House Engrossed Senate Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
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Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 166

SENATE BILL 1219

AN ACT

AMENDING SECTIONS 32-2101, 32-2108, 32-2108.01, 32-2123, 32-2129 AND 32-2130, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 20, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-2137; AMENDING SECTIONS 32-2157, 32-2163 AND 32-2197.21, ARIZONA REVISED STATUTES; AMENDING SECTION 41-619.51, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 173, SECTION 1 AND CHAPTER 300, SECTION 4; REPEALING SECTION 41-619.51, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2009, FIRST REGULAR SESSION, CHAPTER 8, SECTION 12; AMENDING SECTIONS 41-1758 AND 41-1758.01, ARIZONA REVISED STATUTES; 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 32-2101, Arizona Revised Statutes, is amended to read:

32-2101. Definitions

In this chapter, unless the context otherwise requires:

1. "Acting in concert" means evidence of collaborating to pursue a concerted plan.

2. "Advertising" means the attempt by publication, dissemination, exhibition, solicitation or circulation, oral or written, or for broadcast on radio or television to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in lands subject to this chapter including the land sales contract to be used and any photographs, drawings or artist's presentations of physical conditions or facilities existing or to exist on the property. Advertising does not include:

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

(b) Communications to stockholders as follows:

(i) Annual reports and interim financial reports.

(ii) Proxy materials.

(iii) Registration statements.

(iv) Securities prospectuses.

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

(vi) Prospectuses.

(vii) Property reports.

(viii) Offering statements.

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

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

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

6. "Blanket encumbrance" means any mortgage, any deed of trust or any other encumbrance or lien securing or evidencing the payment of money and affecting more than one lot or parcel of subdivided land, or an agreement affecting more than one lot or parcel by which the subdivider holds the subdivision under an option, contract to sell or trust agreement. Blanket encumbrance does not include taxes and assessments levied by public authority.

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

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

9. "BUSINESS BROKER" MEANS A REAL ESTATE BROKER WHO ACTS AS AN INTERMEDIARY OR AGENT BETWEEN SELLERS OR BUYERS, OR BOTH, IN THE SALE OR PURCHASE, OR BOTH, OF BUSINESSES OR BUSINESS OPPORTUNITIES WHERE A LEASE OR SALE OF REAL PROPERTY IS EITHER A DIRECT OR INCIDENTAL PART OF THE TRANSACTION.

~~9.~~ 10. "Camping site" means a space designed and promoted for the purpose of locating any trailer, tent, tent trailer, pickup camper or other similar device used for camping.

~~10.~~ 11. "Cemetery" or "cemetery property" means any one, or a combination of more than one, of the following in a place used, or intended to be used, and dedicated for cemetery purposes:

(a) A burial park, for earth interments.

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

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

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

~~11.~~ 12. "Cemetery broker" means a person other than a real estate broker or real estate salesperson who, for another, for compensation:

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

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

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

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

~~12.~~ 13. "Cemetery salesperson" means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation engaged by or on behalf of a licensed cemetery or real estate broker, or through and on behalf of a corporation, partnership or limited liability company that is licensed as a cemetery or real estate broker, to perform any act or transaction included in the definition of cemetery broker.

~~13.~~ 14. "Commissioner" means the state real estate commissioner.

~~14.~~ 15. "Common promotional plan" means a plan, undertaken by a person or a group of persons acting in concert, to offer lots for sale or lease. If the land is offered for sale by a person or group of persons acting in concert, and the land is contiguous or is known, designated or advertised as a common unit or by a common name, the land is presumed, without regard to

the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan. Separate subdividers selling lots or parcels in separately platted subdivisions within a master planned community shall not be deemed to be offering their combined lots for sale or lease as part of a common promotional plan.

~~15.~~ 16. "Compensation" means any fee, commission, salary, money or other valuable consideration for services rendered or to be rendered as well as the promise of consideration whether contingent or not.

~~16.~~ 17. "Contiguous" means lots, parcels or fractional interests that share a common boundary or point. Lots, parcels or fractional interests are not contiguous if they are separated by either of the following:

(a) A barrier.

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

~~17.~~ 18. "Control" or "controlled" means a person who, through ownership, voting rights, power of attorney, proxy, management rights, operational rights or other rights, has the right to make decisions binding on an entity, whether a corporation, a partnership or any other entity.

~~18.~~ 19. "Corporation licensee" means a lawfully organized corporation that is registered with the Arizona corporation commission and that has an officer licensed as the designated broker pursuant to section 32-2125.

~~19.~~ 20. "Department" means the state real estate department.

~~20.~~ 21. "Designated broker" means the natural person who is licensed as a broker under this chapter and who is either:

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

(b) Doing business as a sole proprietor.

~~21.~~ 22. "Developer" means a person who offers real property in a development for sale, lease or use, either immediately or in the future, on the person's own behalf or on behalf of another person, under this chapter. Developer does not include a person whose involvement with a development is limited to the listing of property within the development for sale, lease or use.

~~22.~~ 23. "Development" means any division, proposed division or use of real property that the department has authority to regulate, including subdivided and unsubdivided lands, cemeteries, condominiums, timeshares, membership campgrounds and stock cooperatives.

~~23.~~ 24. "Employing broker" means a person who is licensed or is required to be licensed as a:

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

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

~~24.~~ 25. "Fractional interest" means an undivided interest in improved or unimproved land, lots or parcels of any size created for the purpose of sale or lease and evidenced by any receipt, certificate, deed or other document conveying the interest. Undivided interests in land, lots or parcels created in the names of a husband and wife as community property, joint tenants or tenants in common, or in the names of other persons who, acting together as part of a single transaction, acquire the interests without a purpose to divide the interests for present or future sale or lease shall be deemed to constitute only one fractional interest.

~~25.~~ 26. "Improved lot or parcel" means a lot or parcel of a subdivision upon which lot or parcel there is a residential, commercial or industrial building or concerning which a contract has been entered into between a subdivider and a purchaser that obligates the subdivider directly, or indirectly through a building contractor, to complete construction of a residential, commercial or industrial building on the lot or parcel within two years from the date on which the contract of sale for the lot is entered into.

~~26.~~ 27. "Inactive license" means a license issued pursuant to article 2 of this chapter to a licensee who is on inactive status during the current license period and who is not engaged by or on behalf of a broker.

~~27.~~ 28. "Lease" or "leasing" includes any lease, whether it is the sole, the principal or any incidental part of a transaction.

~~28.~~ 29. "License" means the whole or part of any agency permit, certificate, approval, registration, public report, charter or similar form of permission required by this chapter.

~~29.~~ 30. "License period" means the TWO YEAR period beginning with the date of original issue or renewal of a particular license and ending on the expiration date, if any.

~~30.~~ 31. "Licensee" means a person to whom a license for the current license period has been granted under any provision of this chapter, and, for purposes of section 32-2153, subsection A, shall include original license applicants.

~~31.~~ 32. "Limited liability company licensee" means a lawfully organized limited liability company that has a member or manager who is a natural person and who is licensed as the designated broker pursuant to section 32-2125.

~~32.~~ 33. "Lot reservation" means an expression of interest by a prospective purchaser in buying at some time in the future a subdivided or unsubdivided lot, unit or parcel in this state. In all cases, a subsequent affirmative action by the prospective purchaser must be taken to create a contractual obligation to purchase.

~~33.~~ 34. "Master planned community" means a development that consists of two or more separately platted subdivisions and that is either subject to

a master declaration of covenants, conditions or restrictions, is subject to restrictive covenants sufficiently uniform in character to clearly indicate a general scheme for improvement or development of real property or is governed or administered by a master owner's association.

~~34.~~ 35. "Member" means a member of the real estate advisory board.

~~35.~~ 36. "Membership camping broker" means a person, other than a salesperson, who, for compensation:

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

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

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

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

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

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

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

~~37.~~ 38. "Membership camping operator" means an enterprise, other than one that is tax exempt under section 501(c)(3) of the internal revenue code of 1986, as amended, that solicits membership paid for by a fee or periodic payments and has as one of its purposes camping or outdoor recreation including the use of camping sites primarily by members. Membership camping operator does not include camping or recreational trailer parks that are open to the general public and that contain camping sites rented for a per use fee or a mobile home park.

~~38.~~ 39. "Membership camping salesperson" means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation engaged by or on behalf of a licensed membership camping or real estate broker, or by or on behalf of a corporation, partnership or limited liability company that is licensed as a membership camping or real estate broker, to perform any act or participate in any transaction in a manner included in the definition of membership camping broker.

~~39.~~ 40. "Partnership licensee" means a partnership with a managing general partner who is licensed as the designated broker pursuant to section 32-2125.

~~40.~~ 41. "Permanent access", as required under article 4 of this chapter, means permanent access from the subdivision to any federal, state or county highway.

~~41.~~ 42. "Perpetual or endowed-care cemetery" means a cemetery wherein lots or other burial spaces are sold or transferred under the representation that the cemetery will receive "perpetual" or "endowed" care as defined in this section free of further cost to the purchaser after payment of the original purchase price for the lot, burial space or interment right.

~~42.~~ 43. "Perpetual-care" or "endowed-care" means the maintenance and care of all places where interments have been made of the trees, shrubs, roads, streets and other improvements and embellishments contained within or forming a part of the cemetery. This shall not include the maintenance or repair of monuments, tombs, copings or other man-made ornaments as associated with individual burial spaces.

~~43.~~ 44. "Person" means any individual, corporation, partnership or company and any other form of multiple organization for carrying on business, foreign or domestic.

~~44.~~ 45. "Private cemetery" means a cemetery or place that is not licensed under article 6 of this chapter, where burials or interments of human remains are made, in which sales or transfers of interment rights or burial plots are not made to the public and in which not more than ten interments or burials occur annually.

~~45.~~ 46. "Promotion" or "promotional practice" means advertising and any other act, practice, device or scheme to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in or use of real property subject to this chapter, including meetings with prospective purchasers, arrangements for prospective purchasers to visit real property, travel allowances and discount, exchange, refund and cancellation privileges.

~~46.~~ 47. "Real estate" includes leasehold-interests and any estates in land as defined in title 33, chapter 2, articles 1 and 2, regardless of whether located in this state.

~~47.~~ 48. "Real estate broker" means a person, other than a salesperson, who, for another and for compensation:

(a) Sells, exchanges, purchases, rents or leases real estate, BUSINESSES AND BUSINESS OPPORTUNITIES or timeshare interests.

(b) Offers to sell, exchange, purchase, rent or lease real estate, BUSINESSES AND BUSINESS OPPORTUNITIES or timeshare interests.

(c) Negotiates or offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate, BUSINESSES AND BUSINESS OPPORTUNITIES or timeshare interests.

(d) Lists or offers, attempts or agrees to list real estate, BUSINESSES AND BUSINESS OPPORTUNITIES or timeshare interests for sale, lease or exchange.

(e) Auctions or offers, attempts or agrees to auction real estate, BUSINESSES AND BUSINESS OPPORTUNITIES or timeshare interests.

(f) Buys, sells, offers to buy or sell or otherwise deals in options on real estate, BUSINESSES AND BUSINESS OPPORTUNITIES or timeshare interests or improvements to real estate, BUSINESSES AND BUSINESS OPPORTUNITIES or timeshare interests.

(g) Collects or offers, attempts or agrees to collect rent for the use of real estate, BUSINESSES AND BUSINESS OPPORTUNITIES or timeshare interests.

(h) Advertises or holds himself out as being engaged in the business of buying, selling, exchanging, renting or leasing real estate, BUSINESSES AND BUSINESS OPPORTUNITIES or timeshare interests or counseling or advising regarding real estate, BUSINESSES AND BUSINESS OPPORTUNITIES or timeshare interests.

(i) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate, BUSINESSES AND BUSINESS OPPORTUNITIES or timeshare interests.

(j) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate, BUSINESSES AND BUSINESS OPPORTUNITIES or timeshare interests.

(k) Incident to the sale of real estate, BUSINESSES AND BUSINESS OPPORTUNITIES negotiates or offers, attempts or agrees to negotiate a loan secured or to be secured by any mortgage or other encumbrance upon or transfer of real estate, BUSINESSES AND BUSINESS OPPORTUNITIES or timeshare interests subject to section 32-2155, subsection C. This subdivision does not apply to mortgage brokers as defined in and subject to title 6, chapter 9, article 1.

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

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

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

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

(p) ACTS AS A BUSINESS BROKER.

~~48.~~ 49. "Real estate sales contract" means an agreement in which one party agrees to convey title to real estate to another party upon the satisfaction of specified conditions set forth in the contract.

~~49.~~ 50. "Real estate salesperson" means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation engaged by or on behalf of a licensed real estate broker, or by or on behalf of a limited liability company, partnership or corporation that is licensed as a real estate broker, to perform any act or participate in any transaction in a manner included in the definition of real estate broker subject to section 32-2155.

~~50.~~ 51. "Sale" or "lease" includes every disposition, transfer, option or offer or attempt to dispose of or transfer real property, or an interest, use or estate in the real property, including the offering of the property as a prize or gift if a monetary charge or consideration for whatever purpose is required.

~~51.~~ 52. "Salesperson", when used without modification, means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation licensed under this chapter or any person required to be licensed as a salesperson under this chapter.

~~52.~~ 53. "School" means a person or entity that offers a course of study towards completion of the education requirements leading to licensure or renewal of licensure under this chapter.

~~53.~~ 54. "Stock cooperative" means a corporation to which all of the following apply:

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

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

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

~~54.~~ 55. "Subdivider" means 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 into a subdivision for the subdivider or for others, or who undertakes to develop a subdivision, but does not include a public agency or officer authorized by law to create subdivisions.

~~55.~~ 56. "Subdivision" or "subdivided lands":

(a) Means improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into six or more lots, parcels or fractional interests.

(b) Includes a stock cooperative, lands divided or proposed to be divided as part of a common promotional plan and residential condominiums as defined in title 33, chapter 9.

(c) Does not include:

(i) Leasehold offerings of one year or less.

(ii) The division or proposed division of land located in this state into lots or parcels each of which is or will be thirty-six acres or more in area including to the centerline of dedicated roads or easements, if any, contiguous to the lot or parcel.

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

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

~~56.~~ 57. "Timeshare" or "timeshare property" means real property ownership or right of occupancy in real property pursuant to article 9 of this chapter. For the purposes of this chapter, a timeshare is not a security unless it meets the definition of a security under section 44-1801.

~~57.~~ 58. "Trustee" means:

(a) A person designated under section 32-2194.27 to act as a trustee for an endowment-care cemetery fund.

(b) A person holding bare legal title to real property under a subdivision trust. A trustee shall not be deemed to be a developer, subdivider, broker or salesperson within this chapter.

~~58.~~ 59. "Unimproved lot or parcel" means a lot or parcel of a subdivision that is not an improved lot or parcel.

~~59.~~ 60. "Unsubdivided lands" means land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into six or more lots, parcels or fractional interests and the lots or parcels are thirty-six acres or more each but less than one hundred sixty acres each, or that are offered, known or advertised under a common promotional plan for sale or lease, except that agricultural leases shall not be included in this definition.

Sec. 2. Section 32-2108, Arizona Revised Statutes, is amended to read:

32-2108. <u>Powers and duties of commissioner to make investigations and require information</u>

A. The commissioner on the commissioner's own motion may, and upon a verified complaint in writing shall, investigate the actions of any natural person or entity engaged in the business or acting in the capacity of a broker, salesperson or developer and may at any time examine the books and

records used in connection with the business insofar as the commissioner reasonably believes the books or records pertain to the transfer, sale, rental, lease, use or management of real property. In connection with an investigation, the commissioner or the commissioner's representative may take testimony and may examine and copy documents and other physical evidence that relate to the investigation. If necessary, the commissioner or the commissioner's representative may issue subpoenas to compel the testimony of witnesses and the production of documents and other evidence. If a person refuses to comply with a subpoena, the commissioner or the commissioner's representative may apply to the superior court for an order to compel compliance.

B. The commissioner shall establish a certification and enforcement unit that is charged with investigative duties relevant to the rules of the commissioner and the laws of this state, including applications for certification, investigations and enforcement and other duties as the commissioner prescribes.

C. The commissioner may require any additional information and documents that are reasonably necessary to determine the good moral character of an applicant for or holder of a license or public report or renewal or amendment of a license or public report. For the purposes of this subsection, "applicant" or "holder" means a person and, if an entity, any officer, director, member, manager, partner, owner, trust beneficiary holding ten per cent or more beneficial interest, stockholder owning ten per cent or more stock and person exercising control of the entity. The information may include:

1. Prior criminal records.

2. ~~Fingerprints and background information~~ A VALID FINGERPRINT CLEARANCE CARD ISSUED pursuant to section ~~32-2108.01~~ 41-1758.03.

3. An affidavit setting out whether the applicant or holder has:

(a) Been convicted of a felony or a misdemeanor.

(b) Had any business or professional license denied, suspended or revoked or had any other disciplinary action taken or administrative order entered against the applicant or holder by any regulatory agency.

(c) Had a public report denied or suspended.

(d) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate, cemetery property, time-share intervals, membership camping campgrounds or contracts or securities or involving consumer fraud or the racketeering laws of this state.

(e) Had any adverse decision or judgment entered against the applicant or holder arising out of the conduct of any business in or involving a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts involving fraud, dishonesty or moral turpitude.

(f) Filed, or is subject to, a petition under any chapter of the federal bankruptcy act.

(g) Participated in, operated or held an interest or exercised control in any entity to which subdivision (b), (c), (d), (e) or (f) applies.

Sec. 3. Section 32-2108.01, Arizona Revised Statutes, is amended to read:

32-2108.01. License applicants; fingerprint clearance cards; requirements; fees; definition

A. Before receiving and holding a license issued pursuant to this chapter, each license applicant shall ~~submit~~ OBTAIN a ~~full set of fingerprints and the fees required in section 41-1750 to enable~~ VALID FINGERPRINT CLEARANCE CARD ~~the state real estate department~~ ISSUED PURSUANT TO SECTION 41-1758.03. ~~to conduct a criminal background investigation to determine the suitability for licensure of the applicant. The state real estate department shall submit completed applicant fingerprint cards and the fees to the department of public safety. The department of public safety shall conduct applicant criminal history records checks pursuant to section 41-1750, Public Law 92-544 and any other applicable federal laws. The department of public safety, on behalf of the state real estate department, may exchange license applicant fingerprint card information with the federal bureau of investigation for national criminal history records checks.~~

~~B. The fees the department collects under subsection A of this section shall be credited pursuant to section 35-148.~~

~~C.~~ B. The license applicant is responsible for providing the department with a ~~readable~~ VALID fingerprint CLEARANCE card. ~~The license applicant shall pay any costs attributable to refingerprinting the license applicant due to unreadable prints and any fees required for the resubmission of fingerprints.~~

~~D.~~ C. The department ~~may~~ SHALL NOT issue a license to an original license applicant before receiving ~~the results of a criminal history records check~~ A VALID FINGERPRINT CLEARANCE CARD pursuant to this section ~~if there is no evidence or reasonable suspicion that the applicant has a criminal history background~~. However, the department shall suspend the license if ~~a~~ THE fingerprint CLEARANCE card is ~~returned as unreadable~~ DETERMINED TO BE INVALID and an applicant who was issued a license fails to submit a new VALID fingerprint CLEARANCE card within ten days after being notified by the department.

~~E.~~ D. This section does not affect the department's authority to otherwise issue, deny, cancel, terminate, suspend or revoke a license.

~~F.~~ E. For THE purposes of this section, "license applicant" means:

1. Each original real estate, cemetery and membership camping salesperson and broker applicant pursuant to article 2 of this chapter.

2. Each natural person, or for an entity applicant, any person exercising control of the entity, who applies for an original certificate of approval to operate a real estate school, or for a renewal certificate, any

natural person or person exercising control who has not previously submitted a fingerprint card to the department.

3. Any natural person, or for an entity applicant, any person exercising control of the entity, on whom the department has evidence of a criminal record that has not been previously reviewed or evaluated by the department~~,~~ AND who applies for a:

(a) License renewal pursuant to section 32-2130.

(b) Public report to:

(i) Sell or lease subdivided lands pursuant to article 4 of this chapter.

(ii) Sell or lease unsubdivided lands pursuant to article 7 of this chapter.

(iii) Sell or lease time-share estates pursuant to article 9 of this chapter.

(iv) Sell membership camping contracts pursuant to article 10 of this chapter.

(c) Certificate of authority to sell cemetery lots pursuant to article 6 of this chapter.

Sec. 4. Section 32-2123, Arizona Revised Statutes, is amended to read:

32-2123. Application for license as broker or salesperson

A. Every application for an original license shall be either submitted in writing and signed by the applicant or submitted electronically and contain an electronic or digital identifier that the commissioner deems appropriate. The application shall be accompanied by all applicable fees.

B. An application for an original license as a broker or salesperson shall set forth:

1. The legal name and residence address of the applicant.

2. The applicant's employers and employment history for the immediately preceding ten years and any experience in real estate sales, appraisals, transfers or similar business in which the applicant previously engaged, if the commissioner determines that this information is needed to reasonably evaluate the good moral character of the applicant.

3. The name and place of business of the applicant's present employer, if any.

4. Whether the applicant has ever been convicted of a felony and, if so, the nature of the felony, where and when committed and the disposition of the conviction, or whether the applicant has been disbarred or suspended from the practice of law.

5. Whether the applicant has ever been refused a broker's or salesperson's license or any other occupational license in this or any other state, whether the applicant's license as a broker or salesperson has been revoked or suspended in this or any other state or whether the applicant has had any other occupational or professional license, certificate or registration revoked or suspended in this or any other state.

6. The name of any corporation, company or partnership that is or ever has been licensed by the department in which the applicant exercised any control.

7. If the applicant is a natural person, the applicant's social security number. If the applicant, due to bona fide religious convictions or other bona fide reasons that the applicant documents on the application to the satisfaction of the commissioner, does not have a social security number, the applicant may provide the applicant's federal tax identification number with the application. The state real estate department shall use the applicant's social security number or federal tax identification number to aid the department of economic security in locating noncustodial parents or the assets of noncustodial parents, and for no other purpose.

C. An application for a license as a broker additionally shall set forth:

1. The name under which the business is to be conducted.

2. The situs and mailing address of the applicant's place of business, or if more than one, the situs and mailing addresses of each.

D. An applicant for a broker's or salesperson's license shall provide information that the commissioner determines is reasonably necessary to establish the character of the applicant. The information may include but shall not be limited to:

1. Prior criminal records.

2. ~~Fingerprints and background information~~ A VALID FINGERPRINT CLEARANCE CARD~~,~~ ISSUED pursuant to section ~~32-2108.01~~ 41-1758.03.

3. An affidavit setting out whether the applicant has participated in, operated or held an interest in any land development company which has filed, or is subject to, a petition under any chapter of the federal bankruptcy act.

E. Each person licensed pursuant to this article, whether the license is active or inactive, shall have available for the licensee's use a current copy of the department's statutes, rules and annotations pertaining to real estate laws. Failure to comply with this requirement shall not be deemed grounds for a civil penalty or for denial, suspension or revocation of a license.

Sec. 5. Section 32-2129, Arizona Revised Statutes, is amended to read:

32-2129. <u>Advance payment of license fees</u>

A. All license fees shall be paid in advance and shall be the same regardless of the time of the year the license is issued.

B. If the license fees or other fees that relate to licensure are paid with a check that is not honored by the financial institution on which it is written, the department may deny or cancel the license.

C. An original license shall be for a period of two years up to and including the last day of the month in which the license was granted. A renewal license shall be effective as of the date of issuance, but no earlier than the first day after the expiration of the previous license. Regardless

of the date of issuance, the renewed license is for a ~~four~~ TWO year period beginning on the first day after the expiration of the previous license.

D. License applicants shall pay fees as specified in this chapter.

Sec. 6. Section 32-2130, Arizona Revised Statutes, is amended to read:

32-2130. Renewal of licenses

A. A license may be renewed in a timely manner by filing an application for renewal in the manner prescribed by the commissioner, by paying the renewal fee specified in this chapter and by presenting evidence of attendance at a school certified by the commissioner during the preceding license period of twenty-four credit hours ~~in the first renewal and forty-eight credit hours in subsequent renewals~~, or a lesser number of credit hours prescribed by the commissioner, of real estate oriented continuing education courses prescribed and approved by the commissioner. The total number of credit hours shall be accrued at a rate of twenty-four credit hours during each twenty-four month period of licensure. The department shall maintain a current list of approved courses. The commissioner may waive all or a portion of the continuing education requirement for good cause shown.

B. If an applicant is renewing a license within one year after it expired, the applicant may apply continuing education hours completed after the expiration toward the continuing education required for renewal.

C. Each renewal application shall contain, as applicable, the same information required in an original application pursuant to section 32-2123.

D. Cemetery brokers and salespersons and membership camping brokers and salespersons are exempt from the educational requirements of this section.

E. Nothing in this section requires a licensee to attend department produced or sponsored courses if approved courses are otherwise available.

F. Between the expiration date of the license and the date of renewal of the license, the rights of the licensee under the license expire. While the license is expired it is unlawful for a person to act or attempt or offer to act in a manner included in the definition of a real estate, cemetery or membership camping broker or salesperson. If the license of an employing broker expires under this subsection, the licenses of persons who are employed by the employing broker shall be severed from the employing broker on the license expiration date of the employing broker. These persons may be rehired on renewal of the employing broker's license. The department shall terminate a license that has been expired for more than one year.

G. Except as provided in section 32-4301, no more than one year after the license expiration date, the department shall renew a license without requiring the applicant to submit to an examination if the applicant held a license that was not canceled or suspended at the time of expiration. Except as provided in section 32-4301, the license period for a license renewed pursuant to this subsection commences the day after the expiration date of the expired license. Except as provided in section 32-2131, subsection A,

paragraph 4 or 6, an applicant whose license has been terminated or revoked does not qualify for license renewal.

H. Any employee or immediate family member of any employee of this state who, pursuant to section 32-2110 or any other law, rule or requirement, is prohibited from using a license issued under this chapter shall have, on the request of the employee or family member, the license placed on inactive status, shall have the right to renew the license and shall not be required to pay further fees until the employee or family member is again eligible to use the license. Renewal fees for the license shall not be required for only as long as the employee or family member is prohibited from using the license.

I. The department shall not renew the license of a person who has been convicted of a felony offense and who is currently incarcerated for the conviction, paroled or under community supervision and under the supervision of a parole or community supervision officer or who is on probation as a result of the conviction. This subsection does not limit the commissioner's authority and discretion to deny the renewal for any other reason pursuant to this chapter.

Sec. 7. Title 32, chapter 20, article 2, Arizona Revised Statutes, is amended by adding section 32-2137, to read:

32-2137. Cancellation of active license

ON REQUEST OF AN ACTIVE LICENSEE, THE DEPARTMENT MAY CANCEL THAT PERSON'S LICENSE IF BOTH OF THE FOLLOWING ARE TRUE:

1. THE LICENSEE IS NOT PRESENTLY UNDER INVESTIGATION BY THE DEPARTMENT.

2. THE DEPARTMENT HAS NOT COMMENCED ANY DISCIPLINARY PROCEEDING AGAINST THE LICENSEE.

Sec. 8. Section 32-2157, Arizona Revised Statutes, is amended to read:

32-2157. Written notice of charges; summary suspension; hearing; voluntary surrender of license

A. Except as provided in subsections B and C of this section, before suspending, revoking or denying the renewal or the right of renewal of any license, or issuing any order prohibiting the sale or lease of property or the sale of cemetery lots or membership camping contracts as provided by this chapter, the commissioner shall present the licensee, owner, operator, agent or developer with written notice of the charges filed against the person, or reasons for prohibiting the sale or lease, and shall afford the person an opportunity for a hearing pursuant to title 41, chapter 6, article 10. Within twenty days after service of a notice of hearing, the respondent shall appear by filing a written answer to the complaint. A LICENSEE AGAINST WHOM THE DEPARTMENT HAS COMMENCED A DISCIPLINARY PROCEEDING UNDER THIS CHAPTER MAY VOLUNTARILY SURRENDER TO THE DEPARTMENT THE LICENSE IF THE SURRENDER OF THE LICENSE OCCURS NOT LESS THAN TEN DAYS PRIOR TO A HEARING UNDER THIS SECTION. AFTER THE ACCEPTANCE OF A VOLUNTARY SURRENDER OF A LICENSE UNDER THIS SECTION

THE DEPARTMENT SHALL NOT THEREAFTER ISSUE A LICENSE UNDER THIS CHAPTER TO THE LICENSEE.

B. If the commissioner finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in the commissioner's order, summary suspension of a license or sales may be ordered. Grounds for issuance of an order of summary suspension include the violation of any of the provisions of section 32-2153 and the termination of a license pursuant to section 32-2188, subsection I. A licensee, owner, operator, agent or developer may request a hearing pursuant to title 41, chapter 6, article 10. A summary suspension shall be deemed to be final if a request for a hearing is not received within thirty days as provided by section 41-1092.03.

C. The department may issue a summary suspension when the department receives notice that a person licensed pursuant to this chapter has been convicted of a felony offense and is currently incarcerated for the conviction, paroled or under the supervision of a parole or community supervision officer or is on probation as a result of the conviction. This subsection does not limit the commissioner's authority to seek revocation of a license or other disciplinary action pursuant to this chapter.

Sec. 9. Section 32-2163, Arizona Revised Statutes, is amended to read:

32-2163. <u>Unlawful acts; out-of-state broker; cooperation agreement</u>

A. It is unlawful for any licensed broker in this state to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter if the person is not also a licensed broker in this state, or a salesperson licensed under the broker employing or compensating him, except that a licensed broker in this state may pay compensation to and receive compensation from a broker lawfully operating in another state.

B. Notwithstanding that pursuant to subsection A of this section~~,~~ a licensed broker in this state may pay to and receive compensation from an out-of-state broker, this authority shall not be construed to permit an out-of-state broker to conduct activity in this state that would otherwise require a broker's license issued by the department.

C. A licensed broker in this state may cooperate with an out-of-state broker who would otherwise require licensure in this state if:

1. The licensed broker and the out-of-state broker enter into a written cooperation agreement before the out-of-state broker conducts any activity otherwise requiring a broker's license pursuant to this chapter. The cooperation agreement shall include the following:

(a) A list of the real estate activities to be conducted by the out-of-state broker.

(b) A statement that the out-of-state broker agrees to fully comply with the laws of this state and submit to the regulatory jurisdiction of the

department for activities subject to real estate broker licensure pursuant to this chapter.

(c) A statement that the licensed broker in this state understands and accepts responsibility for the acts of the out-of-state broker.

2. All negotiations in this state or with people who own property in this state ~~shall be~~ ARE conducted through the licensed broker in this state.

3. The licensed broker in this state assumes all responsibility for the acts of the out-of-state broker.

4. All principal funds handled by either the licensed broker in this state or the out-of-state broker ~~shall be~~ ARE subject to the deposit and handling requirements of section 32-2151.

D. The offering of real estate brokerage services specified by section 32-2101, paragraph ~~47~~ 48 for compensation or any other thing of value pertaining to real property located in this state through an internet web site constitutes activity that requires a broker's license issued by the department.

E. This section does not allow an out-of-state broker who is not licensed in this state to list, market or advertise in this state real property located in this state for sale, lease or exchange.

F. Signs shall not be placed on real property in this state by an out-of-state broker. An out-of-state broker shall not use a cooperation agreement as authority to sell, lease, rent, exchange or attempt to sell, lease, rent or exchange real property to a resident of this state.

Sec. 10. Section 32-2197.21, Arizona Revised Statutes, is amended to read:

32-2197.21. <u>Payment of finder fees; limits; prohibited activities; records; definition</u>

A. Notwithstanding sections 32-2155, 32-2163 and 32-2165 or any other provision of this chapter, a developer OR MANAGING ENTITY may pay a finder fee to a person who is not licensed pursuant to this chapter and who owns a timeshare interest in the developer's timeshare plan OR IN THE TIMESHARE PLAN MANAGED BY THAT MANAGING ENTITY.

B. A finder fee paid pursuant to this section shall not exceed ~~six hundred~~ ONE THOUSAND dollars in credit or nonmonetary compensation during any twelve month period.

C. This section does not permit a person who is not licensed pursuant to this chapter to advertise or promote the person's services in procuring or assisting to procure prospective timeshare interest purchasers.

D. The developer OR MANAGING ENTITY shall keep records of all finder fees paid pursuant to this section for three years after the payment is made.

E. For purposes of this section, "finder fee" means credit or nonmonetary compensation paid to a person who is not licensed pursuant to this chapter, who owns a timeshare interest and who provides the name and address of a prospective purchaser to the developer OR MANAGING ENTITY of the timeshare plan in which the owner previously purchased a timeshare interest.

Sec. 11. Section 41-619.51, Arizona Revised Statutes, as amended by Laws 2008, chapter 173, section 1 and chapter 300, section 4, is amended to read:

41-619.51. Definitions

In this article, unless the context otherwise requires:

1. "Agency" means the supreme court, the department of economic security, the department of education, the department of health services, the department of juvenile corrections, the department of emergency and military affairs, THE STATE REAL ESTATE DEPARTMENT or the board of examiners of nursing care institution administrators and assisted living facility managers.

2. "Board" means the board of fingerprinting.

3. "Expedited review" means an examination, in accordance with board rule, of the documents an applicant submits by the board or its hearing officer without the applicant being present.

4. "Good cause exception" means the issuance of a fingerprint clearance card to an employee pursuant to section 41-619.55.

5. "Person" means a person who is required to be fingerprinted pursuant to this article and any of the following:

(a) Section 8-105.
(b) Section 8-322.
(c) Section 8-509.
(d) Section 8-802.
(e) Section 15-183.
(f) Section 15-534.
(g) Section 15-1330.
(h) Section 15-1881.
(i) Section 26-103.
(j) SECTION 32-2108.01.
(k) SECTION 32-2123.
~~(j)~~ (l) Section 36-411.
~~(k)~~ (m) Section 36-425.03.
~~(l)~~ (n) Section 36-446.04.
~~(m)~~ (o) Section 36-594.01.
~~(n)~~ (p) Section 36-594.02.
~~(o)~~ (q) Section 36-882.
~~(p)~~ (r) Section 36-883.02.
~~(q)~~ (s) Section 36-897.01.
~~(r)~~ (t) Section 36-897.03.
~~(s)~~ (u) Section 36-3008.
(v) SECTION 41-619.53.
~~(t)~~ (w) Section 41-1964.
~~(u)~~ (x) Section 41-1967.01.
~~(v)~~ (y) Section 41-1968.
~~(w)~~ (z) Section 41-1969.

~~(x)~~ (aa) Section 41-2814.
~~(y)~~ (bb) Section 46-141, subsection A.
~~(z)~~ (cc) Section 46-321.
Sec. 12. Repeal
Section 41-619.51, Arizona Revised Statutes, as amended by Laws 2009, first regular session, chapter 8, section 12, is repealed.
Sec. 13. Section 41-1758, Arizona Revised Statutes, is amended to read:
41-1758. Definitions
In this article, unless the context otherwise requires:
1. "Agency" means the supreme court, the department of economic security, the department of education, the department of health services, the department of juvenile corrections, the department of emergency and military affairs, THE STATE REAL ESTATE DEPARTMENT, the board of fingerprinting or the board of examiners of nursing care institution administrators and assisted living facility managers.
2. "Division" means the fingerprinting division in the department of public safety.
3. "Good cause exception" means the issuance of a fingerprint clearance card to an employee pursuant to section 41-619.55.
4. "Person" means a person who is required to be fingerprinted pursuant to any of the following:
(a) Section 8-105.
(b) Section 8-322.
(c) Section 8-509.
(d) Section 8-802.
(e) Section 15-183.
(f) Section 15-503.
(g) Section 15-512.
(h) Section 15-534.
(i) Section 15-1330.
(j) Section 15-1881.
(k) Section 26-103.
(l) SECTION 32-2108.01.
(m) SECTION 32-2123.
~~(l)~~ (n) Section 36-411.
~~(m)~~ (o) Section 36-425.03.
~~(n)~~ (p) Section 36-446.04.
~~(o)~~ (q) Section 36-594.01.
~~(p)~~ (r) Section 36-594.02.
~~(q)~~ (s) Section 36-882.
~~(r)~~ (t) Section 36-883.02.
~~(s)~~ (u) Section 36-897.01.
~~(t)~~ (v) Section 36-897.03.
~~(u)~~ (w) Section 36-3008.

~~(v)~~ (x) Section 41-619.52.
~~(w)~~ (y) Section 41-619.53.
~~(x)~~ (z) Section 41-1964.
~~(y)~~ (aa) Section 41-1967.01.
~~(z)~~ (bb) Section 41-1968.
~~(aa)~~ (cc) Section 41-1969.
~~(bb)~~ (dd) Section 41-2814.
~~(cc)~~ (ee) Section 46-141, subsection A.
~~(dd)~~ (ff) Section 46-321.

5. "Vulnerable adult" has the same meaning prescribed in section 13-3623.

Sec. 14. Section 41-1758.01, Arizona Revised Statutes, is amended to read:

41-1758.01. Fingerprinting division; duties

The fingerprinting division is established in the department of public safety and shall:

1. Conduct fingerprint background checks for persons and applicants who are seeking LICENSES FROM STATE AGENCIES, employment with licensees, contract providers and state agencies or ~~seeking~~ employment or educational opportunities with agencies that require fingerprint background checks pursuant to sections 8-105, 8-322, 8-509, 8-802, 15-183, 15-503, 15-512, 15-534, 15-1330, 15-1881, 26-103, 32-2108.01, 32-2123, 36-411, 36-425.03, 36-446.04, 36-594.01, 36-594.02, 36-882, 36-883.02, 36-897.01, 36-897.03, 36-3008, 41-619.52, 41-619.53, 41-1964, 41-1967.01, 41-1968, 41-1969 and 41-2814, section 46-141, subsection A and section 46-321.

2. Issue fingerprint clearance cards. On issuance, a fingerprint clearance card becomes the personal property of the cardholder and the cardholder shall retain possession of the fingerprint clearance card.

3. On submission of an application for a fingerprint clearance card, collect the fees established by the board of fingerprinting pursuant to section 41-619.53 and deposit, pursuant to sections 35-146 and 35-147, the monies collected in the board of fingerprinting fund.

4. Inform in writing each person who submits fingerprints for a fingerprint background check of the person's right to petition the board of fingerprinting for a good cause exception pursuant to sections 41-1758.03 and 41-1758.07.

5. Administer and enforce this article.

APPROVED BY THE GOVERNOR APRIL 26, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 27, 2010.