

House Engrossed

real estate licensees; employers; compensation

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HOUSE BILL 2172

AN ACT

AMENDING SECTIONS 32-2101, 32-2153 AND 32-2155, 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 32-2101, 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~~ ATTEMPTING by publication,
9 dissemination, exhibition, solicitation or circulation, oral or written,
10 or for broadcast on radio or television to induce directly or indirectly
11 any person to enter into any obligation or acquire any title or interest
12 in lands subject to this chapter, including the land sales contract to be
13 used and any photographs, drawings or artist's presentations of physical
14 conditions or facilities existing or to exist on the property.
15 Advertising does not include:

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

21 (b) Communications to stockholders as follows:

22 (i) Annual reports and interim financial reports.

23 (ii) Proxy materials.

24 (iii) Registration statements.

25 (iv) Securities prospectuses.

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

27 (vi) Prospectuses.

28 (vii) Property reports.

29 (viii) Offering statements.

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

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

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

40 6. "Blanket encumbrance":

41 (a) Means EITHER:

42 (i) Any mortgage, any deed of trust or any other encumbrance or
43 lien ~~securing~~ THAT SECURES or ~~evidencing~~ EVIDENCES the payment of ~~money~~
44 MONIES and ~~affecting~~ THAT AFFECTS more than one lot or parcel of
45 subdivided land. ~~, or~~

1 (ii) An agreement ~~affecting~~ THAT AFFECTS more than one lot or
2 parcel by which the subdivider holds the subdivision under an option,
3 contract to sell or trust agreement. ~~Blanket encumbrance~~

4 (b) Does not include taxes and assessments that are levied by
5 public authority.

6 7. "Board" means the ~~state~~ real estate advisory board.

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

10 9. "Business broker" means a real estate broker who acts as an
11 intermediary or agent between sellers or buyers, or both, in the sale or
12 purchase, or both, of businesses or business opportunities where a lease
13 or sale of real property is either a direct or incidental part of the
14 transaction.

15 10. "Camping site" means a space that is designed and promoted for
16 the purpose of locating any trailer, tent, tent trailer, pickup camper or
17 other similar device used for camping.

18 11. "Cemetery" or "cemetery property" means any one, or a
19 combination of more than one, of the following in a place that is used, or
20 intended to be used, and dedicated for cemetery purposes:

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

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

23 (c) A crematory, or a crematory and columbarium, for cinerary
24 interments.

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

27 12. "Cemetery broker" means a person other than a real estate
28 broker or real estate salesperson who, for another, for compensation:

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

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

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

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

38 13. "Cemetery salesperson" means a natural person who acts on the
39 person's own behalf or through and on behalf of a professional limited
40 liability company or a professional corporation engaged by or on behalf of
41 a licensed cemetery or real estate broker, or through and on behalf of a
42 corporation, partnership or limited liability company that is licensed as
43 a cemetery or real estate broker, to perform any act or transaction
44 included in the definition of cemetery broker.

45 14. "Commissioner" means the state real estate commissioner.

1 15. "Common promotional plan" means a plan, undertaken by a person
2 or a group of persons acting in concert, to offer lots for sale or lease.
3 If the land is offered for sale by a person or group of persons acting in
4 concert, and the land is contiguous or is known, designated or advertised
5 as a common unit or by a common name, the land is presumed, without regard
6 to the number of lots covered by each individual offering, as being
7 offered for sale or lease as part of a common promotional plan. Separate
8 subdividers selling lots or parcels in separately platted subdivisions
9 within a master planned community shall not be deemed to be offering their
10 combined lots for sale or lease as part of a common promotional plan.

11 16. "Compensation" means any fee, commission, salary, ~~money~~ MONIES
12 or other valuable consideration for services rendered or to be rendered as
13 well as the promise of consideration whether contingent or not.

14 17. "Contiguous":

15 (a) Means lots, parcels or fractional interests that share a common
16 boundary or point.

17 (b) DOES NOT INCLUDE lots, parcels or fractional interests ~~are not~~
18 ~~contiguous if they~~ THAT are separated by either of the following:

19 ~~(a)~~ (i) A barrier.

20 ~~(b)~~ (ii) A road, street or highway that has been established by
21 this state or by any agency or political subdivision of this state, that
22 has been designated by the federal government as an interstate highway or
23 that has been regularly maintained by this state or by any agency or
24 political subdivision of this state and has been used continuously by the
25 public for at least the last five years.

26 18. "Control" or "controlled" means a person who, through
27 ownership, voting rights, power of attorney, proxy, management rights,
28 operational rights or other rights, has the right to make decisions
29 binding on an entity, whether a corporation, a partnership or any other
30 entity.

31 19. "Corporation licensee" means a lawfully organized corporation
32 that is registered with the Arizona corporation commission and that has an
33 officer licensed as the designated broker pursuant to section 32-2125.

34 20. "Department" means the state real estate department.

35 21. "Designated broker" means ~~the~~ A natural person who is licensed
36 as a broker under this chapter and who is either:

37 (a) Designated to act on behalf of an employing real estate,
38 cemetery or membership camping entity.

39 (b) Doing business as a sole proprietor.

40 22. "Developer":

41 (a) Means a person who offers real property in a development for
42 sale, lease or use, either immediately or in the future, on the person's
43 own behalf or on behalf of another person, under this chapter. ~~Developer~~

1 (b) Does not include a person whose involvement with a development
2 is limited to ~~the~~ listing ~~of~~ property within the development for sale,
3 lease or use.

4 23. "Development" means any division, proposed division or use of
5 real property that the department has authority to regulate, including
6 subdivided and unsubdivided lands, cemeteries, condominiums, timeshares,
7 membership campgrounds and stock cooperatives.

8 24. "Employing broker" means a person who is licensed or is
9 required to be licensed as a:

10 (a) Broker entity pursuant to section 32-2125, subsection A.

11 (b) Sole proprietorship if the sole proprietor is a broker licensed
12 pursuant to this chapter.

13 25. "Fractional interest" means an undivided interest in improved
14 or unimproved land, lots or parcels of any size created for the purpose of
15 sale or lease and evidenced by any receipt, certificate, deed or other
16 document conveying the interest. Undivided interests in land, lots or
17 parcels created in the names of a husband and wife as community property,
18 joint tenants or tenants in common, or in the names of other persons who,
19 acting together as part of a single transaction, acquire the interests
20 without a purpose to divide the interests for present or future sale or
21 lease shall be deemed to constitute only one fractional interest.

22 26. "Improved lot or parcel" means a lot or parcel of a subdivision
23 on which there is a residential, commercial or industrial building or
24 concerning which a contract has been entered into between a subdivider and
25 a purchaser that obligates the subdivider directly, or indirectly through
26 a building contractor, to completely construct a residential, commercial
27 or industrial building on the lot or parcel within two years after the
28 date on which the contract of sale for the lot is entered into.

29 27. "Inactive license" means a license that is issued pursuant to
30 article 2 of this chapter to a licensee who is on inactive status during
31 the current license period and who is not engaged by or on behalf of a
32 broker.

33 28. "Lease" or "leasing" includes any lease, whether it is the
34 sole, the principal or any incidental part of a transaction.

35 29. "License" means the whole or part of any agency permit,
36 certificate, approval, registration, public report, charter or similar
37 form of permission required by this chapter.

38 30. "Licensee" means a person to whom a license for the current
39 license period has been granted under any provision of this chapter, and,
40 for the purposes of section 32-2153, subsection A, includes original
41 license applicants.

42 31. "License period" means the two-year period beginning with the
43 date of original issue or renewal of a particular license and ending on
44 the expiration date, if any.

1 32. "Limited liability company licensee" means a lawfully organized
2 limited liability company that has a member or manager who is a natural
3 person and who is licensed as the designated broker pursuant to section
4 32-2125.

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

10 34. "Master planned community" means a development that consists of
11 two or more separately platted subdivisions and that is either subject to
12 a master declaration of covenants, conditions or restrictions, is subject
13 to restrictive covenants sufficiently uniform in character to clearly
14 indicate a general scheme for improving or developing real property or is
15 governed or administered by a master owner's association.

16 35. "Member" means a member of the real estate advisory board.

17 36. "Membership camping broker" means a person, other than a
18 salesperson, who, for compensation:

19 (a) Sells, purchases, lists, exchanges or leases membership camping
20 contracts.

21 (b) Offers to sell, purchase, exchange or lease membership camping
22 contracts.

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

25 (d) Advertises or holds himself out as being engaged in the
26 business of selling, buying, exchanging or leasing membership camping
27 contracts or counseling or advising regarding membership camping
28 contracts.

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

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

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

38 38. "Membership camping operator":

39 (a) Means an enterprise, other than one that is tax exempt under
40 section 501(c)(3) of the internal revenue code of 1986, as amended, that
41 solicits membership paid for by a fee or periodic payments and has as one
42 of its purposes camping or outdoor recreation, including the use of
43 camping sites primarily by members. ~~Membership camping operator~~

1 (b) Does not include camping or recreational trailer parks that are
2 open to the general public and that contain camping sites rented for a per
3 use fee or a mobile home park.

4 39. "Membership camping salesperson" means a natural person who
5 acts on the person's own behalf or through and on behalf of a professional
6 limited liability company or a professional corporation engaged by or on
7 behalf of a licensed membership camping or real estate broker, or by or on
8 behalf of a corporation, partnership or limited liability company that is
9 licensed as a membership camping or real estate broker, to perform any act
10 or participate in any transaction in a manner included in the definition
11 of membership camping broker.

12 40. "Online course" means prelicensure education that is a planned
13 learning experience with a geographic separation that may be synchronous
14 or asynchronous, that does not require real-time interaction between a
15 student and an instructor and that uses a platform with self-paced or
16 prerecorded lessons and materials that a student can access via the
17 internet to proceed at the student's own pace.

18 41. "Partnership licensee" means a partnership with a managing
19 general partner who is licensed as the designated broker pursuant to
20 section 32-2125.

21 42. "Permanent access", as required under article 4 of this
22 chapter, means permanent access from the subdivision to any federal, state
23 or county highway.

24 43. "Perpetual care" or "endowed care":

25 (a) Means maintaining and caring, in all places where interments
26 have been made, for the trees, shrubs, roads, streets and other
27 improvements and embellishments contained within or forming a part of the
28 cemetery. ~~But~~

29 (b) Does not include maintaining or repairing monuments, tombs,
30 copings or other man-made ornaments as associated with individual burial
31 spaces.

32 44. "Perpetual or endowed-care cemetery" means a cemetery in which
33 lots or other burial spaces are sold or transferred under the
34 representation that the cemetery will receive perpetual care or endowed
35 care free of further cost to the purchaser after payment of the original
36 purchase price for the lot, burial space or interment right.

37 45. "Person" means any individual, corporation, partnership or
38 company and any other form of multiple organization for carrying on
39 business, foreign or domestic.

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

1 47. "Promotion" or "promotional practice" means advertising and any
2 other act, practice, device or scheme to induce directly or indirectly any
3 person to enter into any obligation or acquire any title or interest in or
4 use of real property subject to this chapter, including meetings with
5 prospective purchasers, arrangements for prospective purchasers to visit
6 real property, travel allowances and discount, exchange, refund and
7 cancellation privileges.

8 48. "Real estate" includes leasehold-interests and any estates in
9 land as defined in title 33, chapter 2, articles 1 and 2, regardless of
10 whether located in this state.

11 49. "Real estate broker" means a person, other than a salesperson,
12 who, for another and for compensation:

13 (a) Sells, exchanges, purchases, rents or leases real estate,
14 businesses and business opportunities or timeshare interests.

15 (b) Offers to sell, exchange, purchase, rent or lease real estate,
16 businesses and business opportunities or timeshare interests.

17 (c) Negotiates or offers, attempts or agrees to negotiate the sale,
18 exchange, purchase, rental or leasing of real estate, businesses and
19 business opportunities or timeshare interests.

20 (d) Lists or offers, attempts or agrees to list real estate,
21 businesses and business opportunities or timeshare interests for sale,
22 lease or exchange.

23 (e) Auctions or offers, attempts or agrees to auction real estate,
24 businesses and business opportunities or timeshare interests.

25 (f) Buys, sells, offers to buy or sell or otherwise deals in
26 options on real estate, businesses and business opportunities or timeshare
27 interests or improvements to real estate, businesses and business
28 opportunities or timeshare interests.

29 (g) Collects or offers, attempts or agrees to collect rent for the
30 use of real estate, businesses and business opportunities or timeshare
31 interests. This subdivision does not apply to a person who is not a
32 licensee, who works for a real estate broker or a real estate salesperson,
33 who collects in-person rent and related fees on behalf of the real estate
34 broker or real estate salesperson for the use of real estate as part of
35 the person's clerical duties and who provides a receipt when rent is paid.

36 (h) Advertises or holds himself out as being engaged in the
37 business of buying, selling, exchanging, renting or leasing real estate,
38 businesses and business opportunities or timeshare interests or counseling
39 or advising regarding real estate, businesses and business opportunities
40 or timeshare interests.

41 (i) Assists or directs in procuring prospects that are calculated
42 to result in the sale, exchange, leasing or rental of real estate,
43 businesses and business opportunities or timeshare interests.

1 (j) Assists or directs in negotiating any transaction calculated or
2 intended to result in the sale, exchange, leasing or rental of real
3 estate, businesses and business opportunities or timeshare interests.

4 (k) Incident to the sale of real estate, businesses and business
5 opportunities negotiates or offers, attempts or agrees to negotiate a loan
6 secured or to be secured by any mortgage or other encumbrance on or
7 transfer of real estate, businesses and business opportunities or
8 timeshare interests subject to section 32-2155, subsection ~~C~~ D. This
9 subdivision does not apply to mortgage brokers as defined in and subject
10 to title 6, chapter 9, article 1.

11 (l) Engages in the business of assisting or offering to assist
12 another in filing an application for the purchase or lease of, or in
13 locating or entering on, lands owned by the state or federal government.

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

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

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

34 (p) Acts as a business broker.

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

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

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

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

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

14 55. "Stock cooperative" means a corporation to which all of the
15 following apply:

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

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

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

24 56. "Subdivider":

25 (a) Means any person who offers for sale or lease six or more lots,
26 parcels or fractional interests in a subdivision or who causes land to be
27 subdivided into a subdivision for the subdivider or for others, or who
28 undertakes to develop a subdivision. ~~, but~~

29 (b) Does not include a public agency or officer authorized by law
30 to create subdivisions.

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

32 (a) Means improved or unimproved land or lands divided or proposed
33 to be divided for the purpose of sale or lease, whether immediate or
34 future, 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
37 as 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
41 state into lots or parcels each of which is or will be thirty-six acres or
42 more in area including to the centerline of dedicated roads or easements,
43 if any, contiguous to the lot or parcel.

1 (iii) The leasing of agricultural lands or apartments, offices,
2 stores, hotels, motels, pads or similar space within an apartment
3 building, industrial building, rental recreational vehicle community,
4 rental manufactured home community, rental mobile home park or commercial
5 building.

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

9 (v) A sale or lease of a lot, parcel or fractional interest that
10 occurs ten or more years after the sale or lease of another lot, parcel or
11 fractional interest if the other lot, parcel or fractional interest is not
12 subject to this article and is treated as an independent parcel unless, on
13 investigation by the commissioner, there is evidence of intent to
14 subdivide.

15 58. "Timeshare" or "timeshare property" means real property
16 ownership or right of occupancy in real property pursuant to article 9 of
17 this chapter. For the purposes of this chapter, a timeshare is not a
18 security unless it meets the definition of a security under section
19 44-1801.

20 59. "Trustee":

21 (a) Means:

22 ~~(a)~~ a person who EITHER:

23 (i) Is designated under section 32-2194.27 to act as a trustee for
24 an endowment-care cemetery fund.

25 ~~(b) A person holding~~

26 (ii) HOLDS bare legal title to real property under a subdivision
27 trust. ~~A trustee shall~~

28 (b) DOES not ~~be deemed to be~~ INCLUDE a developer, subdivider,
29 broker or salesperson within this chapter.

30 60. "Unimproved lot or parcel" means a lot or parcel of a
31 subdivision that is not an improved lot or parcel.

32 61. "Unsubdivided lands":

33 (a) Means land or lands divided or proposed to be divided for the
34 purpose of sale or lease, whether immediate or future, into six or more
35 lots, parcels or fractional interests and the lots or parcels are
36 thirty-six acres or more each but less than one hundred sixty acres each,
37 or that are offered, known or advertised under a common promotional plan
38 for sale or lease, except that agricultural leases shall not be included
39 in this definition.

40 (b) Includes any land that is sold and that would otherwise
41 constitute the sixth lot, parcel or fractional interest if the sale occurs
42 ten or more years after the earliest of the previous five sales and if all
43 of the sales consist of property that was originally contained within the
44 same parcel that is thirty-six acres or more and less than one hundred
45 sixty acres.

1 Sec. 2. Section 32-2153, Arizona Revised Statutes, is amended to
2 read:

3 32-2153. Grounds for denial, suspension or revocation of
4 licenses; letters of concern; provisional license;
5 retention of jurisdiction by commissioner;
6 definitions

7 A. The commissioner may suspend or revoke a license, deny the
8 issuance of a license, issue a letter of concern to a licensee, issue a
9 provisional license or deny the renewal or the right of renewal of a
10 license issued under this chapter if it appears that the holder or
11 applicant, within five years immediately preceding, in ~~the performance of~~
12 **PERFORMING** or ~~attempt~~ **ATTEMPTING** to perform any acts authorized by the
13 license or by this chapter, has:

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

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

19 3. Disregarded or violated any of the provisions of this chapter or
20 any rules adopted by the commissioner.

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

27 5. Knowingly used the term "real estate broker", "cemetery broker"
28 or "membership camping broker" without **THE** legal right to do so.

29 6. Employed any unlicensed salesperson or unlicensed associate
30 broker.

31 7. Accepted compensation as a licensee for ~~the performance of~~
32 **PERFORMING** any of the acts specified in this chapter from any person ~~other~~
33 ~~than the licensed broker to whom the licensee is licensed, the licensed~~
34 ~~professional corporation of which the licensee is an officer and~~
35 ~~shareholder or the licensed professional limited liability company of~~
36 ~~which the licensee is a member or manager~~ **WHO IS NOT AUTHORIZED TO PROVIDE**
37 **COMPENSATION PURSUANT TO SECTION 32-2155.**

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

40 9. Failed, within a reasonable time, to account for or to remit any
41 monies, to surrender to the rightful owner any documents or other valuable
42 property ~~coming~~ **THAT COMES** into the licensee's possession and that belongs
43 to others, or to issue an appraisal report on real property or cemetery
44 property in which the licensee has an interest, unless the nature and
45 extent of the interest are fully disclosed in the report.

- 1 10. Paid or received any rebate, profit, compensation or commission
2 in violation of this chapter.
- 3 11. Induced any party to a contract to break the contract for the
4 purpose of substituting a new contract with the same or a different
5 principal, if the substitution is motivated by the personal gain of the
6 licensee.
- 7 12. Placed a sign on any property offering it for sale or for rent
8 without the written authority of the owner or the owner's authorized
9 agent.
- 10 13. Solicited, either directly or indirectly, prospects for the
11 sale, lease or use of real property, cemetery property or membership
12 camping contracts through a promotion of a speculative nature involving a
13 game of chance or risk or through conducting lotteries or contests that
14 are not specifically authorized under this chapter.
- 15 14. Failed to pay to the commissioner the renewal fee as specified
16 in this chapter promptly and before the time specified.
- 17 15. Failed to keep an escrow or trust account or other record of
18 ~~funds~~ MONIES deposited with the licensee relating to a real estate
19 transaction.
- 20 16. Commingled the ~~money~~ MONIES or other property of the licensee's
21 principal or client with the licensee's own or converted ~~that money~~ THESE
22 MONIES or property to the licensee or another.
- 23 17. Failed or refused ~~upon~~ ON demand to produce any document,
24 contract, book, record, information, compilation or report that is in the
25 licensee's possession or that the licensee is required by law to maintain
26 concerning any real estate, cemetery or membership camping business,
27 services, activities or transactions involving or conducted by the
28 licensee for inspection by the commissioner or the commissioner's
29 representative.
- 30 18. Failed to maintain a complete record of each transaction ~~which~~
31 THAT comes within this chapter.
- 32 19. Violated the federal fair housing law, the Arizona civil rights
33 law or any local ordinance of a similar nature.
- 34 20. Tendered to a buyer a wood infestation report in connection
35 with the transfer of residential real property or an interest in
36 residential real property knowing that wood infestation exists or that the
37 wood infestation report was inaccurate or false as of the date of the
38 tender or that an inspection was not done in conjunction with the
39 preparation of the wood infestation report.
- 40 21. As a licensed broker, failed to exercise reasonable supervision
41 over the activities of salespersons, associate brokers or others under the
42 broker's employ or failed to exercise reasonable supervision and control
43 over the activities for which a license is required of a corporation,
44 limited liability company or partnership on behalf of which the broker
45 acts as designated broker under section 32-2125.

- 1 22. Demonstrated negligence in performing any act for which a
2 license is required.
- 3 23. Sold or leased a property to a buyer or lessee that was not the
4 property represented to the buyer or lessee.
- 5 24. Violated any condition or term of a commissioner's order.
- 6 25. Signed the name of another person on any document or form
7 without the express written consent of the person.
- 8 26. As a licensed school, failed to exercise reasonable supervision
9 over the activities for which a license is required for an owner,
10 director, administrator or instructor in the school's employ.
- 11 B. The commissioner may suspend or revoke a license, deny the
12 issuance of a license, issue a letter of concern to a licensee, issue a
13 provisional license or deny the renewal or the right of renewal of a
14 license issued under this chapter ~~when~~ IF it appears that the holder or
15 applicant has:
 - 16 1. Procured or attempted to procure a license under this chapter
17 for the holder or applicant or another by fraud, misrepresentation or
18 deceit, ~~or~~ or by filing an original or renewal application ~~which~~ THAT is
19 false or misleading.
 - 20 2. Been convicted in a court of competent jurisdiction in this or
21 any other state of a felony or of any crime of forgery, theft, extortion,
22 conspiracy to defraud, a crime of moral turpitude or any other like
23 offense.
 - 24 3. Made any substantial misrepresentation.
 - 25 4. Made any false promises of a character likely to influence,
26 persuade or induce.
 - 27 5. Been guilty of any conduct, whether of the same or a different
28 character than specified in this section, ~~which~~ THAT constitutes fraud or
29 dishonest dealings.
 - 30 6. Engaged in the business of a real estate **BROKER**, cemetery **BROKER**
31 or membership camping broker or real estate, cemetery or membership
32 camping salesperson without holding a license as prescribed in this
33 chapter.
 - 34 7. Not shown that the holder or applicant is a person of honesty,
35 truthfulness and good character.
 - 36 8. Demonstrated incompetence to perform any duty or requirement of
37 a licensee under or arising from this chapter. For the purposes of this
38 paragraph, "incompetence" means a lack of basic knowledge or skill
39 appropriate to the type of license the person holds or a failure to
40 appreciate the probable consequences of the licensee's action or inaction.
 - 41 9. Violated the terms of any criminal or administrative order,
42 decree or sentence.
 - 43 10. Violated any federal or state law, regulation or rule that
44 relates to real estate or securities or that involves forgery, theft,
45 extortion, fraud, substantial misrepresentation, dishonest dealings or

1 violence against another person or failure to deal fairly with any party
2 to a transaction that materially and adversely affected the transaction.
3 This paragraph applies equally to violations of which the licensee was
4 convicted in any lawful federal or state tribunal and to any admissions
5 made in any settlement agreement by the licensee to violations.

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

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

13 D. The commissioner may deny, suspend or revoke the issuance of a
14 license ~~upon~~ ON application by a corporation, a limited liability company
15 or a partnership if it appears that an owner, officer, director, member,
16 manager, partner, stockholder owning ten ~~per cent~~ PERCENT or more of the
17 stock in the corporation or limited liability company or person exercising
18 control of the entity is a current or former licensee whose license as a
19 broker or a salesperson has been denied, suspended or revoked.

20 E. The lapsing or suspension of a license by operation of law or by
21 order or decision of the commissioner or a court of law or the voluntary
22 surrender of a license by a licensee ~~shall~~ DOES not deprive the
23 commissioner of jurisdiction to do any of the following:

24 1. Proceed with any investigation of or action or disciplinary
25 proceeding against the licensee.

26 2. Render a decision suspending or revoking the license, ~~or~~
27 denying the renewal or right of renewal of the license.

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

29 F. For the purposes of this section:

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

35 2. "Provisional license" means a license that the department issues
36 and that allows a licensee to practice subject to either a consent order
37 as prescribed in section 32-2153.01 or the commissioner's terms,
38 conditions and restrictions.

39 Sec. 3. Section 32-2155, Arizona Revised Statutes, is amended to
40 read:

41 32-2155. Restriction on employment or compensation of person
42 as broker or salesperson

43 A. A broker shall employ and pay only active licensees, and a
44 licensee shall accept employment and compensation as a licensee only from
45 EITHER OR BOTH OF THE FOLLOWING:

- 1 1. The legally licensed broker to whom the licensee is licensed.
2 2. AN EMPLOYER OTHER THAN THE LEGALLY LICENSED BROKER AS DESCRIBED
3 IN PARAGRAPH 1 OF THIS SUBSECTION IF THE ALL OF THE FOLLOWING APPLY:
4 (a) THE EMPLOYER HOLDS A LICENSE.
5 (b) THE LICENSEE IS THE EMPLOYER'S EMPLOYEE AND RECEIVES A FEDERAL
6 FORM W-2 WAGE AND TAX STATEMENT.
7 (c) THE EMPLOYER HAS THE SAME EMPLOYING BROKER AS THE LICENSEE.
8 (d) THE EMPLOYER OBTAINS WRITTEN PERMISSION FROM THE EMPLOYING
9 BROKER TO PAY THE LICENSEE.
- 10 B. If the licensee is licensed through a professional corporation
11 or a professional limited liability company, the employing broker may pay
12 and the licensee may receive compensation only through the licensed
13 professional corporation of which the licensee is an officer and
14 shareholder or the licensed professional limited liability company of
15 which the licensee is a member or manager.
- 16 ~~B.~~ C. It is unlawful for a person, firm or corporation, whether AN
17 obligor, escrow holder or otherwise, to pay or deliver to anyone
18 compensation for performing any of the acts specified by this chapter, as
19 a broker, who is not licensed at the time the service is rendered. An
20 identification card or certificate of license issued by the state real
21 estate department showing that the person, firm or corporation holds a
22 license for the year in which the payment is made or earned ~~shall be~~ IS
23 sufficient proof to relieve from any penalty for a violation of this
24 section the obligor, escrow holder or other person who relied in good
25 faith on the card or certificate.
- 26 ~~C.~~ D. A real estate broker or real estate salesperson shall not
27 collect compensation for rendering services in negotiating loans secured
28 by real property unless all of the following apply:
29 1. The broker or salesperson is licensed pursuant to title 6,
30 chapter 9 or is an employee, officer or partner of a corporation or
31 partnership licensed pursuant to title 6, chapter 9.
32 2. The broker or salesperson has disclosed to the person from whom
33 the compensation is collected that the broker or salesperson is receiving
34 compensation both for real estate brokerage, when applicable, and for
35 mortgage broker services.
36 3. The compensation does not violate any other state or federal
37 law.
- 38 ~~D.~~ E. Notwithstanding subsection A OR B of this section, brokers
39 licensed under this chapter may employ residential leasing agents or
40 managers of residential rental properties, as prescribed by section
41 32-2121, subsection A, paragraph 6. The exemption of residential leasing
42 agents or managers of residential rental property under article 2 of this
43 chapter ~~shall~~ DOES not ~~be construed to~~ exempt the designated broker from
44 the responsibility to exercise reasonable supervision over these leasing
45 agents or managers.