House Engrossed

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 9

HOUSE BILL 2110

AN ACT

AMENDING SECTIONS 32-2107, 32-2132, 32-2135 AND 32-2136, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 20, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-2118; RELATING TO REAL ESTATE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 32-2107, Arizona Revised Statutes, is amended to read:

32-2107. Powers and duties of commissioner; compensation; administration of department; seal; revolving fund

A. The commissioner shall have charge of the department with power to administer it in accordance with the provisions of and to carry out the purposes of this chapter. ~~He~~ THE COMMISSIONER shall adopt a seal which shall bear the words "real estate commissioner, state of Arizona", which shall be used for the authentication of proceedings of the department and the official documents thereof. ~~He shall have his~~ THE COMMISSIONER'S principal office SHALL BE at the state capitol. ~~but~~ THE COMMISSIONER may have branch offices ~~he~~ THE COMMISSIONER deems necessary in other cities.

B. The commissioner shall receive compensation as determined pursuant to section 38-611.

C. The commissioner shall prepare and cause to be produced and circulated among the licensees and the general public ~~such~~ educational matter ~~as he~~ THE COMMISSIONER deems helpful and proper for the guidance and assistance of both licensees and the public. The commissioner may assess a fee for each of these educational products that does not exceed a level reasonably estimated to be sufficient to recover production and distribution costs.

D. IN COOPERATION WITH INDUSTRY EDUCATORS, CONTENT EXPERTS AND OTHER PROFESSIONALS, THE COMMISSIONER MAY DEVELOP, SPONSOR OR HOLD EDUCATIONAL SEMINARS AND WORKSHOPS FOR THE BENEFIT OF LICENSEES.

~~D.~~ E. A real estate department education revolving fund is established consisting of monies received from the sale of educational matter under subsection C of this section and grants of monies to be used in the production of educational products. Monies in the fund shall be used for the printing of a compilation of real estate laws and rules and other educational publications and for ~~such~~ other educational efforts ~~as~~ the commissioner deems helpful and proper for the guidance and assistance of licensees and the public, INCLUDING SPONSORING AND HOLDING EDUCATIONAL SEMINARS OR WORKSHOPS FOR EDUCATORS AND OTHER LICENSEES. The department shall establish the revolving fund as a separate account. The department shall make a full accounting of its use to the department of administration annually or as required by the department of administration. Expenditures from the fund and reimbursement to the fund shall be as prescribed by rules of the department of administration. Monies received in the real estate department education revolving fund are not subject to reversion, except that all monies in the fund in excess of twenty-five thousand dollars at the end of the fiscal year revert to the state general fund.

~~E.~~ F. The commissioner shall adopt rules, in accord with ~~the provisions of~~ this chapter, as the commissioner deems necessary to carry out ~~the provisions of~~ this chapter.

~~F.~~ G. The commissioner may approve standardized legal forms for use in the sale or lease of real estate for the purpose of recognizing compliance of the forms with ~~the provisions of~~ this chapter and the rules adopted pursuant to this chapter.

Sec. 2. Title 32, chapter 20, article 1, Arizona Revised Statutes, is amended by adding section 32-2118, to read:

32-2118. Competition with private enterprise; prohibition

THE DEPARTMENT SHALL NOT CREATE, ENDORSE OR SPONSOR ANY ACTIVITY THAT MAY BE LEGALLY PERFORMED BY A LICENSEE IN ANY WAY THAT CONSTITUTES COMPETITION WITH THE PRIVATE SECTOR, UNLESS THERE IS NO LICENSEE THAT IS CAPABLE AND WILLING TO CREATE, ENDORSE OR SPONSOR THE ACTIVITY. THIS SECTION DOES NOT APPLY TO LICENSE APPROVAL PROCESSES OR PROCEDURES UNDER THIS CHAPTER OR TO EDUCATIONAL ACTIVITIES UNDER SECTION 32-2107.

Sec. 3. Section 32-2132, Arizona Revised Statutes, is amended to read:

32-2132. Fees

A. Except as provided in subsection D, the following fees shall be charged which shall not be refunded by the commissioner after issuance of a receipt for payment:

1. A broker's examination application fee~~,~~ OF not less than thirty-five dollars and not more than one hundred twenty-five dollars.

2. A broker's examination fee~~,~~ OF not less than thirty-five dollars and not more than one hundred dollars.

3. A broker's license~~,~~ FEE OF not less than seventy-five dollars and not more than two hundred fifty dollars.

4. A broker's renewal fee~~,~~ OF not less than seventy-five dollars and not more than two hundred fifty dollars.

5. A salesperson's examination application fee~~,~~ OF not less than fifteen dollars and not more than seventy-five dollars.

6. A salesperson's examination fee~~,~~ OF not less than fifteen dollars and not more than fifty dollars.

7. A salesperson's license fee~~,~~ OF not less than thirty-five dollars and not more than one hundred twenty-five dollars.

8. A salesperson's renewal fee~~,~~ OF not less than thirty-five dollars and not more than one hundred twenty-five dollars.

9. A branch office broker's license fee or renewal ~~thereof,~~ FEE OF not less than thirty-five dollars and not more than one hundred twenty-five dollars.

10. A FEE FOR A change of name and address of licensee on records of the department~~,~~ OF not more than twenty dollars.

11. A duplicate license fee~~,~~ OF five dollars.

12. A FEE FOR reinstatement of license within license period~~,~~ OF five dollars.

13. A FEE FOR each certificate of correctness of copy of records or documents on file with the department~~,~~ OF one dollar, plus the cost to the department for reproducing the records or documents.

14. A temporary broker's license fee~~,~~ OF not less than fifteen dollars and not more than fifty dollars.

15. A temporary cemetery salesperson's license fee~~,~~ OF not less than fifteen dollars and not more than fifty dollars.

16. A membership camping salesperson certificate of convenience fee~~,~~ OF not less than fifteen dollars and not more than fifty dollars.

B. No corporation, partnership or limited liability company shall be assessed a fee for the issuance of a broker's license.

C. The commissioner may contract for the processing of applications and the examination of applicants for licensure. The contract may provide for specific fees or a reasonable range for fees as determined by the commissioner for examination applications and examinations to be paid directly to the contractor by the applicant. These fees may not exceed the amounts prescribed in subsection A, paragraphs 1, 2, 5 and 6.

D. For good cause shown the commissioner may refund fees previously collected.

Sec. 4. Section 32-2135, Arizona Revised Statutes, is amended to read:

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

A. Before offering a course of study towards completion of the education requirement for real estate licensure or renewal of licensure, a school shall obtain from the commissioner a certificate of approval OR RENEWAL to operate a school FOR A PERIOD OF AT LEAST FOUR YEARS. A school shall also obtain a certificate of course approval for each course offered for credit THAT IS NOT CURRENTLY APPROVED FOR ANOTHER SCHOOL. Each school is responsible for the content of any course it offers AND FOR THE PROFESSIONAL ADMINISTRATION AND TEACHING OF THE COURSE. LIVE CLASSROOM PRELICENSURE EDUCATION, LIVE CLASSROOM CONTINUING EDUCATION AND DISTANCE LEARNING CONTINUING EDUCATION COURSES ARE SUBJECT TO APPROVAL PURSUANT TO THIS SECTION.

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

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

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

2. Improper certification of student attendance or performance.

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

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

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

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

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

1. Offer a course of study for credit that is not approved by the department, EXCEPT THAT THE SCHOOL MAY ADVERTISE A COURSE AS PENDING APPROVAL BEFORE ITS APPROVAL.

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

E. The commissioner may determine minimal CONTENT requirements for approving educational courses and APPROPRIATE PROFESSIONAL QUALIFICATIONS for approving instructors to teach individual educational courses.

F. At least thirty days before holding a course of study for completion of the education requirements leading to licensure of real estate applicants or for license renewal requirements, an application for a certificate of course approval OR RENEWAL must be filed with the department. FOR A LIVE CLASSROOM COURSE, THE APPLICATION SHALL INCLUDE A COURSE OUTLINE WITH SUFFICIENT DETAIL TO CLEARLY IDENTIFY THE SCOPE AND CONTENT OF THE COURSE. THE OUTLINE SHALL STATE A DESIRED INSTRUCTIONAL OUTCOME FOR THE COURSE. A PRELICENSURE EDUCATION COURSE OUTLINE THAT IS SUBMITTED FOR APPROVAL SHALL BE DIVIDED INTO ESTIMATED FIFTY MINUTE INSTRUCTIONAL SEGMENTS. COURSE APPROVAL SHALL NOT BE UNREASONABLY WITHHELD AND SHALL NOT BE ISSUED LATER THAN THIRTY DAYS AFTER FILING WITH THE DEPARTMENT FOR A LIVE CLASSROOM COURSE. A CONTINUING EDUCATION DISTANCE LEARNING COURSE APPROVAL SHALL NOT BE ISSUED LATER THAN NINETY DAYS AFTER FILING WITH THE DEPARTMENT. IF THE APPROVALS UNDER THIS SUBSECTION ARE NOT GRANTED WITHIN THE TIME FRAMES PRESCRIBED BY THIS SUBSECTION, THE COURSE SHALL BE AUTOMATICALLY APPROVED ON A PROVISIONAL BASIS FOR ONE HUNDRED EIGHTY DAYS, UNLESS THE DEPARTMENT HAS OTHERWISE NOTIFIED THE APPLICANT OF SPECIFIC DEFICIENCIES OR UNFULFILLED REQUIREMENTS FOR THE COURSE SUBMISSION. A PROVISIONAL APPROVAL MAY BE WITHDRAWN BY THE DEPARTMENT UPON FIFTEEN DAYS ADVANCE NOTICE IF THE DEPARTMENT'S REVIEW OF THE COURSE SUBSEQUENTLY REVEALS COURSE DEFICIENCIES OR UNFULFILLED COURSE REQUIREMENTS. IF NOT WITHDRAWN, THE COURSE APPROVAL SHALL REMAIN APPROVED FOR THE ENTIRE COURSE APPROVAL PERIOD. Course approval shall be for a period of at least ~~two~~ FOUR years ~~from the date the course was first approved for the school making application to offer the course,~~ if the contents of ~~and instructors for~~ the course remain CURRENT AND substantially unchanged. THE COURSE MAY NOT BE TAUGHT IF THE CONTENT CEASES TO BE CURRENT OR IS SUBSTANTIALLY CHANGED. THE DEPARTMENT MAY ESTABLISH BY RULE ADDITIONAL APPROPRIATE REQUIREMENTS FOR APPROVAL OF A DISTANCE LEARNING COURSE.

G. For a currently approved course: ~~,~~

1. The school shall submit notice to the department at least fourteen days ~~prior to~~ BEFORE holding the course to permit ~~the~~ department EMPLOYEES to monitor the course. THE NOTICE IS NOT OTHERWISE SUBJECT TO REVIEW AND APPROVAL BY THE DEPARTMENT.

2. WITH THE PERMISSION OF THE SCHOOL THAT RECEIVED ORIGINAL APPROVAL FOR THE COURSE, ANOTHER SCHOOL THAT DESIRES TO OFFER THE COURSE IS SUBJECT ONLY TO THE FOURTEEN DAY NOTICE REQUIREMENT BEFORE HOLDING THE SAME COURSE. NO ADDITIONAL REVIEW AND APPROVAL BY THE DEPARTMENT IS REQUIRED.

~~G.~~ H. The department shall approve for continuing education credit any course of study proposed by a real estate school if the course satisfies the commissioner's requirements and is held in this state. ~~If the school proposes to hold a course outside this state, at the discretion of the commissioner~~

I. THE DEPARTMENT MAY APPROVE FOR CONTINUING EDUCATION CREDIT ANY COURSE OF STUDY PROPOSED BY A REAL ESTATE SCHOOL IF THE COURSE SATISFIES THE COMMISSIONER'S REQUIREMENTS AND IS HELD OUTSIDE THIS STATE. UPON THE COMMISSIONER'S REQUEST, the school shall either:

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

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

J. AN INSTRUCTOR SHALL FILE WITH THE DEPARTMENT AN APPLICATION FOR INSTRUCTOR APPROVAL OR RENEWAL. INSTRUCTOR APPROVAL SHALL BE FOR AT LEAST FOUR YEARS FROM THE DATE OF APPROVAL AND IS SUBJECT TO AMENDMENT DURING THE LICENSE PERIOD ONLY IF INFORMATION MATERIAL TO THE INSTRUCTOR'S QUALIFICATIONS HAS CHANGED. A PERSON HOLDING INSTRUCTOR APPROVAL TO TEACH SPECIFIC SUBJECT MATTER IS NOT SUBJECT TO ADDITIONAL OR DUPLICATE APPROVAL REQUIREMENTS DURING THE ORIGINAL APPROVAL PERIOD, EXCEPT THAT AN ADDITIONAL INSTRUCTOR COMPETENCY AREA MAY BE ADDED DURING THE LICENSE PERIOD ON SUBMISSION BY THE INSTRUCTOR OF EVIDENCE OF COMPETENCY IN SUCH ADDITIONAL COMPETENCY AREA.

K. THE THIRTY DAY AND FOURTEEN DAY COURSE FILING TIME FRAMES PRESCRIBED IN THIS SECTION MAY BE WAIVED BY THE DEPARTMENT FOR GOOD CAUSE SHOWN.

L. UNLESS SUBJECT TO A VIOLATION OR SUSPECTED VIOLATION LISTED IN SUBSECTION C OF THIS SECTION, THE DEPARTMENT'S APPROVAL OF A SCHOOL, SCHOOL OFFICIAL, INSTRUCTOR OR COURSE SHALL BE PROCESSED IN A TIME FRAME CONSISTENT WITH THE TIME FRAMES SET FORTH IN THIS SECTION.

M. THIS SECTION DOES NOT AFFECT THE DEPARTMENT'S ABILITY TO WITHDRAW OR DENY CERTIFICATION OR APPROVAL OF REAL ESTATE SCHOOLS, EDUCATION COURSES OR REAL ESTATE INSTRUCTORS FOR A VIOLATION OF THIS CHAPTER.

Sec. 5. Section 32-2136, Arizona Revised Statutes, is amended to read:

32-2136. <u>Broker management clinics</u>

A. The department shall determine the instructor qualifications for teaching broker management clinics and the course content of broker

management clinics for persons required to attend these clinics pursuant to subsection C of this section.

B. A broker management clinic shall include instruction on department audits and on the obligations and responsibilities of designated brokers. A broker management clinic ~~shall~~ MAY address record keeping requirements, trust fund accounts, advertising and promotions, ~~listing~~ EMPLOYMENT agreements, contracts, fiduciary duties, material disclosures, department investigations, ~~and~~ RISK MANAGEMENT, employee supervision and broker responsibilities AND RELATED TOPICS. A broker management clinic may be designed to address property management activities or sales activities, or both.

C. An applicant for an original real estate broker's license shall attend a broker management clinic before activating the license. A broker shall attend a broker management clinic before becoming a designated broker, unless the broker has attended a broker management clinic during the preceding twenty-three months. All active designated real estate brokers shall attend a broker management clinic once during every two year licensing period after their initial attendance.

D. Attendance at a broker management clinic constitutes three clock-hours of real estate oriented education pursuant to section 32-2130, subsection A.

APPROVED BY THE GOVERNOR APRIL 10, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 2007.