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United States • Arizona Real Estate Salesperson License Exam

Arizona

Study Guide

KNOWLEDGE POINTS	CHAPTERS	EDITION
281	25	2026-10-18

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Contents

01	A.R.S. Title 32 Ch. 20 Art. 1: Real Estate Department, definitions, commissioner (32-2101–32-2129)	1
02	Art. 2: Licensing – qualifications, examination, education, renewal, brokers and salespersons	10
03	Art. 3: Regulation – broker duties, advertising, trust accounts, agency, discipline (32-2151–32-2176)	21
04	Art. 3.1: Property management	30
05	Art. 4: Sale of subdivided lands – public reports	35
06	Art. 7: Sale of unsubdivided lands	43
07	Art. 11: Administrative hearings	50
08	A.A.C. R4-28 Commissioner's Rules Art. 1: General provisions	52
09	Rules Art. 3: Licensure	57
10	Rules Art. 4: Education	65
11	Rules Art. 5, 7, 8: Advertising, compensation, documents	70
12	Rules Art. 11: Professional conduct	76
13	Rules Art. 12: Developments – public report applications	80
14	Rules Art. 13: Administrative procedures	88
15	A.R.S. Title 44: Exclusive property engagement (Ch. 5) and residential property disclosures (Ch. 15.1)	91
16	Art. 5: Real Estate Recovery Fund	94
17	Supplement: Landlord-Tenant	101
18	Supplement: Foreclosure and Mortgage Law	103
19	Supplement: Transfer Taxes and Recording	105
20	Supplement: Property Tax	107
21	Supplement: Condominium and HOA Law	109
22	Supplement: Arizona Property Law	111
23	Supplement: Arizona Statutory Disclosures	113
24	Supplement: Fair Housing	115

Contents (cont.)

25 Supplement: Closing Practice 117

CHAPTER 1

A.R.S. Title 32 Ch. 20 Art. 1: Real Estate Department, definitions, commissioner (32-2101–32-2129)

1.1 Key Licensing Definitions: Broker, Salesperson, Associate Broker

Section 32-2101 defines the core license categories. A 'broker' (unmodified) is a person licensed or required to be licensed as a broker. A 'real estate salesperson' is a natural person acting on behalf of a licensed broker to perform acts within the broker definition. An 'associate broker' is a licensed broker employed by another broker and, unless otherwise specified, has the same license privileges as a salesperson. A 'designated broker' is a natural person licensed as a broker who is designated to act on behalf of an employing entity or is a sole proprietor.

- ✓ An associate broker is licensed as a broker but is employed by another broker and generally has the same privileges as a salesperson
- ✓ A designated broker must be a natural person licensed as a broker who acts for an employing entity or operates as a sole proprietor
- ✓ A salesperson must act on behalf of a licensed broker; a broker acts for another for compensation

1.2 Real Estate Broker Activities Requiring a License

A 'real estate broker' means a person, other than a salesperson, who for another and for compensation performs acts such as: selling, exchanging, purchasing, renting or leasing real estate; offering or negotiating such transactions; listing property; auctioning; dealing in options; collecting rent; advertising as being in the business; procuring prospects; and acting as a business broker. Compensation includes any fee, commission, salary, or other valuable consideration, including the promise of consideration whether contingent or not.

- ✓ Performing any listed brokerage act for another for compensation requires a real estate license
- ✓ Collecting rent generally requires a license, except unlicensed clerical staff collecting in-person rent who provide a receipt
- ✓ Compensation includes contingent promises of consideration, not just fees actually paid
- ✓ Incident-to-sale loan negotiation is a brokerage act but excludes mortgage brokers under Title 6

1.3 Subdivision and Subdivider Definitions

A 'subdivider' is any person who offers for sale or lease six or more lots, parcels, or fractional interests in a subdivision, or who causes land to be subdivided, or undertakes to develop a subdivision (excludes public agencies). 'Subdivision/subdivided lands' means improved or unimproved land divided or proposed to be divided into six or more lots for sale/lease; it includes stock cooperatives, common promotional plan lands, and residential condominiums. It excludes leasehold offerings of one year or less, parcels 36 acres or more, leasing of agricultural land/apartments/commercial space, cemetery parcels, and certain sales occurring 10+ years apart.

- ✓ The threshold for a subdivision is six or more lots, parcels, or fractional interests
- ✓ Parcels of 36 acres or more are excluded from the subdivision definition
- ✓ Leasehold offerings of one year or less are not a subdivision
- ✓ Residential condominiums and common promotional plan lands are included as subdivisions

1.4 Commissioner Investigation Powers and Subpoenas

Section 32-2108 authorizes the commissioner, on their own motion or on a verified written complaint (mandatory), to investigate the actions of any person acting as a broker, salesperson, or developer and to examine books and records pertaining to transfer, sale, rental, lease, use, or management of real property. The commissioner may take testimony, examine and copy documents, issue subpoenas, and apply to superior court to compel compliance. A certification and enforcement unit is established for investigative duties.

- ✓ The commissioner must investigate upon a verified written complaint and may investigate on their own motion
- ✓ The commissioner may issue subpoenas and seek superior court orders to compel compliance
- ✓ Investigation reaches books and records relating to real property transactions and management

1.5 Fingerprint Clearance Card Requirement for Licensees

Section 32-2108.01 requires each license applicant to obtain and provide the department a valid fingerprint clearance card under 41-1758.03 before receiving and holding a license. The department shall not issue a license to an original applicant before receiving the card. The department may suspend a license if the fingerprint clearance card is suspended and either the underlying conviction could support denial, or the licensee fails to prove they applied for a good-cause exception within five business days after notice. This applies to original salesperson/broker applicants (real estate, cemetery, membership camping), school operators, and certain renewal/public-report applicants with unreviewed criminal records.

- ✓ A valid fingerprint clearance card is required before a license is issued or held
- ✓ The department may suspend a license upon fingerprint clearance card suspension in specified circumstances
- ✓ A licensee has five business days after notice to prove application for a good-cause exception

1.6 Business Broker Definition

A 'business broker' is a real estate broker who acts as an intermediary or agent between sellers or buyers (or both) in the sale or purchase of businesses or business opportunities where a lease or sale of real property is either a direct or incidental part of the transaction. Acting as a business broker falls within the real estate broker definition.

- ✓ A business broker must be a licensed real estate broker
- ✓ Real property sale/lease need only be a direct OR incidental part of the transaction

1.7 Advertising Definition and Exclusions

'Advertising' means attempting by publication, dissemination, exhibition, solicitation, or circulation (oral, written, or broadcast) to induce any person to enter an obligation or acquire an interest in lands subject to the chapter. Advertising does NOT include press releases delivered to news media for general information/public relations if no charge is made, and certain stockholder communications (annual reports, proxy materials, registration statements, securities prospectuses, property reports, offering statements).

- ✓ Advertising covers any medium intended to induce a person to acquire an interest in subject lands
- ✓ Uncharged press releases for general information/PR are excluded from the advertising definition
- ✓ Specified stockholder communications (e.g., proxy materials, prospectuses, property reports) are excluded

1.8 Unsubdivided Lands Definition

'Unsubdivided lands' means land divided or proposed to be divided into six or more lots/parcels that are 36 acres or more each but less than 160 acres each, or that are offered under a common promotional plan (agricultural leases excluded). It also includes land that would be the sixth lot if sold 10+ years after the earliest of the previous five sales within the same 36-to-160-acre parent parcel.

- ✓ Unsubdivided lands are parcels of 36 acres or more but less than 160 acres each, six or more in number
- ✓ Agricultural leases are excluded from the unsubdivided lands definition
- ✓ A common promotional plan can bring parcels within the unsubdivided lands definition

1.9 Common Promotional Plan and Acting in Concert

A 'common promotional plan' is a plan undertaken by a person or group acting in concert to offer lots for sale or lease. If land is offered by persons acting in concert and is contiguous or advertised as a common unit/name, it is presumed offered as part of a common promotional plan regardless of the number of lots per offering. Separate subdividers in separately platted subdivisions within a master planned community are NOT deemed to be offering combined lots under a common promotional plan. 'Acting in concert' means evidence of collaborating to pursue a concerted plan.

- ✓ Contiguous land advertised under a common name and offered by persons acting in concert is presumed a common promotional plan
- ✓ Separate subdividers within a master planned community are not automatically under a common promotional plan

1.10 License, Licensee, and License Period Definitions

A 'license' includes the whole or part of any agency permit, certificate, approval, registration, public report, charter, or similar permission required by the chapter. A 'licensee' is a person granted a license for the current period (and for 32-2153(A), includes original applicants). A 'license period' is the two-year period beginning at original issue or renewal and ending on the expiration date. An 'inactive license' is issued to a licensee on inactive status not engaged by a broker.

- ✓ A license period runs two years from original issue or renewal
- ✓ A public report is included within the statutory definition of a license
- ✓ An inactive licensee is not engaged by or on behalf of a broker

1.11 Entity Licensee Types and Designated Broker

A 'corporation licensee,' 'limited liability company licensee,' and 'partnership licensee' each must have a designated broker: an officer (corporation), a member/manager who is a natural person (LLC), or a managing general partner (partnership), each licensed as the designated broker under 32-2125. An 'employing broker' is a person licensed as a broker entity under 32-2125(A) or as a sole proprietorship where the sole proprietor is a licensed broker.

- ✓ Every entity licensee must have a natural-person designated broker licensed under 32-2125
- ✓ LLC designated broker must be a member or manager who is a natural person
- ✓ Partnership designated broker must be the managing general partner

1.12 Purpose of the Department and Commissioner Oversight

Section 32-2102 provides the chapter is administered by the state real estate department under the direction of the real estate commissioner. The department's purpose in administering the chapter is to protect the public interest through licensure and regulation of the real estate profession in Arizona.

- ✓ The Department of Real Estate administers the chapter under the commissioner's direction
- ✓ The stated purpose is protecting the public interest through licensure and regulation

1.13 Powers and Duties of the Commissioner

Section 32-2107 gives the commissioner charge of the department with power to administer and carry out the chapter, adopt an official seal, maintain a principal office at the state capitol, and open branch offices. The commissioner shall adopt rules necessary to carry out the chapter and may approve standardized legal forms for use in the sale or lease of real estate to recognize their compliance with the chapter and rules. The commissioner may also produce educational materials and hold seminars.

- ✓ The commissioner shall adopt rules as necessary to carry out the chapter
- ✓ The commissioner may approve standardized legal forms for sale or lease of real estate
- ✓ The commissioner administers the department and may establish branch offices

1.14 Additional Information the Commissioner May Require of Applicants

Section 32-2108(C) allows the commissioner to require additional information about an applicant or holder (including entity officers, directors, members, managers, partners, 10%+ owners/stockholders, and controlling persons). This may include prior criminal records, a valid fingerprint clearance card, and an affidavit disclosing felony/misdemeanor convictions, denied/suspended/revoked licenses, denied public reports, injunctions, adverse judgments involving fraud or moral turpitude, bankruptcy filings, and participation in entities subject to such actions.

- ✓ The commissioner may require criminal records, fingerprint clearance cards, and disclosure affidavits
- ✓ Disclosure reaches entity officers, controlling persons, and 10%-or-more owners/stockholders
- ✓ Applicants must disclose prior discipline, injunctions, fraud judgments, and bankruptcy

1.15 Recorded Disclaimer of Unlawful Restrictive Covenants

Section 32-2107.01 requires the commissioner to execute and record in each county a document disclaiming the validity and enforceability of covenants or restrictions based on race, religion, color, disability status, or national origin, declaring any such recorded restriction void. This does not affect other lawful covenants, conditions, or restrictions.

- ✓ Covenants based on race, religion, color, disability, or national origin are invalid and unenforceable
- ✓ The commissioner records a disclaimer in each county declaring such restrictions void

1.16 Military and Environmental Recorded Disclosures

Sections 32-2113, 32-2114, 32-2114.01, and 32-2117 require the commissioner to record disclosures for property near military airports/ancillary facilities (subject to increased noise and accident potential), under military training routes, under restricted air space, and within military electronics ranges. The department also posts related maps (32-2115) and provides earth fissure maps (32-2117). Under 32-2117, a subdivider/owner/licensee who provides written disclosure or public-report notice of the earth fissure map is not liable, though the disclosure creates no independent cause of action.

- ✓ Military airport vicinity disclosure warns of increased noise and accident potential
- ✓ Providing earth fissure map disclosure protects subdividers/owners/licensees from liability
- ✓ Earth fissure and military disclosures do not create an independent cause of action

1.17 Developer and Development Definitions

A 'developer' is a person who offers real property in a development for sale, lease, or use, on the person's own behalf or another's; it excludes a person whose involvement is limited to listing property. 'Development' means any division, proposed division, or use of real property the department regulates, including subdivided/unsubdivided lands, cemeteries, condominiums, timeshares, membership campgrounds, and stock cooperatives.

- ✓ A person who merely lists property in a development is not a developer
- ✓ Development broadly covers all property types the department has authority to regulate

1.18 Address of Record Definition

An 'address of record' is any of: the address where a licensee practices or is employed; a licensee's residential address; or the address of a licensee's statutory agent registered with the corporation commission (only if notice of the statutory agent is given to the department under section 32-2126).

- ✓ A licensee's address of record may be their business, residential, or registered statutory agent address
- ✓ The statutory agent option applies only if notice is given to the department per 32-2126

1.19 Education Delivery Definitions: Distance Learning and Live Classroom

'Distance learning' is continuing or prelicensure education delivered as an online, planned learning experience with geographic separation (synchronous or asynchronous), not requiring real-time interaction, using a self-paced or prerecorded platform accessed via the internet. A 'live classroom course' is delivered either in-person or in a synchronous remote format allowing students to observe and participate remotely via livestreaming. A 'school' is a person/entity offering study toward education requirements for licensure or renewal.

- ✓ Distance learning does not require real-time student-instructor interaction and is self-paced
- ✓ Live classroom courses may be in-person or synchronous remote via livestreaming

1.20 Real Estate Advisory Board Composition and Terms

Section 32-2104 establishes the ten-member real estate advisory board appointed by the governor for six-year terms, with three members' terms expiring January 31 of each odd-numbered year. Membership includes brokers/salespersons with residential experience, commercial and multifamily management representatives, a timeshare/campground/cemetery member, a subdividing member, an education member, and three public members unrelated to licensees. Members receive no compensation but are reimbursed for expenses; not more than five members from one county may serve concurrently.

- ✓ The board has ten governor-appointed members serving six-year terms
- ✓ Three of the ten members must be public members unrelated to licensees within the third degree
- ✓ Board members receive no compensation, only expense reimbursement
- ✓ No more than five members from any one county may serve concurrently

1.21 Real Estate Commissioner Qualifications and Appointment

Section 32-2106 provides the commissioner is appointed by the governor and serves at the governor's pleasure. Candidates must have at least five years' experience in the real estate, title insurance, or banking/mortgage broker industry, plus three years' administrative experience, and must not be financially interested in or act as a broker/salesperson/agent of any real estate or brokerage firm at the date of appointment acceptance.

- ✓ The commissioner is appointed by the governor and serves at the governor's pleasure
- ✓ Requires five years' industry experience and three years' administrative experience
- ✓ The commissioner may not be financially interested in or act for any real estate/brokerage firm

1.22 Department Officer/Employee Conflict of Interest Prohibition

Section 32-2110 prohibits any officer or employee of the department from being connected with or directly or indirectly interested in any real estate company or real estate brokerage firm, ensuring impartial regulation.

- ✓ No department officer or employee may be interested in a real estate company or brokerage firm
- ✓ The prohibition covers both direct and indirect interests

1.23 Water Supply Consumer Education Requirements

Section 32-2119 requires the department to post information advising prospective home buyers to investigate water availability before purchasing, with a link to the Department of Water Resources for definitions (adequate water supply, inadequate water supply, property served by an adequate-supply provider, and no water supply determination) applicable outside active management areas. The department must also display a current map of areas outside active management areas.

- ✓ The department must advise buyers to investigate water availability before purchase
- ✓ Water supply definitions apply to areas outside active management areas per section 45-108.05

CHAPTER 2

Art. 2: Licensing – qualifications, examination, education, renewal, brokers and salespersons

2.1 Exemptions from real estate licensing requirements

A.R.S. 32-2121 lists persons and activities that do not require a real estate license. Owners dealing in their own property, attorneys performing legal duties, court-appointed receivers/trustees, deed of trust trustees, government employees, and others are exempt when they do not receive special compensation or act as brokers. Understanding these exemptions is critical for determining when a license is required.

- ✓ An owner selling/leasing/managing their OWN property is exempt if they do not receive special compensation and the majority of their activities are not those of a broker
- ✓ An attorney is exempt only when performing attorney duties; the exemption does NOT allow otherwise engaging in acts requiring a license
- ✓ A trustee selling under a deed of trust, receivers, and trustees in bankruptcy acting under court order are exempt
- ✓ A person holding a power of attorney for a specific isolated transaction (not as a method of conducting real estate business) is exempt
- ✓ A person who manages a hotel, motel, or RV park is exempt, as is a person handling reservations for occupancies of 31 or fewer days

2.2 License required for brokers and salespersons

A.R.S. 32-2122 makes it unlawful to act as a real estate broker, salesperson, cemetery broker/salesperson, or membership camping broker/salesperson without first obtaining a license. Any act done for compensation (or expectation of it) that falls within the definition of a broker constitutes acting as a licensee, even if incidental to a transaction.

- ✓ Any act in consideration or expectation of compensation included in the broker definition requires a license, whether incidental or the entire transaction
- ✓ An unlicensed person may collect in-person rent and related fees only if they work for a licensee, collect on behalf of the licensee, and provide a receipt when rent is paid
- ✓ It is unlawful for any person, corporation, partnership, or LLC to engage in licensed activity without first obtaining a license

2.3 Experience qualifications for broker licenses

A.R.S. 32-2124 requires proof of competency and specific experience for broker licenses. An original real estate broker applicant must have been an active licensed salesperson or broker for at least three years during the five years immediately preceding application.

- ✓ Original real estate broker license requires at least 3 years active licensed experience during the 5 years immediately preceding application
- ✓ A license denied within the prior 1 year (per 32-2153) disqualifies an applicant; a license revoked within the prior 2 years also disqualifies
- ✓ Equivalent active experience within the preceding 5 years may substitute for the licensed experience requirement at the commissioner's satisfaction
- ✓ Reapplying more than one year after expiration requires meeting all current education/experience requirements and retaking the exam

2.4 Prelicensure education requirements

A.R.S. 32-2124(B)-(C) require salesperson and broker applicants to complete an approved course of at least 90 classroom hours (or equivalent) at a certified real estate school and pass an examination. Courses may be live classroom or distance learning, but the exam must be proctored in person.

- ✓ Both salesperson and broker prelicensure courses require at least 90 classroom hours or the equivalent at a certified school
- ✓ The examination on the prelicensure course must be a proctored exam completed in person
- ✓ Course completion may not be more than 10 years before application unless the commissioner finds equivalent work experience and education
- ✓ Salesperson applicants must additionally complete 6 hours of instruction in real estate contract law and contract writing, including drafting practice

2.5 Renewal continuing education requirements

A.R.S. 32-2130 allows timely renewal by filing, paying the fee, and presenting evidence of continuing education: 24 hours for salespersons and associate brokers, and 30 hours for designated brokers (and associate brokers under 32-2151.01(G)) per 24-month period.

- ✓ Salespersons and associate brokers must complete 24 continuing education credit hours per 24-month license period
- ✓ Designated brokers (and associate brokers under 32-2151.01(G)) must complete 30 continuing education credit hours per 24-month period
- ✓ Cemetery and membership camping brokers/salespersons are exempt from these education requirements
- ✓ If renewing within one year after expiration, CE hours completed after expiration may be applied toward

the renewal requirement

2.6 Residential leasing agent / on-site manager exemption

Natural persons acting as residential leasing agents or on-site managers of residential rental property are exempt from licensure under specific conditions. They must work at not more than one location during their regular workday and be employed by the owner or the owner's licensed management agent. Their duties may include preparing leases, collecting deposits/rent, showing units, executing leases, and delivering notices.

- ✓ The agent/manager must perform activities at not more than one location during their regular workday
- ✓ They must not receive special compensation for the leasing acts described
- ✓ A performance-based bonus paid no more than monthly that does not exceed one-half of total compensation does NOT constitute special compensation
- ✓ One natural person may act as property manager for one nonresidential income property (or contiguous commonly-owned properties) without a license

2.7 Application requirements for broker/salesperson license

A.R.S. 32-2123 requires an original license application to be signed or electronically submitted with all fees. The applicant must disclose legal name, address, felony convictions, disbarment/suspension from law, prior license refusals/revocations/suspensions in any state, and provide a social security number.

- ✓ Applicants must disclose any felony conviction, its nature, location, timing, and disposition, plus any disbarment or law license suspension
- ✓ Applicants must disclose whether any occupational license was ever refused, revoked, or suspended in this or any other state
- ✓ A broker application must additionally set forth the business name and address of record
- ✓ The commissioner may require a valid fingerprint clearance card and prior criminal records

2.8 Age, examination content, and out-of-state applicants

A.R.S. 32-2124 requires an applicant to be at least 18 before receiving a license. The commissioner ascertains via exam that a real estate applicant understands English, arithmetic, real estate forms, agency, ethics, and the chapter/rules. The broker exam must be more exacting than the salesperson exam.

- ✓ An applicant must be at least 18 years of age before receiving any license
- ✓ The broker's examination must be more exacting, stringent, and broader in scope than the salesperson's examination
- ✓ An applicant holding an equivalent out-of-state license is exempt from the national portion of the exam (per 32-4302) but must pass the Arizona state-specific portion

✓

The commissioner may waive prelicensure course requirements except the 27-hour Arizona-specific course for holders of a current out-of-state license

2.9 Felony conviction bar on licensure

A.R.S. 32-2124(M) and 32-2130(I) prohibit issuing or renewing a license to a person convicted of a felony who is currently incarcerated, paroled, under community supervision, or on probation for that conviction.

- ✓ The commissioner shall NOT issue a license to a felon currently incarcerated, paroled, under community supervision, or on probation for the conviction
- ✓ The department shall NOT renew a license under the same felony-status conditions
- ✓ This bar does not limit the commissioner's discretion to deny renewal for other reasons

2.10 Renewal examination waiver within 12 months

A.R.S. 32-2124(H) allows a renewal applicant to avoid re-examination if the application is made within 12 months after the license expires and the license was not canceled, terminated, or suspended at the time of application.

- ✓ A renewal applicant need not re-examine if applying within 12 months after expiration and the license was not canceled, terminated, or suspended
- ✓ This applies to real estate, cemetery, and membership camping brokers and salespersons

2.11 Entity broker licenses and designated broker

A.R.S. 32-2125 governs licenses for corporations, LLCs, and partnerships. An entity applying for a broker's license must designate a licensed natural person broker who is an officer, manager, member, or partner to act as designated broker. The entity's license runs concurrently with the designated broker's license.

- ✓ An entity broker license requires designating a licensed natural-person broker (officer/manager/member/partner) as designated broker
- ✓ The entity's broker license runs concurrently with the designated broker's license and extends no authority to any other person
- ✓ A professional corporation or professional LLC may not be licensed as an employing broker
- ✓ Entities must report to the department within 10 days changes in officers/members, control changes, articles amendments, 10%+ stock ownership, or dissolution

2.12 Restrictions on naming a designated broker

A.R.S. 32-2125(E) prohibits an entity from naming a person as designated broker if that person is under a cease-and-desist order, has a suspended license, or had a license revoked in the previous two years for an act occurring while named on a license.

- ✓ A person may not be named designated broker if under an order to cease and desist from real estate activity
- ✓ A person may not be named designated broker if their license is under suspension
- ✓ A person may not be named designated broker if their license was revoked in the previous 2 years for an act/omission occurring while named on the license

2.13 One license rule and multiple activity authority

A.R.S. 32-2125.01 provides that not more than one license may be issued to a licensee at a time, but a real estate broker/salesperson may engage in cemetery and membership camping sales without separate licenses. A person who passes the exam must become licensed within one year or retest.

- ✓ A person who passed the broker/salesperson exam must become licensed within 1 year of the exam or must retake it
- ✓ A real estate broker/salesperson may engage in cemetery or membership camping sales without separate licenses for those activities
- ✓ A real estate licensee may have only ONE employing broker in each category: cemetery, membership camping, and real estate

2.14 Nonresident licensees and service of process

A.R.S. 32-2125.02 deems a nonresident license application an irrevocable appointment of the commissioner as agent for service of process. Nonresident licensees may accept employment/compensation only from a broker actively licensed in Arizona.

- ✓ A nonresident license application constitutes irrevocable appointment of the commissioner as agent for service of process
- ✓ A nonresident licensee may accept employment or compensation only from a broker actively licensed in Arizona (under 32-2155)
- ✓ A nonresident broker must maintain Arizona-required records and notify the department of their location (or of online recordkeeping provider)
- ✓ A nonresident applicant must pass the Arizona state-specific portion of the examination

2.15 Place of business and change-of-location notice

A.R.S. 32-2126 requires each employing broker to maintain a definite place of business or a valid statutory agent, and to notify the department in writing of any change. Failure to give notice of change or abandonment automatically cancels the broker's license and severs employees' licenses.

- ✓ Each employing broker must maintain a definite place of business OR an active valid statutory agent on file with the Corporation Commission
- ✓ Change or abandonment of business location/statutory agent without written notice automatically cancels the employing broker's license
- ✓ Cancellation severs the license of any salesperson or associate broker employed by that broker; they may be rehired if the license is reinstated
- ✓ Each broker must post a compliant sign at the entrance identifying the broker and business

2.16 License fees and license period

A.R.S. 32-2129 requires all license fees be paid in advance, uniform regardless of time of year. An original license is for two years through the last day of the month it was granted; a renewal is for a two-year period beginning after the previous license expires.

- ✓ All license fees must be paid in advance and are the same regardless of the time of year issued
- ✓ An original license lasts 2 years through the last day of the month it was granted
- ✓ A renewed license is for a 2-year period beginning the first day after the previous license expires, regardless of issuance date
- ✓ The department may deny or cancel a license if fees are paid with a dishonored check

2.17 Expired license consequences and termination

A.R.S. 32-2130(F)-(G) provide that between expiration and renewal, the licensee's rights expire and it is unlawful to act as a licensee. A license expired more than one year is terminated. Within one year the department renews without re-examination if the license was not canceled or suspended.

- ✓ While a license is expired it is unlawful to act or offer to act as a broker or salesperson
- ✓ An employing broker's expiration severs employees' licenses on the expiration date; they may be rehired on renewal
- ✓ The department terminates a license that has been expired for more than one year
- ✓ A terminated or revoked license does not qualify for renewal and requires original application

2.18 Broker renewing as salesperson and inactive licenses

A.R.S. 32-2130(J)-(L) allow a real estate broker to renew as a salesperson without meeting the salesperson prelicensure course requirement. Inactive licensees need not complete CE while inactive, but must upon reactivation, and after 15 years inactive must pass the Arizona-specific exam.

- ✓ A broker licensee may renew as a salesperson without meeting the 32-2124(B) course requirement, but must pay the salesperson renewal fee
- ✓ To later become a broker again, the person must meet all broker requirements including 32-2124(C)
- ✓ An inactive licensee need not complete CE during inactivity, but the commissioner may require CE before reactivation
- ✓ If inactive more than 15 years, the applicant must pass an Arizona law-specific exam before the license is activated; the department notices the licensee one year before the 15-year mark

2.19 Reinstatement of licenses

A.R.S. 32-2131 sets out how the commissioner may reinstate expired, canceled, terminated, suspended, or revoked licenses. Different paths apply: expired licenses reinstate by renewal, canceled by reapplication or renewal, terminated/revoked by original application.

- ✓ A revoked license (per 32-2153) requires reinstatement by ORIGINAL application
- ✓ A license terminated for recovery fund payment requires full repayment to the fund, original application, and proof the judgment was satisfied
- ✓ Reinstatement (except for canceled licenses) is not available while the licensee is under department investigation or a pending administrative proceeding
- ✓ Reinstatement does not lessen the qualifications otherwise required of applicants

2.20 Broker management clinics

A.R.S. 32-2136 requires broker management clinics covering broker statute/rule requirements, designated broker legal obligations, recordkeeping, trust funds, advertising, contracts, fiduciary duties, disclosures, investigations, and risk management. Original broker applicants must attend before activating a license.

- ✓ A broker management clinic consists of three courses of three hours each (9 hours total)
- ✓ An applicant for an original broker license must attend a broker management clinic before activating the license
- ✓ Designated brokers and associate brokers under 32-2151.01(G) must attend a clinic once during each 24 months of licensure after initial attendance
- ✓ A broker engaging in property management activities must complete a clinic designed to teach proficiency in property management

2.21 Continuation after change in entity ownership

A.R.S. 32-2125(C) provides that an entity license under subsection B terminates on death or change of shareholders/members, but a remaining authorized officer/shareholder may continue business for up to 90 additional days pending a new license or designated broker.

- ✓ An entity license may continue for up to 90 additional days pending a new license or new designated broker after a qualifying change
- ✓ The corporation or LLC may NOT assume representation for new clients while a new license is pending or until a new designated broker is added

2.22 Confidentiality of licensee personal information

A.R.S. 32-2125.03 protects a licensee's or applicant's residential address, residential telephone number, email address, and social security number from public disclosure unless a legitimate justice/governmental purpose applies.

- ✓ Residential address and phone number are not public unless the commissioner finds disclosure serves justice and the public interest
- ✓ Email addresses are released only to a court or governmental agency for a legitimate purpose
- ✓ Social security numbers may only be released to a court or governmental agency for a legitimate governmental purpose

2.23 Branch offices and temporary broker absence

A.R.S. 32-2127 requires a separate additional license for each branch office, issued in the same name and posted at the branch. Each branch must be under the management of a broker or licensed salesperson. A designated broker unable to act within 24 hours may appoint a designee.

- ✓ A broker with more than one place of business must procure an additional license for each branch office
- ✓ Each branch office must be under the management of a broker or a licensed salesperson, with a sign including the designation 'branch office'
- ✓ A designated broker unable to act within 24 hours may make a WRITTEN designation of a licensee/another designated broker, not exceeding 30 days
- ✓ A salesperson designee may NOT be authorized to hire or sever licensees

2.24 Display and possession of license certificates

A.R.S. 32-2128 requires the designated broker's (and employing broker's) certificate to be prominently displayed and all other certificates readily available. Salesperson/associate broker certificates remain in the employer's possession until severance or termination.

- ✓ The designated broker's certificate must be prominently displayed; other certificates must be readily available
- ✓ A salesperson's/associate broker's certificate remains in the employer's possession until canceled, terminated, suspended, revoked, or the licensee is severed
- ✓ A designated broker may satisfy possession requirements by accessing the department's public database and printing/keeping a record showing current active licensure

2.25 Schedule of maximum license fees

A.R.S. 32-2132 lists maximum fees that may be charged. Once paid and receipted, fees are not refundable except for good cause. Entities are not assessed a fee for issuance of a broker's license.

- ✓ Maximum broker fees: exam application $125, exam $100, license $250, renewal $400
- ✓ Maximum salesperson fees: exam application $75, exam $50, license $125, renewal $200
- ✓ Fees are not refunded after issuance of a receipt except that the commissioner may refund for good cause shown
- ✓ A corporation, partnership, or LLC is not assessed a fee for issuance of a broker's license

2.26 Temporary broker's license to wind up business

A.R.S. 32-2133 permits the commissioner to issue a temporary broker license to wind up the business of a deceased or disabled licensed broker. It may go to a surviving spouse, next of kin, employee, administrator, personal representative, guardian, or conservator.

- ✓ A temporary broker license is limited to 90 days and may not be extended, except a personal representative/administrator license continues until the deceased broker's business is disposed of, not to exceed 15 months
- ✓ No more than one temporary license may be issued to or regarding the same individual within any one-year period
- ✓ A temporary licensee has the same license powers and obligations as under a permanent license

2.27 Real estate school and course certification

A.R.S. 32-2135 requires schools to obtain a certificate of approval to operate and course approval before offering credit courses. The commissioner may withdraw certification for violations including improper attendance certification and unapproved materials.

- ✓ A school must obtain a certificate of approval to operate (for at least 4 years) and course approval for each credit course before offering it
- ✓ The commissioner may withdraw/deny certification for improperly certifying attendance, teaching unapproved materials, or filing false documentation
- ✓ A live classroom course application must be filed at least 30 days before, and a distance learning course at least 90 days before, offering
- ✓ Course approval is for at least 4 years if contents remain current; a course may not be taught if content ceases to be current or is substantially changed

2.28 Voluntary cancellation of license

A.R.S. 32-2137 allows the department, on a licensee's request, to cancel that person's license only if the licensee is not under investigation and no disciplinary proceeding has commenced.

- ✓ The department may cancel a license on the licensee's request only if the licensee is not presently under department investigation
- ✓ Cancellation is available only if the department has not commenced any disciplinary proceeding against the licensee

CHAPTER 3

Art. 3: Regulation – broker duties, advertising, trust accounts, agency, discipline (32-2151–32-2176)

3.1 Disposition of trust funds; neutral escrow vs trust account

Under 32-2151(A), unless all parties agree otherwise in writing, a broker who does not immediately place entrusted monies in a neutral escrow depository in Arizona must, on receipt, place all such monies in a trust fund account in a federally insured or guaranteed account at a depository located in Arizona. This is the core trust-fund handling rule for Arizona brokers.

- ✓ Monies must go into either a neutral in-state escrow depository or an in-state trust fund account immediately/on receipt
- ✓ The trust fund account must be federally insured or guaranteed and located in Arizona
- ✓ Parties may agree in writing to different handling arrangements

3.2 Trust fund account minimum requirements

32-2151(B) sets minimum requirements: deposits by deposit slips with documentation identifying each transaction, date, amount, and parties; monies used only for the purpose deposited; complete records kept electronically, in the main/branch office, or at an approved in-state off-site storage location (with prior written notice of address to the department). Records must follow generally accepted accounting principles and include descriptive receipts, a disbursement journal, and a client ledger. Computerized records must allow reconstruction if electronic data is destroyed.

- ✓ Deposits must be made by deposit slips identifying transaction, date, amount, and parties
- ✓ Trust monies may only be used for the purpose for which they were deposited
- ✓ Records must be kept per GAAP and include descriptive receipts, disbursement journal, and client ledger
- ✓ Off-site storage requires prior written notice of the street address to the department

3.3 Monthly three-way reconciliation requirement

32-2151(B)(3) requires the broker, on a monthly basis, to complete a three-way reconciliation between the trust fund account bank statements, client ledgers, and trust fund account ledgers, and to provide an explanation for any variation. Failure to regularly complete this reconciliation is itself a violation (per subsection C).

- ✓ Three-way reconciliation must be done monthly among bank statements, client ledgers, and trust account ledgers
- ✓ Any variation must be explained
- ✓ Failure to regularly reconcile is a violation of the chapter

3.4 Trust account variations that are violations

32-2151(C) lists acts/omissions causing a variation that constitute violations: failing to remove interest earned at least once every 12 months; allowing advance payment of others' monies into the broker's personal account or commingling with personal monies; failing to identify nonowner tenant monies in receipts; failing to maintain separate ledgers for each property; failing to complete required three-way reconciliations; transferring monies between differently-owned accounts without each person's written consent; failing to create checks and balances; and failing to follow state or federal requirements.

- ✓ Interest earned on a trust account must be removed at least once every 12 months
- ✓ A broker may deposit up to $5,000 of personal monies to keep the account open or avoid insufficient-balance charges without it being commingling
- ✓ Separate ledgers must be maintained for each property
- ✓ Transferring monies between accounts owned by different persons requires each person's written consent

3.5 Broker record keeping; five-year retention

32-2151.01(A) requires each employing broker to keep records of all real estate (and cemetery/timeshare/membership camping) transactions and employment records for current and former employees. Records must include earnest money receipts, closing statements showing all receipts/disbursements/adjustments, sales contracts, and employment agreements if applicable. Records must be open to the commissioner at all reasonable times and kept at least five years after termination of the transaction or employment, in the principal or licensed branch office or an approved in-state off-site storage location.

- ✓ Transaction and employment records must be kept at least five years after termination
- ✓ Records must be open at all reasonable times for inspection by the commissioner or representatives
- ✓ Records must be kept in the principal/branch office or an approved in-state off-site storage location with prior written notice

3.6 Withdrawal authority and earnest money handling

32-2151.01(B) prohibits a broker from granting any person authority to withdraw from the trust fund account unless that person is a licensee under the broker's license (except as provided by 32-2174(C)). Subsection C requires the broker to specifically state the type of earnest money received (cash, check, promissory note, or other item of value) in the purchase contract, lease, or receipt. Subsection D requires all licensees to promptly place all cash, checks, or items of value received into the care of the designated broker.

- ✓ Only a licensee under the broker's license may be granted trust-account withdrawal authority (except per 32-2174(C))
- ✓ The type of earnest money must be specifically stated in the contract, lease, or receipt
- ✓ Licensees must promptly deliver all payments received to the designated broker

3.7 Designated broker review of instruments within ten business days

32-2151.01(G) requires the designated broker to review each listing agreement, purchase or nonresidential lease agreement, or similar instrument within ten business days after execution by placing initials and date of review on the same page as the parties' signatures. The designated broker may authorize in writing an employed associate broker to review and initial on the broker's behalf. 'Business day' excludes Saturdays, Sundays, and legal holidays.

- ✓ Designated broker must review and initial covered instruments within ten business days of execution
- ✓ Initials and date must appear on the same page as the parties' signatures
- ✓ Review authority may be delegated in writing to an employed associate broker

3.8 Real estate employment agreements requirements

32-2151.02 requires all real estate employment agreements to be written in clear, unambiguous language, fully set forth all material terms including broker compensation, have a definite duration/expiration date showing inception and expiration, and be signed by all parties. Employing brokers cannot assign an agreement to another broker without written consent of all parties at the time of assignment. A licensee may not procure an agreement from a party already under an exclusive agreement without written acknowledgment of potential liability for additional commissions. An employment agreement is not required for a licensee to represent a party.

- ✓ Employment agreements must be written, clear, list all material terms/compensation, have definite inception and expiration dates, and be signed by all parties
- ✓ Assignment to another broker requires written consent of all parties at the time of assignment
- ✓ A licensee needs written acknowledgment before procuring an agreement from a party already under an exclusive agreement
- ✓ A written employment agreement is not required to represent a party in a transaction

3.9 Grounds for discipline – conduct in transactions

32-2153(A) lists conduct within the preceding five years that can lead to denial, suspension, revocation, letters of concern, or provisional licensing, including misrepresentation/false promises; acting for more than one party without knowledge or written consent of all parties; violating the chapter or commissioner rules; false advertising; employing unlicensed persons; failing to account for/remit monies; commingling or converting client monies; failing to keep required records; failing to exercise reasonable supervision; negligence; signing another's name without written consent; and violating fair housing laws.

- ✓ Acting for more than one party requires the knowledge AND written consent of all parties
- ✓ Commingling or converting a client's/principal's monies is grounds for discipline
- ✓ A broker's failure to exercise reasonable supervision over licensees/employees is grounds for discipline
- ✓ Violating federal or Arizona fair housing law is a disciplinary ground

3.10 Restriction on employment and compensation of licensees

32-2155 requires a broker to employ and pay only active licensees, and a licensee may accept employment/compensation only from the broker to whom licensed or a qualifying employer (that holds a license, treats the licensee as a W-2 employee, has the same employing broker, and gets written permission from the employing broker). Compensation through a professional corporation/LLC must flow through the entity of which the licensee is officer/shareholder or member/manager. It is unlawful to pay anyone unlicensed at the time of service for broker acts.

- ✓ A broker may employ and pay only active licensees
- ✓ A licensee may be paid only by the employing broker or a qualifying same-broker W-2 employer with written permission
- ✓ It is unlawful to pay an unlicensed person compensation for performing broker acts

3.11 Real estate sales disclosure safe harbor (stigmatized property)

32-2156 provides that no criminal, civil, or administrative action may be brought against a transferor/lessor or licensee for failing to disclose that a property is or was the site of a natural death, suicide, homicide, or felony; was owned/occupied by a person with HIV/AIDS or another disease not transmitted through common occupancy; or is located near a sex offender. Failing to disclose these facts is not grounds for termination or rescission of a transaction.

- ✓ No liability for failing to disclose deaths, suicides, homicides, or felonies occurring on the property
- ✓ No liability for failing to disclose HIV/AIDS status of prior occupants or proximity to a sex offender
- ✓ These nondisclosures are not grounds to terminate or rescind a transaction

3.12 Out-of-state depository agreements

32-2151(D) allows placing entrusted monies in a depository outside Arizona only if all parties agree in writing and either (1) monies are in a property management trust account under 32-2174 that is federally insured/guaranteed with required disclosures and a signed depository addendum allowing department examination, or (2) the broker discloses to the parties the potential risks of using an out-of-state depository. The section does not permit commingling with the broker's own monies unless the commissioner adopts rules allowing it.

- ✓ Out-of-state depository requires written agreement of all parties
- ✓ Property management out-of-state accounts require specific disclosures and a signed addendum permitting department and owner examination
- ✓ Non-property-management out-of-state deposits require disclosure of potential risks to parties
- ✓ Commingling with the broker's own monies is not permitted unless commissioner rules allow it

3.13 Retention of transaction folders and rejected offers

32-2151.01(F) requires sales transaction folders to include confirmation earnest/other monies were handled per instructions and a complete copy of the sales contract, escrow receipt, closing/settlement statement, and if applicable escrow instructions, listing agreement, employment agreement, and release of escrow monies. Subsection I requires retaining rejected offers at least one year; if the offer results in a binding contract, prior rejected offers must be kept at least five years.

- ✓ Sales transaction folders must contain the sales contract, escrow receipt, closing statement, and applicable ancillary documents
- ✓ Rejected offers must be retained at least one year
- ✓ When an offer results in a binding contract, prior rejected offers must be kept at least five years

3.14 Action to collect compensation; commissioner jurisdiction limits

32-2152 permits brokers or salespersons to sue in state courts to collect earned compensation; the complaint must allege the plaintiff was a qualified licensee when the claim arose, and the court requires proof of qualifications before hearing. The commissioner will not entertain purely civil disputes between licensees over earning, splitting, or nonpayment of compensation.

- ✓ A collection action requires the plaintiff to plead and prove licensure at the time the claim arose
- ✓ The commissioner does not handle purely civil compensation disputes between licensees
- ✓ Nothing permits compensation that violates 32-2155 or 32-2163

3.15 Grounds for discipline – character and licensing fraud

32-2153(B) allows discipline where the holder/applicant procured a license by fraud/misrepresentation; was convicted of a felony or crime of forgery, theft, extortion, conspiracy to defraud, or moral turpitude; made substantial misrepresentations or false promises; engaged in fraud or dishonest dealings; practiced without a license; demonstrated incompetence; violated criminal/administrative orders; violated real estate or securities laws; or failed to respond in an investigation or audit. Judgments of fraud or convictions resulting in recovery-fund payment are prima facie evidence of a violation.

- ✓ Felony convictions and crimes of moral turpitude/fraud are grounds for discipline
- ✓ Failing to respond in an investigation or audit by providing documents or written statements is a ground
- ✓ A fraud judgment or conviction resulting in a recovery-fund payment is prima facie evidence of a violation

3.16 Commissioner retains jurisdiction after license ends

32-2153(E) provides that lapsing, suspension, voluntary surrender, or court/commissioner action ending a license does not deprive the commissioner of jurisdiction to proceed with investigation/disciplinary proceedings, render a decision suspending/revoking or denying renewal, or assess a civil penalty under 32-2160.01. The commissioner may also deny an entity license if a controlling person is a current/former licensee whose license was denied, suspended, or revoked.

- ✓ Surrender or lapse of a license does not end the commissioner's disciplinary jurisdiction
- ✓ The commissioner may still assess civil penalties and render decisions after a license ends
- ✓ An entity application may be denied if a 10%+ owner or controlling person had a license denied/suspended/revoked

3.17 Letters of concern and provisional licenses

32-2153(F) defines a 'letter of concern' as an advisory letter notifying a licensee that, while conduct does not warrant discipline, the commissioner believes practices should be modified or eliminated and continuation may result in further disciplinary action. A 'provisional license' allows practice subject to a consent order (32-2153.01) or the commissioner's terms, conditions, and restrictions.

- ✓ A letter of concern is advisory and not itself disciplinary action
- ✓ A provisional license allows practice subject to a consent order or the commissioner's conditions

3.18 Cease and desist orders

32-2154 empowers the commissioner to issue cease and desist orders against anyone engaging in or preparing to engage in acts violating the chapter, rules, or orders, and may order restitution or affirmative corrective action within a reasonable time. An aggrieved person may request a hearing under title 41. The commissioner may also seek a court injunction; proceedings must be promptly instituted and determined.

- ✓ The commissioner may order a person to cease and desist and to make restitution or take corrective action
- ✓ A person aggrieved by a cease and desist order may request a hearing
- ✓ The commissioner may seek a court injunction against continued violations

3.19 Mortgage compensation and leasing agents

32-2155(D) prohibits a broker/salesperson from collecting compensation for negotiating loans secured by real property unless licensed under title 6, chapter 9 (mortgage broker), disclosure of dual compensation is made, and no other law is violated. Subsection E allows brokers to employ residential leasing agents/managers per 32-2121, but their exemption does not relieve the designated broker's duty to supervise them.

- ✓ Collecting compensation for negotiating real-property loans requires title 6 mortgage licensure and dual-compensation disclosure
- ✓ A designated broker must still supervise residential leasing agents/managers even though they are exempt from licensure under Article 2

3.20 Notice, summary suspension, and voluntary surrender

32-2157 requires written notice of charges and an opportunity for a hearing before suspending, revoking, or denying renewal; respondents must file a written answer within 20 days after service of the hearing notice. A licensee facing discipline may voluntarily surrender the license at least ten days before a hearing, after which the department will not issue a new license to that person. Summary suspension is available for emergencies affecting public health/safety/welfare or when a licensee is convicted of a felony and incarcerated, paroled, or on probation.

- ✓ Written notice and hearing opportunity are required before most license actions; answer due within 20 days
- ✓ Voluntary surrender at least 10 days before a hearing bars future licensure
- ✓ Summary suspension is allowed for public-safety emergencies or felony conviction with incarceration/parole/probation

3.21 Civil penalties up to $1,000 per infraction

32-2160.01 allows the commissioner, after a hearing, to assess a civil penalty not to exceed $1,000 for each infraction against a licensee who violates the chapter, rules, or orders, deviates substantially from a public report, or engages in unlawful practices under 44-1522 regarding subdivided/unsubdivided land sales. Actions to recover penalties are brought by the attorney general, and unpaid penalty orders can be filed and enforced like superior court judgments.

- ✓ Civil penalties may not exceed $1,000 per infraction and require a prior hearing
- ✓ A commissioner's order for unpaid penalties can be filed and enforced as a superior court judgment

3.22 Out-of-state broker cooperation agreements

32-2163 makes it unlawful for an Arizona broker to employ or compensate unlicensed persons for broker acts, though an Arizona broker may pay/receive compensation from a broker lawfully operating in another state. An Arizona broker may cooperate with an out-of-state broker only under a written cooperation agreement (executed before activity begins) listing the activities, agreeing to Arizona law/jurisdiction, and accepting responsibility for the out-of-state broker's acts. All in-state negotiations must go through the Arizona broker, who assumes all responsibility, and all principal funds are subject to 32-2151.

- ✓ A written cooperation agreement must be executed before any out-of-state broker activity in Arizona
- ✓ All Arizona negotiations must be conducted through the licensed Arizona broker, who assumes responsibility
- ✓ Out-of-state brokers may not list, market, advertise, or place signs on Arizona property, or use the agreement to deal directly with Arizona residents
- ✓ Offering brokerage services for Arizona property via an internet website requires an Arizona broker's license

3.23 Unlicensed activity classifications

32-2165 makes acting as (or advertising as) a broker or salesperson without a license a class 6 felony, and performing other license-required acts without a license a class 5 felony. Exceptions include a broker/salesperson within one year of expiration where failure to renew was unintentional neglect or department delay, licensee acts otherwise violating the chapter, and persons who, on discovering licensure is required, notify the department, apply for licensure, and cease the prohibited activity before a cease and desist order. 32-2166 makes performing license-required acts while incarcerated a class 6 felony.

- ✓ Acting/advertising as an unlicensed broker or salesperson is a class 6 felony
- ✓ Performing other license-required acts without a license is a class 5 felony
- ✓ Performing license-required acts while incarcerated is a class 6 felony

3.24 Judicial review of commissioner decisions

32-2159 provides that, except as provided in 41-1092.08(H), a final commissioner decision may be appealed to the superior court in Maricopa County under title 12. If the court finds an appealing party indigent, the department pays for the reporter's transcript and provides a certified copy of the administrative record at no charge.

- ✓ Final commissioner decisions are appealed to superior court in Maricopa County
- ✓ Indigent appellants receive transcript and record copies at no charge

CHAPTER 4

Art. 3.1: Property management

4.1 Required Contents of Property Management Agreements

Property management agreements must be written in clear, unambiguous language and must state all material terms and conditions of the firm's services, obligations, and duties to the owner. They must be signed by the owner (or agent) and the firm's designated broker (or authorized licensee), specify beginning and ending dates, contain cancellation provisions agreeable to both parties, provide for disposition of all collected monies including tenant deposits, specify type and frequency of status reports, state operating reserve amounts and purposes, provide for disposition of interest earned on trust monies, state compensation terms, and prohibit assignment to another licensee without express written owner consent.

- ✓ The agreement must be signed by the property owner or agent and the designated broker or authorized real estate licensee
- ✓ Must specify a beginning and an ending date
- ✓ Must contain cancellation provisions agreeable to both parties
- ✓ Must provide for disposition of all monies collected, including tenant deposits, and interest earned on trust accounts
- ✓ May not be assigned to another licensee or licensed entity without express written consent of the owner

4.2 Final Accounting Timeline on Termination

On termination the firm must provide a final accounting of the property's financial status: within 5 days a list of all tenant security obligations; within 35 days reimbursement of all monies remaining in property accounts (except monies needed for unpaid obligations incurred during the term); within 75 days a final accounts receivable and payable list; and within 75 days a final bank account reconciliation.

- ✓ Within 5 days: provide a list of all tenant security obligations
- ✓ Within 35 days: reimburse all remaining monies except those needed for unpaid obligations
- ✓ Within 75 days: provide a final accounts receivable/payable list and a final bank account reconciliation

4.3 Property Management Trust Accounts

All property management accounts must be designated as trust accounts on the broker's records. A broker's trust account is required for all owner monies unless the owner directs deposit directly into the owner's account (the broker may not have access to the owner's account). Trust accounts may be interest bearing. The firm must deposit non-disputed, non-contingent monies within three banking days into either the owner's direct account or the firm's trust account. Each rental agreement executed by a property manager must include a provision clearly stating the disposition of any tenant deposits.

- ✓ All property management accounts must be designated as trust accounts on the broker's records
- ✓ A broker's trust account is required for all owner monies unless the owner directs direct deposit into the owner's own account, to which the broker has no access
- ✓ Non-disputed monies must be deposited within three banking days
- ✓ Each rental agreement must clearly state the disposition of any tenant deposits

4.4 Property Management Recordkeeping Requirements

Firms must keep a residential rental agreement plus amendments, addenda, and related documents for one year after expiration or until given to the owner at termination. Finder fee records paid to tenants must be kept for three years after payment or until given to the owner. All client financial records (bank statements, canceled checks/images, deposit slips, receipts, journals, owner statements, client ledgers, bills, invoices) must be kept at least three years from execution. Signed management agreements must be consecutively numbered or filed in an orderly, accessible system.

- ✓ Residential rental agreements and related documents must be kept one year after expiration or until given to the owner
- ✓ Finder fee records must be kept three years after payment
- ✓ All client financial records must be kept at least three years from the date of execution
- ✓ Signed management agreements must be consecutively numbered or filed in an orderly, accessible manner

4.5 Property Management Firm and Rental Agreement Defined

A 'property management firm' is any corporation, partnership, or LLC licensed under section 32-2125(A), or a designated broker, that by written agreement manages rental property for compensation. A 'rental agreement' means a lease or leasing agreement. This article supersedes all provisions of law and rules relating to property management.

- ✓ A property management firm must be a licensed entity or designated broker managing rental property for compensation under a written agreement
- ✓ Article 3.1 supersedes all other laws and rules relating to property management
- ✓ 'Rental agreement' means a lease or leasing agreement

4.6 Optional Provisions in Property Management Agreements

Property management agreements MAY contain an automatic renewal provision only if the firm sends the owner a reminder notice at least 30 days before the renewal date (the notice does not negate any other agreed cancellation term). They may provide for reasonable liquidated damages or cancellation fees for early termination, allow the broker to authorize a licensed or unlicensed person in direct employment to transfer monies or be a signatory on trust accounts, require more than one signature on checks, and contain any other agreed provisions not in conflict with the chapter.

- ✓ An automatic renewal provision is allowed only if the firm sends a reminder notice at least 30 days before the renewal date
- ✓ The agreement may provide for reasonable liquidated damages or cancellation fees for early termination
- ✓ Additional provisions are permitted if agreed to and not in conflict with the chapter

4.7 Duties Upon Termination of Management Agreement

Immediately on termination, the firm must give the owner all originals or copies of rental agreements and related documents (applications, inventories, leases, pet permits, default notices, amendments/addenda) for current and previous tenants, plus building plans, environmental studies, CC&Rs, inspection reports, contracts, keys, warranties, and personal property in the firm's possession. The broker is not required to keep copies of residential rental lease documents after termination. If an on-site management office exists, the firm may leave the records there for the owner's benefit but must immediately inform the owner in writing of their location.

- ✓ Immediately upon termination the firm must provide the owner all rental agreements, related documents, keys, plans, and other property in its possession
- ✓ The broker is not required to keep copies of residential rental lease documents after termination
- ✓ If records are left in an on-site office, the firm must immediately notify the owner in writing of their location

4.8 Trust Account Signatory Authorization

The designated broker may authorize a licensee or an unlicensed natural person in the broker's direct employ to transfer monies or be a signatory on the firm's trust accounts. If unlicensed, that person must be a bona fide officer, member, principal, or employee of the firm. The broker may require dual signatures and may use facsimile signatures per business policy. Delegating signatory authority does not lessen the broker's responsibility or liability for monies handled.

- ✓ A designated broker may authorize a licensed or unlicensed person in direct employ to be a trust account signatory
- ✓ An unlicensed signatory must be a bona fide officer, member, principal, or employee of the firm
- ✓ Delegation of signatory authority does not reduce the broker's responsibility or liability for monies handled

4.9 Signing Authority and Storage of Records

Only the designated broker or the broker's authorized real estate licensee may sign nonresidential rental agreements, and any delegation of authority must be in writing and filed in the broker's employee file. Fully executed residential lease agreements need not be reviewed and initialed. Records must be kept at the broker's main or branch office, electronically, or at an in-state off-site storage location if prior written notice and a street address are provided to the department. On request for routine audits, the broker must make records available within a reasonable time.

- ✓ Only the designated broker or authorized licensee may sign nonresidential rental agreements, with written delegation filed
- ✓ Fully executed residential lease agreements are not required to be reviewed and initialed by the broker
- ✓ Records must be kept at the main/branch office, electronically, or at an in-state off-site location after prior written notice to the department
- ✓ The broker must make records available for routine audits within a reasonable time

4.10 Finder Fees to Apartment Tenants

Notwithstanding other chapter provisions, a property management firm or property owner may pay a finder fee to an unlicensed tenant in an apartment complex it manages or owns, and may authorize a residential leasing agent or manager to deliver (but not receive) such a fee. The fee must be a credit toward or reduction in the tenant's monthly rent, and a tenant may receive multiple fees. The tenant must limit activity to referring prospective lessees and may not show units, discuss lease terms, or negotiate. Violations by a licensee may result in license suspension/revocation or civil penalty.

- ✓ A finder fee may be paid to an unlicensed tenant only as a credit toward or reduction in the tenant's monthly rent
- ✓ A residential leasing agent or manager may deliver but may not receive a finder fee
- ✓ The tenant may only refer prospective lessees and may not show units, discuss lease terms, or negotiate
- ✓ Finder fees may not be used to advertise or promote services procuring lessors or tenants

CHAPTER 5

Art. 4: Sale of subdivided lands – public reports

5.1 Notice of Intention to Subdivide Lands

Before offering subdivided lands for sale or lease, the subdivider must notify the commissioner in writing of the intention to subdivide. This notice of intention must contain extensive disclosures about the ownership, land, title condition, terms of sale, improvements, utilities, water, schools, taxes/assessments, and any restrictive covenants. It forms the basis for the commissioner's public report.

- ✓ Subdivider must file a written notice of intention with the commissioner BEFORE offering subdivided lands for sale or lease
- ✓ 'Principal' means any person/entity holding 10% or more financial interest, or for a trust each beneficiary holding 10% or more beneficial interest
- ✓ Notice must include name/address of owner and subdivider, legal description, condition of title including encumbrances, terms/conditions of sale, recorded subdivision map, and use restrictions/covenants
- ✓ Subdivider need not disclose items more than one mile from the subdivision boundaries, except foreign nations or tribal lands within the one-mile radius must be disclosed

5.2 Six-or-More Lots Threshold and Exemptions

A creation of six or more lots, parcels or fractional interests of any size is a subdivision subject to the article, with specific exceptions such as 36-acre-plus partitions, foreclosure results, court decrees, securities-regulated interests, and commissioner special orders.

- ✓ Creating six or more lots/parcels/fractional interests of any size is subject to the article unless an exemption applies
- ✓ Exempt: each interest represents 36 acres or more; results of foreclosure/deed in lieu; created by court order/operation of law; oil/gas/mineral or registered securities interests; commissioner special-order exemptions
- ✓ A sale/lease occurring 10 or more years after another lot's sale is treated as independent unless there is evidence of intent to subdivide

5.3 Public Report Issuance and Delivery

Upon examination, unless grounds for denial exist, the commissioner issues a public report authorizing sale/lease. The subdivider must furnish each prospective buyer/lessee a copy before they sign any offer to purchase or lease and take a receipt.

- ✓ The commissioner shall issue a public report authorizing sale/lease unless grounds for denial exist
- ✓ The subdivider must furnish each initial buyer or lessee a copy of the public report BEFORE they sign any offer to purchase or lease, and must take a receipt
- ✓ Reports for property near military airports, training routes, restricted airspace or electronics ranges must include specified disclosure statements in bold 12-point block letters on the first page

5.4 Grounds for Denial/Suspension/Revocation of Public Report

The commissioner may suspend, revoke or deny a public report for numerous grounds including noncompliance, misrepresentation/fraud, inability to deliver title, failure to assure improvement completion, and disqualifying background of owners or 10%-or-more interest holders.

- ✓ Grounds include failure to comply with the article/rules, sale that would constitute misrepresentation/deceit/fraud, inability to deliver title, and failure to assure completion of improvements
- ✓ Disqualifying background of any owner/subdivider/officer/director/partner or 10%-or-more interest holder (felony/misdemeanor involving fraud or real estate, injunctions, adverse administrative orders/judgments) is a ground for denial
- ✓ Procuring a public report by fraud, failure to demonstrate permanent access, or lots posing an unreasonable health risk are grounds for denial

5.5 Public Report Required and Rescission Rights

A subdivider may not sell/lease or offer subdivided lands without first obtaining a public report and certificate of administrative completeness (unless exempt). Selling before the report issues, or failing to deliver it, makes the transaction rescindable by the buyer/lessee.

- ✓ A subdivider must obtain a public report (and certificate of administrative completeness) before selling/leasing subdivided lands, except under section 32-2181.01 or 32-2181.02 exemptions
- ✓ Sale/lease before the report issues or failure to deliver it renders the transaction rescindable by the purchaser or lessee
- ✓ A rescission action must be brought within three years of the date the purchaser/lessee executed the purchase or lease agreement; prevailing party gets reasonable attorney fees

5.6 Rescission Rights on Unimproved Lot Sales

Purchasers of unimproved lots have statutory rescission rights: a seven-day cooling-off period without cause and a six-month inspection right if they had not inspected before contracting.

- ✓ A purchaser of an unimproved lot may rescind without cause by written notice by midnight of the seventh calendar day after executing the contract; the subdivider must clearly disclose this right
- ✓ A buyer who did not inspect the lot before signing has six months to inspect and unilaterally rescind, signing an affidavit of inspection
- ✓ The subdivider must clearly and conspicuously disclose the rescission right per commissioner regulations

5.7 Contract Disclosures and Anti-Waiver Rule

All contracts for purchase/lease of subdivided land must clearly disclose the document's nature, the right to receive the public report, and applicable rescission rights. Missing disclosures make the contract unenforceable against the purchaser.

- ✓ Contracts must clearly and conspicuously disclose the nature of the document, the right to receive a copy of the public report, and the rescission right for unimproved lots
- ✓ A contract failing to make these disclosures is not enforceable against the purchaser
- ✓ For lots for present/future residential use, provisions waiving or disclaiming liability for prior material representations relied upon by the purchaser are void

5.8 Blanket Encumbrance Release Provisions

When subdivided land is subject to a blanket encumbrance, the subdivider must ensure purchasers can obtain clear title to their lot free of the blanket encumbrance lien once they complete payments. Documents evidencing these provisions must be filed with the commissioner before selling any affected lot.

- ✓ A statement of blanket encumbrance release provisions enabling a purchaser to acquire title free of the lien is required in the notice
- ✓ Copies of documents containing these release provisions must be filed with the commissioner before selling any lot subject to a blanket encumbrance

5.9 Water Supply Requirements for Subdivisions

If a subdivision lies within an Active Management Area, the subdivider must submit a certificate of assured water supply from the Director of Water Resources (or a written commitment from a designated provider). Outside AMAs, in counties/cities that adopted adequate water supply provisions, the subdivider must show an adequate water supply report. Where water is inadequate, promotional materials and contracts must disclose the water report.

- ✓ Within an AMA, subdivider must accompany notice with a certificate of assured water supply and proof applicable fees are paid, unless a written commitment of water service exists or an exemption applies
- ✓ Outside AMAs where adequacy rules apply, an adequate water supply report from the Director of Water Resources is required unless an exemption applies
- ✓ If water supply is inadequate or unavailable, the commissioner requires all promotional material and contracts to display the water report or approved summary

5.10 Unlawful Acting in Concert

It is unlawful for persons acting in concert to evade the subdivided-lands article by dividing land through a series of owners, conveyances or other methods that ultimately produce a subdivision or subdivided-land sale. For a licensee to be liable, they must have known or should have known the property was subject to the article.

- ✓ Acting in concert to divide land or sell lots through a series of owners/conveyances to avoid the article is unlawful; the plan is still subject to the article
- ✓ A real estate licensee is liable only with proof they knew or with reasonable diligence should have known the property was subdivided land subject to the article
- ✓ A familial relationship alone is not sufficient to constitute unlawful acting in concert

5.11 Statutory Exempt Sales and Leases

Section 32-2181.02 lists sales/leases fully or partially exempt: bulk sales of six or more lots to one buyer in one transaction, lots of 160 acres or more, commercial/industrial zoned parcels, and qualifying resales in platted subdivisions with a recent public report.

- ✓ Fully exempt: bulk sale/lease of six or more lots to one buyer in one transaction; lots/parcels of 160 acres or more
- ✓ Exempt from notice/public-report requirements: parcels zoned/restricted to commercial or industrial uses
- ✓ Single-platted-subdivision resale exemption requires a public report issued within the past five years, all improvements complete or assured, no disqualifying criminal/civil/license history of principals, and delivery of the most recent public report with a receipt taken from the buyer

5.12 Lot Reservations Before Public Report

Subdividers may accept lot reservation deposits before a public report is issued, subject to strict rules protecting the prospective buyer, including escrow of deposits and full refundability. No sale may be finalized until the public report issues.

- ✓ Reservation deposit for a single lot/parcel may not exceed $5,000 and must be delivered to a licensed escrow agent within one business day and held in escrow
- ✓ A prospective buyer may cancel a reservation at any time before a purchase contract is executed; all deposits (plus interest, less agreed fees) must be refunded within five business days of termination
- ✓ Authority to take lot reservations expires two years after the commissioner receives notice of intent; each reservation form must state no public report has been issued and no sale offer may be made

5.13 Commissioner Examination and Filing Fee

The commissioner examines every subdivision offered for sale or lease and makes findings public. A filing fee accompanies the notice, and the commissioner has time limits for determining violations.

- ✓ A filing fee of $500 (or lesser fee set by commissioner) must accompany the written notification under section 32-2181
- ✓ The commissioner has no more than five years after an initial complaint or start of investigation to determine if the sale/lease violated the article
- ✓ The commissioner may skip a site inspection if the subdivision was inspected within the past two years, all improvements were complete, and no physical changes are proposed

5.14 Improvement Completion Before Sale

A subdivider may not sell a lot unless subdivision improvements are complete or their completion is assured through acceptable financial arrangements or government/trustee agreements.

- ✓ It is unlawful to sell a lot unless all proposed/promised improvements are completed OR completion is assured by financial arrangements acceptable to the commissioner
- ✓ Alternatively, the municipality/county may agree to prohibit occupancy and the subdivider agrees not to close escrow until improvements are completed, or a trustee assurance agreement (recorded) may be used

5.15 Advertising Disclosure Requirement

Print or internet advertisements for a specific lot must include a disclosure that the public report is available on the ADRE website.

- ✓ Print (magazine/newspaper) or internet advertisements for a specific subdivider lot/parcel must state that 'a public report is available on the state real estate department's website'
- ✓ This disclosure requirement applies to advertising of specific subdivider lots or parcels

5.16 Advertising Content Restrictions for Subdivisions

Subdivision advertising, sales literature and oral statements may not contain untrue material statements, claims of no risk, or misrepresentations of proposed improvements/nonexistent scenes, and homesite claims require potable water and sewage availability.

- ✓ Advertising may not contain untrue material statements, claims that lots are offered without risk or that loss is impossible, or unlabeled depictions of proposed improvements/nonexistent scenes
- ✓ Representations that lots are suitable as homesites/building lots require potable water and sewage/sewer availability, or clear disclosure of facts to the contrary
- ✓ All advertising must be consistent with the notice of intention and public report; subdivider must retain advertising copies for three years after last use

5.17 Civil Liability for False Notice or Public Report

Subdividers or agents are liable to purchasers when the notice of intention or public report contains an untrue statement or omits a material fact, unless the buyer knew of the untruth/omission. Fraud in selling lots is also unlawful.

- ✓ A subdivider or agent is liable to a purchaser for untrue statements or omissions of material fact in the notice of intention or public report, unless the buyer knew
- ✓ It is unlawful to defraud, obtain money by material misrepresentation, or engage in any transaction operating as fraud/deceit on a purchaser
- ✓ Actions for false notice/report liability must be brought within one year of discovery; fraud actions within two years of the violation; and in no event more than three years after the sale/lease

5.18 Material Change to Subdivision Plan

After approval, a subdivider may not materially change the plan or continue offering lots after a material change without first notifying the commissioner, who may require an amended public report. Buyers may get cancellation rights in certain cases.

- ✓ It is unlawful to materially change an approved subdivision plan, or keep offering lots after a material change, without first notifying the commissioner in writing
- ✓ A buyer/lessee may cancel within ten days after written notice of a material change if it adversely impacts them and was caused by (or known to) the subdivider, or if it involves the occupant's health, safety or designated use
- ✓ An amended public report filing fee is one-half the initial public report fee but no less than $250

5.19 Delivery of Clear Title and Sale of Unimproved Lots

Selling a lot subject to a blanket encumbrance without release provisions is unlawful. Sales of unimproved lots must follow prescribed methods (deed with recording, escrow with deed and title report, or deed to trustee), all documents recorded in the subdivision's county.

- ✓ It is unlawful to sell a lot subject to a blanket encumbrance unless a provision lets the purchaser acquire title free of it upon completing payments
- ✓ Unimproved lot sales must use one of the statutory methods and required documents (deed, mortgage/deed of trust, or trust agreement) must be recorded within 60 days
- ✓ The provisions do not apply to sales of improved lots (as defined in 32-2101) or cemetery lots

5.20 Permanent Access Requirement

No subdivided land may be sold without provision for permanent access traversable by conventional motor vehicle unless waived by the commissioner, and sales lacking permanent access are rescindable.

- ✓ Subdivided land may not be sold without permanent access over terrain traversable by conventional motor vehicle, unless the commissioner waives the requirement
- ✓ A sale of subdivided land without permanent access is rescindable; the action must be brought within three years of the buyer's execution of the sales contract

5.21 Civil Penalties for Subdivision Violations

The commissioner may assess civil penalties against subdividers/agents who violate the chapter, rules, orders, or engage in unlawful practices, with higher penalties for selling without a public report.

- ✓ A subdivider or agent may be assessed a civil penalty up to $2,000 per infraction after a hearing; an infraction concerning more than one lot is a single infraction
- ✓ Selling/leasing without first obtaining a public report (for lots created after Dec. 31, 2008, on a commissioner order) may be penalized up to $5,000 per infraction
- ✓ Penalty proceedings must be commenced within five years of actual or reasonably-diligent discovery by the department

5.22 Commissioner Special-Order Exemption

The commissioner may, by special order, exempt certain subdivided lands or fractional interests from all or part of the article when compliance is not essential to the public interest or buyer protection due to special characteristics or limited character of the offering.

- ✓ Exemption requires a written petition and a showing satisfactory to the commissioner that compliance is not essential to the public interest or buyer protection
- ✓ A petition must be accompanied by a $100 initial fee, which is non-returnable regardless of outcome
- ✓ Special orders relate only to specific lands or specific fractional interests

5.23 Recording of Commissioner Actions and Violation Notices

When the commissioner issues cease-and-desist, prohibition, injunction or suspension orders, or when land is subdivided in violation of the article, the department records notices in the county recorder's office affecting the land.

- ✓ Cease-and-desist orders, injunctions, prohibition orders, or subdivision approval suspensions must be recorded in the county deed records and affected owners notified within ten business days
- ✓ A public notice is recorded for land subdivided in violation, allowing cities/counties to decline building permits until proper approval; a release is recorded within ten business days after compliance

5.24 Subdivider Surety Bond Requirement

A subdivider with a history of subdivision-law or fraud violations may be required to post a surety bond (or certificate of deposit) with the commissioner to protect purchasers.

- ✓ A bond may be required if the subdivider has violated subdivision laws or the interstate land sales act, or been found guilty of fraud/misrepresentation in selling subdivided lands
- ✓ The bond runs in favor of the state, is subject to claims by injured purchasers, and continues until two years after all sales are completed; a certificate of deposit may be posted in lieu of a bond

CHAPTER 6

Art. 7: Sale of unsubdivided lands

6.1 Notice of Intention to Commissioner Before Offering

Before offering unsubdivided land for sale or lease, the owner or agent must notify the ADRE Commissioner in writing of their intention. This written notice must contain extensive disclosure information about ownership, the land, and its condition. Principals holding a 10% or more financial interest (or trust beneficiaries holding 10% or more beneficial interest) must be identified.

- ✓ Written notice of intention must be filed with the Commissioner BEFORE offering unsubdivided land for sale or lease
- ✓ 'Principal' means any person or entity with a 10% or more financial interest, or a trust beneficiary holding a 10% or more beneficial interest
- ✓ Notice must include owner/agent name and address, legal description and area, title condition and encumbrances, terms of offering, intended uses, and access provisions
- ✓ Copies of original promotional and advertising material must be attached to the notice

6.2 Written Authorization and Public Report Required

It is unlawful for any owner or agent to make offerings of unsubdivided land without the written authorization of the Commissioner. The Commissioner issues a public report, and a copy must be furnished to each offeree at the time of the offering.

- ✓ It is unlawful to make offerings without written authorization of the Commissioner
- ✓ The Commissioner issues a public report that must be furnished to each offeree at the time of offering
- ✓ The Commissioner may terminate any authorization on grounds set out in section 32-2183

6.3 Public Report Issuance and Owner-Prepared Reports

Upon examination, unless grounds for denial exist, the Commissioner issues a public report authorizing sale or lease. Alternatively, an owner may prepare a final public report and obtain a certificate of administrative completeness. The Commissioner has 15 business days to determine administrative completeness. Sales may commence after obtaining the certificate.

- ✓ Public report must be reproduced by the owner/agent and furnished to each prospective buyer before signing an offer to purchase, taking a receipt
- ✓ Owner-prepared public reports require a $500 initial (or $250 amended) filing fee and assigned registration number
- ✓ Department must determine administrative completeness within 15 business days
- ✓ Owner may commence sales/leasing only after obtaining a certificate of administrative completeness
- ✓ Military airport vicinity land requires bold 12-point block letter statements on the first page of the report

6.4 Prohibition on Sale Without Public Report

No owner or agent may sell, lease, or offer unsubdivided lands without first obtaining both a public report and a certificate of administrative completeness. Sales made before issuance are voidable by the purchaser.

- ✓ Both a public report AND a certificate of administrative completeness are required before selling, leasing, or offering
- ✓ Any sale or lease before public report issuance is voidable by the purchaser
- ✓ An action to void must be brought within three years of the purchaser executing the purchase agreement
- ✓ The prevailing party in a voidance action is entitled to reasonable attorney fees

6.5 Required Methods of Sale and Recording Deadlines

An owner/agent may only sell unsubdivided lots using one of three prescribed methods: (1) deed conveying marketable title (recorded within 60 days), (2) escrow of a real estate sales contract with title report, executed deed, and blanket encumbrance releases (deposited within 60 days), or (3) deed to a qualified trustee with a trust agreement. Recording must occur in the county where the land is located.

- ✓ Only three prescribed methods (direct deed, escrow of sales contract, or deed to trustee) may be used to sell unsubdivided lots
- ✓ Deeds, mortgages/deeds of trust, and sales contracts generally must be recorded within 60 days of purchaser execution
- ✓ All documents must be recorded in the county and state where the unsubdivided land is located
- ✓ Only a bank, savings and loan, or title insurance company (or authorized escrow agent) may act as trustee under method 3

6.6 Purchaser Rescission Rights

Purchasers of unsubdivided land have two distinct rescission rights: a 7-day cooling-off period after signing, and a 6-month inspection rescission right if they did not inspect the parcel before signing. The owner/agent must clearly disclose the 7-day right and provide opportunity to exercise it.

- ✓ A purchaser may rescind without cause by midnight of the 7th calendar day following execution of the contract
- ✓ A buyer who has not inspected the lot before signing has a 6-month period to inspect and unilaterally rescind
- ✓ At inspection the buyer must sign an affidavit stating he inspected the property, which may be required to be filed with the department
- ✓ Owner/agent must clearly and conspicuously disclose the right to rescind

6.7 Required Contents of Notice of Intention

The statutory notice of intention must contain numerous 'true statements' covering water availability, sewage/utilities, permanent access, indebtedness of special taxing districts, open range/livestock status, and military/public airport vicinity disclosures. It must also disclose parent/subsidiary corporation involvement in other subdivisions over the past five years.

- ✓ Must include a true statement of water availability or lack thereof, and availability of sewage disposal and utilities (water, electricity, gas, telephone)
- ✓ Must disclose whether land is in an open range where livestock may roam and any fencing provisions
- ✓ Must disclose whether the land is in the vicinity of a military or public airport or in a high noise/accident potential zone (per July 1, 2001 rules)
- ✓ Commissioner may require other information and documents reasonably needed to protect the public

6.8 Permanent Access and Water Disclosure Requirements

Unsubdivided land cannot be offered without provisions for permanent access over terrain where conventional motor vehicle roads could be established, unless waived by the Commissioner. Proof must come from a licensed engineer or land surveyor. Water availability reports from the Director of Water Resources must be displayed in promotional material and contracts.

- ✓ Permanent access over terrain suitable for conventional motor vehicle roads is required unless waived by the Commissioner
- ✓ Proof of access must be furnished by a licensed engineer or land surveyor of Arizona
- ✓ If a water availability report exists, promotional material and contracts must display it or an approved summary
- ✓ If no water report exists and availability is unknown, promotional material and contracts must state that no report was prepared and availability is unknown

6.9 Examination and Filing Fees

The Commissioner examines unsubdivided land offered for sale or lease and makes findings public. Travel and subsistence costs of examination are borne by the owner/agent/subdivider at actual cost, plus an initial filing fee.

- ✓ Commissioner must examine unsubdivided land and make findings public
- ✓ An initial filing fee of $500 must accompany the written notification under sections 32-2195 and 32-2195.10
- ✓ Travel and subsistence examination costs are borne by the owner, agent, or subdivider at actual cost

6.10 Grounds for Denial of Public Report

The Commissioner may deny a public report for reasons including failure to comply with the article, misrepresentation/fraud, inability to deliver title, inadequate financial arrangements for improvements, or failure to show the parcels can be used for their offered purpose. Denial may also arise from disqualifying background of owners, agents, officers, directors, partners, or 10%+ interest holders.

- ✓ Grounds include failure to comply, fraud/misrepresentation, inability to deliver title, inadequate improvement financing, and inability to show usability
- ✓ A felony/misdemeanor conviction involving fraud, dishonesty, or real estate conduct is a ground for denial
- ✓ Prior injunctions, administrative orders, or adverse judgments involving real estate fraud/dishonesty are grounds for denial
- ✓ Applicant may request a hearing within 30 days of an order of denial

6.11 Investigations, Hearings and Summary Orders

On his own motion or upon a complaint with satisfactory evidence of violations or unlawful practices, the Commissioner may investigate, examine books and records, issue summary orders, or hold hearings. Owners/agents must maintain records of all sales transactions and funds received and make them accessible upon reasonable notice.

- ✓ Owner or agent must keep records of all sales transactions and funds received and make them accessible to the Commissioner on reasonable notice
- ✓ Commissioner may investigate, issue summary orders under section 32-2157, or hold public hearings
- ✓ If violations continue after a hearing, the Commissioner may seek an injunction in court

6.12 Advertising Material Filing and Content Rules

Owners/agents must file original promotional and advertising material with the Commissioner and file subsequent advertising within 21 days of use. Advertising and sales literature (including oral statements) cannot contain untrue statements, omissions of material fact, risk-free claims, or misrepresent proposed improvements or nonexistent scenes.

- ✓ Subsequent advertising must be filed with the Commissioner within 21 days of use
- ✓ No advertising may contain untrue statements of material fact, material omissions, or claims that land is offered without risk or that loss is impossible
- ✓ Proposed improvements and nonexistent scenes must be clearly labeled as such
- ✓ 'Homesite/building lot' claims require available potable water and sewage disposal, or clear contrary disclosure in each ad
- ✓ All advertising must be consistent with the notice of intention and public report

6.13 Civil Liability for Untrue Statements

Owners/agents are civilly liable to purchasers if the notice of intention or public report contains an untrue statement or omits a material fact, or if they sell in violation of section 32-2195.03. It is unlawful to defraud, obtain money by material misrepresentation, or engage in fraudulent practices. Damages formulas, attorney fees, and limitation periods are prescribed.

- ✓ Liability arises for untrue statements or omissions of material fact in the notice of intention or public report
- ✓ Prevailing purchaser is entitled to reasonable attorney fees; if no violation is established, the court may award fees to the defendant
- ✓ Actions under subsection A/B must be brought within 1 year of discovery; under subsection C within 2 years of the violation
- ✓ No action may be brought by a purchaser more than 3 years after the sale or lease

6.14 Change of Plan After Approval

After securing Commissioner approval, it is unlawful for an owner, agent, or subdivider to materially change the plan without first notifying the Commissioner in writing. The Commissioner may suspend approval pending amendment of the public report if needed to protect purchasers.

- ✓ Material changes to an approved plan require prior written notice to the Commissioner
- ✓ The Commissioner may suspend approval pending amendment of the public report to protect purchasers
- ✓ Each purchaser must be provided a recordable copy of each contract at closing

6.15 Civil Penalties and Limitation Period

An owner or agent subject to ADRE jurisdiction who violates the chapter, rules, orders, or engages in unlawful practices regarding unsubdivided land may be assessed a civil penalty after a hearing. Proceedings must be commenced within a defined statute of limitations tied to discovery.

- ✓ Civil penalty may be assessed after a hearing, up to $1,000 per infraction
- ✓ An infraction concerning more than one lot is treated as a single infraction
- ✓ Penalty/suspension/revocation proceedings must begin within 5 years of actual discovery or when discovery should have occurred with reasonable diligence

6.16 Prohibition on Anti-Testimony Contract Clauses

No contract, conveyance, lease, assignment, or covenant affecting unsubdivided land may contain a provision limiting a party's right to appear or testify for or against zoning changes, building permits, or other official acts before a governmental body. Such provisions are contrary to public policy, though private use restrictions remain permitted.

- ✓ Contracts and covenants cannot limit a party's right to testify on zoning changes, building permits, or official acts
- ✓ Conflicting contractual provisions are declared contrary to public policy
- ✓ Private restrictions on the use of real property are still permitted

6.17 Commissioner Exemption by Special Order

The Commissioner may, at his discretion, exempt certain unsubdivided land from any or all provisions of this article by special order, upon written petition showing that compliance is not essential to public interest or buyer protection due to special characteristics or limited character/duration of the offer.

- ✓ Exemption requires a written petition and a showing satisfactory to the Commissioner
- ✓ A special order relates to specific land only
- ✓ The petition must be accompanied by a non-refundable $100 initial fee

6.18 Recording of Commissioner Orders

When the Commissioner issues a cease and desist order, obtains an injunction, issues a prohibition order, or suspends a public report, the action must be recorded in the county deed records and affected owners notified. Revocations require a recorded order of release.

- ✓ Cease and desist, injunction, prohibition, or suspension orders must be recorded in the county book of deeds with the legal description
- ✓ Affected parties with recorded ownership interest must be notified within 10 business days of the order or suspension
- ✓ An order of release upon revocation must be recorded within 10 business days
- ✓ The Commissioner retains jurisdiction even if another agency also has jurisdiction over the person

CHAPTER 7

Art. 11: Administrative hearings

7.1 Petition for Hearing on Association Disputes

An owner or a condominium/planned community association may petition the ADRE for a hearing concerning violations of the community documents or of the statutes regulating condominiums (Title 33, ch. 9) or planned communities (Title 33, ch. 16). The petitioner files a written petition on a department-approved form and pays a filing fee set by the Commissioner, which is deposited in the condominium and planned community hearing office fund.

- ✓ Either an owner or the association may petition the department for a hearing over document or statutory violations
- ✓ Petition must be in writing on a department-approved form, list the complaints, be signed with addresses, and state a hearing is desired
- ✓ A filing fee set by the Commissioner must accompany the petition and is deposited into the hearing office fund
- ✓ If the petitioner voluntarily dismisses or the parties stipulate to dismissal before a hearing is scheduled, the filing fee is refunded

7.2 Limits on ADRE Hearing Jurisdiction

The department has no jurisdiction over certain disputes: disputes among or between owners where the association is not a party, and disputes between an owner and a person/entity engaged in designing, constructing, or selling a condominium or planned community improvements (including licensees) arising out of the design, construction, condition, or sale of the property.

- ✓ Department cannot hear disputes among owners to which the association is not a party
- ✓ Department cannot hear disputes between an owner and a designer, builder, or seller arising from design, construction, condition, or sale

7.3 Response and Referral Process

On receiving the petition and fee, the department mails a copy by certified mail to the named respondent, who must respond within 20 days showing cause why the petition should be dismissed. The Commissioner reviews the petition and, if justified, refers it to the Office of Administrative Hearings, but may dismiss it if the dispute has been resolved.

- ✓ Department mails petition by certified mail; respondent must answer within 20 days after mailing
- ✓ Failure of the respondent to answer is deemed an admission and the Commissioner issues a default decision
- ✓ The Commissioner may dismiss a petition if satisfied the disputed issues have been resolved
- ✓ Either party may inspect the department's hearing file if a written authorization is filed

7.4 Orders, Penalties, and Filing Fee Award

The administrative law judge may order any party to comply with the statute, community documents, or contract at issue and may levy a civil penalty per violation. Collected monies are deposited in the hearing office fund. If the petitioner prevails, the ALJ orders the respondent to reimburse the petitioner's filing fee.

- ✓ The ALJ may order compliance and levy a civil penalty on the basis of each violation
- ✓ All monies collected are deposited in the condominium and planned community hearing office fund
- ✓ If the petitioner prevails, the respondent must pay the petitioner's filing fee
- ✓ The ALJ's order is enforceable through contempt of court and subject to judicial review under section 41-1092.08

7.5 Rehearing and Appeal Procedures

A person aggrieved by the ALJ's decision may apply for a rehearing by filing a written petition with the Commissioner. Filing the petition temporarily suspends the operation of the ALJ's action, and if granted, suspends it pending the rehearing decision.

- ✓ An aggrieved party may petition the Commissioner in writing for a rehearing under section 41-1092.09
- ✓ Filing a rehearing petition temporarily suspends the operation of the ALJ's action
- ✓ The Commissioner must serve notice on the other party within ten days of the filing
- ✓ The Commissioner's order granting or denying rehearing must state the particular grounds and reasons

CHAPTER 8

A.A.C. R4-28 Commissioner's Rules Art. 1: General provisions

8.1 Key License Status Definitions

R4-28-101 defines license statuses that are heavily tested. An 'active license' is a current license naming the employing broker and the work location. A 'current license/status' is one that is active or eligible to be active, within the two-year license period OR the one-year grace period while expired. An 'eligible license/status' is issued under article 2 to a licensee who holds a license during the current period but is not engaged by a broker and is prohibited from doing anything requiring an active license. 'Inactive license/status' means a period in which a licensee is prohibited from performing acts requiring an active license.

- ✓ Active license must state the employing broker's name and the location of employment
- ✓ An employing broker's active license requires a currently licensed designated broker of record
- ✓ Current status spans the two-year license period plus a one-year grace period while expired
- ✓ Eligible and inactive licensees may NOT perform activities requiring an active license

8.2 Continuing Education Credit Hour Standard

A 'credit hour' equals 50 minutes of instruction, and the course content must represent at least 80 percent of the course category for which the course is approved. A 'module' is a unit of instruction no shorter than .25 credit hours (12.5 minutes) and no longer than one credit hour (50 minutes). A 'course' means a class, seminar, or presentation.

- ✓ One credit hour = 50 minutes of instruction
- ✓ At least 80% of content must represent the approved course category
- ✓ A module is between .25 credit hours (12.5 min) and 1 credit hour (50 min)

8.3 Material Change and Property Interest

A 'material change' is any significant change in the size or character of a development, development plan, or interest offered, or a change significantly affecting the rights, duties, or obligations of developer or purchaser, or use and enjoyment of the property. A 'property interest' is a person's ownership or control of a lot, parcel, unit, share, or use in a development, including subdivided/unsubdivided land, cemetery plot, condominium, time-share interval, membership camping contract, or stock cooperative.

- ✓ A material change significantly affects development character or the parties' rights, duties, or obligations
- ✓ Property interest covers subdivided/unsubdivided land, condos, time-shares, and stock cooperatives

8.4 Document Filing and Computation of Time

R4-28-102 provides that documents are considered filed on the date received by the Department, but a renewal application postmarked on or before the deadline is considered timely. When computing time periods, the first day is excluded and the last day is included unless it is a Saturday, Sunday, or legal State holiday, in which case the period runs to the next non-holiday business day.

- ✓ Documents are filed on the date received, except renewals are timely if postmarked by the deadline
- ✓ The first day of a period is excluded and the last day is included
- ✓ If the last day is a Saturday, Sunday, or legal State holiday, the period extends to the next business day

8.5 Licensing Time-Frames: Overall and Reviews

R4-28-103 requires the Department to issue or deny a license within the overall time-frame in Table 1, which is the sum of the administrative completeness review and substantive review periods. During the completeness review the Department must notify the applicant in writing of all known deficiencies; if no notice is given within the time-frame, the application is deemed complete. Time-frames are suspended while the Department awaits requested information.

- ✓ Overall time-frame = administrative completeness review + substantive review
- ✓ If the Department fails to give timely deficiency notice, the application is deemed complete
- ✓ Review time-frames are suspended from the date of a deficiency/information request until the information is received

8.6 Deficiency Response and Extensions

An applicant with an incomplete application must supply missing information within the response period in Table 1. If the applicant fails to respond before the completion request period expires, the Department closes the file unless a written extension is requested and approved beforehand; the Department grants one 30-day extension. For substantive review, failure to provide comprehensively requested additional information results in denial unless a written extension (one 30-day extension) is requested beforehand. Closed files require a new application to reapply.

- ✓ The Department grants only one extension of 30 days for either administrative or substantive deficiencies
- ✓ Extension requests must be in writing and approved before the response period expires
- ✓ An applicant whose file is closed must submit a new application to reapply
- ✓ Denial notices must cite supporting statutes/rules, explain appeal rights, and state the appeal deadline

8.7 License Renewal Processing

R4-28-103(D) governs renewals. If a complete renewal application is submitted before expiration with no changes in license/qualifications under R4-28-301(A), the Department sends notice that the license is renewed. If submitted after expiration, or where a substantive review is required because the applicant wants changes or answered affirmatively to disciplinary/criminal questions, the Department processes it as a modified or amended application.

- ✓ A complete, timely renewal with no changes is simply renewed by notice
- ✓ Renewals filed after expiration or requiring substantive review are processed as modified/amended applications
- ✓ Affirmative answers to disciplinary or criminal history questions trigger substantive review

8.8 Distance Learning Course Requirements

A distance learning course is instruction outside a traditional classroom consisting of computer-based interactive instructional material that must be completed in the specified credit hours. It may include audio recordings and video material but must include interactions, instruction, and student participation.

- ✓ Must be computer-based interactive instructional material
- ✓ Must include interactions, instruction, and student participation
- ✓ Must be completed within the specified credit hours

8.9 Non-Resident and Residency Definitions

A non-resident license (A.R.S. § 32-2122(A)) is issued to a person domiciled in Arizona less than one year who does not meet residency-establishing criteria such as an Arizona driver's license, vehicle/voter registration, Arizona employment, transferring banking, changing permanent address, being a domestic corporation/LLC, filing an Arizona income tax return, or receiving Arizona public benefits. 'Residency' means having a place of habitation in Arizona and living there as other than a tourist, or owning/operating a place of business in Arizona.

- ✓ Non-resident status applies to persons domiciled in Arizona less than one year not meeting residency criteria
- ✓ Establishing an Arizona driver's license, voter/vehicle registration, or employment can defeat non-resident status
- ✓ Residency = a place of habitation and living in Arizona as other than a tourist, or operating a business in Arizona

8.10 D.b.a. and Immediate Family Definitions

A 'd.b.a.' ('doing business as') is a name other than a person's legal name, authorized by the Department, for a licensee's use in conducting business. 'Immediate family' means persons related by blood, marriage, or adoption, including spouse, siblings, parents, grandparents, children, and grandchildren. 'Individual' means a natural person.

- ✓ A d.b.a. must be authorized by the Department before use
- ✓ Immediate family includes spouse, siblings, parents, grandparents, children, and grandchildren

8.11 Individual vs. Entity Licensing Time-Frames

Table 1 sets calendar-day time-frames. Individual broker/salesperson licensing, renewal, modified/amended, and reinstatement each carry a 60-day overall time-frame (30/30/30/30). Entity licenses (Corp/LLC/Partnership/PC/PLC/Designated Broker status, branch offices, entity renewals/reinstatements, temporary broker, temp cemetery salesperson, membership camping certificate) carry a 120-day overall time-frame (60/30/60/60).

- ✓ Individual broker/salesperson licensing and renewals have a 60-day overall time-frame
- ✓ Entity, branch office, and designated broker status applications have a 120-day overall time-frame
- ✓ Individual reinstatement is 60 days; entity reinstatement is 120 days

8.12 Education Approval Time-Frames

Table 1 provides education-related time-frames. School approval, new live-instruction course approval, and instructor approval each have a 30-day overall time-frame (10/15/20/15). A new distance learning course approval has a much longer 120-day overall time-frame (30/30/90/30) due to the extended substantive review.

- ✓ School, live course, and instructor approvals have a 30-day overall time-frame
- ✓ New distance learning course approval has a 120-day overall time-frame with a 90-day substantive review

8.13 Waiver and Advertising Time-Frames

Table 1 also lists waivers and advertising submissions. A pre-license education waiver has a 45-day overall time-frame (15/60/30/0) and a continuing education waiver has a 12-day overall time-frame (5/10/7/0). Advertising submissions for drawings, contests, lotteries, or premium offers (membership campground, subdivision, time-share) each have a 15-day overall time-frame (15/5/0/0).

- ✓ Pre-license education waiver = 45-day overall time-frame; CE waiver = 12-day overall time-frame
- ✓ Advertising submissions for drawings/contests/premiums have a 15-day overall time-frame

8.14 Development Site Inspection Fee

R4-28-104 provides that a fee is charged for a development site inspection pursuant to A.R.S. § § 32-2182, 32-2194.02, 32-2195.02, 32-2197.05, and 32-2198.04, either before or after issuance of a public report. Multiple inspections and fees may be required based on the circumstances of the development.

- ✓ Development site inspection fees may be charged before or after issuance of a public report
- ✓ Multiple inspections and fees may be required depending on development circumstances

CHAPTER 9

Rules Art. 3: Licensure

9.1 General License Requirements and Disclosures

Every applicant for a Department-issued license or renewal (and, for entities, any officer, director, member, manager, partner, owner, 10%+ trust beneficiary, 10%+ stockholder, or controlling person) must submit a signed licensure/renewal questionnaire disclosing criminal convictions/deferrals, adverse civil judgments involving fraud/dishonesty or real estate business, professional license discipline, and injunctions related to real estate/securities/consumer fraud/racketeering.

- ✓ Entity applicants must disclose for any 10%+ owner, stockholder, trust beneficiary, or controlling person
- ✓ Must disclose misdemeanor/felony convictions or deferred judgments/sentencing
- ✓ Must disclose fraud/dishonesty judgments and professional license restriction, suspension, or revocation in any state
- ✓ Must disclose injunctions involving real estate, securities, consumer fraud, or racketeering

9.2 License Renewal Requirements

A timely, administratively complete renewal keeps the existing license active until the Department finally determines the application. Renewal applications require any licensing corrections, late status, applicant signature attesting truthfulness, and a completed disciplinary actions disclosure form. Designated brokers renewing must file a signed Broker Supervision & Control Audit Declaration.

- ✓ A timely, complete renewal application keeps the license from expiring pending determination
- ✓ A completed disciplinary actions disclosure form is required at renewal
- ✓ A DB must file a Broker Supervision & Control Audit Declaration no earlier than 90 days before expiration, listing all property management and trust accounts

9.3 Unlawful License Activity Definition and Reporting

Unlawful license activity includes performing licensed acts without an active license, acting for a broker other than the employing broker, or a broker employing an unlicensed/improperly licensed person. The person must report it as soon as aware, with written explanations, signed statements from the person and the designated broker, and requested compensation/contract documentation.

- ✓ Acting without an active license or for a non-employing broker is unlawful license activity
- ✓ The person and the employing broker's DB must submit signed statements identifying all unlawful activity
- ✓ Requested documentation includes all agreements and compensation received while improperly licensed

9.4 Advisory Letter vs. Disciplinary Action Thresholds

A person with no prior unlawful activity, who acted unlawfully for 30 days or less with no pending complaints, may renew or change to active status without processing delay and receives only an Advisory Letter of Concern. The Commissioner may take disciplinary action under A.R.S. § 32-2153 if the activity exceeded 30 days, was repeated, or a complaint is pending.

- ✓ 30 days or less with no prior history and no pending complaint results in an Advisory Letter of Concern
- ✓ Activity over 30 days, repeat activity, or a pending complaint permits discipline under A.R.S. § 32-2153

9.5 Inactive License Status Rules

An active licensee must sever from the employing brokerage before requesting inactive status, which may last up to 15 years. Inactive licensees need not complete continuing education until reactivating but must still renew and pay fees. Failure to renew causes expiration; an expired inactive license may be renewed within one year, after which it is terminated. Inactive licensees cannot perform activities requiring an active license.

- ✓ A licensee must sever from the brokerage before requesting inactive status
- ✓ Inactive status may not exceed 15 years and does not relieve renewal/fee obligations
- ✓ An expired inactive license may be renewed within one year, then is terminated
- ✓ Inactive licensees may not perform activities requiring an active license

9.6 Reactivating an Inactive License and CE Requirements

A license may be reactivated on 30 days' written notice with CE completed within 24 months of applying. CE requirements increase with time inactive: same-as-required if under 3 years; plus 6 hours for 3-6 years; plus 15 hours for 6-10 years; plus 30 hours for 10-15 years (on top of 24 salesperson/30 broker base hours). No exam is required if reactivated within 15 years; after 15 years a new application, prelicensing education, and exam are required.

- ✓ Reactivation requires 30 days' written notice and CE completed within 24 months
- ✓ Additional CE hours scale with the length of inactivity (6/15/30 extra hours)
- ✓ No exam if reactivated within 15 years; a new application and exam are required after 15 years
- ✓ Continuous industry/government work may waive additional CE hours if approved by the Commissioner

9.7 Documentation Supporting Disclosed Matters

If an applicant discloses a reportable matter, they must provide a signed written statement describing the circumstances, certified court/police records for each crime, certified documents on professional license discipline within the last 10 years, certified civil judgment documents involving fraud, recovery fund payment records, injunction documents, and any supporting evidence of restitution.

- ✓ A signed written statement detailing the circumstances is required
- ✓ Certified records for each crime must be provided, or written proof from the court explaining unavailability
- ✓ Discipline documentation covers licenses held within the last 10 years
- ✓ Evidence of restitution or remediation may be submitted to support qualification

9.8 Fingerprint, Fee, and SSN Requirements

All license applicants must submit a valid fingerprint clearance card as prescribed in A.R.S. § 32-2108.01, the appropriate application and fee, and (for individuals) a social security number under A.R.S. § 25-320.

- ✓ A valid fingerprint clearance card is required for licensure
- ✓ Individual applicants must provide a social security number
- ✓ The appropriate application and fee must accompany the application

9.9 Salesperson/Broker Experience and Education

Beyond general requirements, salesperson and broker applicants must show they meet experience and education qualifications under A.R.S. § 32-2124 and rules R4-28-401 and R4-28-403. If disclosing license discipline, they must submit a certified license history from each state where they held a license within the prior five years.

- ✓ Salesperson/broker applicants must meet statutory experience and education qualifications
- ✓ A certified license history from each state held within the last 5 years is required when disclosing discipline

9.10 Broker License Restriction for Active Salespersons

The Department will not issue a broker's license to a person holding an active salesperson's license in Arizona. An active salesperson applying for a broker license may simultaneously submit a severance or request administrative severance.

- ✓ No broker license issued to a person holding an active Arizona salesperson license
- ✓ The applicant may submit a severance or request administrative severance under R4-28-303(G)

9.11 License Names and DBA Restrictions

The Department issues a license bearing the licensee's legal name plus any approved nickname, dba, or corporate name the Commissioner finds not detrimental to the public. A professional corporation or PLLC licensed under A.R.S. § 32-2125(B) may not adopt a dba name.

- ✓ Additional names/dba must be found not detrimental to the public and not prohibited by statute
- ✓ A professional corporation or PLLC may not adopt a dba name

9.12 Address Filing and Notification of Changes

Every licensed salesperson and broker must file their principal place of business (or statutory agent) address and a current residence address. Licensees must notify the Commissioner in writing within 10 days of any change to disclosable information under (A)(1)(a)-(d) with supporting documentation, unless the license is terminated, revoked, or surrendered.

- ✓ Both a business/statutory agent address and a current residence address must be filed
- ✓ Changes to disclosable criminal/civil/license information must be reported within 10 days

9.13 Response to Complaint Investigations

A licensee must respond within 14 calendar days (or a later date set by the Department) to a Commissioner's request for documents, files, statements, or information as part of a complaint investigation, whether or not the licensee is named in the complaint.

- ✓ Licensees must respond to investigation requests within 14 calendar days
- ✓ The duty applies even if the licensee is not named in the complaint

9.14 Employing Broker License Application Basics

An employing broker applicant must provide business contact details, designated broker information, entity type, mailing/dba names, and the bank name, location, name, and number of each trust account.

- ✓ Application must identify the designated broker's name, license number, and expiration
- ✓ Bank name, location, name, and number of each trust account must be provided

9.15 Designated Broker Requirements by Entity Type

Partnerships, corporations, and LLCs must name a qualified designated broker: a partner of a partnership general partner, a corporate officer of a corporate general partner, or a member/manager of an LLC general partner. A limited partner may not be a designated broker. Entities must submit governing documents, resolutions/agreements naming the DB, and signed statements attesting to accuracy and qualification.

- ✓ A limited partner cannot serve as designated broker
- ✓ Corporate DB must be a corporate officer; LLC DB must be a member or manager
- ✓ Entities must submit filed formation documents and a resolution/agreement appointing the DB
- ✓ A Certificate of Good Standing is required if over one year has elapsed since formation filing

9.16 Non-Resident Employing Broker Requirements

A non-resident employing broker with a principal office out of state must maintain an Arizona trust/escrow account for Arizona transaction monies, keep immediately available copies of Arizona transaction records, identify an Arizona resident custodian of records, and identify the records' location. If employing Arizona licensees, it must establish an Arizona office with a branch manager or notify the Department of a valid statutory agent.

- ✓ Non-resident broker must maintain an Arizona-situated trust or escrow account for Arizona monies
- ✓ Records must be immediately available with an identified Arizona custodian and location
- ✓ Must notify the Department within 10 days of any change to required information

9.17 Employing Broker DBA and Fee-Only Prohibition

The Department will not license similar dba names that cause public confusion. Before adding a dba/trade name, the employing broker entity must show at least 10% ownership of the name. An individual may not conduct business under a name other than the licensed name. A broker may not allow a licensee to conduct activity if the broker's only interest is a fee for use of the license.

- ✓ Employing broker entity must hold at least 10% ownership of a dba/trade name before adding it
- ✓ A broker may not permit licensed activity where the broker's only interest is a fee for use of the license

9.18 Change of Designated Broker Continuity

A designated broker resigns by submitting a resignation letter; an entity removes its DB via a copy of the resolution/agreement. The employing broker must cease business until compliant, but may continue without interruption if the incoming DB files the Change Form (and required resolution/amendment) the same or next business day.

- ✓ The employing broker must cease business until the DB change is completed
- ✓ Business continues uninterrupted only if the incoming DB files the Change Form by the next business day

9.19 Late Renewal and Reinstatement

Late renewal applicants must specify whether they conducted unlawful license activity under R4-28-306. Reinstatement applicants under A.R.S. § 32-2131 must submit specified information plus, if active at suspension/revocation/termination, the information required under R4-28-306.

- ✓ Late renewal requires disclosure of any unlawful license activity
- ✓ Reinstatement applicants must acknowledge awareness of A.R.S. § § 32-2131, 32-2153, and 32-2160.01

9.20 Notification of Personal and Broker Changes

A salesperson/broker must notify the Department in writing within 10 days of changes in personal information or qualifications, including disclosures, name changes, address changes, and contact updates. A designated broker must notify within 10 days of changes to the employing broker's qualifications, and may not conduct business under certain changed information (name, dba, closures, trust accounts, etc.) until Department approval.

- ✓ Personal information/qualification changes must be reported within 10 days
- ✓ A DB cannot conduct business under listed changes until Department approval
- ✓ Trust account opening/closing/relocation must be reported with account name, number, and bank information

9.21 Branch Office License and Manager Authority

A designated broker must file a branch office application before operating, identifying the main office, branch address, and branch manager. A DB may authorize an associate broker or salesperson to manage a branch; associate broker managers may perform broker-level duties (initial contracts, supervise, hire/sever, sign checks, trust account signer), while salesperson managers are limited to office management and being a trust account signer. Delegation does not relieve the DB of responsibility.

- ✓ Branch office license must be obtained before operating the branch
- ✓ Salesperson branch managers cannot perform statutory duties of the designated/employing broker
- ✓ Delegation of duties makes the manager additionally responsible but does not relieve the DB
- ✓ Manager change requires new authorization within 10 days, retained 5 years beyond branch closure or authority removal

9.22 Professional Corporation and PLLC Licensure

To be licensed as a PC or PLLC, the entity name must include each member's full/last name, all members must hold current active real estate licenses, and formation documents must be provided. If the applicant is a designated broker, membership must be limited to that DB only.

- ✓ Every member/officer/shareholder must hold a current, active real estate license
- ✓ If licensed as a designated broker, PC/PLLC membership is limited to the DB alone
- ✓ Filed Articles and (for PLLC) operating agreement must be provided

9.23 Administrative Severance Process

A salesperson or broker may request the Department sever their license from the employing broker by submitting name, license number, dated signature, and the employing broker's name. Upon receipt, the Department severs the license and notifies the employing broker, who must return the severed license.

- ✓ Severance requires the licensee's name, license number, dated signature, and employing broker name
- ✓ The employing broker must return the severed license to the Department

9.24 Temporary Office for Subdivision Sales

No additional license is required for a temporary office used for original on-site sales within the immediate area of a subdivision or unsubdivided land. The broker named in the public report application must supervise it and prominently display the development name and employing broker name at the entrance.

- ✓ A temporary on-site subdivision sales office needs no additional license
- ✓ The public report broker must supervise and prominently display development and broker names

9.25 Temporary Broker License and Certificate of Convenience

Applicants for temporary cemetery/broker licenses or membership camping certificates must submit specified info and fees. A temporary broker under A.R.S. § 32-2133 must submit a death certificate/illness notice and a letter appointing an individual to serve as temporary broker for 90 days to close the business or install a new DB.

- ✓ A temporary broker under A.R.S. § 32-2133 serves 90 days to close the business or install a new DB
- ✓ A death certificate/illness notice and appointment letter are required for a temporary broker license

9.26 Broker Duties for Non-Resident Recordkeeping

Non-resident brokers must define 'immediately available' as the ability to produce records at the time of the Department's request, provide a written statement identifying the Arizona resident custodian, and identify the records' physical location.

- ✓ 'Immediately available' means records producible at the time of the Department's request
- ✓ A written statement identifying the Arizona custodian and record location is required

CHAPTER 10

Rules Art. 4: Education

10.1 Prelicensure Education Requirements

Every applicant for a real estate license must complete a 90-hour prelicensure education course and pass a course examination with at least 75 percent, as required by A.R.S. § 32-2124. Alternatively, applicants may apply for a waiver of prelicensure courses, but the 27-hour Arizona-specific course can NEVER be waived.

- ✓ Applicant must complete the 90-hour prelicensure course and pass its exam with a score of at least 75 percent
- ✓ A waiver may be granted for prelicensure courses EXCEPT the 27-hour Arizona-specific course, which is always required
- ✓ Exam requirement is prescribed under A.R.S. § 32-2124

10.2 Continuing Education Renewal Requirements

To renew, a salesperson or associate broker must complete 24 credit hours of Department-approved continuing education, including a minimum of 3 hours in each mandatory category (A5a–A5h), plus any required Current Issues. Designated/delegated associate brokers must complete 24 hours with 3 hours each in categories A5a–A5f and a Broker Management Clinic (A.R.S. § 32-2136). CE completed within 90 days after fulfilling a renewal may count toward the next period but cannot be counted for two license periods.

- ✓ Salespersons and associate brokers must complete 24 hours of approved CE with a minimum of 3 hours in each mandatory category (A5a–A5h)
- ✓ Designated/delegated brokers must complete 24 hours including 3 hours in categories A5a–A5f plus a Broker Management Clinic under A.R.S. § 32-2136
- ✓ CE completed within 90 days after fulfilling a renewal may count toward the next period but not for two license periods

10.3 Prelicensure Waiver Based on Prior Education

To obtain a prelicensure waiver based on prior education, the applicant submits a letter to the Commissioner demonstrating identity information, the type of license sought, the name/city/state of the school, the course description/curriculum with credit hours, and proof of completing real estate courses. Acceptable evidence is a signed school letter or official transcript showing course dates, credit hours, and whether the exam was passed, or evidence within a certified license history.

- ✓ Waiver-by-education letter must include applicant identity, license type, school name/city/state, and course description with credit hours
- ✓ Evidence must show course start/end dates, semesters/quarters/credit hours, and whether the course exam was passed
- ✓ Course completion may be shown via a certified license history from a state where applicant is or was licensed

10.4 Waiver Based on Experience or Education and Experience

A waiver may be granted by meeting A.R.S. § 32-4302, or based on experience (or education plus experience) by submitting a letter to the Commissioner. The letter requires a detailed 10-year resume with duties and employer contacts, an original certified license history (including any disciplinary action) from each state licensed in the past 10 years, plus one of: real estate course completion evidence, evidence of more than five years' experience in a real estate related field, or course completion within a certified license history.

- ✓ Experience-based waiver requires a detailed 10-year resume plus an original certified license history including disciplinary action from each state licensed in the preceding 10 years
- ✓ Applicant must also provide either course completion evidence, more than five years' experience in a real estate related field, or completion shown in a certified license history
- ✓ A waiver may also be granted by meeting the requirement in A.R.S. § 32-4302

10.5 First-Time Renewal and Prelicensure Credit

A salesperson renewing for the first time may include credit for the Contract Writing class (A.R.S. § 32-2124(L)) if taken within one year before original licensure. A broker renewing for the first time may include the Broker Management Clinic (A.R.S. § 32-2136) taken before original licensure. An applicant may also substitute qualifying subject-matter hours from a 90-hour broker prelicensure course taken since last renewal toward CE requirements.

- ✓ First-time salesperson renewals may credit the Contract Writing class if taken within one year before original licensure
- ✓ First-time broker renewals may credit a Broker Management Clinic taken before original licensure
- ✓ Qualifying subject-matter hours from a broker prelicensure course taken since last renewal may substitute for CE credit

10.6 CE Mandatory Course Categories

The mandatory continuing education categories are: (a) Agency law; (b) Contract law; (c) Requirements for Licensees (license laws, Article 26 of the Arizona Constitution, A.R.S. Title 32 Ch. 20, A.A.C. Title 4 Ch. 28); (d) Real estate legal issues; (e) Fair housing and Americans with Disabilities Act; (f) Disclosure. Optional/general categories are (g) Business brokerage and (h) General real estate, which fill remaining hours. Teaching how to fill in a form template does not qualify for CE credit.

- ✓ Mandatory CE categories include Agency law, Contract law, Requirements for Licensees, Real estate legal issues, Fair housing/ADA, and Disclosure
- ✓ Business brokerage and General real estate are used to fulfill remaining hours; business brokerage may be allocated to Legal Issues, Contract Law, Disclosures, or General
- ✓ Teaching how to fill in a form template does not meet minimum content requirements for CE credit

10.7 Continuing Education Waiver for Good Cause

Under A.R.S. § 32-2130, the Commissioner may waive all or part of the CE requirement, or grant additional time, when a salesperson or broker submits a written request showing good cause. Good cause includes state/subdivision employment involving real estate matters, an inactive license due to conflict of interest, completion of a topic-specific course, an approved instructor requesting a waiver for a course taught, or other extraordinary circumstances. Failure to complete by an extended deadline may result in discipline.

- ✓ The Commissioner may waive CE or grant more time only upon a written request showing good cause under A.R.S. § 32-2130
- ✓ Good cause includes qualifying government employment, inactive-status conflicts, approved instructors, or extraordinary circumstances
- ✓ A licensee granted additional time who misses the deadline may be subject to disciplinary action

10.8 Distance Learning Course Requirements

Only a school holding a Certificate of Approval may offer a distance learning course, and course approval must be obtained before advertising or issuing credit hours. Approved distance courses must contain instructional modules, learning objectives per module, a structured learning method, diagnostic assessments (with scenario-based questions), and remediation requiring repetition until the content is understood. Instructors must present only current and accurate content.

- ✓ Only a school with a Certificate of Approval may offer distance learning, and course approval must precede advertising or issuing credit hours
- ✓ Approved distance courses require modules, learning objectives, structured learning, diagnostic assessments with scenario-based questions, and remediation
- ✓ Instructors shall not present course content that is not current and accurate

10.9 Student Certification in Distance Learning

An approved instructor or school administrator must grade distance learning courses and certify the licensee actually attended and completed the course. Certification means the school verifies the licensee is the person completing the course. Acceptable means include two-factor authentication, random audits of at least 10% of attendance, and direct or indirect visual confirmation. A username/password created by the student, a signed affidavit, or verification of publicly available information are NOT acceptable certification means.

- ✓ An approved instructor or school administrator must certify the licensee completed all modules, required live hours, and passed the final exam
- ✓ Acceptable certification includes two-factor authentication, random audits of at least 10% of attendance, or direct/indirect visual confirmation
- ✓ Unacceptable methods include a student-created username/password, a signed affidavit, or verification of publicly available information

10.10 License Examinations

The Department must hold or contract for at least one state licensing examination each week. Exams are not returned to applicants; results are given in person as 'passed' or 'did not pass,' and failing applicants also receive their score and relative score per content area. Qualifying for or passing the exam does not waive the Commissioner's right to deny a license if grounds exist under A.R.S. § 32-2153.

- ✓ The Department must hold or contract for at least one state licensing exam each week
- ✓ Passing the exam does not waive the Commissioner's right to deny a license under A.R.S. § 32-2153 or other applicable statute
- ✓ Failing applicants receive their score and relative score for each content area but the exam is not returned

10.11 Certificate of School and Course Approval

Except for accredited community colleges/universities, any school offering original or renewal licensure courses must hold a Certificate of School Approval and a Certificate of Course Approval for each course. School applications require ownership and administrator details, 10%-or-more interest holders, authorized signers, and a Certificate of Good Standing for corporations/LLCs. Course applications require a detailed content outline, credit hours requested, and limits on third-party recorded materials (not to exceed 20% of instructional time).

- ✓ Schools must possess a Certificate of School Approval and a Certificate of Course Approval for each course offered
- ✓ School applications must disclose owners, persons controlling 10% or more, authorized signers, and a Certificate of Good Standing for corporations/LLCs
- ✓ Third-party recorded material used as instructional aids may not exceed 20 percent of instructional time

10.12 School Recordkeeping and Enrollment Agreements

Schools must keep student records for five years, including student names, attendance dates, course titles, course number/category/credit hours, and the original signature roster for live instruction. Prelicensing students must sign an enrollment agreement disclosing (in bold capital letters) the course title, total credit hours, cost, refund policy, a statement on license pre-determination petitions, and any job placement service.

- ✓ Schools must maintain each student's record for five years including attendance, courses, credit hours, and the signature roster for live instruction
- ✓ Prelicensing enrollment agreements must disclose in bold capitals the course title, credit hours, cost, refund policy, pre-determination petition statement, and job placement service
- ✓ Lists of employers given to graduates are not a placement service; advertising placement requires documented direct referrals

10.13 School Complaints and Notice of Changes

The Commissioner may, and upon a verified written complaint must, investigate and observe classes and examine a school's books and records. Schools, owners, directors, and instructors must give written notice within 10 days of name/address changes, school closing, or certification-disclosure events; within 30 days of entity structure changes; and must obtain prior Commissioner approval before changing a business name, location, course content, course length, or offering a new course.

- ✓ Written notice is required within 10 days of name/address changes or school closing, and within 30 days of entity structure changes
- ✓ Prior Commissioner approval is required before changing business name, location, course content or length, or offering a new course
- ✓ The Commissioner must investigate a school upon a verified written complaint and may examine its books and records

CHAPTER 11

Rules Art. 5, 7, 8: Advertising, compensation, documents

11.1 Advertising Must Disclose Licensee Involvement

A licensee may not advertise property in a way that implies no salesperson or broker is involved. When a licensee advertises their own or another licensee's property, they must disclose their licensed status and property ownership by using the words 'owner/agent' in the advertisement.

- ✓ A licensee shall not advertise property implying no salesperson/broker is involved (R4-28-502.A)
- ✓ A licensee advertising their own or another licensee's property must disclose licensure and ownership using the words 'owner/agent' (R4-28-502.B)

11.2 Accurate and Non-Misleading Advertising

All advertising must contain accurate claims and representations and fully state factual material. A salesperson or broker must not misrepresent facts or create misleading or ambiguous impressions.

- ✓ Advertising must contain accurate claims and fully state factual material (R4-28-502.C)
- ✓ A licensee shall not misrepresent facts or create misleading or ambiguous impressions (R4-28-502.C)

11.3 Employing Broker Identification in Ads

A licensee must ensure all advertising clearly and prominently identifies the employing broker's legal name or the dba name(s) on the employing broker's license certificate. The designated broker is responsible for the advertising of all real estate activity.

- ✓ All advertising must clearly and prominently identify the employing broker's legal name or dba name(s) (R4-28-502.E)
- ✓ The designated broker is responsible for the advertising of all real estate activity (R4-28-502.G)

11.4 Compensation Sharing Disclosure

A real estate broker must disclose to all parties in a transaction, in writing at least three calendar days before closing, the name of each employing broker who represents a party and who will receive compensation from the transaction.

- ✓ Disclosure of compensated employing brokers must be in writing at least three calendar days before closing (R4-28-701)
- ✓ The disclosure must go to all parties in the transaction (R4-28-701)

11.5 Delivery of Transaction Documents

Upon execution of any transaction document, a licensee must expeditiously deliver a legible copy of the signed document and final agreement to each party signing it.

- ✓ A licensee must expeditiously deliver a legible copy of any executed transaction document (R4-28-802.A)
- ✓ A copy must go to each party who signs the document (R4-28-802.A)

11.6 Duty to Submit All Offers

During a listing agreement, a licensee must promptly submit to the client all offers to purchase or lease. With the seller/lessor's permission, the licensee may disclose the existence and terms of additional offers. The duty to submit offers continues after acceptance until closing unless the client instructs otherwise in writing; offers may be voluntarily submitted and submitted after termination of the listing.

- ✓ A licensee must promptly submit all offers to the client during the listing (R4-28-802.B)
- ✓ Acceptance of an offer does not release the duty to submit further offers unless the client instructs in writing (R4-28-802.B)
- ✓ With seller/lessor permission, the licensee may disclose the existence and terms of additional offers (R4-28-802.B)

11.7 Public Report Notice in Development Contracts

A developer or its agent must ensure sale/lease agreements for a development requiring a public report contain, above the signature portion in bold or larger print, the statement that the developer shall give the purchaser a copy of the public report and an opportunity to read it before signing. The document must conspicuously disclose its nature at or near the top.

- ✓ Development contracts requiring a public report must include the mandated public-report language in bold/larger print above the signatures (R4-28-803.A)
- ✓ The document must conspicuously disclose its nature at or near the top (R4-28-803.B)

11.8 Earnest Money and Non-Escrow Disclosure

The contract must indicate where earnest money/down payment will be deposited, naming the title company, broker's trust account, or other depository. If advanced money is paid directly to the seller instead of a neutral escrow, this must be conspicuously disclosed with the mandated bold-print warning, and the purchaser must sign or initial the provision.

- ✓ The contract must state where earnest money/down payment is deposited and name the depository (R4-28-803.C)
- ✓ Non-escrow direct payment to the seller must be conspicuously disclosed with the mandated bold warning and purchaser sign/initial (R4-28-803.D)

11.9 Rescission Rights for Land and Time-Shares

Contracts for unimproved subdivided lots or unsubdivided land must include bold rescission language granting cancellation without cause by midnight of the seventh calendar day after execution (plus a six-month inspection right if not inspected). Time-share interval contracts grant rescission by midnight of the tenth calendar day. The seller's current name, address, phone, and email must be disclosed, and rescission notices must be in writing and delivered by hand, email, courier, or certified mail.

- ✓ Unimproved lot/unsubdivided land contracts allow rescission by midnight of the 7th calendar day after execution (R4-28-804.A)
- ✓ If the lot is not inspected before execution, the purchaser has six months to inspect and unilaterally rescind (R4-28-804.A)
- ✓ Time-share interval contracts allow rescission by midnight of the 10th calendar day after execution (R4-28-804.B)
- ✓ Notices of rescission must be in writing and delivered by hand, email, courier, or certified mail, with the seller's contact info disclosed on the contract face (R4-28-804.C)

11.10 Use of the Term 'Acre'

A licensee shall not use the term 'acre,' either alone or modified, unless referring to an area of land representing at least 43,560 square feet.

- ✓ The term 'acre' may only be used for land of at least 43,560 square feet (R4-28-502.H)
- ✓ This applies whether the term is used alone or modified

11.11 Signs Require Owner's Written Consent

Before placing a sign or publishing to an electronic medium giving notice that specific property is offered for sale, lease, rent, or exchange, a licensee must secure the written consent of the property owner. The sign or publication must be promptly removed upon the owner's request.

- ✓ A licensee must obtain the property owner's written consent before placing a sign or electronic publication (R4-28-502.I)
- ✓ The sign or publication must be promptly removed upon request of the property owner (R4-28-502.I)

11.12 Electronic and AI Advertising Requirements

Use of electronic media (Internet, Artificial Intelligence, or website technology) targeting Arizona residents with property or brokerage services is advertising under A.R.S. 32-2101(2). All such advertising must comply with employing broker identification, and if online, all advertising requirements must be satisfied on the advertisement without the need to scroll.

- ✓ Electronic media targeting Arizona residents constitutes advertising under A.R.S. 32-2101(2) (R4-28-502.J)
- ✓ Online advertising must satisfy all advertising requirements without the need to scroll (R4-28-502.J)

11.13 Development Advertising Disclosures

Developers must disclose on advertising when only reservations/conditional sales contracts will be taken until the public report issues. Advertising must include the development name as registered. Restricted payment/price/rate terms must be conspicuously disclosed. Proposed/incomplete improvements require prominent disclosure or proof of assured completion, and pictorial depictions (including AI-created designs) must be prominently identified.

- ✓ Advertising must disclose that only reservations/conditional sales will be taken until the public report issues (R4-28-504.A)
- ✓ Advertising must include the development name as registered with the Department (R4-28-504.C)
- ✓ Restricted or unavailable payments, prices, or interest rates must be conspicuously disclosed (R4-28-504.D)
- ✓ Pictorial depictions other than unmodified photos (including AI-created designs) must bear a prominent disclosure identifying their nature (R4-28-504.G)

11.14 Broker Retention of Transaction Statements

In addition to A.R.S. 32-2151.01 and 32-2174, the broker must retain copies of all receipts and disbursements, executed and delivered escrow closing statements evidencing all receipts and disbursements, and any transaction documents signed by parties or disclosures made as part of the transaction.

- ✓ Brokers must retain copies of all receipts, disbursements, and executed escrow closing statements (R4-28-802.C)
- ✓ Brokers must retain any signed transaction documents and disclosures made as part of the transaction (R4-28-802.C)

11.15 Public Report Receipt Requirement

When a public report is required, the developer must provide prospective purchasers an opportunity to review it and complete the public report receipt. The developer must obtain the purchaser's signature verifying receipt of a copy and opportunity to review, using the form provided with the approved public report.

- ✓ The developer must give purchasers an opportunity to review the public report and complete the receipt (R4-28-805)
- ✓ The developer must obtain the purchaser's signature on the approved public report receipt form (R4-28-805)

11.16 School Advertising of Approved Courses

A school must include its name, school number, phone and email contact, and school administrator's name in all advertising of Department-approved courses. The school owner, director, or administrator must supervise all advertising, and the owner must ensure it is accurate.

- ✓ School ads must include name, school number, phone/email, and administrator's name (R4-28-502.D)
- ✓ The school owner, director, or administrator must supervise all advertising and ensure accuracy (R4-28-502.D)

11.17 Promotional Premiums and Prohibited Terms

A licensee may not describe a premium offered at no cost or reduced cost as an 'award' or 'prize' or similar term. The licensee must disclose in writing the terms, costs, conditions, restrictions, and expiration date of a premium offer before the person participates. Absent legal authorization, no one may solicit or sell a development interest via lottery, contest, drawing, or game of chance.

- ✓ A premium may not be described as an 'award,' 'prize,' or similar term (R4-28-503.A)
- ✓ Premium terms, costs, conditions, restrictions, and expiration date must be disclosed in writing before participation (R4-28-503.B)
- ✓ Lotteries, contests, drawings, or games of chance to sell development interests are prohibited unless provided by law (R4-28-503.C)

11.18 Development Amenity and Water Disclosures

A developer may not imply exclusive use of a facility subject to public access, and must disclose when private clubs/facilities do not convey a proprietary interest. Bodies of water described as features require disclosure of average surface area and any non-permanence. Incentive-to-visit conditions must be disclosed in writing before the trip.

- ✓ A developer may not imply exclusive facility use where public access/use exists (R4-28-504.J)
- ✓ Body-of-water features require disclosure of average surface area and fluctuation/non-permanence (R4-28-504.L)
- ✓ Conditions and qualifications of incentives to visit must be disclosed in writing before the trip (R4-28-504.M)

CHAPTER 12

Rules Art. 11: Professional conduct

12.1 Licensee Fiduciary Duty and Fair Dealing

A licensee owes a fiduciary duty to the client and must protect and promote the client's interests, while also dealing fairly with all other parties to a transaction. This dual obligation is foundational to professional conduct under R4-28-1101(A).

- ✓ A licensee owes a fiduciary duty to the client and shall protect and promote the client's interests
- ✓ A licensee shall deal fairly with all other parties to a transaction

12.2 Mandatory Written Material Disclosures to All Parties

A licensee participating in a transaction must disclose in writing to all other parties any information that materially or adversely affects the consideration to be paid. This includes the seller's or buyer's inability to perform, known adverse material facts or defects in the property, and any lien or encumbrance on the property being transferred.

- ✓ Must disclose in writing information that materially or adversely affects consideration to be paid by any party
- ✓ Must disclose information that seller/lessor or buyer/lessee is or may be unable to perform
- ✓ Must disclose any known adverse material fact or material defect in the property
- ✓ Must disclose existence of a lien or encumbrance on the property being transferred

12.3 Conflict of Interest Disclosure Requirements

A licensee must not act directly or indirectly in a transaction without informing other parties in writing, before any binding agreement, of a present or prospective interest or conflict. This includes acting as a principal, when a party is an immediate family member of the licensee or designated broker, when a party owns or is an employee of the employing broker, or when the licensee or immediate family has a financial interest beyond normal compensation.

- ✓ Conflicts of interest must be disclosed in writing before parties enter any binding agreement
- ✓ Must disclose if the licensee is acting as a principal
- ✓ Must disclose if a party is a member of the licensee's or designated broker's immediate family
- ✓ Must disclose a financial interest of the licensee or immediate family beyond receipt of compensation

12.4 Dual Compensation and Dual Representation Consent

A licensee shall not accept compensation from, or represent, more than one party to a transaction without the prior written consent of all parties. This is the core rule governing dual agency and dual compensation situations.

- ✓ A licensee shall not accept compensation from more than one party without prior written consent of all parties
- ✓ A licensee shall not represent more than one party without prior written consent of all parties

12.5 Broker Supervision and Control Requirements

An employing broker and designated broker must exercise reasonable supervision and control over licensed activities of licensees and others in their employ. This includes establishing and enforcing written policies and systems to review and manage transactions, disclosure forms and contracts, document filing/storage, trust fund handling, use of unlicensed assistants, and advertising; overseeing delegation of authority; familiarizing licensees with applicable laws; and reviewing documents with material effect and licensee advertising/marketing.

- ✓ Employing and designated brokers must exercise reasonable supervision and control over licensees and employees
- ✓ Must establish and enforce written policies to review and manage transactions, disclosure forms, document handling, trust funds, unlicensed assistants, and advertising
- ✓ Must review and inspect documents with a material effect on party rights/obligations and licensee advertising and marketing
- ✓ Must familiarize licensees with federal, state, and local real estate laws

12.6 Expeditious Performance of License Duties

A licensee must expeditiously perform all acts required by holding a license and shall not delay performance intentionally or through neglect. If unable to perform a required act, the licensee must expeditiously notify their designated broker of the inability to perform.

- ✓ A licensee shall expeditiously perform all acts required and shall not delay performance intentionally or through neglect
- ✓ If unable to perform a required act, the licensee must expeditiously notify their designated broker

12.7 Controversy With Another Licensee Cannot Delay Transaction

A licensee shall not allow a controversy with another licensee to jeopardize, delay, or interfere with initiating, processing, or finalizing a client's transaction. However, this does not obligate the licensee to alter employment/compensation terms or relinquish the right to pursue an action to resolve the controversy.

- ✓ A licensee shall not allow a controversy with another licensee to jeopardize, delay, or interfere with a client's transaction
- ✓ The prohibition does not require altering compensation agreements or relinquishing the right to resolve a controversy

12.8 Disclosure of Compensation for Related Goods/Services

A licensee shall not accept any compensation, including rebates or other consideration, directly or indirectly, for goods or services related to or resulting from a real estate transaction without the person's prior written acknowledgment. This does not apply to compensation paid to a broker by a broker representing a party in the transaction.

- ✓ Compensation for related goods/services requires the person's prior written acknowledgment
- ✓ Exception: compensation paid to a broker by a broker representing a party in the transaction

12.9 Standard of Care and Competence

Services provided to a client must conform to the standards of practice and competence recognized in the professional community for the specific real estate discipline. A licensee shall not provide services outside their field of competence without engaging a competent person, unless the lack of expertise is first disclosed in writing and the client then employs the licensee.

- ✓ Services must conform to standards of practice and competence recognized in the professional community
- ✓ A licensee cannot work outside their field of competence without competent assistance, unless lack of expertise is disclosed in writing and the client subsequently employs the licensee

12.10 Reasonable Care in Communicating Material Information

A licensee must exercise reasonable care to obtain information material to the client's interests and relevant to the transaction, and accurately communicate it to the client. The licensee must also take reasonable steps to assist the client in confirming the accuracy of relevant information.

- ✓ Must exercise reasonable care to obtain and accurately communicate material information to the client
- ✓ Must take reasonable steps to assist the client in confirming the accuracy of relevant information

12.11 Access, Occupancy, and Possession Restrictions

A licensee shall not permit or facilitate access to or occupancy of a person's real property without prior written authorization from the owner, and shall not deliver possession before closing unless expressly instructed by the owner of the property or interest being transferred. Licensees must also recommend clients seek insurance, legal, tax, and accounting counsel regarding pre/post-possession risks.

- ✓ No access or occupancy without prior written authorization from the property owner
- ✓ No delivery of possession before closing unless expressly instructed by the owner
- ✓ Must recommend the client seek insurance, legal, tax, and accounting counsel on pre/post-possession risks

12.12 Property Negotiations Through Represented Principal's Broker

A licensee may not contact a principal represented by another licensee unless the principal's designated broker, a broker representative with delegated authority, and the licensee are all unavailable for 24 hours; the principal may waive or alter this by written instructions. For a buyer, negotiations must go exclusively through the principal's broker or representative unless those parties are unavailable for 24 hours, absent a written waiver.

- ✓ Cannot contact a principal represented by another licensee unless the DB, delegated broker rep, and licensee are unavailable for 24 hours
- ✓ A principal may waive or alter the requirement by written instructions
- ✓ For a buyer, negotiations must go exclusively through the principal's broker unless waived in writing or those parties are unavailable 24 hours

CHAPTER 13

Rules Art. 12: Developments – public report applications

13.1 Designated Broker Supervision and Policy Requirements

A designated broker must establish a system to monitor compliance with statutes, rules, and the employing broker's policies. This system must include a progressive disciplinary policy for managing violations. The designated broker must exercise reasonable supervision and control over licensed activities, and the employing broker is responsible for the acts of all licensees and employees within the scope of employment. A designated broker who immediately reports a licensee's violation to the Department upon learning of it is shielded from failure-to-supervise discipline.

- ✓ A designated broker must establish a monitoring system including a progressive disciplinary policy; failure to enforce it is a violation
- ✓ An employing broker is responsible for the acts of all licensees and employees acting within the scope of their employment
- ✓ A designated broker may delegate to employees but may not relinquish overall responsibility for supervision and control
- ✓ A designated broker who immediately reports a licensee's violation to the Department is not subject to failure-to-supervise discipline
- ✓ A one-office broker employing a designated broker plus no more than one other licensee and one unlicensed person need not maintain written policies

13.2 Water Supply Disclosure and Adequacy Reports

The applicant must disclose water provider type and contact info, compliance status, line locations, extension costs to lot lines, and maintenance responsibility. Key requirements: a water adequacy report from ADWR for subdivisions outside an active management area, and a water availability report for unsubdivided land (a copy/summary must appear in all promotional material and contracts). Outside an AMA with no water source, an ADRE addendum advising investigation must be provided.

- ✓ A water adequacy report from ADWR is required for a subdivision located outside a groundwater active management area
- ✓ A water availability report from ADWR is required for unsubdivided land, and a copy/summary must appear in all promotional material and contracts
- ✓ Outside an AMA with no current water source, an ADRE addendum advising the consumer to investigate water availability must be provided

13.3 Assurances for Completion of Improvements

An applicant must provide one or more approved assurances that improvements will be completed and maintained: a surety/completion bond, an irrevocable letter of credit, a loan commitment, a trust or escrow account, a city/county trust agreement, a written escrow agreement, subdivision assurances, or any other assurance satisfactory to the Department. Financial assurances generally must be payable to a non-developer third party, not expire before the last improvement's completion date, and be in an amount 10% greater than the estimated completion cost.

- ✓ Applicant must provide an approved assurance (bond, letter of credit, loan commitment, trust/escrow, or governmental agreement) for completion of improvements
- ✓ Financial assurances must be payable to a third party who is not the developer and be in an amount 10% greater than the estimated cost to complete
- ✓ Assurances cannot expire before the estimated completion date of the last improvement
- ✓ Under a written escrow agreement, if the completion date is not met the developer must notify purchasers, who may cancel for a full refund within 30 days, and the public report becomes invalid with sales suspended

13.4 Conditional Sales Exemption Before Public Report

A developer may obtain a special order of exemption to offer lots before a public report issues by submitting a Petition for Conditional Sales Exemption, the completed public report application, a purchase contract with all disclosures and a Conditional Sales Addendum, a current title report, the development map, water documentation, and any other requested items. The conditional sales exemption expires upon issuance or denial of the public report, or upon a suspension/cease-and-desist order or voluntary suspension of sales.

- ✓ A conditional sales exemption lets a developer offer lots before a public report issues, using a Conditional Sales Addendum in the purchase contract
- ✓ The conditional sales exemption expires upon issuance or denial of the public report or upon a suspension/cease-and-desist order
- ✓ Earnest money and down payments for conditional sales must be deposited in a neutral depository

13.5 Material Change and Public Report Amendments

A developer must notify the Department of all material changes and must amend the public report when a material change adversely impacts a purchaser or lessee. Amendments require a fee and specified information plus a purchase contract addendum acknowledging the sale is conditioned on the amended report. The Department may suspend sales pending amendment or accept a written agreement to suspend; if not necessary, sales may continue if purchasers receive the current report and disclosure of all changes.

- ✓ A developer must amend the public report when a material change adversely impacts a purchaser or lessee
- ✓ Completion date extensions require an affidavit that purchasers, owners, and officials were given written notice; the Department may deny extensions beyond the first if opposed
- ✓ If sales continue pending amendment, prospective purchasers must receive the current report and disclosure of all changes before signing

13.6 Who May Apply for a Public Report

Any person with a recorded ownership interest in the land (deed, option, beneficial interest in a trust, or other recorded interest approved by the Commissioner) may submit a development application for a public report, certificate of authority, or special order of exemption. The application must include the development/cemetery name as recorded plus any marketing name, the list of lots offered with a sales offering description, and the applicant's contact information.

- ✓ Applicant must have a recorded ownership interest in the land to apply
- ✓ Application must include the recorded name, marketing name(s), list of lots offered, and applicant contact information
- ✓ Corporations must supply a current Certificate of Good Standing, formation documents, and identification of officers/directors/shareholders holding more than 10%
- ✓ Partnerships, LLCs, trusts, and subsidiaries each have specific entity documentation and 10%-interest disclosure requirements

13.7 Flood, Drainage and Adverse Conditions Disclosure

The applicant must disclose known material facts including flooding/drainage problems (supported by an engineer's or flood district letter addressing flood plain, 100-year storm, and insurance), subsidence or expansive soils (with an engineer's letter), nearby nuisance land uses (freeways, airports, sewer plants), agricultural conditions, geological/environmental hazards to health, and whether lots lie within a federal Superfund or state WQARF site.

- ✓ Flooding/drainage disclosures require a signed and sealed engineer's or flood district letter addressing 100-year storm and flood insurance
- ✓ Applicant must disclose subsidence/expansive soils, adverse adjacent land uses, agricultural nuisances, and Superfund/WQARF locations

13.8 Sewage Disposal Disclosure

The applicant must disclose the sewage disposal method (municipality, district, utility, private company, or individual system), provider contact info, ADEQ compliance status, completion and cost details to the lot line, maintenance responsibility, and any Certificate of Convenience and Necessity issues. Individual disposal system requirements, installation costs, refund terms if a system cannot be installed, and dry-sewer future-connection details must also be disclosed.

- ✓ Sewage disposal disclosure must include ADEQ compliance status and, for public service corporations, whether a Certificate of Convenience and Necessity has been issued
- ✓ If an individual sewage disposal system cannot be installed, the applicant must state whether a refund will be offered and any conditions

13.9 Streets and Permanent Legal Access

The applicant must demonstrate permanent access to the land over terrain traversable by conventional 2-wheel drive automobiles and emergency vehicles. Acceptable proof includes a title company legal-access statement (with map and recorded instruments), a surveyor/engineer statement confirming physical access matches legal access, recorded subdivision maps, easements/dedications, or road maintenance programs. Interior street status, completion, surfacing, maintenance responsibility, and purchaser costs must also be disclosed.

- ✓ Applicant must demonstrate permanent access traversable by conventional 2-wheel drive automobiles and emergency vehicles
- ✓ Legal access must be documented by title company statement, surveyor/engineer certification, recorded maps, easements, or road maintenance programs
- ✓ Applicant must disclose whether interior streets are public or private and any provisions assuring purchasers' legal right to use private streets

13.10 Improvements: Completion and Maintenance Disclosure

For flood/drainage, common/community/recreational, and master-planned community improvements (both inside and outside the development but included in the offering), the applicant must disclose who completes each improvement, estimated completion dates, estimated purchaser costs, who maintains it, and any purchaser maintenance costs including special taxing and community facility district participation under A.R.S. Title 48.

- ✓ Applicant must disclose completion party, completion date, and purchaser costs for all improvements including those outside the development but in the offering
- ✓ Purchaser cost disclosures must include participation in and cost of special taxing districts and community facility districts under A.R.S. Title 48

13.11 Property Owners' Association Disclosure

The applicant must disclose HOA details including the association name and any master association, the breakdown and estimated total assessment and payment method, whether the association is legally formed and operational, a URL to CC&Rs and Bylaws, conditions for transferring control and common-area title to purchasers, any liens on common areas, mandatory membership, and copies of the Articles and Bylaws.

- ✓ Applicant must disclose the estimated total and breakdown of HOA assessments and how they are paid
- ✓ Applicant must disclose when control of the association and title to common areas transfer to lot purchasers, and provide the Articles and Bylaws

13.12 Development Use and Restrictions Disclosure

The applicant must disclose whether lots are unimproved or improved and offered for sale or lease, the intended use, and any restrictions (including whether they comply with the Federal Fair Housing Act). Open-range/livestock status must be disclosed with fencing provisions in the purchase contract, along with mineral rights reservations and any other condition limiting use or occupancy.

- ✓ Applicant must disclose lot restrictions and whether they comply with the Federal Fair Housing Act
- ✓ If land is in open range, the purchase contract must contain fencing provisions and any buyer fencing requirements to prevent livestock roaming
- ✓ Applicant must disclose reserved mineral rights and any other condition limiting use or occupancy

13.13 Development Sales and Broker Responsibility

The applicant must describe the sales offering: how sales/leases are made and title conveyed (with transaction documents), where deposits and earnest money are held, refund conditions, when the purchaser may occupy, and any liens affecting clear title. The Arizona broker responsible for sales must be identified by name, license number, and contact info (or an explanation why none). The records custodian and record location, prior sale activity, and inclusion of all required contract disclosures must also be stated.

- ✓ Applicant must disclose where deposits/earnest money are held and the conditions for refund
- ✓ The name, license number, and contact info of the Arizona broker responsible for sales must be provided, or an explanation if none
- ✓ Applicant must confirm the sales documents contain all contract disclosures required by rule and statute

13.14 Title Reports and Encumbrances

The applicant must provide copies of any unrecorded liens/encumbrances and a title report with an effective date no more than 30 days before Department receipt (updateable to be current when the public report issues), a recorded-map legal description, the applicant's interest, preparer info, conditions to secure title, and the closing statement 'There are no further matters of record affecting the land.' Legible copies of all recorded/unrecorded documents must accompany it.

- ✓ The title report must have an effective date not more than 30 days before Department receipt and may be required to be updated when the report issues
- ✓ The title report must end with the statement 'There are no further matters of record affecting the land'

13.15 Condominium and Foreign Development Requirements

Condominium applications require a recorded declaration, map, and amendments plus an Arizona attorney's opinion letter confirming compliance with A.R.S. § § 33-1215 and 33-1219. Foreign (out-of-state) developments advertised, promoted, or sold in Arizona must comply with all Arizona laws as if located in-state unless exempt under A.R.S. § 32-2181.02; the Department may waive Arizona-specific requirements or accept equivalent home-jurisdiction documentation. The applicant must also file an affidavit attesting the application is true and correct.

- ✓ Condominium applications require an Arizona attorney opinion letter confirming compliance with A.R.S. § § 33-1215 and 33-1219
- ✓ Out-of-state developments sold in Arizona must comply with all Arizona laws as if located in-state unless exempt under A.R.S. § 32-2181.02
- ✓ The applicant must sign an affidavit attesting the application information is true and correct

13.16 Subsequent Owner Public Report Requirements

A successor in interest to six or more subdivision lots, six or more unsubdivided parcels, or 12 or more time-share intervals covered by a prior public report must obtain a new public report before offering or selling. If the prior developer failed to complete improvements on time, the Department will not issue a new report until the subsequent owner makes financial arrangements, escrows sales funds, obtains prior-purchaser permission, or otherwise satisfies the Department. The Commissioner may grant a subsequent-ownership exemption for foreclosed lots sold by a financial institution or where compliance is not essential and no material changes exist (prior report approved within ten years).

- ✓ A successor to six or more lots/parcels (or 12+ time-share intervals) must obtain a new public report before offering or selling
- ✓ If the prior developer failed to complete improvements, no new report issues until financial arrangements or escrow assurances are made
- ✓ The Commissioner may grant a subsequent-ownership exemption for foreclosed lots or where compliance is not essential and no material changes exist within a report approved in the last ten years

13.17 Earnest Money Neutral Depository Requirements

The Department may require a developer to deposit earnest money and down payments into a neutral depository based on revocation of a prior public report or knowledge of the developer's failure to meet prior obligations. The developer MUST deposit earnest money and down payments into a neutral depository if the seller is in bankruptcy or the sale is conditional under R4-28-B1202.

- ✓ A developer must deposit earnest money and down payments in a neutral depository if the seller is in bankruptcy or the sale is conditional
- ✓ The Department may require neutral-depository deposits based on revocation of a prior report or the developer's failure to meet prior obligations

13.18 Development Map and Location Disclosure

The applicant must submit a legible paper (no larger than 11"x17") or digital copy of the recorded development map showing recording information, county/city approval, dedications, monuments/distances/bearings, and surveyor certification. The applicant must also identify the development's location, direction from the nearest town, and access route, plus land characteristics such as gross acreage, total lots, phasing, and how lots are staked/marked.

- ✓ The recorded development map must show county recorder's info, approvals, dedications, monuments, and surveyor certification
- ✓ The applicant must disclose gross acreage, total number of lots, phasing, and how lots are marked for location

13.19 Utilities Disclosure Requirements

The applicant must disclose electrical, telephone, internet, natural gas, and other utilities available, including provider contact info, location of existing utilities, who extends each utility to lot lines, conduit-only arrangements, estimated purchaser costs and completion dates, and post-completion charges (hookup, turn-on, meter, wire-pull fees). Updated utility cost figures do not constitute a material change. Propane and street light arrangements must also be disclosed.

- ✓ Applicant must disclose utility providers, who extends utilities to lot lines, and estimated purchaser costs with dates estimates were obtained
- ✓ Updated utility costs do not constitute a material change requiring public report amendment

13.20 Schools and Community Services Disclosure

The applicant must disclose the public school district and distances to nearby public and charter schools with transportation availability, plus community services: nearest shopping, public transportation, medical facility, fire protection (with cost and provider type), ambulance/911 service, law enforcement, refuse collection, and the nearest USPS office.

- ✓ Applicant must disclose the public school district and distance/availability of schools and transportation
- ✓ Applicant must disclose fire, ambulance/911, law enforcement, refuse collection, shopping, medical, and USPS office availability with provider and cost details

13.21 Public Report Correction vs. Amendment

If the public report contains a Department error, the Department corrects it at its own expense, but only within 10 days of the report taking effect; information known to the developer before issuance is not an 'error.' After 10 days, the developer must use the amendment process under R4-28-B1203 with payment of the applicable fee.

- ✓ The Department corrects its own public report errors at its own expense only within 10 days of the report taking effect
- ✓ Information known to the developer before issuance is not an error and must be handled through the amendment process with a fee

13.22 Developer Recordkeeping Without a Broker

When real property in a development is sold or leased by a developer without the services of a listing or selling broker, the developer must keep all records as required by A.R.S. § 32-2151.01(A) and (C).

- ✓ A developer selling or leasing without a broker must keep all records required by A.R.S. § 32-2151.01(A) and (C)
- ✓ Blanket encumbrance releases must be documented in the public report application quoting provisions letting a buyer acquire title free of the encumbrance

CHAPTER 14

Rules Art. 13: Administrative procedures

14.1 Response to Complaint and Default

A response must specifically admit, deny, or state inability to obtain sufficient information for each allegation; a statement of lack of information operates as a denial. Any allegation not denied is deemed a violation of A.R.S. § 32-2153(B)(10). If a party fails to respond or appear, the Department may file an Affidavit of Default and act on the charges, even before the hearing date. The party may move to vacate the default within 15 days of receiving the default/order, and the Commissioner may vacate for good cause. Responses must be signed by the party or an attorney and verified.

- ✓ A statement of lack of information has the effect of a denial; unanswered allegations are deemed violations of A.R.S. § 32-2153(B)(10)
- ✓ Department may file an Affidavit of Default if a party fails to respond or appear, and may act before the scheduled hearing date
- ✓ A motion to vacate default must be filed within 15 days of receiving the default/order; Commissioner may vacate for good cause
- ✓ Every response must be signed by the party or at least one attorney and be verified

14.2 Service of Pleadings After Complaint

Once a complaint and notice of hearing are issued, subsequent pleadings must be served on the party, their statutory agent of record, or their counsel—either personally or by mail to the last known address of record. Mail service adds five days to response time and is complete upon mailing. Anyone filing a pleading or brief with the Department must also file with the Attorney General.

- ✓ Service of subsequent pleadings may be by personal service or mail to last known address of record of party, statutory agent, or counsel
- ✓ Mail service increases response time by five days and is complete upon mailing
- ✓ Any pleading or brief filed with the Department must also be filed with the Attorney General

14.3 Confidentiality of Investigation Information

Information and documents in open audits and investigations are confidential. Department officers and employees may not disclose them except to the Attorney General (or representative) or authorized Department employees, unless the Commissioner authorizes disclosure as being in the public interest. Closed audit/investigative files are available for review if closed within five years of the request, subject to redaction of confidential/privileged information and the Department's retention schedule.

- ✓ Open audit and investigation information/documents must remain confidential
- ✓ Only the Commissioner may authorize disclosure in the public interest
- ✓ Closed files within five years of request are available for review, subject to redaction and retention schedule

14.4 Notice of Representation and Appearance

A party may represent themselves, appoint a representative, or be represented by a member of the State Bar of Arizona. Anyone intending to represent a party in an investigation or audit must submit a completed Notice of Representation to the Department. Counsel representing a party at a contested case hearing or appealable agency action must file a Notice of Appearance with the Office of Administrative Hearings and serve all parties; it must contain the case title, agency ordering the hearing, the representative's current address and phone number, and the name of the party represented.

- ✓ A party may self-represent, appoint a representative, or be represented by a State Bar of Arizona member
- ✓ A representative in an investigation or audit must submit a completed Notice of Representation to the Department
- ✓ Counsel at a contested case hearing must file a Notice of Appearance with OAH containing case title, agency, contact information, and party represented

14.5 Rehearing or Review of Decision

A party aggrieved by an OAH decision may file a written motion for rehearing or review with the Commissioner under A.R.S. § 41-1092.09, specifying grounds and serving all parties. Grounds include procedural irregularity/abuse of discretion, misconduct, accident or surprise, newly discovered evidence, excessive/insufficient penalties, evidentiary or legal error, or decisions that are arbitrary/capricious or unsupported by evidence. Motions must cite specific facts, law, and relief sought. Responses are filed within 15 days of the motion. The Commissioner may also order a rehearing on their own initiative within 30 days of the decision.

- ✓ Motion for rehearing or review must specify the particular grounds and be served on all parties
- ✓ Recognized grounds include irregularity/abuse of discretion, misconduct, newly discovered evidence, excessive/insufficient penalties, errors of law, or decisions unsupported by evidence
- ✓ A written response must be filed within 15 days after the motion is filed
- ✓ The Commissioner may order rehearing on their own initiative within 30 days of the decision

14.6 Correction of Clerical Mistakes

Clerical mistakes in opinions, orders, rulings, Department process, or the record—and errors from oversight or omission—may be corrected by the administrative law judge before the hearing file is transmitted to the Commissioner, or by the Commissioner after transmission, either on their own initiative or on motion of any party.

- ✓ Clerical mistakes and errors from oversight/omission may be corrected in the record
- ✓ The ALJ may correct before transmitting the file; the Commissioner may correct after transmission, sua sponte or on any party's motion

CHAPTER 15

A.R.S. Title 44: Exclusive property engagement (Ch. 5) and residential property disclosures (Ch. 15.1)

15.1 Statute of Frauds for Real Estate Agreements

A.R.S. 44-101 requires certain agreements to be in writing and signed by the party to be charged to be enforceable. For real estate practice, this includes any agreement to lease real property for longer than one year or to sell real property or an interest therein, and any agreement employing an agent or broker to buy or sell real property for compensation or commission. An agent acting for a party must have written, subscribed authority.

- ✓ Agreements to lease real property for more than one year or to sell real property must be in writing and signed by the party to be charged
- ✓ Agreements employing an agent/broker to purchase or sell real property for compensation or commission must be in writing to be enforceable
- ✓ An agent's authority to bind a party to a real property agreement must itself be in writing, subscribed by the party sought to be charged
- ✓ Contracts not to be performed within one year must be in writing

15.2 Prohibited Terms in Listing Agreements

A.R.S. 44-502 makes it unlawful for an exclusive property engagement agreement to last longer than 12 months from execution, to be a covenant running with the land, to bind a future owner (with narrow exceptions), to be recorded with a county recorder, to place a lien or security interest on the property, or to allow assignment without the owner's notice and agreement. These provisions target abusive long-term or lien-based listing schemes.

- ✓ An exclusive property engagement agreement may not last longer than 12 months after execution
- ✓ It may not be a covenant that runs with the land
- ✓ It may not be recorded in the county recorder's office
- ✓ It may not authorize any lien, encumbrance, or security interest against the residential real estate
- ✓ It may not permit assignment without notice to and agreement by the owner
- ✓ It must meet the requirements of A.R.S. 32-2151.02

15.3 Wholesale Buyer and Seller Disclosures

A.R.S. 44-5101 requires wholesale buyers and sellers of residential real property (fewer than five dwelling units) to make written disclosures before entering any binding agreement. A wholesale buyer must disclose in writing that they are a wholesale buyer. A wholesale seller must disclose in writing that they hold only an equitable interest and may not be able to convey title. A wholesale buyer is one who contracts to buy then assigns the contract; a wholesale seller contracts to sell without holding legal title and assigns the contract.

- ✓ A wholesale buyer must disclose in writing to the seller that the buyer is a wholesale buyer before any binding agreement
- ✓ A wholesale seller must disclose in writing that it holds only an equitable interest and may not be able to convey title
- ✓ If a wholesale buyer violates this section, the seller may cancel before close of escrow without penalty and retain the earnest money
- ✓ If a wholesale seller violates this section, the buyer may cancel before close of escrow without penalty and receive a refund of all earnest money
- ✓ Residential real property here means property with fewer than five dwelling units

15.4 Exclusive Property Engagement Agreement Defined

An exclusive property engagement agreement is a contract giving a person an exclusive right to list or sell residential real estate, including agreements to enter into future listing arrangements or memoranda recognizing such an agreement. Residential real estate means Arizona property used primarily for personal, family or household purposes containing fewer than five dwelling units.

- ✓ Exclusive property engagement agreement = exclusive right to list or sell residential real estate, including future or memorandum arrangements
- ✓ Residential real estate = property used primarily for personal/family/household purpose with fewer than five dwelling units
- ✓ Applies only to real property located in Arizona

15.5 Void Agreement If Services Not Begun

An exclusive property engagement agreement is void if the listing services do not begin within one year after the parties execute the agreement.

- ✓ Agreement is void if listing services do not begin within one year of execution
- ✓ The one-year period runs from execution by the parties

15.6 Enforcement and Liability for Violations

A.R.S. 44-503 bars courts from enforcing agreements made or recorded in violation of the chapter and prohibits imposing a constructive trust on the property or transaction proceeds. Any agreement recorded with a county recorder in violation is void and unenforceable, and consideration paid to a homeowner under a violating agreement must be forfeited. Violations are unlawful practices under 44-1522 and expose violators to liability under 33-420, enforceable by private action and the attorney general.

- ✓ Courts cannot enforce agreements made or recorded in violation of the chapter
- ✓ No constructive trust may be imposed on the property or sale proceeds
- ✓ Consideration paid to a homeowner under a violating agreement must be forfeited
- ✓ Violations are unlawful practices under 44-1522 and subject to liability/penalties under 33-420
- ✓ Agreements violating the chapter recorded before September 14, 2024 are void

15.7 Consumer Fraud Unlawful Practices Act

A.R.S. 44-1522 declares that deception, deceptive or unfair acts, fraud, false pretense, false promise, misrepresentation, or concealment/suppression/omission of any material fact—done with intent that others rely—in connection with the sale or advertisement of merchandise is an unlawful practice, whether or not anyone was actually misled or damaged. This applies to real estate advertising and sales conduct.

- ✓ Misrepresentation or concealment of a material fact with intent that others rely, in connection with a sale or advertisement, is an unlawful practice
- ✓ Liability applies whether or not any person was in fact misled, deceived, or damaged
- ✓ Courts may use FTC and federal court interpretations of 15 U.S.C. 45, 52, and 55(a)(1) as a guide

CHAPTER 16

Art. 5: Real Estate Recovery Fund

16.1 Purpose and Scope of Recovery Fund

The commissioner establishes and maintains a real estate recovery fund to compensate persons aggrieved by acts of a licensed real estate or cemetery broker or salesperson that violate the chapter or rules. The fund pays only actual and direct out-of-pocket losses (including reasonable attorney fees and court costs) directly arising from a real estate or cemetery transaction where the licensee performed acts requiring a license, or engaged in fraud/misrepresentation as a principal where the aggrieved person relied on the licensee's licensed status.

- ✓ Fund covers only actual and direct out-of-pocket losses, including reasonable attorney fees and court costs
- ✓ Loss must directly arise from a real estate/cemetery transaction requiring a license or from fraud by a licensee acting as principal where the victim relied on licensed status
- ✓ Applies only to licensed real estate or cemetery brokers and salespersons

16.2 Recovery Fund Liability Limits

The fund's liability is capped per transaction and per licensee regardless of the number of persons aggrieved, licensees, or parcels involved. Liability terminates once orders authorizing payments reach the aggregate maximum for a licensee.

- ✓ Maximum $30,000 per transaction regardless of number of persons aggrieved, licensees, or parcels
- ✓ Maximum $90,000 per licensee (aggregate)
- ✓ Fund liability terminates upon issuance of orders authorizing payments up to the statutory limits

16.3 Exclusions from Recovery Fund Coverage

A licensee acting as principal or agent has no claim against the fund, including entities in which the licensee is a principal, member, officer, director, or holds a 10% or more direct/indirect interest. The fund pays only against the license of a natural person, not a corporation, partnership, or fictitious entity. Certain losses are excluded entirely.

- ✓ Licensees (and their marital communities, corporations, LLCs, partnerships, or entities with 10%+ interest) have no claim against the fund
- ✓ Fund pays only against a natural person's license, not a corporation, partnership, or fictitious entity
- ✓ Fund not liable for: speculation/lost profits, out-of-state property, loans/notes/securities, judgments against non-principal bonding companies, tenant conduct, vandalism, natural causes, punitive damages, postjudgment interest, and undocumented transactions

16.4 Statute of Limitations and Application Deadlines

An action for a judgment that may result in a recovery fund payment must be started within five years of the accrual of the cause of action. After obtaining a judgment, the claimant must file the original application within two years after termination of all proceedings, reviews, and appeals; the commissioner may waive this two-year deadline in the public interest. Delivery must be by personal service or certified mail, return receipt requested.

- ✓ Underlying action must be commenced within 5 years of the cause of action accruing
- ✓ Application to the fund must be filed within 2 years after all proceedings/appeals terminate
- ✓ Commissioner may waive the 2-year deadline if it best serves the public interest
- ✓ Application delivery must be by personal service or certified mail, return receipt requested

16.5 Automatic License Termination on Payment

When the commissioner pays from the fund to satisfy a claim or judgment against a broker, designated broker, or salesperson, that license is automatically terminated upon issuance of the payment order. The licensee cannot obtain a new license until repaying the fund in full plus interest (at the A.R.S. 44-1201 rate) and proving the judgment has been fully satisfied.

- ✓ Any payment from the fund automatically terminates the licensee's license effective on the payment date
- ✓ No new license until the licensee repays the fund in full plus interest and shows the judgment is fully satisfied

16.6 Definition of Judgment for Recovery Fund

For recovery fund purposes, a 'judgment' means a final judgment in a court of competent jurisdiction, a criminal restitution order under A.R.S. 13-603 or 18 U.S.C. 3663, or a confirmed arbitration award (with findings of fact and conclusions of law) reduced to judgment under A.R.S. 12-133. A 'judgment debtor' is any defendant who is the subject of a judgment.

- ✓ Judgment includes a final court judgment, criminal restitution order, or confirmed/reduced arbitration award
- ✓ Judgment debtor means any defendant who is the subject of a judgment

16.7 Payments Into the Recovery Fund

Applicants pay into the fund with original licenses: $20 for an original broker's license and $10 for an original salesperson's license. If the fund balance falls below $600,000 on June 30, brokers pay an extra $20 and salespersons an extra $10 at renewal the following year.

- ✓ Original broker license fee to fund: $20; original salesperson license fee: $10
- ✓ If fund balance is below $600,000 on June 30, renewal surcharge is $20 (broker) or $10 (salesperson) the following license year

16.8 Application Requirements and Good Faith Prosecution

The claimant must use the department's form and include claimant/attorney/debtor information, a detailed narrative of the facts with supporting documents, judgment identification and damages computation, and sworn statements. For non-criminal-restitution claims, the claimant must swear the complaint was prosecuted conscientiously and in good faith (no potentially liable parties intentionally omitted or dismissed, and no procedural means used contrary to diligent prosecution).

- ✓ Claim must be submitted on the department's supplied application form with all required documentation
- ✓ Claimant must swear under penalty of perjury the complaint was prosecuted conscientiously and in good faith
- ✓ Good faith means no liable party was intentionally omitted/dismissed and no procedural manipulation was used to qualify for the fund

16.9 Collection Efforts Required Before Payment

The claimant must first exhaust collection efforts against the judgment debtor, including recording the judgment, conducting a debtor's exam under oath, issuing a writ of execution returned unsatisfied, and garnishing known employers. Claimant must also deduct all amounts recovered or anticipated (from debtor, collections, bonding/insurance/title, settlements, and tax benefits) from the damages. The claimant cannot be the debtor's spouse or spouse's personal representative.

- ✓ Claimant must record the judgment and exhaust collection via debtor's exam, writ of execution, and garnishment before payment
- ✓ All amounts recovered or anticipated (debtor, insurance/bonding/title, settlements, tax benefits) must be deducted from the claim
- ✓ Claimant cannot be the judgment debtor's spouse or the spouse's personal representative

16.10 Duty to Pursue Employing Broker

If a claim is based on a judgment against a salesperson or broker, the department must deny the claim if the claimant failed to obtain judgment against or diligently pursue the employing broker's assets, unless the claimant shows by clear and convincing evidence that the licensee was not employed by a broker or that the employing broker would not have been liable because the licensee acted outside the scope of employment.

- ✓ Claimant must pursue the employing broker or the claim is denied for failure to pursue all liable persons
- ✓ Exceptions require clear and convincing evidence of no employment or the licensee acting outside the scope of employment

16.11 Proration When Fund Is Insufficient

If the fund's remaining liability is likely insufficient to pay all valid claims against one licensee, the commissioner may petition the court to prorate. The court distributes remaining liability among applicants in proportion to their claims, without regard to the order judgments or applications were filed. Claims not filed within 90 days after the proration order are excluded.

- ✓ Commissioner may petition the court for a proration proceeding when the fund is insufficient for all claims against one licensee
- ✓ Distribution is proportional to claims, disregarding the order in which judgments/applications were obtained or filed
- ✓ Claims must be filed within 90 days after the proration order (with complaint filed, licensee served, and commissioner notified) to be included

16.12 Notice of Claim to Judgment Debtor

Within the same time as the application, the claimant must serve notice of the claim plus a copy of the application on the judgment debtor. The debtor has 35 calendar days to file a written response contesting payment. Failure to respond waives the debtor's right to object. If the debtor holds a current license, service is by certified mail to the address on file; otherwise by publication once a week for two consecutive weeks.

- ✓ Judgment debtor must be served notice and a copy of the application and has 35 calendar days to respond
- ✓ Failure to file a timely response waives the debtor's right to object to payment
- ✓ Licensed debtors served by certified mail; unlicensed debtors served by publication twice if personal delivery fails

16.13 Final Decision Deadline and Deemed Approval

The commissioner must issue a final written decision within 90 calendar days of receiving a completed application, except during a pending proration, deficiency correction, or an agreed extension. If no decision is rendered within the deadline, the claim is deemed approved. The commissioner may approve, deny, or compromise; if the claimant refuses a settlement offer, the claim is denied.

- ✓ Commissioner must decide within 90 calendar days of a completed application
- ✓ Failure to decide within the deadline results in the claim being deemed approved
- ✓ Refusal of a commissioner's settlement offer results in denial of the claim

16.14 Claimant's Right to Appeal Denial

A claimant whose application is denied may file a verified application in the court that entered the underlying judgment within six months of receiving the denial notice, seeking an order for payment. The claimant serves the commissioner and judgment debtor; each must respond within 30 days. If the debtor fails to respond, the commissioner may compromise and, on joint petition, the court orders payment.

- ✓ Denied claimant may appeal by filing a verified application in the original judgment court within 6 months of the denial notice
- ✓ Commissioner and judgment debtor each have 30 days to respond after service
- ✓ Judgment debtor's failure to respond waives the right to defend against the claim

16.15 Subrogation and Collection After Payment

Before receiving payment, the claimant must execute an assignment of the judgment lien and notice of subrogation to the commissioner. Once paid, the commissioner is subrogated to the judgment creditor's rights, and the claimant cannot file a satisfaction of judgment without the commissioner's written consent. The attorney general brings collection actions, and a certified copy of the commissioner's payment order can be filed and enforced like a superior court judgment.

- ✓ Claimant must assign the judgment and execute a subrogation notice before receiving fund payment
- ✓ Commissioner becomes subrogated to all rights of the judgment creditor after payment
- ✓ Claimant may not file satisfaction of judgment without the commissioner's prior written consent

16.16 Waiver and Effect on Discipline

An aggrieved person's failure to comply with all provisions of the recovery fund article waives all rights under it. The recovery fund article does not limit the commissioner's authority to discipline a licensee, and full repayment to the fund does not nullify or modify any separate disciplinary proceeding.

- ✓ Failure to comply with all article provisions constitutes a waiver of all recovery fund rights
- ✓ Recovery fund provisions do not limit disciplinary authority; repaying the fund does not affect separate discipline

16.17 Surety Bond Requirement for Licensees

In addition to other fees, the commissioner may require a real estate or cemetery licensee/applicant to post a surety bond if they were found in violation of the chapter/rules, convicted of a felony/ misdemeanor involving real estate or fraud, or had an administrative order entered against them by a real estate or securities regulatory agency. The bond is in favor of the state, covers actual damages (including attorney fees) under 32-2186, with a principal cap of $100,000 and duration up to 5 years.

- ✓ Commissioner may require a surety bond for licensees with chapter violations, qualifying convictions, or administrative orders
- ✓ Bond principal amount cannot exceed $100,000 and duration cannot exceed 5 years
- ✓ On surety cancellation, licensee must furnish a replacement bond within 30 days or the license is suspended; a certificate of deposit may substitute for a bond

16.18 Correction of Deficient Applications

If an application fails to substantially comply, the commissioner must mail an itemized deficiency list within 30 calendar days of receipt. The claimant has 60 calendar days to correct or the file is closed (unless a written extension is requested). The 90-day decision deadline is suspended during the correction period. 'Comply substantially' means filing at minimum a certified judgment copy, legible transaction/loss documents, and a statement of amounts recovered.

- ✓ Commissioner must mail an itemized deficiency list within 30 days of receiving a deficient application
- ✓ Claimant must correct deficiencies within 60 days or the file is closed absent a written extension
- ✓ The decision deadline is suspended while awaiting corrected information

16.19 Management of the Recovery Fund

Sums received are deposited in the fund and held in trust by the commissioner for the article's purposes. The state treasurer invests the monies and credits earnings to the fund. The commissioner may spend interest monies to increase public awareness of the fund, not exceeding $50,000 per fiscal year.

- ✓ Fund monies are held in trust by the commissioner and invested by the state treasurer with earnings credited to the fund
- ✓ Commissioner may spend up to $50,000 of interest per fiscal year to increase public awareness of the fund

CHAPTER 17

Supplement: Landlord-Tenant

17.1 Arizona Residential Landlord and Tenant Act: Security Deposits, Entry and Notice Periods

The Arizona Residential Landlord and Tenant Act (A.R.S. Title 33, Chapter 10) governs most residential rentals. A landlord may not demand a security deposit exceeding one and one-half months rent, although a tenant may voluntarily pay more, and any nonrefundable fee must be stated in writing (A.R.S. 33-1321). Within 14 days (excluding Saturdays, Sundays and legal holidays) after termination and delivery of possession the landlord must return the deposit with an itemized list of deductions; wrongful retention exposes the landlord to damages of twice the amount withheld. The landlord must give at least two days notice before entering except in an emergency (A.R.S. 33-1343). Termination notices: 5 days for nonpayment, 5 days for health and safety noncompliance, 10 days for other material noncompliance, 30 days for month-to-month tenancies and 10 days for week-to-week (A.R.S. 33-1368, 33-1375). Source: A.R.S. 33-1301 et seq.

- ✓ Security deposit limit: 1.5 months rent (tenant may voluntarily pay more); nonrefundable fees must be in writing.
- ✓ Deposit must be returned with itemized statement within 14 days after termination and delivery of possession, excluding weekends and holidays; wrongful retention = double damages.
- ✓ Landlord entry requires at least 2 days notice at reasonable times, except emergencies.
- ✓ Nonpayment notice: 5 days; health/safety violation: 5 days; other material noncompliance: 10 days.
- ✓ Month-to-month termination requires 30 days notice before the periodic rental date; week-to-week requires 10 days.

CHAPTER 18

Supplement: Foreclosure and Mortgage Law

18.1 Deed of Trust Foreclosure, Reinstatement, Redemption and Anti-Deficiency Protection

Arizona is predominantly a deed of trust state. A trustee sale may be held no sooner than 90 days after the notice of sale is recorded (A.R.S. 33-807, 33-808), and the borrower may reinstate by curing the default until 5:00 p.m. on the last business day before the sale (A.R.S. 33-813). There is no statutory right of redemption after a trustee sale (A.R.S. 33-811). Judicial foreclosure of a mortgage, by contrast, carries a 6-month post-sale redemption period, reduced to 30 days if the property was abandoned (A.R.S. 12-1282). Under the anti-deficiency statutes, no deficiency judgment may be obtained after foreclosure of a purchase-money mortgage or a deed of trust on property of 2.5 acres or less used as a single one-family or single two-family dwelling; where a deficiency is allowed after a trustee sale it must be sought within 90 days (A.R.S. 33-729, 33-814). Source: A.R.S. 33-729, 33-807, 33-811, 33-813, 33-814, 12-1282

- ✓ Trustee sale cannot occur until at least 90 days after the notice of trustee sale is recorded.
- ✓ Borrower may reinstate the loan until 5:00 p.m. on the last business day before the trustee sale; no redemption after the sale.
- ✓ Judicial foreclosure of a mortgage allows a 6-month redemption period (30 days if abandoned).
- ✓ Anti-deficiency: no deficiency judgment on 2.5 acres or less used as a one- or two-family dwelling (purchase-money mortgages and deeds of trust).
- ✓ Deficiency actions after a trustee sale, where permitted, must be filed within 90 days.

CHAPTER 19

Supplement: Transfer Taxes and Recording

19.1 Affidavit of Property Value, No Transfer Tax, and Recording Fees

Arizona imposes no real estate transfer tax or documentary stamp tax, and the Arizona Constitution (art. IX, sec. 24, adopted by Proposition 100 in 2008) prohibits the state and local governments from enacting one. Instead, when a deed is recorded the parties must file an Affidavit of Property Value with the county recorder, accompanied by a nominal fee, which reports the sale price and property information for assessment purposes (A.R.S. 11-1133). Exempt transfers listed in A.R.S. 11-1134 include deeds to or from governmental entities, deeds correcting a prior deed, transfers between spouses or family for no consideration, deeds of trust and mortgages, and conveyances for $1,000 or less. County recorders charge a flat per-document recording fee (currently $30 under A.R.S. 11-475). Source: A.R.S. 11-1133, 11-1134, 11-475; Ariz. Const. art. IX, sec. 24

- ✓ Arizona has no real estate transfer tax; the state constitution bars new transfer taxes.
- ✓ An Affidavit of Property Value must accompany most deeds presented for recording.
- ✓ Exemptions from the affidavit include government transfers, corrective deeds, spousal/family gifts, deeds of trust and sales of $1,000 or less.
- ✓ County recording fee is a flat per-document charge (currently $30).

CHAPTER 20

Supplement: Property Tax

20.1 Arizona Property Tax Basics: Assessment, Due Dates, Tax Liens and Homestead Exemption

County assessors determine a full cash value (FCV) and a limited property value (LPV) as of January 1 of the valuation year; property taxes are levied on the LPV, which may not increase more than 5 percent per year under Proposition 117 (Ariz. Const. art. IX, sec. 18). The assessment ratio is 10 percent for Class 3 owner-occupied and Class 4 rental residential property; commercial (Class 1) property is assessed at a higher ratio being phased down toward 15 percent (verify current ratio). Taxes are paid in two halves: the first half is due October 1 and delinquent after November 1, the second half is due March 1 and delinquent after May 1 (A.R.S. 42-18052). Delinquent taxes are sold as tax lien certificates at the county treasurer sale in February, bearing interest up to 16 percent, and the owner has 3 years to redeem before the lien holder may foreclose (A.R.S. 42-18101 et seq.). The homestead exemption protects home equity from general creditors up to $400,000, indexed annually since Proposition 209 (verify current amount) (A.R.S. 33-1101). Source: A.R.S. 42-11001, 42-15001 et seq., 42-18052, 42-18101 et seq., 33-1101

- ✓ Taxes are based on limited property value (LPV), which may rise no more than 5 percent per year.
- ✓ Residential assessment ratio (owner-occupied and rental) is 10 percent.
- ✓ First half taxes due October 1 (delinquent November 1); second half due March 1 (delinquent May 1).
- ✓ Tax lien certificates are sold in February; interest up to 16 percent; 3-year redemption before foreclosure.
- ✓ Homestead exemption is $400,000, indexed for inflation (verify current figure).

CHAPTER 21

Supplement: Condominium and HOA Law

21.1 Condominium and Planned Community Resale Disclosure Statements and HOA Sign Rules

Under the Condominium Act (A.R.S. 33-1260) and the Planned Communities statute (A.R.S. 33-1806), when a unit or lot is resold the association (or the owner, if the association has fewer than 50 units) must, within 10 days after receiving written notice of the pending sale, furnish a resale disclosure statement showing the current assessments, any unpaid assessments or fees, pending litigation, the governing documents, and other required items. The association may charge a fee for the statement, capped by statute at $400 with limited additional rush and update charges. Associations may not prohibit for-sale signs of industry-standard size or open houses between 8:00 a.m. and 6:00 p.m. (A.R.S. 33-1808), and an association lien may be foreclosed only if assessments are delinquent for one year or $1,200 or more (A.R.S. 33-1256, 33-1807). Source: A.R.S. 33-1260, 33-1806, 33-1808, 33-1807

- ✓ Association must deliver the resale disclosure statement within 10 days of written notice of a pending sale.
- ✓ If the association has fewer than 50 units/lots, the owner (not the association) provides the disclosures.
- ✓ Statement fee is capped by statute (base cap $400).
- ✓ HOAs cannot ban for-sale signs of industry-standard size or open houses between 8 a.m. and 6 p.m.
- ✓ HOA lien foreclosure requires assessments delinquent 1 year or $1,200 or more.

CHAPTER 22

Supplement: Arizona Property Law

22.1 Community Property and Spousal Joinder in Real Estate Transactions

Arizona is a community property state: property acquired by either spouse during marriage is community property unless acquired by gift, devise or descent, or is otherwise separate property (A.R.S. 25-211, 25-213). Both spouses must join in any transaction for the acquisition, disposition or encumbrance of an interest in real property, other than a lease of less than one year, so listing agreements, purchase contracts and deeds affecting community real property require both signatures (A.R.S. 25-214(C)). Arizona also recognizes community property with right of survivorship, joint tenancy with right of survivorship (which must be expressly stated in the deed), and tenancy in common, which is presumed when no other form is stated (A.R.S. 33-431). Source: A.R.S. 25-211, 25-213, 25-214, 33-431

- ✓ Property acquired during marriage is presumed community property; gifts and inheritances are separate.
- ✓ Both spouses must sign to buy, sell or encumber community real property (except leases under one year).
- ✓ Community property with right of survivorship is permitted if expressly stated in the deed.
- ✓ Joint tenancy must be expressly declared; a grant to two or more persons is otherwise a tenancy in common.

CHAPTER 23

Supplement: Arizona Statutory Disclosures

23.1 Affidavit of Disclosure for Unsubdivided Land in Unincorporated Areas

A seller of five or fewer parcels of land, other than subdivided land, located in an unincorporated area of a county must furnish the buyer a written Affidavit of Disclosure at least 7 days before the transfer (A.R.S. 33-422). The affidavit covers legal and physical access, water supply and well information, wastewater treatment, floodplain status, utilities, road maintenance, fire protection, military and airport proximity and other listed conditions. The buyer may rescind the transaction within 5 days after receipt of the affidavit, and the affidavit must be recorded with the deed. Source: A.R.S. 33-422

- ✓ Applies to sales of five or fewer parcels of unsubdivided land in unincorporated county areas.
- ✓ Affidavit of Disclosure must be delivered at least 7 days before transfer.
- ✓ Buyer may rescind within 5 days after receiving the affidavit.
- ✓ The affidavit is recorded with the deed at closing.

23.2 Seller Disclosure Duty in Arizona: Common-Law Duty and the SPDS

Arizona has no statute requiring a seller to complete a specific property condition disclosure form; the duty arises from common law. In Hill v. Jones (Ariz. App. 1986) the court held that a seller must disclose known material facts that are not readily observable and that would affect the buyer's decision, and nondisclosure can support rescission or damages. By custom the Arizona REALTORS Seller Property Disclosure Statement (SPDS) is used, and licensees independently must disclose known material facts under Commissioner Rule R4-28-1101(B) and A.R.S. 32-2153. The stigmatized property and sex offender safe harbor in A.R.S. 32-2156 is the main statutory limitation on this duty. Source: Hill v. Jones, 151 Ariz. 81 (App. 1986); A.A.C. R4-28-1101; A.R.S. 32-2153, 32-2156

- ✓ No Arizona statute mandates a seller disclosure form; the SPDS is an industry form, not a legal requirement.
- ✓ Sellers must disclose known material latent defects under common law (Hill v. Jones).
- ✓ Licensees have an independent duty to disclose known material facts to all parties.
- ✓ Death, felony, disease (HIV) and nearby sex offender status need not be disclosed under A.R.S. 32-2156.

23.3 Septic (On-Site Wastewater) Transfer Inspection and Well Transfer Notices

Before a property served by an on-site wastewater treatment facility (septic system) is transferred, the seller must have the system inspected by a qualified inspector within 6 months before the transfer and give the buyer the completed inspection report (A.A.C. R18-9-A316). The buyer must file a Notice of Transfer with ADEQ or the delegated county health agency, with the required fee, within 15 calendar days after the transfer. Separately, when land with a registered well changes hands the new owner must file a change-of-ownership notice with the Arizona Department of Water Resources within 30 days (A.R.S. 45-593). Source: A.A.C. R18-9-A316; A.R.S. 45-593

- ✓ Septic system must be inspected within 6 months before transfer and the report given to the buyer.
- ✓ Buyer files the Notice of Transfer with ADEQ (or county) within 15 calendar days after closing.
- ✓ Well ownership change must be reported to ADWR within 30 days.

23.4 Residential Swimming Pool Barrier Law and Pool Safety Notice

A.R.S. 36-1681 requires that residential swimming pools, spas and similar contained bodies of water be enclosed by a barrier (generally at least 5 feet high with self-closing, self-latching gates) when a child under six years of age lives at the property; local ordinances may be stricter. Any person who sells or transfers residential property with a swimming pool must give the buyer the Arizona Department of Health Services approved pool safety notice explaining barrier requirements and safe pool practices. Violation of the barrier requirements is a petty offense, and failure to give the notice is a common examination point. Source: A.R.S. 36-1681

- ✓ Pool barrier required where a child under 6 resides; barrier at least 5 feet with self-closing, self-latching gate.
- ✓ Seller must give the buyer the ADHS pool safety notice on any transfer of residential property with a pool.
- ✓ Municipal and county ordinances may impose stricter barrier standards.

CHAPTER 24

Supplement: Fair Housing

24.1 Arizona Fair Housing Act: Protected Classes and Enforcement

The Arizona Fair Housing Act (A.R.S. 41-1491 to 41-1491.37) is substantially equivalent to the federal act and protects the same seven classes: race, color, religion, sex, familial status, national origin and disability; the state adds no additional classes, although some cities (for example Phoenix, Tucson, Tempe and Flagstaff) add sexual orientation and gender identity by ordinance. Complaints are filed with the Attorney General Civil Rights Division within one year of the discriminatory act, and a private civil action may be brought within two years. Exemptions mirror federal law (single-family homes sold by an owner without a broker, owner-occupied dwellings of four or fewer units), but licensees never enjoy these exemptions and discrimination is also grounds for license discipline under A.R.S. 32-2153. Source: A.R.S. 41-1491 et seq.; A.R.S. 32-2153

- ✓ Arizona protected classes: race, color, religion, sex, familial status, national origin, disability (same as federal).
- ✓ Complaint to the Attorney General Civil Rights Division within 1 year; civil suit within 2 years.
- ✓ Owner exemptions do not apply when a licensee is involved.
- ✓ Several Arizona cities add sexual orientation and gender identity by local ordinance.

CHAPTER 25

Supplement: Closing Practice

25.1 Closing Through Escrow: Licensed Escrow Agents and No Attorney Requirement

Arizona real estate transactions customarily close through a neutral escrow held by an escrow agent (usually a title company), and attorneys are not required to conduct closings. Escrow agents must be licensed by the Arizona Department of Insurance and Financial Institutions under A.R.S. Title 6, Chapter 7 (A.R.S. 6-801 et seq.), must keep escrow funds in separate trust accounts, and may disburse only in accordance with written escrow instructions when all conditions have been satisfied. The purchase contract typically serves as the escrow instructions, and the broker delivers earnest money to the escrow agent as directed by the contract (A.R.S. 32-2151). Title insurance, prorations of property taxes and HOA assessments, and recording of the deed and deed of trust are handled by the escrow agent at closing. Source: A.R.S. 6-801 et seq.; A.R.S. 32-2151

- ✓ Arizona closings are handled by licensed escrow agents; attorneys are not required.
- ✓ Escrow agents are licensed and regulated by the Department of Insurance and Financial Institutions.
- ✓ Escrow funds must be held in separate accounts and disbursed only per written instructions.
- ✓ Earnest money is normally deposited with the escrow agent as the purchase contract directs.