factory-built building designed for use  
44 as a residential dwelling that is previously owned and that has a purchase  
45 price of less than ~~fifty thousand dollars~~ \$50,000 shall maintain a

1 licensee's trust account or open an escrow account with an independent  
2 financial institution or escrow agent located in this state and shall  
3 deposit all earnest ~~money~~ MONIES received for the sale of manufactured  
4 homes, mobile homes or factory-built buildings designed for use as  
5 residential dwellings in ~~such~~ THAT account. The department shall conduct  
6 an audit of each dealer's trust or escrow account, including any  
7 transactions with an independent escrow account, at least once every two  
8 years. A purchaser of a mobile home, used manufactured home or used  
9 factory-built building designed for use as a residential dwelling may  
10 request that the dealer establish an independent escrow account and if  
11 such a request is made in writing ~~no~~ NOT later than the time the purchase  
12 contract is signed, and the seller consents, the dealer shall comply with  
13 this subsection by complying with subsection A of this section. A  
14 licensee ~~handling~~ THAT HANDLES a transaction under this subsection shall  
15 disclose to the purchaser, in writing and before or at the time the  
16 purchaser signs the purchase contract, that the purchaser may request in  
17 writing the use of an independent escrow account, and that the transaction  
18 will otherwise be handled through a trust account controlled by the  
19 licensee.

20 ~~E.~~ D. All dealers shall notify the director in writing when the  
21 trust or escrow account has been established by indicating the name and  
22 number of the account and the name and location of the financial  
23 institution used.

24 ~~F.~~ E. The dealer, in writing, shall authorize the depository to  
25 release any and all information relative to trust or escrow accounts to  
26 the director or the director's agent, employee or deputy.

27 ~~G.~~ F. The dealer's earnest ~~money~~ MONIES receipt book shall reflect  
28 all earnest monies received and shall be at the minimum in duplicate and  
29 consecutively numbered.

30 ~~H.~~ G. All earnest monies shall be deposited in the escrow account  
31 or trust fund account ~~no~~ NOT later than the close of the second banking  
32 business day after receipt.

33 ~~I.~~ H. The terms or instructions for any escrow account opened  
34 under subsection A or ~~C~~ C of this section are deemed to be enforceable as  
35 part of the purchase contract. All parties to the purchase contract and  
36 the licensee shall sign the terms and instructions. If practicable, the  
37 escrow terms or instructions shall be included in the purchase contract or  
38 stated in an addendum to the purchase contract. The licensee shall  
39 provide a copy of the purchase contract to the escrow agent even if the  
40 escrow terms or instructions are contained in a separate document. The  
41 licensee shall promptly provide the escrow account information to all  
42 parties to the purchase contract once the account is opened.

- 1           ~~J.~~ I. At a minimum, the escrow terms or instructions shall  
2 contain:
- 3           1. Identification of the escrow agent with information containing  
4 at least the name, address and telephone number of the escrow agent.
- 5           2. All conditions or requirements that affect or pertain to closing  
6 the escrow account and disbursement of the monies in the escrow account.
- 7           3. Any conditions or requirements where monies are to be disbursed  
8 from the escrow account in advance of the escrow account being closed.
- 9           4. Any conditions or requirements where additional monies or  
10 documents must be deposited with an escrow agent after the escrow account  
11 is opened.
- 12           ~~K.~~ J. A dealer or broker may deposit and maintain up to ~~two~~  
13 ~~hundred dollars~~ \$200 in the trust account to offset service charges that  
14 may be assessed by the financial institution.
- 15           ~~L.~~ K. Every deposit into a trust account shall be made with a  
16 deposit slip that identifies each transaction as follows:
- 17           1. The amount of deposit.
- 18           2. The names of all parties involved in the transaction. All  
19 receipts for monies deposited in escrow shall be made accountable by  
20 containing the same information.
- 21           ~~M.~~ L. A complete record shall be retained by the dealer's or  
22 broker's office of all earnest monies received. The record shall contain  
23 provisions for entering:
- 24           1. The amount received.
- 25           2. From whom the ~~money was~~ MONIES WERE received.
- 26           3. The date of receipt.
- 27           4. The place of deposit.
- 28           5. The date of deposit.
- 29           6. The daily balance of the trust fund account deposit of each  
30 transaction.
- 31           7. When the transaction has been completed.
- 32           8. The date and payment for all goods and services the dealer has  
33 contracted to provide.
- 34           ~~N.~~ M. All earnest ~~money~~ MONIES deposited in the trust or escrow  
35 account shall be held in such account until one of the following is  
36 completed:
- 37           1. The consummation of sale.
- 38           2. The termination of sale, including a complete accounting of all  
39 monies.
- 40           ~~O.~~ N. On completion pursuant to subsection ~~N.~~ M of this section,  
41 the earnest ~~money~~ MONIES deposit shall be conveyed to the lending  
42 institution or the dealer, purchaser, seller, manufacturer or lienholder,  
43 whichever is applicable.

1           ~~P.~~ O. The dealer shall retain true copies of the purchase  
2 agreements, earnest ~~money~~ MONIES receipts, depository receipts, evidence  
3 of delivery documents and evidence of consummation of sale or termination  
4 of sale for a period of three years.

5           ~~Q.~~ P. The deposits referred to in this section shall not be used  
6 for any purpose other than the transaction for which they were provided.

7           ~~R.~~ Q. Notwithstanding any other provision of this section and  
8 except that this subsection does not apply to an independent escrow  
9 account established pursuant to subsection A of this section, before an  
10 event listed under subsection ~~N~~ M of this section is completed, a  
11 licensed dealer may release trust account earnest monies to pay for  
12 flooring or inventory for the unit that is the subject of the transaction  
13 for which the earnest monies were provided. A licensed dealer may  
14 release trust account earnest monies to pay other lawfully imposed interim  
15 loan amounts and charges imposed by a financial institution or other bona  
16 fide lender on the unit that is the subject of the transaction for which  
17 the earnest monies were provided. The dealer shall not make any payment  
18 out of trust account monies pursuant to this subsection unless done in  
19 compliance with all of the following:

20           1. The payment is made ~~no~~ NOT more than ten business days before  
21 the completion date pursuant to subsection ~~N~~ M of this section.

22           2. The payment is made directly to the financial institution or  
23 other bona fide lender.

24           3. The payment is recorded in the dealer's records under this  
25 section and documented by a receipt, a payment record or any other  
26 evidence from the financial institution or lender.

27           4. If the transaction is terminated, the dealer replaces the amount  
28 of the payment in the trust account within three business days after  
29 receiving written notification of the termination.  
30 This subsection does not affect any other rights or obligations between  
31 the purchaser and the licensed dealer.

32           ~~S.~~ R. The board shall adopt separate rules for dealer trust and  
33 escrow accounts trust and escrow accounts. At a minimum, these rules  
34 shall contain trust and escrow account requirements for the following:

- 35           1. Recordkeeping.  
36           2. Administration.  
37           3. Service fees or charges.  
38           4. Deposits.  
39           5. Advances or payments out of trust and escrow accounts.  
40           6. Closing or termination of sales transactions.  
41           7. Auditing or investigation of trust or escrow account complaints.

42           ~~T.~~ S. This section shall not apply to a real estate broker or  
43 salesperson licensed pursuant to section 32-2122 and pursuant to this  
44 article when the unit is sold in conjunction with real estate.

1           Sec. 2. Title 41, chapter 37, article 4, Arizona Revised Statutes,  
2 is amended by adding section 41-4030.01, to read:

3           41-4030.01. Trust and escrow requirements for dealers that  
4           are also owners of mobile home parks; rules

5           A. THE OWNER OF A MOBILE HOME PARK THAT ALSO IS OR THAT OWNS A  
6 DEALERSHIP LICENSED PURSUANT TO THIS ARTICLE TO SELL UNITS MAY SELL A  
7 MANUFACTURED HOME, MOBILE HOME OR A FACTORY-BUILT BUILDING DESIGNED FOR  
8 USE AS A RESIDENTIAL DWELLING AS A LICENSEE IF ALL OF THE FOLLOWING APPLY:

9           1. THE HOME WILL BE SITED IN A MOBILE HOME PARK THAT IS OWNED BY  
10 THE PARK OWNER.

11           2. AT THE TIME OF THE SALE, THE PARK OWNER HAS ON FILE AT THE  
12 DEPARTMENT THE NAME AND ADDRESS OF ALL MOBILE HOME PARKS OWNED BY THE PARK  
13 OWNER, THE NAME, ADDRESS AND LICENSE NUMBER OF THE LICENSED DEALERSHIP AND  
14 DOCUMENTATION SHOWING TO THE SATISFACTION OF THE DEPARTMENT THAT THE PARK  
15 OWNER EITHER HOLDS THE LICENSE, OWNS A MAJORITY INTEREST IN THE LICENSE OR  
16 IS CONTROLLED BY AN ENTITY THAT HOLDS A CONTROLLING INTEREST IN THE  
17 LICENSE.

18           3. AT THE TIME OF THE SALE, THE LICENSED DEALERSHIP HAS POSTED WITH  
19 THE DEPARTMENT A DEALER BOND IN AN AMOUNT OF AT LEAST \$150,000 IN A FORM  
20 SATISFACTORY TO THE DEPARTMENT COVERING SALES BY PARKS SHARING COMMON  
21 CONTROL.

22           4. AT THE TIME OF THE SALE, THE DEALER SHALL EITHER MAINTAIN A  
23 LICENSEE'S TRUST ACCOUNT OR OPEN AN ESCROW ACCOUNT WITH AN INDEPENDENT  
24 FINANCIAL INSTITUTION OR ESCROW AGENT LOCATED IN THIS STATE. THE LICENSEE  
25 SHALL DEPOSIT ALL EARNEST MONIES RECEIVED FOR THE SALE OF MANUFACTURED  
26 HOMES, MOBILE HOMES OR FACTORY-BUILT BUILDINGS DESIGNED FOR USE AS  
27 RESIDENTIAL DWELLINGS IN THE TRUST OR ESCROW ACCOUNT. THE DEPARTMENT  
28 SHALL CONDUCT AN AUDIT OF EACH DEALER'S TRUST OR ESCROW ACCOUNT, INCLUDING  
29 ANY TRANSACTIONS WITH AN INDEPENDENT ESCROW ACCOUNT, AT LEAST ONCE EVERY  
30 TWO YEARS. THE PURCHASER OF THE MANUFACTURED HOME, MOBILE HOME OR  
31 FACTORY-BUILT BUILDING DESIGNED FOR USE AS A RESIDENTIAL DWELLING MAY MAKE  
32 A WRITTEN REQUEST THAT THE DEALER ESTABLISH AN INDEPENDENT ESCROW ACCOUNT  
33 AND IF SUCH A REQUEST IS RECEIVED BY THE DEALER NO LATER THAN THE TIME THE  
34 PURCHASE CONTRACT IS SIGNED AND THE SELLER CONSENTS, THE DEALER SHALL  
35 COMPLY WITH THE REQUEST. A LICENSEE THAT HANDLES A TRANSACTION UNDER THIS  
36 PARAGRAPH SHALL DISCLOSE TO THE PURCHASER, IN WRITING AND BEFORE OR AT THE  
37 TIME THE PURCHASER SIGNS THE PURCHASE CONTRACT, THAT THE PURCHASER MAY  
38 REQUEST IN WRITING THE USE OF AN INDEPENDENT ESCROW ACCOUNT AND THAT THE  
39 TRANSACTION WILL OTHERWISE BE HANDLED THROUGH A TRUST ACCOUNT CONTROLLED  
40 BY THE LICENSEE.

41           B. FOR THE PURPOSES OF THIS SECTION, A FINANCIAL INSTITUTION OR  
42 ESCROW AGENT IS INDEPENDENT IF THE INDIVIDUAL OR ENTITY IS NOT CONTROLLED  
43 BY THE LICENSEE, A FAMILY MEMBER OF THE LICENSEE OR A BUSINESS AFFILIATED  
44 WITH THE LICENSEE AND THE LICENSEE, FAMILY MEMBER OR BUSINESS AFFILIATE

1 DOES NOT HAVE A MAJORITY INTEREST IN THE FINANCIAL INSTITUTION OR ESCROW  
2 AGENT.

3 Sec. 3. Section 41-4042, Arizona Revised Statutes, is amended to  
4 read:

5 41-4042. Funding and assessments

6 A. A dealer of manufactured homes, mobile homes or factory-built  
7 buildings designed for use as residential dwellings shall pay, in addition  
8 to the license or renewal fee, a fee established by the director of not to  
9 exceed ~~fifty dollars~~ \$50 for each unit that is sold and that is subject to  
10 section 41-4030, subsection ~~D~~ C, for deposit into the consumer recovery  
11 fund. The fee is payable to the department by the fifteenth day of the  
12 month following the month in which the sale is consummated.

13 B. Chapter 6 of this title does not apply to the setting of fees  
14 under this section.

15 C. An amount not to exceed seventy-five percent of the previous  
16 fiscal year's interest earned on the consumer recovery fund may be  
17 expended by the director, with the approval of the board. The expenditure  
18 shall be used for consumer and licensee education in connection with the  
19 manufactured housing and factory-built building industry, and all monies  
20 up to a maximum of ~~fifty thousand dollars~~ \$50,000 remaining unexpended and  
21 unencumbered at the end of each fiscal year may be used for consumer and  
22 licensee education in succeeding fiscal years and do not revert to the  
23 consumer recovery fund.

24 Sec. 4. Section 41-4043, Arizona Revised Statutes, is amended to  
25 read:

26 41-4043. Recovery from fund; claim against licensee;  
27 subrogation; appeal; statute of limitations

28 A. If any consumer who is buying or selling the consumer's home  
29 uses the services of a licensed dealer of manufactured homes, mobile homes  
30 or factory-built buildings designed for use as residential buildings and  
31 is damaged as a result of an act or omission by a licensed dealer of  
32 manufactured homes, mobile homes or factory-built buildings designed for  
33 use as residential buildings that constitutes a violation of section  
34 41-4030, or rules adopted pursuant to that section, and the sale is  
35 subject to section 41-4030, subsection ~~D~~ C, that consumer may file a  
36 claim with the department for payment from the consumer recovery fund.  
37 The claim shall be verified by the department.

38 B. If any consumer of manufactured homes, mobile homes or  
39 factory-built buildings designed for use as residential buildings is  
40 damaged by the failure of the principal to perform a sales agreement or to  
41 perform repairs under a warranty the consumer may file a claim with the  
42 department for payment from the consumer recovery fund. The claim shall  
43 be verified by the department.

44 C. On verification of the claim for payment, the director shall  
45 provide for a hearing pursuant to chapter 6, article 10 of this title.

1 D. The director shall pay from the consumer recovery fund whatever  
2 sum the administrative law judge finds payable on the claim. A decision  
3 granting a claim shall include an order suspending the license of the  
4 licensee on whose account the claim was filed. ~~Such a~~ THE license shall  
5 remain suspended until the licensee has repaid in full, plus interest at  
6 the rate of ten percent per year, the amount paid from the consumer  
7 recovery fund on the licensee's account.

8 E. Any party aggrieved by the administrative law judge's decision  
9 may apply for a rehearing by filing with the director a motion in writing  
10 pursuant to chapter 6, article 10 of this title. The filing of a motion  
11 for rehearing shall suspend the operation of the administrative law  
12 judge's order pending the decision of the director on the rehearing.

13 F. Except as provided in section 41-1092.08, subsection H, any  
14 person aggrieved by a final administrative decision may seek judicial  
15 review pursuant to title 12, chapter 7, article 6.

16 G. The consumer recovery fund has a claim against the licensee on  
17 whose account a claim was granted or any other person who caused or  
18 contributed to a claim paid by the consumer recovery fund for the amount  
19 paid plus costs, necessary expenses and reasonable attorney fees.

20 H. The director is subrogated to the claim of the consumer recovery  
21 fund against the bond and other assets of the licensee. The director  
22 shall deposit any amount recovered into the consumer recovery fund.

23 I. If, at any time, the money deposited in the consumer recovery  
24 fund is insufficient to satisfy any duly authorized claim or portion of a  
25 claim, the director, when sufficient money has been deposited in the  
26 consumer recovery fund, shall satisfy such unpaid claims or portions of  
27 claims in the order that such claims or portions of claims were originally  
28 filed.

29 J. A consumer pursuant to subsection A or B of this section is  
30 barred from commencing an application for payment from the consumer  
31 recovery fund later than two years from the date of sale or date of  
32 installation, whichever is later.

APPROVED BY THE GOVERNOR MARCH 26, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 26, 2021.