TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 28. STATE REAL ESTATE DEPARTMENT

Authority: A.R.S. § 32-2107

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ARTICLE 1. GENERAL PROVISIONS

R4-28-101. Definitions

In addition to the definitions listed in A.R.S. § 32-2101 the following terms apply to this Chapter:

"Active license" or "active status license" means a current license issued by the Department to a broker or salesperson that states the name of the broker that employs the broker or salesperson and the location at which the salesperson or broker is employed. If referring to an employing broker, it means a currently licensed employing broker with a currently licensed designated broker of record.

"ADEQ" means the Arizona Department of Environmental Quality.

"ADWR" means the Arizona Department of Water Resources.

"Closing" means the final step of a real estate transaction, such as when the consideration is paid, all documents relating to the transaction are executed and recorded, or the deed is delivered or placed in escrow.

"Credit hour" means 50 minutes of instruction.

"Course" means a class, seminar, or presentation.

"D.b.a." means 'doing business as' and is a name, other than a person's legal name, authorized by the Department for a licensee's use in conducting business.

"Distance learning course" means a course of instruction outside a traditional classroom situation consisting of computer-based interactive instructional material, requiring completion in the credit hours specified. A course that requires a student to read text, listen to audio tapes, or view video material without student participation, feedback, and remedial instruction is not a distance learning course.

"Immediate family" means persons related to an individual by blood, marriage, or adoption, including spouse, siblings, parents, grandparents, children, and grandchildren.

"Individual" means a natural person.

"Material change" means any significant change in the size or character of the development, development plan, or interest being offered, or a change that has a significant effect on the rights, duties, or obligations of the developer or purchaser, or use and enjoyment of the property by the purchaser.

"Non-resident license" means a license authorized under the provisions of 32-2122(A) issued to a person who has been domiciled in this state for less than one year and who does not meet any of the following:

Has an Arizona driver's license;
Has an Arizona motor vehicle registration;
Has been employed in Arizona;
Has an Arizona voter registration;
Has transferred banking services to Arizona;
Has changed permanent address on all pertinent records;
Is a domestic corporation or limited liability company;
Has filed an Arizona income tax return with the Department of Revenue during the previous or current tax year; or
Has received benefits from any Arizona public service department or agency, such as welfare, food stamps, unemployment benefits, or worker's compensation.

"Property interest" means a person's ownership or control of a lot, parcel, unit, share, use in a development, including any right in a subdivided or unsubdivided land, a cemetery plot, a condominium, a time-share interval, a membership camping contract, or a stock cooperative.

Historical Note

Former Section R4-28-01 repealed, new Section R4-28-01 adopted effective May 1, 1980 (Supp. 80-3). Amended effective August 1, 1986 (Supp. 86-4). Former Section R4-28-01 renumbered without change as Section R4-28-101 (Supp. 87-1). Former Section R4-28-101 renumbered to R4-28-102, new Section R4-28-101 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 3640, effective August 6, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-102. Document Filing; Computation of Time

A. All documents shall be considered filed on the date received by the Department. An original or renewal application postmarked on or before the end of the application or renewal deadline shall be considered timely.

B. In computing any period of time allowed by these rules or by an order of the Commissioner, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the period is included unless it is Saturday, Sunday, or a legal holiday in which event the period runs until the end of the next day that is not a Saturday,

Sunday, or legal holiday. Unless the time period is specified as calendar days, when the period of time allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

Historical Note

Former Section R4-28-02 repealed, new Section R4-28-02 adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Former Section R4-28-02 renumbered without change as Section R4-28-102 (Supp. 87-1). Former Section R4-28-102 repealed, new Section R4-28-102 renumbered from R4-28-101 and amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-103. Licensing Time-frames

A. Overall time-frame. The Department shall issue or deny a license within the overall time-frames listed in Table 1 after receipt of a complete application. The overall time-frame is the total of the number of days provided for in the administrative completeness review and the substantive review.

B. Administrative completeness review.

1. The applicable administrative completeness review time-frame established in Table 1 begins on the date the Department receives the application. The Department shall notify the applicant in writing within the administrative completeness review time-frame whether the application is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant, the license application shall be considered complete.
2. An applicant with an incomplete license application shall supply the missing information within the completion request period established in Table 1. The administrative completeness review time-frame is suspended from the date the Department mails the notice of missing information to the applicant until the date the Department receives the information.
3. If the applicant fails to submit the missing information before expiration of the completion request period, the Department shall close the file, unless the applicant requests an extension in writing from the Department before expiration of the Response to Completion Request period in Table 1. The Department shall grant the applicant one extension for the number of days identified as the Response to Completion Request period for the type of license. An applicant whose file has been closed may obtain a license by submitting a new application.

C. Substantive review. The substantive review time-frame established in Table 1 begins after the application is administratively complete.

1. The Department may schedule an inspection.
2. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date the Department mails the request until the information is received by the Department. If the applicant fails to provide the information identified in the written request the Department shall consider the application withdrawn unless the applicant requests in writing an extension from the Department before expiration of the Response to Additional Information period in Table 1. The Department shall grant the applicant one extension for the number of days identified in the Response to Additional Information period for the type of license.
3. If the application is denied, the Department shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant's right to seek a fair hearing, and the time period for appealing the denial.

D. Renewals. If an applicant for renewal of a salesperson's or broker's license submits a complete renewal application:

1. Before the expiration date and there are no changes in the applicant's license or qualifications pursuant to R4-28-301(A), the Department shall send the applicant notice that the license is renewed;
2. After the expiration date, or if a substantive review is required because the applicant wishes to make changes to or has answered in the affirmative any question on the license questionnaire, the Department shall process the application as a modified or amended application.

Historical Note

Amended as an emergency effective June 20, 1975 (Supp. 75-1). Former Section R4-28-03 repealed, new Section R4-28-03 adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-03 renumbered without change as Section R4-28-103 (Supp. 87-1). Former Section R4-28-103 repealed, new Section R4-28-103 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-104. Development Inspection Fee

A fee shall be 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, before or after issuance of a public report. Multiple inspections and fees may be required based on development circumstances.

Historical Note

New Section R4-28-104 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 4917, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-105. Educator Fees

Any individual applying for a certificate of approval or renewal to operate a school, instructor or other school official approval or renewal, live classroom prelicensure education course approval or renewal, live classroom continuing education course approval or renewal, and continuing education distance learning course approval or renewal pursuant to A.R.S. § 32-2132 shall submit the applicable fees to the Department.

Historical Note

New Section R4-28-105 made by exempt rulemaking at 19 A.A.R. 201, effective January 16, 2013 (Supp. 13-1).

Table 1. Time-frames (Calendar Days)

License	Authority	Administrative Completeness Review	Response to Completion Request	Substan-tive Review	Response to Additional Information	Overall Time-frame
Broker or Salesperson (Individual)	A.R.S. § 32-2122 A.A.C. R4-28-301	30	30	30	30	60
Individual Renewal	A.A.C. R4-28-303	30	30	30	30	60
Modified/Amended (Change of Name, Address, or License Status)	A.A.C. R4-28-303	30	30	30	30	60
Individual Reinstatement	A.A.C. R4-28-303	30	30	30	30	60
Corp/LLC/Partnership/ PC/PLC/Desig. Broker Sta-tus	A.R.S. § 32-2125 A.A.C. R4-28-302	60	30	60	60	120
Branch Office	A.R.S. § 32-2127	60	30	60	60	120
Entity/DB status Renewal	A.A.C. R4-28-303	60	30	60	60	120
Modified/Amended (Change of Name, Address, or License Status)	A.A.C. R4-28-303	60	30	60	60	120
Entity Reinstatement	A.A.C. R4-28-303	60	30	60	60	120
Temporary Broker	A.R.S. § 32-2133	60	30	60	60	120
Temp Cemetery Salesperson	A.R.S. § 32-2134	60	30	60	60	120
Membership Camping Cert. of Convenience	A.R.S. § 32-2134.01 A.A.C. R4-28-305	60	30	60	60	120
School Approval	A.R.S. § 32-2135(A) A.A.C. R4-28-404	10	15	20	15	30
Course Approval:	A.R.S. § 32-2135					
New (Live Instruction)	A.A.C. R4-28-404	10	15	20	15	30
New (Distance Learning)	A.A.C. R4-28-402, R4-28-404	30	30	90	30	120
Instructor Approval	A.R.S. § 32-2135 A.A.C. R4-28-404	10	15	20	15	30
ADVERTISING						
Membership Campground (only for lottery or drawing)	A.R.S. § 32-2198.10(D) A.R.S. § 32-2198.14 A.A.C. R4-28-503(D)	15	5	0	0	15
Subdivision (only for drawing or contest)	A.R.S. § 32-2183.01(I) A.A.C. R4-28-503(D)	15	5	0	0	15
Time-Share (only for drawing or contest)	A.A.C. R4-28-503(D) A.R.S. § 32-2197.17(I)	15	5	0	0	15
Time-Share (the offer of a premium)	A.A.C. R4-28-503(D) A.R.S. § 32-2197.17(K) A.A.C. R4-28-503(D)	15	5	0	0	15
Development Application	A.R.S. § 32-2183(A) A.R.S. § 32-2195.03(A) A.R.S. § 32-2197.06 A.R.S. § 32-2198.02 A.A.C. R4-28-B1203	40	40	60	40	100
Amended Report	A.R.S. § 32-2184 A.R.S. § 32-2195.10 A.R.S. § 32-2197.03 A.R.S. § 32-2198.01(D) A.A.C. R4-28-B1203	30	30	30	30	60
Certificate of Authority	A.R.S. § 32-2194.03(A)	40	40	60	40	100
Amended Certificate	A.R.S. § 32-2194.10 A.A.C. R4-28-B1204	30	30	30	30	60

WAIVERS						
Pre-license	A.R.S. § 32-2124 A.A.C. R4-28-401	15	60	30	0	45
Continuing Education	A.R.S. § 32-2130 A.R.S. R4-28-402	5	10	7	0	12
EXEMPTIONS						
Subdivision	A.R.S. § 2181.01 A.A.C. R4-28-B1202	40	40	40	40	80
Unsubdivided Land	A.R.S. § 32-2195.01 A.A.C. R4-28-B1202	40	40	40	40	80
Time-Share	A.R.S. § 32-2197.13	40	40	40	40	80
Membership Camping	A.R.S. § 32-3198.03	40	40	40	40	80

Historical Note

New Table 1 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

ARTICLE 2. REPEALED

R4-28-201. Repealed

Historical Note

Former Section R4-28-04 repealed, new Section R4-28-04 adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Amended effective August 1, 1986 (Supp. 86-4). Former Section R4-28-04 renumbered and amended as R4-28-201 effective February 28, 1987 (Supp. 87-1). Amended effective February 28, 1995 (Supp. 95-1). Section R4-28-201 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

ARTICLE 3. LICENSURE

R4-28-301. General License Requirements; Non-resident License

A. An applicant for any Department-issued license or license renewal including, if an entity, any officer, director, member, manager, partner, owner, trust beneficiary holding 10% or more beneficial interest, stockholder owning 10% or more stock, or other person exercising control of the entity, shall submit the following information to the Department:

1. A signed original licensure or renewal questionnaire, as applicable, disclosing any:
   a. Conviction for a misdemeanor or felony, or deferral of a judgment or sentencing for a misdemeanor or felony;
   b. Order, judgment, or adverse decision entered against the applicant involving fraud or dishonesty, or involving the conduct of any business or transaction in real estate, cemetery property, time-share intervals, membership camping contracts, or campgrounds;
   c. Restriction, suspension, or revocation of a professional or occupational license, or registration currently or previously held by the applicant in any state, district, or possession of the United States or under authority of any federal or state agency; any civil penalty imposed under the license, or any denial of a license; or
   d. Order, judgment, or decree permanently or temporarily enjoining the applicant from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, time-share intervals, membership camping contracts, campgrounds, securities, or involving consumer fraud or violation of the racketeering laws by the applicant, or payment from a recovery fund or fund of last resort due to the applicant's action or inaction.
2. If the applicant discloses information under subsection (A)(1), the applicant shall provide all of the following written documentation:
   a. A signed written statement describing in detail the circumstances surrounding the matter disclosed;
   b. A certified copy of any police report and court record that pertains to each crime for which the applicant has been convicted or for which sentencing or judgment has been deferred. If the applicant is unable to provide documents for each crime, the applicant shall provide written documentation from the court or agency having jurisdiction, stating the reason the records are unavailable.
   c. Three written and dated references from individuals, 18 years or older and not related by blood or marriage to the applicant, who have known the applicant for at least one year before the date of the Department's receipt of the application. Each reference shall be dated no more than one year from the date the application is submitted to the Department and include the writer's name, address, and telephone number;
   d. A 10-year work history, stating each employer's name and address, supervisor's name and telephone number, position held, and dates of employment, specifying any periods of unemployment;
   e. A certified copy of all documents pertaining to every reprimand, censure or sanction, order assessing a civil penalty, or denying, suspending, restricting, or revoking any professional or occupational license currently held or held by the applicant within the last 10 years;
   f. A certified copy of any civil judgment awarded by a court of competent jurisdiction against the applicant that included findings of fraud or dishonest dealings by the applicant;
   g. A certified copy of any document evidencing a payment of a judgment on behalf of the applicant by any recovery fund administered by any state or professional or occupational licensing board, or repayment by the applicant as a judgment debtor to any recovery fund administered by any state or professional or occupational licensing board. If an Arizona real estate or subdivision recovery fund matter, a written disclosure of the file number, approximate date, and approximate amount of payment and current repayment status satisfies this requirement.

h. A certified copy of any temporary or permanent order of injunction entered against the applicant;
i. Any other documentation that the applicant believes supports the applicant's qualifications for licensure.

3. A full set of fingerprints as prescribed in A.R.S. § 32-2108.01;
4. The appropriate license application and fee; and
5. Social security number, if the applicant is an individual.

B. In addition to the information required in subsection (A), an applicant for a salesperson's or broker's license shall provide information showing the person meet the qualifications listed in A.R.S. § 32-2124, A.A.C. R4-28-401, and R4-28-403. If disclosing censure, sanction, disciplinary action, or other order against any professional or occupational license currently or previously held by the applicant, the applicant shall submit a certified license history from each state in which the applicant holds, or has held, a professional or occupational license within the five years before the application.

C. The Department shall not issue a broker's license to any person who holds an active salesperson's license in this state. An active-status salesperson applying for broker's license may simultaneously submit a severance signed by the designated broker on behalf of the salesperson's employing broker under R4-28-303(E)(10) or may request to be administratively severed under R4-28-303(G).

D. The Department shall issue to a qualified person a license bearing the legal name of the licensee and any additional nickname, corporate, or dba name that the Commissioner finds is not detrimental to the public interest. A professional corporation or professional limited liability company licensed under A.R.S. § 32-2125(B) shall not adopt a dba name.

E. Every salesperson and broker holding a current license shall file with the Commissioner both the address of the salesperson's or broker's principal place of business, if any, and a current residence address.

F. Each salesperson, broker, school owner, director, administrator, and instructor shall, within 10 days of each occurrence, notify the Commissioner in writing of any change in information provided under subsection (A)(1)(a) through (d) and provide documentation listed in subsection (A)(2).

G. A licensee shall, within 14 calendar days or a later date determined by the Department, respond to a request from the Commissioner or the Commissioner's representative for any documents, electronic files, written statements, or other information required as a part of a complaint investigation, regardless of whether the licensee is named in the complaint.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Amended effective August 1, 1986 (Supp. 86-4). Former Section R4-28-05 renumbered without change as Section R4-28-301 (Supp. 87-1). Amended subsection (C) effective May 3, 1988 (Supp. 88-2). Amended subsection (J) effective February 28, 1989 (Supp. 89-1). Amended effective February 28, 1995 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-302. Employing Broker's License; Non-resident Broker

A. A person applying for an employing broker's license shall provide the following information:

1. The name, business address, telephone number, fax number and e-mail address, if any, and designated broker's name, license number and expiration date, and the signature of the designated broker;
2. Whether the broker is an individual, a sole proprietorship, corporation, partnership, limited liability company, professional corporation or professional limited liability company;
3. The mailing address, if different than the business address;
4. The d.b.a. name, if applicable;
5. The bank name and location of each of the broker's trust accounts, if any; and
6. The name and number of the trust account.

B. Partnership.

1. When the applicant is a partnership, the applicant shall name a broker to serve as designated broker:
   a. The designated broker shall be a partner of the general partner if the general partner is a partnership.
   b. The designated broker shall be a corporate officer of the corporate partner if the general partner is a corporation.
   c. The designated broker shall be a member of the member-managed limited liability company or manager of the manager-managed limited liability company if the general partner is a limited liability company.
   d. A limited partner of a partnership shall not be designated broker for the partnership.
2. In addition to the information provided in subsection (A), an applicant for an employing broker's license as a partnership shall, if applicable, provide:
   a. The name and address of each partner, and the name of any other person with a beneficial or membership interest in the partnership;
   b. An agreement signed by all partners, stating the name of the partner appointed to act as the designated broker for the partnership;
   c. A written statement signed by the designated broker stating that:
      i. The partnership has applied for a broker's license in Arizona;
      ii. Each partner has read the complete application on the named partnership as submitted to the Department;
      iii. All the information contained in the application is true;
      iv. Each general partner is qualified to do business in Arizona; and
      v. The name of the partnership complies with A.R.S. § 29-245 and subsections (H) and (I), and is not likely to be misleading or confusing;
   d. A copy of the partnership agreement and any amendments;
   e. A copy of the application for partnership registration stamped "Received and Filed" by the Arizona Secretary of State; and
   f. Any other information required by the Department to verify the applicant's qualifications.

C. Corporation. In addition to the information provided in subsection (A), an applicant for an employing broker's license for a corporation shall provide:

1. The name and address of each officer and director, and the name and address of each shareholder controlling or holding more than 10% of the issued and outstanding

common shares, or 10% of any other proprietary, beneficial, or membership interest in the corporation;

2. A copy of the Articles of Incorporation and any amendments stamped "Received and Filed" by the Arizona Corporation Commission. If more than one year has elapsed between the date the Articles were stamped "Filed" by the Arizona Corporation Commission and the application for the corporate license, a Certificate of Good Standing from the Arizona Corporation Commission is required;
3. A corporate resolution stating that the designated broker was elected or appointed as a corporate officer, naming the office held, and stating that the individual was appointed to act as designated broker for the corporation;
4. A written statement signed by the designated broker stating that:
   a. The corporation has applied for a broker's license in Arizona;
   b. Each officer and director has read the complete application on the named corporation as submitted to the Department;
   c. All the information contained in the application is true;
   d. The name of the corporation complies with A.R.S. § 10-401 and 4 A.A.C. 28, Article 10, and is not likely to be misleading or confusing; and
   e. Each corporation is qualified to do business in Arizona; and
5. Any other information required by the Department to verify the applicant's qualifications.

D. Limited liability company. In addition to the information provided in subsection (A), an applicant for an employing broker's license for a limited liability company shall provide:

1. The name and address of each member and manager, and the name and address of any person controlling or holding more than 10% of the membership interest in the limited liability company;
2. A copy of the Articles of Organization and any amendments stamped "Received and Filed" by the Arizona Corporation Commission. If more than one year has elapsed between the date the Articles were stamped "Filed" by the Arizona Corporation Commission and the application for the limited liability company license, a Certificate of Good Standing from the Arizona Corporation Commission is required;
3. A company resolution signed by all members stating whether management of the limited liability company is established as manager-controlled or member-controlled and the name of the member or manager appointed to act as the designated broker;
4. A written statement signed by the designated broker stating that:
   a. The limited liability company has applied for a broker's license in Arizona;
   b. Each member and manager has read the complete application on the limited liability company as submitted to the Department;
   c. All of the information contained in the application is true;
   d. The name of the limited liability company complies with A.R.S. § 29-602 and 4 A.A.C. 28, Article 10, and is not likely to be misleading or confusing; and
   e. The limited liability company is qualified to do business in Arizona.
5. A copy of the operating agreement and any amendments; and
6. Any other information required by the Department to verify the applicant's qualifications.

E. Foreign entity. In addition to the requirements in this Section, the Department may require any of the following information from an entity applying for a broker's license if a partner, member, officer, or director of the entity is domiciled in another state:

1. The agreement and plan of merger;
2. The Certificate of Good Standing;
3. The Certificate of Merger on file in the state in which the applicant is domiciled;
4. The Certificate of Merger on file with the Arizona Corporation Commission;
5. A filed and stamped Articles of Merger;
6. A filed and stamped application for registration of the foreign limited liability company, foreign corporation, or partnership;
7. Any other information required by the Department to verify the applicant's qualifications.

F. Self-employed broker. In addition to the information provided in subsection (A), any person applying as a self-employed broker shall provide a sworn statement attesting that the applicant is the sole proprietor of the business.

G. If any information prescribed in subsections (A) through (F) changes, the designated broker shall, within 10 days after the change, file a supplemental statement in writing with the Department listing the change and include the appropriate fee, if any.

H. The Department shall not license an employing broker or authorize an employing broker to do business under a dba name similar to that of any employing broker already licensed if the name would cause uncertainty or confusion to the public. If there is a conflict of names between two employing brokers, the Commissioner shall require the employing broker seeking licensure to supplement or otherwise modify the broker's name.

I. The Department shall not license an employing broker under more than one dba name and a person shall not conduct or promote real estate business under any name other than the name under which the person is licensed.

J. A broker shall not employ a salesperson or associate broker and allow the salesperson or associate broker to establish and carry on a brokerage business if the broker's only interest is the receipt of a fee for the use of the license and the broker does not exercise supervision over the salesperson or associate broker.

K. Change of designated broker.

1. To resign as an employing broker's designated broker a broker shall submit to the Department a copy of the broker's letter of resignation and shall return the licenses issued to the designated broker and the employing broker to the Department.
2. A licensed entity may remove its designated broker by submitting to the Department a copy of the partnership agreement, corporate or company resolution removing the broker and returning to the Department the licenses issued to the employing broker and designated broker.
3. The employing broker whose designated broker has resigned or been removed shall cease conducting business until the employing broker has complied with subsection (K)(4).
4. An employing broker whose designated broker has resigned or been removed may continue business without interruption if the incoming designated broker on the same day as, or the next business day following, the departure or removal of the outgoing designated broker:

a. Completes, signs, and submits the Change Form as prescribed in R4-28-303; and
b. If the entity is a corporation or limited liability company, submits a resolution appointing the new broker to act on its behalf; or
c. If the entity is a partnership, submits an amendment to the partnership agreement naming the new broker to act on its behalf.

L. Non-resident employing broker.
1. An employing broker that holds a non-resident license and maintains a principal office outside this state shall:
   a. Maintain a trust account or licensed escrow account situated in Arizona for monies received from Arizona transactions;
   b. Maintain, in Arizona, copies of all documents pertaining to any Arizona transactions handled by the broker;
   c. Provide a written statement to the Department identifying the name, address, and telephone number of the person residing in Arizona, such as a statutory agent or attorney, who has possession of the records; and
   d. Identify the physical location of the records.
2. An employing broker that holds a non-resident license and employs a licensed salesperson or broker within the state shall:
   a. Establish an office in Arizona and appoint a branch manager; and
   b. Provide a statement describing how the licensed employee shall be supervised.
3. An employing broker who holds a non-resident license shall notify the Department within 10 days of any change to any information required under this Section.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Correction, Supp. 80-3 should read Adopted effective May 1, 1980 (Supp. 83-3). Amended subsection (B) effective August 1, 1986 (Supp. 86-4). Former Section R4-28-06 renumbered without change as Section R4-28-302 (Supp. 87-1). Amended effective February 28, 1995 (Supp. 95-1). Former Section R4-28-302 repealed, new Section R4-28-302 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-303. License Renewal; Reinstatement; Changes of Personal Information, License, or License Status; Professional Corporation or Professional Limited Liability Company Licensure; Administrative Severance

A. Renewal.
1. If a salesperson or broker makes a timely and sufficient application for license renewal or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the Department, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the Commissioner's order or a later date fixed by order of the reviewing court.
2. Any salesperson or broker applying for a license renewal shall submit the following information on the Application for License Renewal form:
   a. Any change or correction to the applicant's licensing information;
   b. Whether the renewal application is late;
   c. If the renewal is for an active license and is filed in paper format, the Department shall require the application to include the date and signature of the designated broker, authorized branch office manager, or authorized designee under A.R.S. § 32-2127(D). If signed by a branch manager or designee, the branch manager or designee shall attach a copy of the authorization or designation;
   d. The signature of the applicant, attesting to the truthfulness of the application information;
   e. A completed certification questionnaire, providing details and supporting documents for any affirmative response not previously disclosed in writing to the Department concerning judgments, orders, professional licenses, or convictions, as required under R4-28-301(A).
   f. To renew as designated broker for an employing broker, the designated broker shall complete and submit a signed Broker Supervision & Control Audit Declaration for the sole proprietorship or entity on whose behalf the broker acts as designated broker. The completed declaration shall:
      i. Be dated and filed before or with the broker's renewal application, and submitted to the Department no earlier than 90 days before the broker's license expiration date;
      ii. Be in the form prescribed by the Department;
      iii. State the broker's compliance or non-compliance with, or the non-applicability of, specified statutes and rules; and
      iv. Identify all of the broker's property management and trust accounts.

B. Late renewal. In addition to the information required in subsection (A), any person applying for renewal after the date of license expiration shall specify whether the person conducted unlawful license activities as described in R4-28-306.

C. Reinstatement.
1. Any salesperson or broker applying for license reinstatement under A.R.S. § 32-2131 shall, in addition to the requirements in R4-28-301(A), submit the following information on the Application For Reinstatement form:
   a. The type of license and status requested;
   b. The applicant's legal name, business address, and telephone number;
   c. Whether the license was suspended, canceled, terminated, or revoked, and the date of and reason for the action;
   d. The license number of the applicant;
   e. The mailing address, if different than the business address;
   f. The name, address, and telephone number of the employing broker, if applicable;
   g. The employer's trade or d.b.a. name, if any;
   h. The date of the application; and
   i. The signature of the applicant attesting to the above information and that the applicant is aware of the provisions in A.R.S. §§ 32-2131, 32-2153, and 32-2160.01.
2. If the license was active at the time of suspension, cancellation, revocation, or termination, the applicant shall provide the information required under R4-28-306.

D. A salesperson or broker shall notify the Department in writing within 10 days of any change in the individual's personal information or qualifications. The salesperson or broker shall

include in the notice the individual's name, signature, license number, and:

1. If disclosing information required under R4-28-301, such as a criminal conviction, adverse judgment, denial or restriction of or disciplinary action against a professional or occupational license, or recovery fund payment on the person's behalf, a written statement providing detailed information and, upon request by the Department, the supporting documentation identified in R4-28-301(A)(2);
2. If requesting a change of personal name, written notice stating the prior name and new name, supporting documentation for the change, and applicable fee;
3. If changing residence address or residential mailing address, written notice stating the prior address, new address and the date of the change;
4. If changing residence telephone number or providing an additional telephone number or e-mail address, written notice of the prior and current number or e-mail address; or
5. If becoming licensed as a professional corporation or professional limited liability company, or changing licensure as a professional corporation or professional limited liability company, the information required under subsection (F).

E. A designated broker shall notify the Department in writing within 10 days of any change in the employing broker's qualifications under R4-28-301, and shall provide notice of any proposed change in the employing broker's business information under this Section. An employing broker shall not conduct business under information described in subsections (E)(2), (3), (7), (9), (12), or (13) until the change is approved by the Department. The designated broker shall include in the notice the designated broker's name and signature, the employing broker's legal name, and:

1. If disclosing information required under R4-28-301 such as an adverse judgment, denial, or restriction of or disciplinary action against a professional or occupational license, or recovery fund payment on the person's own behalf or on behalf of any officer, director, member, manager, partner, owner, trust beneficiary holding 10 percent or more beneficial interest, stockholder owning 10 percent or more stock, or other person exercising control of the employing broker, file with the Department a written statement within 10 days of the occurrence, providing detailed information and, upon request by the Department, the supporting documentation identified in R4-28-301(A)(2);
2. If changing the employing broker's legal name, written notice stating the current name and proposed name, supporting documentation, and applicable fee;
3. If changing the employing broker's dba name, written notice stating the current dba name, if any, the proposed dba name, and applicable fee;
4. If changing the employing broker's physical address, changing or adding a business mailing address, or changing the address of any branch office, written notice within 10 days of the change stating the prior address and new address, return all current licenses issued to the former address, and pay the applicable fee;
5. If changing business telephone number, written notice within 10 days of the change, providing the prior and current number. The broker may provide additional telephone numbers or e-mail addresses;
6. If changing the structure or membership of the employing broker as provided in A.R.S. § 32-2125 (G), written notice within 10 days of the change including supporting documentation identified in R4-28-302;
7. If changing branch office managers at an established branch office of the employing broker, or changing the authority delegated to the branch office manager, the application form, applicable fee, and letter of authority that identifies the person appointed and specifies the duties delegated as provided by R4-28-304;
8. If closing a branch office, a written statement informing the Department within 10 days of the closure, accompanied by the branch office license and Department form severing the employment of or transferring to another branch office each employee at the branch;
9. If hiring a salesperson or broker, or transferring a salesperson or broker employed by the employing broker to another office of the employing broker, a change form that includes the name, license number, signature of the employee, and the branch office address where the employee will work, and applicable fee;
10. If severing a licensee employed by the employing broker, written notice and return of the employee's license within 10 days of the severance;
11. If opening or closing a broker's trust account, written notice within 10 days of the opening or closing that provides the name of the account, the account number, and the name and address of the bank where the account is located. If relocating or changing the name of a trust account, the designated broker shall include the information for the previous and new accounts;
12. If appointing a temporary broker, submit the information specified in R4-28-305 and in accordance with provisions of A.R.S. §§ 32-2127 or 32-2133, as applicable; or
13. If an employing broker is changing designated brokers, the information and documentation provided in R4-28-302(K).

F. In addition to the applicant's name, signature, license number, the name and address of the employing broker's office where the employee will work, and the change fee, a salesperson or broker shall submit the following information to be licensed as a professional corporation or professional limited liability company, to add or remove members of a licensed professional corporation or professional limited liability company, or to change the name of a licensed professional corporation or professional limited liability company:

1. Professional corporation.
   a. The name of the professional corporation that includes the full or last name of each officer, director, and shareholder of the professional corporation as it appears in the Articles of Incorporation;
   b. The name and business address of each officer, director, and shareholder in the corporation and a written statement that each holds a current and active real estate license;
   c. A copy of the Articles of Incorporation, as amended, stamped "Received and Filed" by the Arizona Corporation Commission;
      i. The Articles of Incorporation shall state that the corporation's sole purpose is to provide professional real estate, cemetery, or membership camping services, or real estate, cemetery, and membership camping services.
      ii. If more than one year has elapsed between the date the Articles of Incorporation were stamped "Filed" by the Arizona Corporation Commission and the date of the application for a license as a professional corporation, the Department

shall require the salesperson or associate broker to submit a Certificate of Good Standing from the Arizona Corporation Commission; and

d. Evidence that membership in the professional corporation is limited to the designated broker and does not include any other person if the applicant for licensure as a professional corporation is licensed as a designated broker;

2. Professional limited liability company.
   a. The name of the professional limited liability company which includes the full or last name of each member of the professional limited liability company as it appears in the Articles of Organization;
   b. The name and address of each member and manager in the limited liability company and a written statement that each holds a current and active real estate license;
   c. A copy of the Articles of Organization, as amended, stamped "Received and Filed" by the Arizona Corporation Commission:
      i. The Articles of Organization shall state that the limited liability company's sole purpose is to provide professional real estate, cemetery, or membership camping services, or real estate, cemetery, and membership camping services.
      ii. If more than one year has elapsed between the date the Articles of Organization were stamped "Filed" by the Arizona Corporation Commission and the date of the application for a license as a professional limited liability company, the Department shall require the salesperson or associate broker to submit a certificate of Good Standing from the Arizona Corporation Commission.
   d. A copy of the operating agreement, as amended; and
   e. Evidence that membership in the professional limited liability company is limited to the designated broker and does not include any other person if the applicant for licensure as a professional limited liability company is licensed as a designated broker.
3. To return a license from professional corporation or professional limited liability company status to individual status:
   a. The name, license number, and dated signature of the salesperson or broker;
   b. A written statement that the salesperson or broker no longer wishes to be licensed as a professional corporation or professional limited liability company; and
   c. The change fee.

G. Administrative severance.
1. A salesperson or broker may request that the Department sever the salesperson's or broker's license from the employing broker. The salesperson or broker shall provide the following information on a form or in the manner prescribed by the Department:
   a. The name, license number, and dated signature of the salesperson or broker seeking the severance; and
   b. The name of the employing broker from whom the license is being severed.
2. Upon receipt of the written request for severance as provided in subsection (G)(1)(a), the Department shall administratively sever the license and provide written notice to the employing broker, who shall return the severed person's license to the Department under subsection (E)(10).

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Amended effective August 1, 1986 (Supp. 86-4). Former Section R4-28-07 renumbered without change as Section R4-28-303 (Supp. 87-1). Amended by adding a new subsection (K) effective May 3, 1988 (Supp. 88-2). Amended effective February 28, 1995 (Supp. 95-1). Former Section R4-28-303 repealed, new Section R4-28-303 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Subsection (F) amended to correct a manifest clerical error, filed in the Office of the Secretary of State March 29, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-304. Branch Office; Branch Office Manager

A. To obtain a branch office license, the designated broker shall submit to the Department before operating the branch office the following information for each branch office of the employing broker on the Application for Branch Office form:
1. The name, date, and signature of the designated broker;
2. The license number and license expiration date of the employing broker;
3. The name, address, telephone, and license number of the main office;
4. The type of employing broker's license;
5. The employing broker's dba name, if applicable;
6. The address, telephone number, and fax number, if any, of the branch office; and
7. The name and license status of the salesperson or broker who is the branch office manager and the authority granted to the branch office manager, including any designation of authority under subsection (B).

B. Branch office manager. A designated broker may authorize in writing an associate broker or salesperson to act as a branch office manager to perform any of the following duties of the designated broker at the branch office. This designation does not relieve the designated broker from any responsibilities. Upon change of the branch manager, the designated broker shall submit a new authorization to the Department within 10 days of the change and shall retain a copy in the broker's main office for five years.
1. If the branch manager is an associate broker, the associate broker may, when dealing with branch office transactions:
   a. Review and initial contracts,
   b. Supervise the activity of salespersons and associate brokers,
   c. Hire or sever a salesperson or associate broker,
   d. Sign compensation checks,
   e. Be a signer on the branch office trust account and property management trust account,
   f. Write checks from the broker's trust accounts, and
   g. Be responsible for the handling of all trust account funds administered by the branch manager.
2. If the branch manager is a salesperson, the salesperson may, when dealing with branch office transactions:
   a. Perform office management tasks that are not statutory duties of the employing broker, and
   b. Be a signer on the broker's trust account and property management trust account.

C. Temporary office. An additional license is not required for a temporary office established for the original on-site sale of properties within the immediate area of a subdivision or unsubdivided land.

1. The broker named in the application for public report shall supervise operation of the temporary office to sell or lease the subdivided or unsubdivided land.
2. The broker shall display the subdivision or unsubdivided land name and the licensed name of the employing broker marketing the development in a prominent manner at the entrance to the temporary office.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended subsection (A) effective June 23, 1983 (Supp. 83-3). Amended subsection (A)(4) effective August 1, 1986 (Supp. 86-4). Former Section R4-28-08 renumbered and amended as Section R4-28-304 effective February 28, 1987 (Supp. 87-1). Former Section R4-28-304 repealed, new Section R4-28-304 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-305. Temporary License, Certificate of Convenience

A. Any individual applying for a temporary cemetery salesperson's license, a temporary broker's license, or a membership camping salesperson's certificate of convenience shall submit the following information and applicable fee to the Department:
1. The type of license requested;
2. The name, address, telephone number, and date of birth of the applicant;
3. The mailing address if different from the address in subsection (A)(2);
4. The name, business address, telephone number, fax number, if any, and license number of the employing broker; and
5. The branch office number, address, telephone number, and fax number, if any, where employed, if different than the employing broker in subsection (A)(4).

B. The designated broker shall submit an affidavit under A.R.S. § 32-2134 or 32-2134.01 for:
1. An applicant for temporary cemetery license stating that the applicant has been trained in cemetery and contract law; or
2. An applicant for a membership camping certificate of convenience stating that the applicant will be trained in membership camping and contract laws.

C. In addition to the information required in subsection (A), an applicant for a temporary broker's license pursuant to A.R.S. § 32-2133 shall submit the following information to the Department:
1. A copy of the death certificate or notice, if applicable, or a letter advising the Department of the broker's illness or disability; and
2. A letter from the surviving spouse, an attorney representing the broker or the broker's family, personal representative, or other responsible party, appointing an individual to serve as a temporary broker for 90 days.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended subsection (A) effective June 23, 1983 (Supp. 83-3). Amended subsection (A)(4) and (5) effective August 1, 1986 (Supp. 86-4). Former Section R4-28-09 renumbered without change as Section R4-28-305 (Supp. 87-1). Former Section R4-28-305 repealed, new Section R4-28-305 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-306. Unlawful License Activity

A. Unlawful license activity is:
1. The performance of acts requiring a license under A.R.S. § 32-2122 by a person who does not hold a current and active license;
2. The performance of acts requiring a license by a person on behalf of a broker other than the person's employing broker; or
3. A broker's employment of a person as a salesperson or broker if the person does not hold a current and active license issued to the person under that employing broker.

B. A person who conducts unlawful license activity shall submit to the Department, as soon as the person becomes aware that the activity has occurred, the following:
1. A written explanation of why the unlawful license activity occurred;
2. A signed statement from the person that the person will not conduct activities requiring licensure under A.R.S. § 32-2122 unless the person holds a current and active license to perform those acts;
3. A signed statement from the employing broker's designated broker, identifying all unlawful activity by the person on behalf of the employing broker;
4. Upon request by the Department:
   a. A copy of all listing and employment agreements, offers or contract to buy, sell, lease, exchange, transfer, or manage real estate, cemetery property, or membership camping contracts prepared, negotiated or executed by the person while the person was not properly licensed under the employing broker;
   b. Documentation listing all compensation received or to be received by the person based on transactions that occurred while the person was not properly licensed;
   c. Documentation listing all compensation received or to be received by the person's employing broker and designated broker, if any, resulting from transactions that occurred while the person was not properly licensed if not provided in response to subsection (B)(4)(b); and
   d. A signed statement from the person stating that the information provided under subsection (B)(4) is true and complete and that the copies provided are true copies of all contracts, agreements, statements, and leases and no relevant documents are omitted.

C. A person who has no prior history of engaging in unlawful license activity under this Section, who conducted unlawful license activity for not more than 30 days and against whom there are no pending complaints may apply to renew the person's license or for license change to active status. The Department shall not delay processing the application based on the unlawful licensed activity. The Department shall issue an Advisory Letter of Concern to the person.

D. The Commissioner may take disciplinary action under A.R.S. § 32-2153 against a person who engages in unlawful license activity under this Section for longer than 30 days, has previously conducted unlawful license activity, or is the subject of a pending complaint.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

ARTICLE 4. EDUCATION

R4-28-401. Prelicensure Education Requirements; Waiver

A. Any individual applying for a real estate license shall either:

1. Complete the required 90-hour prelicensure education as prescribed in A.R.S. § 32-2124; or
2. Except for the 27-hour Arizona-specific course, apply for and be granted a waiver of the prelicensure courses.

B. If the waiver request is based on prior education, the applicant shall submit a letter to the Commissioner that includes or demonstrates:
1. The name, mailing, and business address, daytime telephone number, and signature of the applicant;
2. The type of license sought;
3. The name and address of the school;
4. The course description or curriculum, including credit hours; and
5. Completion of one or more real estate courses. Acceptable evidence includes;
   a. A signed letter from a school representative or official transcript from a college or university, which indicates:
      i. The starting and ending dates of the course;
      ii. The number of semesters, quarters, and credit hours awarded per course; and
      iii. Whether the course examination was passed.
   b. Evidence of course completion provided as part of a certified license history from a state in which the applicant is currently or was previously licensed.

C. If the waiver request is based on experience, or education and experience, the applicant shall submit a letter to the Commissioner that includes:
1. A detailed resume covering the previous 10 years, indicating duties performed and the name and telephone number for each employer; and
2. An original certified license history, including disciplinary action if any, from the real estate regulatory agency in each state in which the applicant is currently licensed and from any other state in which the applicant was licensed during the preceding 10 years; and
3. One or more of the following:
   a. Completion of one or more real estate courses. Acceptable evidence includes a signed letter from a school representative, or official transcript from a college or university, which identifies:
      i. The starting and ending dates of the course;
      ii. The number of semesters, or quarters, and credit hours awarded per course;
      iii. Whether the course examination was satisfactorily passed.
   b. Evidence of more than five years' experience in a real estate related field; or
   c. Evidence of course completion provided as part of a certified license history from a state in which the applicant is currently or was previously licensed.

D. The Department shall provide a copy of the prelicensure course content to any person requesting it.

E. A person shall not receive credit for more than 10 hours of prelicensure education classes per day.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended subsections (F) and (G) effective March 13, 1981 (Supp. 81-2). Former Section R4-28-10 renumbered without change as Section R4-28-401 (Supp. 87-1). Amended by adding a new subsection (E) and renumbering accordingly effective March 7, 1988 (Supp. 88-1). Amended subsection (G) effective June 6, 1989 (Supp. 89-2). Amended effective February 28, 1995 (Supp. 95-1). Section R4-28-401 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-402. Continuing Education Requirements; Waiver; Distance Learning

A. Continuing education requirements.
1. To be eligible for license renewal, a real estate salesperson or broker shall complete continuing education courses approved by the Department under R4-28-404, presented by a real estate school approved under R4-28-404, and taken since the salesperson's or broker's original licensure or effective date of the preceding license, whichever is later.
2. A real estate salesperson or associate broker applying for renewal shall submit proof of satisfactory completion of 24 credit hours of continuing education courses in the categories specified in subsection (A)(5). The renewal applicant shall complete a minimum of three hours in each of the mandatory categories under subsections (A)(5)(a) through (A)(5)(f). The renewal applicant shall take additional courses in the mandatory categories, or shall take courses in the business brokerage or general real estate categories described in subsection (A)(5)(g) and (A)(5)(h) to fulfill the required 24 credit hours.
3. A real estate designated broker applying for renewal shall submit proof of satisfactory completion of 24 credit hours of continuing education courses. The renewal applicant shall complete a minimum of three hours in each of the mandatory categories under subsections (A)(5)(a) through (A)(5)(f) and shall complete a Broker Management Clinic under A.R.S. 32-2136 approved in the Commissioner's Standards category under subsection (A)(5)(c). The renewal applicant shall take additional courses in the mandatory categories, or shall take courses in the business brokerage or general real estate categories described in subsection (A)(5)(g) and (A)(5)(h) to fulfill the required 24 credit hours.
4. A salesperson renewing for the first time may include credit for attendance at the Contract Writing class taken under A.R.S. § 32-2124(L) if taken within one year before the date of the salesperson's original licensure. A broker renewing for the first time may include credit for attendance at the Broker Management Clinic under A.R.S. § 32-2136 taken before the broker's original licensure date.
5. The categories for real estate continuing education courses are:
   a. Agency law. The majority of class material concerns agency relationships and disclosure.
   b. Contract law. The majority of class material concerns the contract formation and implementation, or the results of contract use, including:
      i. Various contract forms and clauses, fundamentals, updates, options, offers, counter offers, first right of refusal, and exchanges;
      ii. Contract writing;
      iii. Required disclosures, problem-solving, and law and rule requirements;
      iv. Recent court decisions and case law studies;
      v. Breach of contract issues;
      vi. Legal, ethical and agency considerations, procedures, and disclosures;
      vii. Accommodating current financing procedures, requirements, and options.
   c. Commissioner's standards. The majority of class material relates to license laws, including:
      i. Article 26 of the Arizona Constitution;

ii. A.R.S. Title 32, Chapter 20, and A.A.C. Title 4, Chapter 28, which includes trust accounts, recordkeeping, license requirements, exemptions to licensure, commission payments, recovery fund provisions, development requirements, processes for public reports for and sale of subdivided and unsubdivided land, membership campgrounds and time-shares, cemetery regulations, and grounds for disciplinary action and hearings.
iii. A.R.S. Title 44, Chapter 10, Article 3.1, Trade Names and Business Practices.

d. Real estate legal issues. The majority of class material concerns existing real estate law, including:
i. Sources of real estate law (constitutions, statutes, zoning, common), and the legal system;
ii. Land and its elements (air, mineral rights, real and personal property);
iii. Land, title, and interests in land, homestead, encumbrances, and the Landlord and Tenant Act;
iv. Easements, fixtures, land descriptions, ownership, deeds, and building restrictions;
v. Escrow procedures, financing documents, and lending laws and regulations, including Regulation Z;
vi. Wills and estates, taxes, bankruptcy law, securities laws, title insurance, and appraisal law;
vii. Case law studies, real estate fraud, disclosure law, interstate and international real estate;
viii. Commission issues and forms of business ownership;
ix. Homeowners Association regulations;
x. Real Estate Settlement Procedures Act (RESPA); and
xi. Environmental issues.

e. Fair housing. The majority of class material concerns equal opportunities in housing, including:
i. Americans with Disabilities Act, ADA architectural designs (construction and development), and pertinent court cases;
ii. Arizona and federal fair housing laws, including advertising, marketing, information, and enforcement;
iii. Housing developments, deed restrictions, affordable housing, elder housing, zoning, local ordinances, and disclosures;
iv. Commercial and residential concerns; and
v. Administrative procedures and business practices.

f. Disclosure. The majority of class material concerns the following:
i. Licensee's disclosure obligations to client and others;
ii. Seller's and buyer's disclosure obligations to each other;
iii. Common material facts warranting disclosure, and liability for failure to disclose;
iv. Avoiding inadvertent non-disclosures;
v. Transaction documents that should be reviewed;
vi. Common "red flags" in a real estate transaction;
vii. Homeowner associations and buyers' obligations to homeowner associations; and
viii. Advising buyers and sellers of common "red flags."

g. Business brokerage. The majority of class material concerns business brokerage including:
i. Business brokerage basics including introducing licensees to business brokerage, associated terminology, marketing, prospecting, listing, pricing, closing practices, the use of contracts related to and unique to business brokerage, and the application of business brokerage contracts;
ii. Business valuations and appraisals, and establishing an in-depth review of proper business valuation techniques for small, medium, and large businesses;
iii. Tax structure and considerations, tax law, and policy including subjects such as financing tools available, options available, and tax implications;
iv. Accounting for business brokers;
v. Agency in business brokerages, the use of contracts related to and unique to business brokerage, and the application of business brokerage contracts; and
vi. Disclosure issues in business brokerage, including common "red flags" in a business opportunity transaction, and advising buyers and sellers of common "red flags."

h. General real estate. The majority of class material concerns real estate, but does not fall within any of the categories listed in subsections (A)(5)(a) through (A)(5)(g), including:
i. Appraisal methodology;
ii. General finance, use of financial calculators, mathematics, and managing cash flow;
iii. History of development in metropolitan areas; and
iv. Introduction to property management.

6. The Department may require an individual applying for renewal to obtain credit hours based upon significant current issues in the real estate community. The Department shall notify licensees of a new requirement by written notice published in printed or electronic format.
7. The Department may grant continuing education credit for a course that does not have a certificate of approval under R4-28-404 if the applicant demonstrates to the satisfaction of the Commissioner that the course meets the requirements prescribed in R4-28-404 and the course content requirements of this Section.
8. An applicant may substitute subject matter hours within a 90-hour broker's prelicensure course that meet the criteria for credit under subsections (A)(5)(a) through (A)(5)(h), if taken since the last license renewal, for the continuing education credit required in subsection (A)(2) or (3).
9. If any change in the continuing education course requirements occurs during a renewal applicant's license period and the applicant has fully complied with the continuing education requirement in effect before the change occurs, the Department shall consider the renewal applicant to be in compliance with the continuing education requirements for the license period.

B. Continuing education waiver. Under A.R.S. § 32-2130, the Commissioner may waive all or a portion of the continuing education requirement or grant additional time to complete a continuing education requirement when a salesperson or bro-

ker submits a written request to the Commissioner and shows good cause for the waiver or additional time.

1. Good cause may include:
   a. A person employed by the state or political subdivision establishes to the satisfaction of the Commissioner that the person's employment during the prior license period involved real estate-related matters;
   b. Any officer or employee of the state whose license is on an inactive status due to a possible conflict of interest or other employment requirement;
   c. The person demonstrates successful completion of a course on topics specifically related to the person's field of real estate practice;
   d. An approved real estate instructor requests a waiver for a course the instructor has taught;
   e. The salesperson or broker demonstrates other extraordinary circumstances.
2. A salesperson or broker is granted additional time by the Commissioner to complete the continuing education requirement for license renewal shall complete the continuing education hours by the deadline or be subject to disciplinary action.

C. The Department shall not grant a person credit for more than nine hours of continuing education per day.

D. Distance learning.

1. Only a school holding a Certificate of Approval shall offer a distance learning course. The school shall obtain course approval from the Department before advertising the course as approved by the Department for credit hours and before issuing Department credit hours for the course to students.
2. The Department shall not approve a distance learning course unless it contains:
   a. Individual modules of instruction for delivery on a computer or other interactive program;
   b. At least one learning objective for each module of instruction. The learning objective shall ensure that if all the objectives are met, the entire content of the course is understood;
   c. A structured learning method to enable the student to attain each learning objective;
   d. A diagnostic assessment of the student's performance during each module of instruction;
      i. The assessment shall measure what the student learned throughout the module of instruction, and
      ii. Assess the comprehension of each concept covered in the module;
   e. Remediation.
      i. Repetition of a module if a student is deficient in a diagnostic assessment; and
      ii. Continuous repetition of the module until the student understands the content material.
3. An approved instructor shall teach and an approved instructor or the school director shall grade distance learning courses. The instructor or school director shall:
   a. Provide the student with assistance, if required;
   b. Obtain a signed certification statement from the student indicating that the student has completed each assignment of instruction; and
   c. Certify the student as completing a distance learning course only if the student:
      i. Completes all required instructional modules,
      ii. Attends any required hours of live instruction or testing, or both, for a given course; and
      iii. Passes a final examination.
4. As part of its application for approval of a distance learning course, a school shall file a plan with the Department describing how the school will deal with hardware and software failure.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended subsection (F) effective March 13, 1981 (Supp. 81-2). Former Section R4-28-11 renumbered without change as Section R4-28-402 (Supp. 87-1). Amended by deleting subsections (C) and (E) and renumbering accordingly effective March 7, 1988 (Supp. 88-1). Former Section R4-28-402 renumbered to Section R4-28-403, new Section R4-28-402 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-403. License Examinations

A. The Department shall hold, or contract for, at least one state licensing examination each week.

B. A state license examination shall not be returned to the applicant. The applicant shall be notified in person of the results of the examination by the words "passed" or "did not pass." The results notification for an applicant who did not pass the examination shall also show the score for the examination and the relative score for each content area.

C. Qualifying to take or passing a license examination does not constitute a waiver of the Commissioner's right to deny issuance of a license if grounds exist pursuant to A.R.S. § 32-2153 or any other applicable statute.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-12 repealed, new Section R4-28-12 adopted effective August 28, 1986 (Supp. 86-4). Former Section R4-28-12 renumbered without change as Section R4-28-403 (Supp. 87-1). Amended effective February 28, 1995 (Supp. 95-1). Former Section R4-28-403 renumbered to R4-28-404, new Section R4-28-403 renumbered from R4-28-402 and amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-404. Real Estate School Requirements, Course and Instructor Approval

A. Certificate of School Approval. Except for a community college or university accredited by the Council on Post Secondary Accreditation or the U.S. Department of Education offering courses in real estate, any school offering a course of study for original or renewal licensure of a real estate applicant shall apply for and possess a Certificate of School Approval from the Department. The school's authorized representative shall provide the following information on or with the Certificate of School Approval form:

1. The name, address, telephone number, and fax number, if any, of the school;
2. The name of the owner and d.b.a. name, if any;
3. Whether the owner is a sole proprietorship, partnership, trust, limited liability company, or corporation;
4. The name, address, telephone number, and percentage ownership of each person, entity, or beneficiary holding or controlling 10% or more financial interest in the school;
5. The name of each individual authorized to act on behalf of the school and sign continuing education certificates or prelicensure verifications, or both;

6. The name, business address, and telephone number of all current and prospective administrators, directors, and instructors;
7. In addition to the information required in R4-28-301(A), each school owner, administrator, director, and instructor shall provide a statement of the individual's:
   a. Education,
   b. Teaching experience, and
   c. Employment history.
8. If the owner is a partnership, a copy of the partnership agreement naming the partner authorized to act on its behalf;
9. If the owner is a corporation or limited liability company, a copy of:
   a. A corporate or company resolution or operating agreement naming the officer, member, or manager authorized to execute the Certificate of Approval form;
   b. A current Certificate of Good Standing from the Arizona Corporation Commission;
   c. The latest annual report on file with the Arizona Corporation Commission;
   d. The Articles of Incorporation or Organization, as amended.
10. The location of school registration and licensing certification records.

B. Certificate of Course Approval. Any school offering a course of study for original or renewal licensure of a real estate applicant shall apply for and possess a Certificate of Course Approval for each course offered by the school. The school's authorized representative shall submit the following information:
1. The school name, address, telephone number, and fax number, if any;
2. The authorized representative's name, title, and signature;
3. The title of the course;
4. A detailed outline of course material content that clearly lists the subject matter to be covered;
5. The date, time, and location of the anticipated presentation, if known;
6. The number of credit hours requested. The time allocated by a school for examination shall not be included in calculating credit hours if the examination is used for overall evaluation.
7. The category of approval requested;
8. A definition of segments if the course is to be offered in part and in its entirety;
9. If video or audio tapes will be used as instructional aids, the percentage of the class they will comprise;
10. The name of every instructor who will teach the course; and
11. The date of the application.

C. Instructor approval. Any person wishing to teach an approved real estate course shall apply for an instructors approval, and shall have at least one of the following in the proposed subject area:
1. A bachelor's or master's degree in an area traditionally associated with real estate, such as business, law, economics, marketing, and finance;
2. An award of a generally-recognized professional real estate designation, such as Certified Commercial Investment Member, Graduate Realtor Institute, Certified Residential Specialist, Independent Fee Appraiser, or Member of the Appraisal Institute, and two years of postsecondary education from an accredited institution;
3. Experience in real estate, and a bachelor's degree in education with a valid certificate issued within 15 years of the date of application for instructor approval;
4. A real estate salesperson's or broker's license, and is an employee or former employee of a regulatory agency;
5. A Distinguished Real Estate Instructor designation, with credentials in the specific subject;
6. At least three years real estate or specific subject experience; or
7. Other education or experience determined by the Commissioner to qualify the applicant as an instructor.

D. The school shall maintain a record for five years of each student attending the school. The record shall include:
1. The name of each student;
2. The dates of attendance;
3. The title of each course taken;
4. The course number, category, and credit hours awarded;
5. The final grade or score in each prelicensure course; and
6. The original signature roster for each course or course segment taught.

E. The prospective student shall sign an agreement or application to enroll, presented to the student by the school representative, that includes the following, in bold type and capital letters:
1. The course or course segment title within a curriculum,
2. The total credit hours applicable for licensure or renewal,
3. The cost of each course,
4. A statement of the refund policy, and
5. A statement of any job placement service.

F. The Department does not consider lists of employers given to graduates to be a placement service. The school may advertise job placement services only if:
1. Student referrals result from direct contact between the school placement service and prospective employers,
2. Documented evidence of student referrals is maintained and includes:
   a. The number of referrals to prospective employers per student,
   b. Results of referrals,
   c. Final placement or other disposition.

G. Complaints. The Commissioner may, and upon a verified complaint in writing shall, investigate and observe the classes of any school, owner, administrator, director, or instructor acting on behalf of the school and may examine the books and records of the school in connection with the offering of approved courses.

H. Change in school, course, or instructor. Each school owner, operator, director, and instructor shall:
1. Provide a written notice and supporting documentation within 10 days of any:
   a. Change of personal name or address,
   b. Change of business address,
   c. Change of business mailing address,
   d. School closing, or
   e. Disclosure of certification information pursuant to R4-28-301(A),
2. Provide a written notice and supporting documentation within 30 days after any change in structure of a licensed entity, including any change of a:
   a. Director, officer, or person holding or controlling 10% or more of the shares, if a corporation;
   b. Partner, if a partnership;
   c. Member or manager, if a limited liability company.
3. Obtain approval from the Commissioner before conducting business when:
   a. Changing a business name,
   b. Establishing a school location,

c. Changing the course content,
d. Changing the course length, or
e. Offering a new course.

4. Provide written notice as soon as practical of a last minute change of instructor due to illness or emergency.

Historical Note
Section R4-28-404 renumbered from R4-28-403 and amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-405. Business Brokerage Specialist Designation

A. The Department shall award the business brokerage specialist designation under A.R.S. § 32-2124(N) to a real estate salesperson or broker or an applicant for licensure as a real estate salesperson or broker who submits to the Department satisfactory proof that the licensee or applicant completed 24 credit hours of courses on business brokerage, approved by the Department under R4-28-404, as follows:
1. Either two 12-hour courses or three eight-hour courses that contain instruction on business brokerage practices, review and analysis of financial statements, including recasting, and business valuation; and
2. The applicant passes an examination on each course.

B. A real estate salesperson or broker may request the designation from the Department by submitting to the Department satisfactory proof from the International Business Broker Association of having taken the courses and passed the course examinations described in subsection (A) within the five years before the request.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

ARTICLE 5. ADVERTISING

R4-28-501. Repealed

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-13 renumbered without change as Section R-28-501 (Supp. 87-1). Former Section R4-28-501 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-502. Advertising by a Licensee

A. A salesperson or broker acting as an agent shall not advertise property in a manner that implies that no salesperson or broker is taking part in the offer for sale, lease, or exchange.

B. Any salesperson or broker advertising the salesperson's or broker's own property for sale, lease, or exchange shall disclose the salesperson's or broker's status as a salesperson or broker, and as the property owner by placing the words "owner/agent" in the advertisement.

C. A salesperson or broker shall ensure that all advertising contains accurate claims and representations, and fully states factual material relating to the information advertised. A salesperson or broker shall not misrepresent the facts or create misleading impressions.

D. A school shall include its name, address and telephone number in all advertising of Department-approved courses. The school owner, director, or administrator shall supervise all advertising. The school owner shall ensure that the school's advertising is accurate.

E. A salesperson or broker shall ensure that all advertising identifies in a clear and prominent manner the employing broker's legal name or the dba name contained on the employing broker's license certificate.

F. A licensee who advertises property that is the subject of another person's real estate employment agreement shall display the name of the listing broker in a clear and prominent manner.

G. The designated broker shall supervise all advertising, for real estate, cemetery, or membership camping brokerage services.

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

I. Before placing or erecting a sign giving notice that specific property is being offered for sale, lease, rent, or exchange, a salesperson or broker shall secure the written consent of the property owner, and the sign shall be promptly removed upon request of the property owner.

J. The provisions of subsections (E) and (G) do not apply to advertising that does not refer to specific property.

K. Trade Names.
1. Any broker using a trade name owned by another person on signs displayed at the place of business shall place the broker's name, as licensed by the Department on the signs;
2. The broker shall include the following legend, "Each (TRADE NAME or FRANCHISE) office is independently owned and operated," or a similar legend approved by the Commissioner, in a manner to attract the attention of the public.

L. The use of an electronic medium, such as the Internet or web site technology, that targets residents of this state with the offering of a property interest or real estate brokerage services pertaining to property located in this state constitutes the dissemination of advertising as defined in A.R.S. § 32-2101(2).

Historical Note
Former Section R4-28-14 repealed, new Section R4-28-14 adopted effective May 1, 1980 (Supp. 80-3). Amended subsection (D) effective August 1, 1986 (Supp. 86-4). Former Section R4-28-14 renumbered without change as Section R4-28-502 (Supp. 87-1). Section R4-28-502 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-503. Promotional Activities

A. A licensee shall not describe a premium offered at no cost or reduced cost to promote sales or leasing as an "award," or "prize," or use a similar term.

B. A licensee shall clearly disclose to a person in writing the terms, costs, conditions, restrictions, and expiration date of an offer of a premium before the person participates in the offer.

C. Unless otherwise provided by law, a person shall not solicit, sell, or offer to sell an interest in a development by conducting a lottery contest, drawing, or game of chance.

D. A subdivider, time-share developer, or membership camping operator may apply for approval to conduct a lottery, contest, drawing, or game of chance, or award a premium under A.R.S. § 32-2197.17(J), by submitting to the Department the information under A.R.S. §§ 32-2183.01(I), 32-2197.17(J) or 32-2198.10(D), the applicable fee, if any, and:
1. The name, address, telephone number, and fax number, if any, of the subdivider, time-share developer, or operator;
2. The legal name of the broker;
3. The public report number;
4. The time and location for collecting entries for the lottery, contest, or drawing;
5. The date, time, and site for selection of a winner; and
6. The conditions and restrictions to enter, if any.

Historical Note

Former Section R4-28-15 repealed, new Section R4-28-15 adopted effective May 1, 1980 (Supp. 80-3). Amended effective August 1, 1986 (Supp. 86-4). Former Section R4-28-15 renumbered without change as Section R4-28-503 (Supp. 87-1). Section R4-28-503 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-504. Development Advertising

A. If a developer obtains a conditional sales exemption, under R4-28-B1202, or registers a notice of intent with the Department to accept lot reservations under A.R.S. § 32-2181.03, the developer shall disclose on all advertising that only reservations or conditional sales contracts will be taken until the public report has been issued.

B. Only a developer or the developer's authorized representative shall file advertising for a development under A.R.S. §§ 32-2183.01(A), 32-2194.05(A), 32-2195.05(A), 32-2197.17(A) or 32-2198.01(A)(6) with the Department.

C. A developer shall ensure that advertisement of property in a development includes the name of the development as registered with the Department. The Commissioner may waive application of this subsection if the Commissioner determines that the public interest is not affected.

D. A developer shall not advertise a monthly payment, total price, or interest rate that is not available to all prospective purchasers or is restricted, unless the lack of availability or the restriction is conspicuously disclosed to all prospective purchasers within the advertisement.

E. A developer shall not advertise proposed or incomplete improvements unless the following requirements are met:

1. The estimated date of completion is specified or, if there is no estimated date of completion, the developer includes a prominent disclosure in the advertisement that the improvement is proposed only and no warranty is given or implied that the improvement will be completed; and
2. If a completion date is specified, the developer has submitted to the Department evidence to satisfactorily demonstrate to the Department that the completion and operation of the facilities are assured and that completion will be within the time represented in the advertisement or promotional material.

F. The developer shall not reference a proposed public facility or project that purports to effect the value or utility of an interest in a development without disclosing in writing the existing status of the proposed facility. The developer shall base the disclosure upon information supplied or verified by the authority responsible for the public facility or project and shall forward the information to the Department.

G. Pictorial or illustrative depictions, other than unmodified photographs of the property being offered, shall bear a prominent disclosure identifying the nature of the depiction, such as an artist's conception, and shall identify those improvements that are proposed and not in existence.

H. When a pictorial representation is used in an advertisement for a specific development and is not an actual or accurate representation of the property, a statement within the advertisement shall prominently disclose the distance of the pictorial representation from the advertised property.

I. If a map or diagram is used to show the location of the development in relation to other facilities, actual road miles from each facility to the development shall be shown on the map or diagram.

J. A developer shall not expressly state or imply that a facility is available for the exclusive use of purchasers of lots or interests if a public right of access or public use of the facility exists.

K. A developer shall not refer to availability for use of private clubs or facilities in which the owner will not acquire a proprietary interest through purchase of an interest in the development unless a disclosure is made in the advertisement. The disclosure shall affirmatively state the existence of the facilities and that availability for use by owners of an interest in the development is at the pleasure of the owners of the facility.

L. When a standing body of water is described as a feature of a development, all advertising shall indicate the average surface area of the body of water. If a standing body of water or a flowing waterway described as a feature of a development is not permanent, or fluctuates substantially in size or volume, the developer shall disclose this fact in all advertisements describing the feature.

M. At the time an incentive is offered to visit any place where a sales presentation for a development is to be made and before the recipient of the incentive makes the trip, the developer shall disclose in writing all conditions, limitations, or recipient qualifications that will be applied.

N. A developer shall not include in advertising testimonials or endorsements that contain statements that a salesperson or broker would be precluded by law from making on the salesperson's or broker's behalf.

Historical Note

Editorial correction new language subsection (D)(2) (Supp. 75-1). Former Section R4-28-16 repealed, new Section R4-28-16 adopted effective May 1, 1980 (Supp. 80-3). Amended by adding subsection (T) effective March 13, 1981 (Supp. 81-2). Amended subsection (F) effective June 9, 1982 (Supp. 82-3). Amended effective August 1, 1986 (Supp. 86-4). Former Section R4-28-16 renumbered without change as Section R4-28-504 (Supp. 87-1). Section R4-28-504 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

ARTICLE 6. REPEALED

R4-28-601. Repealed

Historical Note

Former Section R4-28-17 repealed, new Section R4-28-17 adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-17 renumbered without change as Section R4-28-601 (Supp. 87-1). Repealed effective February 28, 1995 (Supp. 95-1).

ARTICLE 7. COMPENSATION

R4-28-701. Compensation Sharing Disclosure

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

Historical Note

Former Section R4-28-18 repealed, new Section R4-28-18 adopted effective May 1, 1980 (Supp. 80-3). Amended by adding subsection (B) effective March 13, 1981 (Supp. 81-2). Former Section R4-28-18 renumbered without change as Section R4-28-701 (Supp. 87-1). Section R4-28-701 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2,

2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 3640, effective August 6, 2002 (Supp. 02-3).

ARTICLE 8. DOCUMENTS

R4-28-801. Repealed

Historical Note

Former Section R4-28-19 repealed, new Section R4-28-19 adopted effective May 1, 1980 (Supp. 80-3). Amended effective August 28, 1986 (Supp. 86-4). Former Section R4-28-19 renumbered without change as Section R4-28-801 (Supp. 87-1). Amended subsection (A) effective November 27, 1987 (Supp. 87-4). Correction to subsection (D), from "...management shall..." to "...management agreement shall..." as certified effective August 28, 1986. Amended subsections (A), (C) and (D) effective June 6, 1989 (Supp. 89-2). Amended effective February 28, 1995 (Supp. 95-1). Former Section R4-28-801 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-802. Conveyance Documents

A. Upon execution of any transaction document a salesperson or broker shall, as soon as practical, deliver a legible copy of the signed document and final agreement to each party signing the document.

B. During the term of a listing agreement, a salesperson or broker shall promptly submit to the salesperson's or broker's client all offers to purchase or lease the listed property. Upon receiving permission from the seller or lessor, the salesperson or broker acting on behalf of the seller or lessor may disclose to all offerors or their agents the existence and terms of all additional offers on the listed property. The salesperson or broker shall submit to the client all offers made prior to closing and is not released from this duty by the client's acceptance of an offer unless the client instructs the salesperson or broker in writing to cease submitting offers or unless otherwise provided in the listing agreement, lease, or purchase contract. The salesperson or broker may voluntarily submit offers to the seller or lessor regardless of any limitations contained in the listing agreement and may submit offers after the listing agreement is terminated.

C. Transaction statements. In addition to the requirements of A.R.S. §§ 32-2151.01 and 32-2174, the broker shall retain true copies of all receipts and disbursements, or copies of the executed and delivered escrow closing statements that evidence all receipts and disbursements in the transaction.

Historical Note

Former Section R4-28-20 repealed, new Section R4-28-20 adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Former Section R4-28-20 renumbered without change as Section R4-28-802 (Supp. 87-1). Amended effective February 28, 1995 (Supp. 95-1). Section R4-28-802 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 3640, effective August 6, 2002 (Supp. 02-3).

R4-28-803. Contract Disclosures

A. A developer or the developer's agent shall ensure that any agreement or contract for the sale or lease of a property interest in a development that requires a public report contains substantially the following language in bold print or print larger than the other print used in the document above the signature portion of the document:

> THE DEVELOPER SHALL GIVE A PROSPECTIVE PURCHASER A COPY OF THE PUBLIC REPORT AND AN OPPORTUNITY TO READ AND REVIEW IT BEFORE THE PROSPECTIVE PURCHASER SIGNS THIS DOCUMENT.

B. A developer or the developer's agent shall ensure that any agreement or contract for the sale or lease of a property interest in a development conspicuously discloses the nature of the document at or near the top of the document.

C. The contract shall indicate where the earnest money or down payment, if any, will be deposited and shall include the name of the title company, the name of the broker's trust account, or other depository.

D. Any agreement or contract for the sale or lease of a property interest in a development where a down payment, earnest money deposit, or other advanced money, if any, is paid directly to the seller and not placed in a neutral escrow depository, shall conspicuously disclose this fact within the document, and the purchaser shall sign or initial this provision indicating approval in the space adjacent to or directly below the disclosure in the purchase contract or agreement of sale. The following disclosure shall be written in large or bold print and shall be included in the public report, purchase contract, and agreement of sale.

> Prospective purchasers are advised that earnest money deposits, down payments, and other advanced money will not be placed in a neutral escrow. This money will be paid directly to the seller and may be used by the seller. This means the purchaser assumes a risk of losing the money if the seller is unable or unwilling to perform under the terms of the purchase contract.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended Exhibit effective March 13, 1981 (Supp. 81-2). Former Section R4-28-21 renumbered without change as Section R4-28-803 (Supp. 87-1). Section R4-28-803 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-804. Rescission of Contract

A. Any agreement or contract for the purchase or lease of an unimproved subdivided lot, or any unsubdivided land, shall contain substantially the following language in bold print or print larger than the other print used in the document above the signature portion of the document:

> The purchaser or lessee has the legal right to rescind (cancel) this agreement without cause or reason of any kind, and to the return of any money or other consideration by sending or delivering a written notice of rescission to the seller or lessor by midnight of the seventh calendar day following the day the purchaser or lessee executed the agreement. If the purchaser or lessee does not inspect the lot or parcel before the execution of the agreement, the purchaser or lessee shall have six months to inspect the lot or parcel, and at the time of inspection shall have the right to unilaterally rescind the agreement.

B. Any agreement or contract for the purchase or lease of a timeshare interval shall contain substantially the following language in bold print or print larger than the other print used in the document above the signature portion of the document:

> The purchaser or lessee has the legal right to rescind (cancel) this agreement without cause or reason of any kind by sending or delivering a written notice of rescission to the seller or lessor by midnight of the seventh calendar

day following the day the purchaser or lessee executed the agreement.

C. An opportunity to exercise the seven-day right of rescission shall be provided by conspicuously disclosing the complete current name, address, and telephone number of the seller on the face of all agreements and contracts.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-22 renumbered without change as Section R4-28-804 (Supp. 87-1). Section R4-28-804 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2).

R4-28-805. Public Report Receipt

When a public report is required, the developer shall complete the following public report receipt and obtain the purchaser's signature to verify that the prospective purchaser has received a copy of the public report:

PUBLIC REPORT RECEIPT

The developer shall furnish you, as a prospective customer, with a copy of the public report required by the Arizona Department of Real Estate. It is recommended that you read the report before you make any written offer to purchase or lease an interest in the development and before you pay any money or other consideration toward the purchase or lease of an interest in the development.

FOR YOUR PROTECTION, DO NOT SIGN THIS RECEIPT UNTIL YOU HAVE RECEIVED A COPY OF THE REPORT AND HAVE HAD THE OPPORTUNITY TO READ IT. BY SIGNING THIS RECEIPT, THE BUYER HAS ACCEPTED THE PUBLIC REPORT AND ACKNOWLEDGES THE INFORMATION IT CONTAINS.

_____ _____

Public Report Registration No. Development Name and Lot No.

I understand the report is not a recommendation or endorsement of the development by the Arizona Department of Real Estate, but is for information only.

_____ _____

Buyer's Name Address

_____ _____

Date

Historical Note

New Section R4-28-805 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

ARTICLE 9. REPEALED

R4-28-901. Repealed

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended by adding subsection (E) effective August 28,1986 (Supp. 864). Former Section R4-28-23 renumbered without change as Section R4-28-901 (Supp. 87-1). Repealed effective February 28, 1995 (Supp. 95-1).

R4-28-902. Repealed

Historical Note

Adopted effective May 1, 1980 (Supp. 90-3). Amended effective March 13, 1981 (Supp. 81-2). Former Section R4-28-24 renumbered without change as Section R4-28-902 (Supp. 87-1). Repealed effective February 28, 1995 (Supp. 95-1).

ARTICLE 10. REPEALED

R4-28-1001. Repealed

Historical Note

Adopted effective May 31, 1980 (Supp. 80-3). Amended subsection (A) effective August 1, 1986 (Supp. 864). Former Section R4-28-26 renumbered without change as Section R4-28-1001 (Supp. 87-1). Section R4-28-1001 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Section repealed by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-1002. Expired

Historical Note

New Section R4-28-1002 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1893, effective February 29, 2004 (Supp. 04-2).

ARTICLE 11. PROFESSIONAL CONDUCT

R4-28-1101. Duties to Client

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

B. A licensee participating in a real estate transaction shall disclose in writing to all other parties any information the licensee possesses that materially or adversely affects the consideration to be paid by any party to the transaction, including:

1. Any information that the seller or lessor is or may be unable to perform;
2. Any information that the buyer or lessee is, or may be, unable to perform;
3. Any material defect existing in the property being transferred; and
4. The existence of a lien or encumbrance on the property being transferred.

C. A licensee shall expeditiously perform all acts required by the holding of a license. A licensee shall not delay performance, either intentionally or through neglect.

D. A licensee shall not allow a controversy with another licensee to jeopardize, delay, or interfere with the initiation, processing, or finalizing of a transaction on behalf of a client. This prohibition does not obligate a licensee to agree to alter the terms of any employment or compensation agreement or to relinquish the right to maintain an action to resolve a controversy.

E. A real estate salesperson or broker shall not act directly or indirectly in a transaction without informing the other parties in the transaction, in writing and before the parties enter any binding agreement, of a present or prospective interest or conflict in the transaction, including that the:

1. Salesperson or broker has a license and is acting as a principal;
2. Purchaser or seller is a member of the salesperson's, broker's, or designated broker's immediate family;
3. Purchaser or seller is the salesperson's or broker's employing broker, or owns or is employed by the salesperson's or broker's employing broker; or
4. Salesperson or broker, or a member of the salesperson's or broker's immediate family, has a financial interest in the transaction other than the salesperson's or broker's receipt of compensation for the real estate services.

F. A salesperson or broker shall not accept compensation from or represent more than one party to a transaction without the prior written consent of all parties.

G. A salesperson or broker shall not accept any compensation, including rebate or other consideration, directly or indirectly, for any goods or services provided to a person if the goods or services are related to or result from a real estate transaction, without that person's prior written acknowledgement of the compensation. This prohibition does not apply to compensation paid to a broker by a broker who represents a party in the transaction.

H. The services that a salesperson or broker provides to a client or a customer shall conform to the standards of practice and competence recognized in the professional community for the specific real estate discipline in which the salesperson or broker engages. A salesperson or broker shall not undertake to provide professional services concerning a type of property or service that is outside the salesperson's or broker's field of competence without engaging the assistance of a person who is competent to provide those services, unless the salesperson's or broker's lack of expertise is first disclosed to the client in writing and the client subsequently employs the salesperson or broker.

I. A salesperson or broker shall exercise reasonable care in ensuring that the salesperson or broker obtains information material to a client's interests and relevant to the contemplated transaction and accurately communicates the information to the client. A salesperson or broker is not required to have expertise in subject areas other than those required to obtain the salesperson's or broker's license. A salesperson or broker shall take reasonable steps to assist a client in confirming the accuracy of information relevant to the transaction.

J. A salesperson or broker shall not:
1. Permit or facilitate occupancy in a person's real property by a third party without prior written authorization from the person; or
2. Deliver possession prior to closing unless expressly instructed to do so by the owner of the property or property interest being transferred.

K. A salesperson or broker shall recommend to a client that the client seek appropriate counsel from insurance, legal, tax, and accounting professionals regarding the risks of pre-possession or post-possession of a property.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-27 renumbered without change as Section R4-28-1101 (Supp. 87-1). Section R4-28-1101 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 3640, effective August 6, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-1102. Property Negotiations

Except for owner listed properties, negotiations shall be conducted exclusively through the principal's broker or the broker's representative unless:
1. The principal waives this requirement in writing, and
2. No licensed representative of the broker is available for 24 hours.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-28 renumbered without change as Section R4-28-1102 (Supp. 87-1). Section R4-28-1102 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1103. Broker Supervision and Control

A. An employing broker and a designated broker shall exercise reasonable supervision and control over the activities of brokers, salespersons, and others in the employ of the broker. Reasonable supervision and control includes the establishment and enforcement of written policies, procedures, and systems to:
1. Review and manage:
   a. Transactions requiring a salesperson's or broker's license; and
   b. Use of disclosure forms and contracts and, if a real estate broker, real estate employment agreements under A.R.S. § 32-2151.02;
2. Manage:
   a. Filing, storing, and maintaining documents pertaining to transactions under subsection (A)(5)(a);
   b. Handling of trust funds; and
   c. Use of unlicensed assistants by a salesperson or broker;
3. Oversee delegation of authority to others to act on behalf of the broker;
4. Familiarize salespersons and associate brokers with the requirements of federal, state, and local laws relating to the practice of real estate, or the sale of cemetery property or membership camping contracts; and
5. Review and inspect:
   a. Documents that may have a material effect upon the rights or obligations of a party to a transaction; and
   b. Advertising and marketing by the broker and by salespersons, brokers, and others in the broker's employ.

B. A designated broker shall establish a system for monitoring compliance with statutes, rules, and the employing broker's policies, procedures, and systems.

C. A designated broker shall supervise associate brokers, salespersons, and employees of the employing broker and shall exercise reasonable supervision and control over activities by the employing broker for which a license is required.

D. An employing broker is responsible for the acts of all associate brokers, salespersons, and other employees acting within the scope of their employment.

E. A designated broker may use the services of employees to assist in administering the provisions of this Section but shall not relinquish overall responsibility for supervision and control of the acts of the employing broker's employees.

F. A designated broker who, upon learning of a violation of real estate statutes or rules by a salesperson or associate broker under the broker's supervision, immediately reports the violation to the Department is not subject to disciplinary action by the Department for failure to supervise the salesperson or broker.

G. If an employing broker maintains one office and employs a designated broker, no more than one other licensed person, and no more than one unlicensed person, the employing broker and designated broker are not required to develop and maintain written policies, procedures, and systems as described in subsection (A).

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3640, effective August 6, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 1496, effective June 4, 2005 (Supp. 05-2).

ARTICLE 12. DEVELOPMENTS

R4-28-1201. Renumbered

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Amended subsection (B) effective June 9, 1982 (Supp. 82-3). Former Section R4-28-29 renumbered without change as Section R4-28-1201 (Supp. 87-1). Former Section R4-28-1201 renumbered to R4-28-B1205 by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1202. Repealed

Historical Note
Former Section R4-28-30 repealed effective May 1, 1980, new Section R4-28-30 adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Former Section R4-28-30 renumbered without change as Section R4-28-1202 (Supp. 87-1). Repealed effective February 28, 1995 (Supp. 95-1).

R4-28-1203. Renumbered

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-31 renumbered without change as Section R4-28-1203 (Supp. 87-1). Former Section R4-28-1203 renumbered to R4-28-B1203 by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1204. Repealed

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-32 renumbered without change as Section R4-28-1204 (Supp. 87-1). Section R4-28-1204 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

PART A. APPLICATION FOR PUBLIC REPORT, CERTIFICATE OF AUTHORITY, OR SPECIAL ORDER OF EXEMPTION

R4-28-A1201. Development Name; Lot Sales; Applicant

A. Any person may submit a development application for a public report, a certificate of authority, or a special order of exemption, provided the applicant has a recorded ownership interest in the land, such as a deed, option, beneficial interest in a trust, or other recorded interest approved by the Commissioner. The application for a public report or certificate of authority shall contain the following information, as applicable:
1. The name of the development or cemetery, as shown on the recorded map, and the marketing name if one will be used;
2. The list of the lots to be offered, including the description of the sales offering;
3. The name, address, telephone number, and fax number, if any, of the applicant; and
4. The applicable information in this Article, Parts A and B.

B. If the applicant is a corporation, the application shall contain the following information:
1. A Certificate of Good Standing from the Arizona Corporation Commission, dated no earlier than one year from the date of the application;
2. A corporate resolution, authorizing the person signing the application on behalf of the corporation; and
3. The name and address of each officer, director, and shareholder controlling or holding more than 10% of the issued and outstanding common shares, or 10% of any other proprietary, beneficial, or membership interest in the entity.

C. If the applicant is a partnership, the application shall contain the following information:
1. A copy of all partnership agreements;
2. Proof of registration with the Secretary of State if any partnership is a limited partnership, foreign or domestic;
3. If the general partner is a corporation, the information requested in subsection (B);
4. If the general partner is a limited liability company, the information requested in subsection (D); and
5. The name and address of each partner in the partnership.

D. If the applicant is a limited liability company, the application shall contain the following information:
1. A copy of the Articles of Organization, stamped "Received and Filed" by the Arizona Corporation Commission. If more than one year has elapsed between the original filing with the Arizona Corporation Commission and the filing date of the development application, a Certificate of Good Standing from the Arizona Corporation Commission is required;
2. A copy of the operating agreement and any amendments;
3. If not included in the operating agreement or Articles of Organization, a copy of the company resolution signed by all members stating whether management of the limited liability company is established as manager-controlled or member-controlled and the name of the member or manager appointed to act on behalf of the company and sign the application;
4. The name and address of each member, manager, and managerial employee, and the name and address of any person controlling or holding more than 10% of the membership interest in the limited liability company;
5. If a member is a corporation, the information requested in subsection (B);
6. If a member is a partnership, the information requested in subsection (C).

E. If the applicant is a trust, the application shall contain the name and address of each trustee, beneficiary, and anyone in control of the trust.

F. If the applicant is a subsidiary corporation, the application shall contain the name and address of the parent corporation.

Historical Note
Section R4-28-A1201 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1202. Development Map; Location; Land Characteristics

A. The applicant shall submit a legible copy, no larger than 11" x 17", of the recorded development map showing, as applicable:
1. The county recorder's recording information, including the book and page of maps and recording date;
2. County or city approval;
3. Applicable dedications;
4. Monuments, distances, and bearings; and
5. Registered land surveyor certification.

B. The applicant shall identify the location of the development, including the street, city, county, and state, and:
1. The miles and direction from the nearest city or town, if applicable; and
2. The most direct route for getting to the development from a federal, state, county, or city road.

C. The application shall include a description of the physical characteristics of the land and any unusual factors that may affect it, such as if it has level or hilly terrain, rocky, loose, or alkaline soil, and

1. The gross acreage of the development;
2. The total number of lots within the development, including a description of phasing, if applicable; and
3. Whether and how lots are permanently or temporarily staked or marked for easy location.

Historical Note
Section R4-28-A1202 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1203. Flood and Drainage; Land Uses; Adverse Conditions
The applicant shall state, or include as applicable:
1. Whether the development is subject to any known flooding or drainage problems and a letter bearing the signature and seal of a professional civil, city, and county engineer, or county flood district detailing the drainage conditions and flood hazards. The letter shall include the effect of any flood plain and its location, the effect of a 100 year frequency storm, and whether flood insurance is required.
2. Whether the development lots are subject to subsidence or expansive soils. If subsidence or expansive soils exist, a professional engineer's letter addressing the effects of the condition, remedies, and a buyer's on-going responsibilities in plain language;
3. A description of the existing and proposed land uses in the vicinity of the development that may cause a nuisance or adversely affect lot owners, such as freeways, airports, sewer plants, railroads, and canals, including:
   a. Any unusual safety factors within or near the development, and
   b. A description of all current and proposed adjacent land uses.
4. Whether the development is affected by any unusual or unpleasant odors, noises, pollutants, or other nuisances;
5. A description of any agricultural activity or condition in the area that may adversely affect a lot owner, including any odors, cultivation and related dust, agricultural burning, application of pesticides, or irrigation and drainage;
6. Whether the development lots are subject to any known geological or environmental condition that would or may be detrimental to a purchaser's health, safety, or welfare; or
7. Whether the development lots are located within the boundary of a federal, designated Superfund site or a state designated Water Quality Assurance Revolving Fund site.

Historical Note
Section R4-28-A1203 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1204. Utilities
The applicant shall include information about electrical, telephone, and natural gas utilities available to the development, including:
1. The names, addresses, and telephone numbers of the electrical, telephone, and natural gas company that will provide service;
2. The location of existing electrical, telephone, and natural gas utilities in relation to the development;
3. The name of each person responsible for extending each utility to the lot lines;
4. The estimated completion date for extending each utility to the lot lines;
5. If the developer will only install conduit, a description of the arrangement made to complete operational utilities to lot lines;
6. The estimated cost a lot purchaser will be required to pay for completion of each utility to the purchaser's lot line, and, if the offer is for unimproved lots, the estimated costs to provide service from the lot line to the dwelling;
7. Upon completion of the utilities, other costs or requirements that must be addressed before the lot purchaser receives service, including the current service charges, hookup fees, turn-on fees, meter fees, and fees for pulling wire through conduit;
8. If propane gas will be used, a letter from the supplier stating that it will be providing service to the development, with a description of requirements to be met and costs to be paid by the lot purchaser for receiving the service; and
9. If street lights will be available, the person responsible for completion, the estimated completion date and the person who will pay for the electricity.

Historical Note
Section R4-28-A1204 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1205. Water Supply
An applicant shall include information about any water supply to the development, including:
1. The type of water provider such as a municipal system, improvement district, public utility, private water company, co-operative, irrigation district, private well, water hauler, or other source;
2. The name, address, and telephone number of the water provider;
3. The compliance status of the water provider with federal and state environmental laws, as of the date of the application. If in noncompliance, provide an explanation;
4. The location of the water lines closest to the development;
5. The name of the person responsible for extending the water lines to the lot lines;
6. The estimated completion date for extending the water lines to the lot lines;
7. The estimated cost a lot purchaser will be required to pay for completion of the water lines to the purchaser's lot line;
8. The estimated cost a lot purchaser will pay for completion of water lines from the lot line to a dwelling;
9. Other costs or requirements before the lot purchaser receives water service, including the current service charges, hookup fees, turn-on fees, meter fees, and development fees;
10. The name of the person responsible for maintenance of the water lines within the development, other than from lot line to dwelling;
11. The name of the person who is or will be responsible for maintenance of the water lines outside the development;
12. If a private well will be used, a description of the requirements and costs involved to install an operational domestic water system;
13. If the source of water is a private well and domestic water cannot be obtained from a private well, whether the purchaser will be offered a refund of the purchase price and if so, an explanation of any condition or restriction involving the refund;
14. The name and location of the water provider if domestic water will be transported or hauled by the lot purchaser. A cost estimate computed on a monthly basis for a four-member family, including the cost of water, cistern, and other holding tanks, pumps, or any other costs necessary to install an operational water system;

15. A water adequacy report from ADWR if the development is a subdivision or part of a subdivision located outside of a groundwater active management area;
16. A water availability report from ADWR if the development is unsubdivided land. A copy of the report or a brief summary of the report, approved by the Department, shall be displayed in all promotional material and contracts for sale; and
17. If a water provider is a public service corporation, whether a Certificate of Convenience and Necessity from the Arizona Corporation Commission has been issued and, if not, an explanation of why a Certificate has not been issued.

Historical Note

Section R4-28-A1205 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2).

R4-28-A1206. Sewage Disposal

The applicant shall include information about sewage disposal for the development, including:

1. Whether the sewage disposal will be provided by a municipality, improvement district, public utility, private company, or individual sewage disposal system;
2. The name, address, and telephone number of the sewage disposal company;
3. The compliance status of the sewage disposal provider with the ADEQ as of the date of the application. If in noncompliance, provide an explanation;
4. The name of the person responsible for extending the sewage disposal utility to the lot lines;
5. The estimated completion date for extending the utility to the lot lines;
6. The estimated cost the lot purchaser will be required to pay for completion of the utility to the purchaser's lot line;
7. If offering an unimproved lot, the estimated cost a lot purchaser will pay for completion of the utility from the lot line to the dwelling;
8. Upon completion of the utility, other costs or requirements that must be addressed before the lot purchaser receives service, including the service charge, hookup fees, tap-in fees, and development fees;
9. The name of the person responsible for maintenance of the sewage disposal utility within the development, other than from lot line to dwelling;
10. The name of the person who is or will be responsible for maintenance of the sewage disposal utility outside the development;
11. What cost, if any, will the lot purchaser pay toward maintenance of the sewage disposal utility;
12. If a sewage disposal provider is a for-profit public service corporation, whether a Certificate of Convenience and Necessity from the Arizona Corporation Commission has been issued, and if not, an explanation of why a Certificate has not been issued;
13. A description of the type of individual sewage disposal system the lot purchaser will be required to install in accordance with the standards and requirements of ADEQ or its designee;
14. A description of all requirements and costs involved to install an operational individual sewage disposal system, including any cost for governmental licensing and permitting, equipment, and other installation, maintenance, and operation costs;
15. If an operational individual sewage disposal system cannot be installed, will the lot purchaser be offered a refund of the purchase price, and if so, an explanation of any condition or restriction involving the refund; and
16. If a dry sewer system will be installed for future connection to a future provider, the name of the future provider, all requirements and costs for lot purchasers, and the estimated connection date.

Historical Note

Section R4-28-A1206 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1207. Streets and Access

A. The applicant shall include a statement attesting that:
1. Exterior streets providing access are private; or federal, state, and county highways; or municipal streets;
2. The interior streets are public or private; and
   a. If any streets are private, a description of what provisions have been made to assure purchasers of a legal right to use the private streets;
   b. Whether the streets are completed;
   c. The standards to which the streets will be or are constructed;
   d. If the streets are not completed, the person responsible for completion and the estimated completion date;
   e. The type of existing and proposed surfacing;
   f. The cost, if any, the lot purchaser will pay toward street completion;
   g. The name of the person responsible for exterior and interior street maintenance;
   h. Whether a city or county is responsible for maintaining the streets and the approximate date when streets will be accepted for maintenance; and
   i. The cost, if any, the lot purchaser will pay toward street maintenance.

B. The applicant shall demonstrate that there is permanent access to the land over terrain that may be traversed by conventional 2-wheel drive automobiles and emergency vehicles by providing any of the following information or documents necessary to make the demonstration:
1. A statement from a title insurance company, signed by an authorized title officer, affirming that legal access exists to the development and lots within the development. The statement shall:
   a. Describe the legal access by listing all recorded instruments which establish legal access,
   b. Be accompanied by a map on which legal access is shown with accurate references to the recorded instruments,
   c. Be accompanied by a legible copy of each recorded instrument listed in the statement.
2. A statement bearing the seal and signature of a registered land surveyor or professional engineer, affirming that legal access to and within the development, as described in the title insurance company legal access statement, is over terrain that can be traversed by conventional 2-wheel drive automobiles and emergency vehicles. The statement shall affirm that:
   a. The legal access corresponds with the actual physical access to the development and to the lots,
   b. The legal access is permanent and describe how that permanence is assured.
3. The recorded subdivision map which shows approval by the applicable city or county officials.

4. Recorded easements or road dedications whether public or private. If private, the applicant shall ensure that development lot owners, emergency vehicles, and utility service providers have access rights.
5. Land, on which easements and roads are provided, is traversable by conventional 2-wheel drive automobiles and emergency vehicles.
6. Road maintenance programs that assure permanent access. Road maintenance programs include those administered by city or county governments, city or county improvement districts, or private property owner associations.
7. Recorded documentation that establishes legal and permanent access for development lot owners through federal or state lands.

Historical Note
Section R4-28-A1207 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1208. Flood Protection and Drainage Improvements
The applicant shall include with the application the following information about flood protection and drainage improvement:
1. A description of any current or proposed improvement;
2. The name of the person responsible for completion of the improvement;
3. The estimated completion date of the improvement;
4. The cost, if any, the lot purchaser will pay for completion of the improvement;
5. The name of the person responsible for the continuing maintenance and expense of the improvement;
6. If a city or county is responsible for maintenance, the approximate date when the improvement will be accepted for maintenance; and
7. The cost, if any, the lot purchaser will pay toward completion and maintenance of the improvement.

Historical Note
Section R4-28-A1208 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1209. Common, Community, or Recreational Improvements
The applicant shall provide with the application a list of all common, community, or recreational improvements, located within the development, and include the following information:
1. The name of the person responsible for completion of each improvement;
2. The estimated completion date of each improvement;
3. The estimated cost a lot purchaser will be required to pay for the completion of each improvement;
4. The name of the person responsible for the continuing maintenance and expense of each improvement; and
5. The cost, if any, the lot purchaser will be responsible for paying toward the maintenance of each improvement.

Historical Note
Section R4-28-A1209 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1210. Master Planned Community
The applicant shall include the following information about a master planned community:
1. A list of all improvements located outside the development, but included in the development offering, including all common, community and recreational improvements;
2. The name of the person responsible for completing each improvement;
3. The estimated completion date of each improvement;
4. The name of the person responsible for the continuing maintenance and expense of each improvement; and
5. The cost, if any, the lot purchaser will pay toward the completion and maintenance of each improvement.

Historical Note
Section R4-28-A1210 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1211. Assurances for Completion and Maintenance of Improvements
A. The applicant shall identify:
1. Whether arrangements have been made to assure the completion, delivery, and continued maintenance of the improvements listed in subsections R4-28-A1204 through R4-28-A1210; and
2. Whether the assurances to complete and deliver the improvements have been approved by the county or city, where applicable, and if so, submit a copy of the county or city approval;

B. An applicant shall provide one or more of the following assurances for completion:
1. A surety or completion bond from an insurance company licensed in Arizona with a rating of good or higher from a rating agency and a copy of the rating. The bond shall specify which improvements are included and shall:
   a. Be stipulated by and payable to a third party who is not the developer;
   b. Be accepted and signed by all parties;
   c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date;
   d. State when and how the third party may draw on the funds;
   e. Be in an amount 10% greater than the estimated amount to complete all improvements; and
   f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements.
2. An irrevocable letter of credit from a financial institution licensed to do business in Arizona. The irrevocable letter of credit shall specify which improvements are included and shall:
   a. Be stipulated by and payable to a third party who is not the developer;
   b. Be accepted and signed by all parties;
   c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date;
   d. State when and how the third party may draw on the funds;
   e. Be in an amount 10% greater than the estimated amount to complete all improvements;
   f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements;
   g. State that repayment is the responsibility of the developer and not of the third party; and
   h. State that the irrevocable letter of credit is noncancelable.
3. A loan commitment and agreement from a lender licensed in Arizona. The loan commitment and agreement shall specify which improvements are included and shall:
   a. Be stipulated by and payable to a third party who is not the developer;

b. Be accepted and signed by all parties;
c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date;
d. State when and how the third party may draw on the funds;
e. Be in an amount 10% greater than the estimated amount to complete all improvements;
f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements; and
g. State that repayment is the responsibility of the developer and not of the third party even if the third party draws on the funds.

4. A trust or escrow account with a financial institution or escrow company licensed in Arizona. The trust or escrow account shall specify which improvements are included and shall:
   a. Be stipulated by and payable to a third party who is not the developer;
   b. Be accepted and signed by all parties;
   c. Include an expiration date not less than 90 Days beyond the last improvement estimated completion date;
   d. State when and how the third party may draw on the funds;
   e. Be in an amount 10% greater than the estimated amount to complete all improvements;
   f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements; and
   g. Directly pay for the improvements completed or release funds to the developer upon written verification from a registered engineer that the improvements have been completed in accordance with the plan.
5. City and county trust agreement. A municipal or county government may enter into an assurance agreement with a trustee to hold a lot conveyance until improvements are completed:
   a. The trustee is an escrow company licensed in Arizona, and
   b. The agreement is recorded.
6. Written escrow agreement. A developer may enter into a written escrow agreement with a title insurance company or escrow company to escrow all funds and prohibit close of escrow until all improvements are complete. The agreement shall contain the following stipulations:
   a. The funds are not released nor the purchaser's deed or other relevant documents recorded until the developer's architect or engineer certifies to the Department and the escrow agent that the project is complete, ready for occupancy, and in compliance with all city and county requirements;
   b. If the completion date is not met:
      i. The developer will give purchasers notice that completion dates were not met and an updated completion schedule,
      ii. A purchaser may, within 30 days of receiving the notice specified in subsection (B)(6)(b)(i), cancel and receive a full refund by sending written notice to the escrow agent,
      iii. The public report is invalid and all sales are suspended; and
      iv. The Department considers the public report valid if improvements are completed at a later date and the public report is complete and accurate.
7. Subdivision assurances. The municipal or county government shall prohibit occupancy and an subdivider shall not close escrow on lots sold in a subdivision until all proposed or promised subdivision improvements are complete.
   a. The subdivider shall submit an agreement or copy of the ordinance from the city or county prohibiting occupancy until all proposed or promised subdivision improvements are complete.
   b. If improvements are completed in phases, the subdivider shall submit complete details of the phasing program, including approval of the phasing by the city or county and the completion schedule for the phases to the Department.
   c. The subdivider shall submit a written statement that no escrow will close on any lot until all subdivision improvements are complete. If a lot is within a phase of the subdivision where all improvements are complete and can be used and maintained separately from the improvements required for the entire subdivision the escrow may be closed.
   d. The subdivider shall submit a copy of the subdivider's purchase contract containing in large or bold print the condition that escrow will not close until the city or county issues its occupancy clearance and all subdivision improvements are complete.
   e. Any improvement offered or promised to a purchaser that is scheduled for completion in a later phase of completion shall have its completion assured by an alternative method of assurance listed in this Section.
   f. If the subdivider's sales include unimproved (vacant) lots, the subdivider shall deposit all earnest money into a neutral escrow depository until escrow closes.
8. Any other assurance satisfactory to the Department that is not listed in subsections (B)(1) through (B)(7).

C. If the construction of any improvement is completed in phases, the applicant shall provide a description of the phased schedule of completion, including the lots in each phase and estimated completion dates.

Historical Note

Section R4-28-A1211 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2).

R4-28-A1212. Schools and Services

A. The applicant shall include the following information about schools:
1. The location of and distance to the nearest public elementary, junior, and high schools and whether school bus or other transportation is available;
2. The type and location of any other school located within a 1/2 mile radius of the exterior boundaries of the development.

B. The applicant shall include the following information about services:
1. Community shopping. The location and distance from the development of the nearest community shopping area where food, drink, and medical supplies may be purchased;

2. Public transportation. The type, provider, location, and distance to the nearest access point to public transportation for the development;
3. Medical facility. The type, provider, location, and distance to the nearest medical facility;
4. Fire protection. Whether fire protection is available to the development, the name of the provider and the cost to the lot purchaser;
5. Ambulance service. Whether ambulance service is available to the development and whether the development is in a 911 service area. If 911 service is not available, the name, address, and telephone number of the ambulance service.
6. Police service. Whether police service is available to the development, and the name of the provider;
7. Refuse collection. Whether provisions have been made for refuse collection, the name of the service provider, and the cost to the lot purchaser. If no provisions have been made, what a buyer will do to dispose of refuse.

Historical Note
Section R4-28-A1212 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1213. Property Owners' Association
The applicant shall provide the following information about a property owner's association:
1. The name of the association, if any;
2. The name of the master property owners' association, if any;
3. The amount of the association assessment that property owners will be required to pay, and how it will be paid;
4. Whether the association is legally formed and operational;
5. When and under what conditions control of the association will be released to lot purchasers;
6. When and under what conditions title to the common areas will be transferred to the association;
7. Whether the common areas are subject to any lien or encumbrance. If yes, explain how purchasers' use and enjoyment of common areas will be protected in the event of default;
8. Whether all lot owners will be required to be members of the association. If not, explain;
9. Whether nonmembers will be liable for payments to the association; and
10. A copy of the Articles of Incorporation and Bylaws in effect.

Historical Note
Section R4-28-A1213 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1214. Development Use
The applicant shall provide the following information about development use:
1. Whether unimproved (vacant) lots or improved (with building) lots will be sold or leased;
2. The use for which development lots will be offered and an identification of the lots and their proposed use if more than one use is contemplated;
3. Whether the development or any lot is subject to adult occupancy or age restrictions;
   a. If yes, explain the restriction;
   b. If yes, explain whether this restriction is in compliance with the Federal Fair Housing Act.
4. Whether all or any portion of the development is located in an open range or area in which livestock may roam at large under the laws of this State and what provisions, if any, have been made for the fencing of the development to prevent livestock from roaming within the development and on a purchaser's lot. If land is located in an open range or area in which livestock may roam at large, the purchase contract shall contain:
   a. Any provisions for the fencing of the development to prevent livestock from roaming within the development; and
   b. Any fencing requirements for the buyers to prevent livestock from roaming on their property.
5. Whether mineral rights are, or will be, reserved from the development lots and what the effect will be on lot owners if the minerals are extracted from the development; and
6. A full written disclosure of any condition or provision not specified in subsections (1) through (5) that may limit the use or occupancy of the property.

Historical Note
Section R4-28-A1214 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1215. Development Sales
The applicant shall provide a description of the sales offering and:
1. A description of how sales or leases will be made and the manner by which title, right, or other interest is to be conveyed to the purchaser, including copies of sales and lease transaction documents;
2. Indicate whether cash sales are allowed and when the purchaser takes title;
3. Indicate where the purchaser's deposit and earnest monies will be deposited and held;
4. If the deposit monies are available for use by the seller, when and under what conditions the monies will be refunded;
5. Indicate when the lot purchaser will be permitted to use and occupy the lot;
6. An explanation if the purchaser will not receive title free and clear of all liens;
7. The estimated average sales price for the lots;
8. Indicate whether any of the property will be leased, and if so;
   a. Provide a description of any provision for increase of rental payments during the term of the lease and any provisions in the lease prohibiting assignment or subletting, or both;
   b. Indicate whether the lease prohibits the lessee from mortgaging or otherwise encumbering the leasehold; and
   c. Indicate whether the lessee is permitted to remove an improvement when the lease expires.
9. The name, address, and telephone number of the Arizona broker who will be responsible for sales. If none, explain why;
10. The name and telephone number of the custodian of the development records and the physical location where the records will be kept;
11. Indicate whether the property has been or will be offered for sale before the date of the development application. If yes, explain; and
12. Indicate whether the sales documents contain all contract disclosures required by rule and statute.

Historical Note
Section R4-28-A1215 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-A1216. Title Reports and Encumbrances

The applicant shall provide the following information concerning title reports and encumbrances:

1. Copies of any unrecorded liens or encumbrances against the property;
2. A title report showing:
   a. An effective date not more than 30 days before Department receipt. The Department may request that the applicant update the title report so that it is not more than 30 days old when the public report is issued;
   b. A legal description based upon a recorded map, condominium or timeshare declaration. Metes and bounds legal descriptions shall be used only for membership camping application title reports;
   c. The applicant's interest in the property;
   d. The name and telephone number of the person who prepared the title report;
   e. A requirement page, if applicable; and
   f. The following statement after the title exceptions: "There are no further matters of record affecting the land."
3. Legible copies of all recorded and unrecorded documents reflected by the title report, or known to applicant, such as restrictions, easements, liens, encumbrances, trust agreements, options, and maps.

Historical Note

Section R4-28-A1216 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1217. ADEQ Approval

The applicant shall obtain subdivision approval from ADEQ or its designee.

Historical Note

Section R4-28-A1217 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1218. Property Registrations in Other Jurisdictions

The applicant shall provide a list of the jurisdictions where a property registration was filed with or accepted by another department of real estate or similar regulatory agency.

Historical Note

Section R4-28-A1218 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1219. Condominium Developments

The applicant shall provide the following information about condominium developments:

1. A copy of the recorded condominium declaration, map, and amendments in effect, and
2. An opinion letter from an attorney licensed to practice in Arizona, stating that the condominium plat and declaration of condominium are in compliance with the requirements of A.R.S. §§ 33-1215 and 33-1219.

Historical Note

Section R4-28-A1219 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1220. Foreign Developments

A. Unless exempt pursuant to A.R.S. § 32-2181.02, an applicant shall ensure that any development located outside the state that is advertised, promoted, or sold within the state complies with all Arizona laws and rules as if the land was located in the state.

B. Any law or rule that is specific to Arizona may be waived by the Department, or the Department may request and accept the domicile state or country's equivalent form of documentation.

C. The applicant shall provide evidence that the domicile state or country has authorized the sale of lots and that the development is in compliance and good standing. If the domicile state or country issues a public report or equivalent, the application shall include the report.

Historical Note

Section R4-28-A1220 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1221. Cemetery Developments

The applicant shall provide the following information about cemetery developments:

1. A statement that there are no liens on the cemetery property,
2. An accounting of the endowment care fund for an existing perpetual care cemetery, and
3. A financial statement of the applicant.

Historical Note

Section R4-28-A1221 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1222. Membership Camping Developments

The applicant shall provide the following information about a membership camping development:

1. If the interest of the operator is evidenced by a lease, license, franchise, or a reciprocal agreement, a copy of the document and any amendments;
2. A description of any lakes or streams available for recreational use; and
3. A description of any exchange network and the responsibilities, obligations, and rights of the operator and purchaser, and copies of all exchange network documents.

Historical Note

Section R4-28-A1222 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1223. Affidavit

The applicant shall sign an affidavit attesting that the information found in the application is true and correct.

Historical Note

Section R4-28-A1223 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

PART B. GENERAL INFORMATION

R4-28-B1201. Expedited Registration For Improved Subdivision Lots and Unsubdivided Lands

A. A developer may use the expedited public report registration by preparing the public report and submitting the appropriate application documents and fees established in A.R.S. §§ 32-2183(B) or 32-2195.03(B) to the Department. The Department shall assign a registration number to each application and verify the following:

1. The correct application form has been used and is two-hole punched at the top in standard placement. The application is placed on a two-prong AACO-type fastener in a file folder and delivered to the Department in an expanding file folder. Maps may be left off the fastener, folded, and placed in the expanding file. The application shall include:
   a. The Expedited Registration Request letter signed by the applicant; and

b. The completed Department checklist for administrative completeness which indicates inclusion of the documents required by A.R.S. Title 32, Chapter 20, Article 4 and 4 A.A.C. 28, Article 12, Part A.

2. The filing fees have been included with the application;
3. All application questions have been answered;
4. The application signature page has been properly executed;
5. All required documents have been submitted; and
6. A complete and accurate public report in the Department's published format on a computer diskette, formatted in a word processing program compatible with the Department's current computer operating system and word processing software, has been submitted and all exhibits used for disclosure have been included on the diskette. (The developer may obtain a diskette containing the public report template from the Department upon request.)

B. The Department may allow the applicant to correct a deficiency within the administrative completeness time-frame provided in A.R.S. §§ 32-2183(B) and 32-2195.03(B), in which case the overall 15 business day limitation is suspended until the applicant corrects the deficiency.

Historical Note
Section R4-28-B1201 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-B1202. Conditional Sales Exemption

A. Any developer applying for a special order of exemption authorizing the offer for sale of a subdivision lot or unsubdivided land before issuance of a public report shall provide the following information to the Department:

1. The completed and executed Petition for Conditional Sales Exemption;
2. The completed and executed subdivision or unsubdivided land application for a public report;
3. The purchase contract containing all required contract disclosures and the Conditional Sales Addendum;
4. A current title report showing the ownership interest of the developer and acceptable condition of title;
5. A copy of the recorded development map, or if not recorded, a copy of the unrecorded map;
6. A copy of the Condominium Declaration, if applicable;
7. A Certificate of Assured Water Supply, or a letter from the ADWR or other evidence that the property is located in an area designated as having an assured water supply, if the property is located in a groundwater active management area;
8. A water adequacy report from the ADWR or evidence that the property is located in an area designated as having an adequate water supply, if the property is located outside of a groundwater active management area; and
9. Any other information revealed necessary after preliminary review.

B. The conditional sales exemption shall expire upon issuance or denial of the public report, or upon issuance of an order to summarily suspend sales, to cease and desist, or a voluntary suspension of sales by the developer or owner.

Historical Note
Section R4-28-B1202 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-B1203. Material Change; Public Report Amendments

A. The developer shall notify the Department of all material changes in the information required by A.R.S. Title 32, Chapter 20, Articles 4, 7, 9, and 10, or 4 A.A.C. 28, Article 12, Part A.

B. According to material changes reported in subsection (A), the Department may require the developer to amend the public report.

C. Completion Date Extension.

1. A developer may apply to the Department for an amendment to a public report to extend the completion date of any improvement by providing an affidavit from the developer attesting that each purchaser, owner, and the city or county officials responsible for improvements were provided written notice of the completion status of the improvement, including a list of all people who were provided notice.
2. The Department may deny the application to extend the completion date beyond the first extension if a purchaser, owner, or city or county official opposes issuance of an amended public report to extend a completion date.
3. If an extension is denied, the developer shall provide the Department with a written agreement to suspend sales until the improvement is complete or the Department may issue a summary suspension order as provided in A.R.S. § 32-2157(B).

D. To amend a public report, a developer shall submit payment of the applicable amendment fee and the following information:

1. The name and registration number of the development;
2. The name and signature of the developer;
3. A list of the changes to the development and sales offering or in the information previously provided to the Department;
4. Status of sales as prescribed in subsections (C) and (E); and
5. A purchase contract addendum, to be signed and dated by both seller and purchaser, acknowledging that the sale is conditioned upon issuance of the amended public report and purchaser's receipt and acceptance of the amended public report.

E. Suspension of sales.

1. If necessary for the protection of purchasers, the Department may suspend approval to sell or lease pending amendment of the report.
2. In lieu of issuing a suspension order under A.R.S. § 32-2157, the Department may accept a developer's written agreement to suspend sales until the amended public report has been issued by the Department.

F. If the Department determines that a suspension of sales is not necessary for the protection of purchasers and approves the proposed disclosure of the change, sales may continue if the prospective purchaser is provided a copy of the current public report and disclosure of all changes before signing a contract. Completion of sales is conditioned upon the developer obtaining and delivering to each purchaser under contract the amended public report.

G. Upon obtaining the amended report, the developer shall provide a copy to prospective purchasers in place of the earlier public report and obtain a receipt for the amended public report.

H. If an application to amend a public report is denied, the Department shall notify the developer in writing of the statutory basis for the denial and of the developer's right to a fair hearing.

Historical Note
Section R4-28-B1203 renumbered from R4-28-1203 and amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final

rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2).

R4-28-B1204. Cemetery Notice; Amendments
A change to information required pursuant to the provisions of Title 32, Chapter 20, Article 6, R4-28-301(A), or any other Section, requires amendment of the notice filed pursuant to A.R.S. 32-2194.01.

Historical Note
Section R4-28-B1204 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-B1205. Contiguous Parcels
Except for lots in a platted subdivision, if two or more contiguous parcels of land are acquired by a single owner, the Department shall classify the lots as a single parcel for purposes of subdivision laws.

Historical Note
Section R4-28-B1205 renumbered from R4-28-1201 and amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-B1206. Filing with HUD
If the subdivider requests that a subdivision public report be certified by the Department for filing with HUD, the subdivider shall comply with the terms, conditions, and requirements of the HUD certification agreement.

Historical Note
Section R4-28-B1206 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-B1207. Subsequent Owner
A. Except as provided in A.R.S. § 32-2181.02, any developer who is a successor in interest to six or more lots within a subdivision on which the Department previously issued a public report shall file an application for and obtain a new public report before offering or selling any lot.
B. Any developer who is a successor in interest to six or more parcels within an unsubdivided land development on which the Department previously issued a public report shall file an application for and obtain a new public report before offering or selling any parcel.
C. Any developer who is a successor in interest to 12 or more time-share intervals within a time-share project on which the Department previously issued a public report shall file an application for and obtain a new public report, before offering or selling any interval.
D. The Department shall not issue a new public report to a subsequent owner of a development if the previous developer failed to complete proposed improvements in accordance with estimated completion dates specified in the previously issued public report until one of the following occurs:
1. The subsequent owner makes financial arrangements, as described in R4-28-A1211, in favor of the local governmental authority and for the benefit of purchaser, securing the owner's promise to complete the previously proposed improvements by a designated date; or
2. The subsequent owner becomes obligated to place all sales funds in a neutral escrow depository until the Department is furnished satisfactory evidence that all proposed improvements have been completed or accepted by the city or county; or
3. Permission is obtained by all previous purchasers in the development for completion of the proposed improvements by the new designated date for completion; or
4. The subsequent owner establishes to the satisfaction of the Department that adequate financial arrangements have been made to assure completion of the proposed improvements by the new designated date for completion.

E. A developer who is a new owner of property that is the subject of a pending application for a public report shall not replace or be substituted for the applicant of the pending application.

Historical Note
Section R4-28-B1207 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2).

R4-28-B1208. Public Report Correction
If the public report contains an error, the Department shall correct the report at its own expense. Additional or changed information that was known to the developer before issuance of the report is not an error. The Department shall not correct the public report after it has been in effect for 10 days. After 10 days, the developer shall change the report through the development amendment process, established in R4-28-B1203, with payment of the applicable amendment fee.

Historical Note
Section R4-28-B1208 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-B1209. Options; Blanket Encumbrances; Releases
A. The Department shall not issue or amend a public report for any lot held under option or subject to a blanket encumbrance if a condition precedent to the optionee's right to acquire the lot or to release from the blanket encumbrance shows that the lot shall:
1. Be acquired or released in a particular sequence,
2. Be acquired or released only after one or more additional lots have been acquired or released, or
3. Not be released if the encumbrance is in default because of a cross-default provision contained in the encumbrance,

B. The developer may require payment of a premium to permit the acquisition or release of the lot.
C. When a blanket encumbrance clouds title to a development, the developer shall place a written statement from the holder of the blanket encumbrance in the public report application, quoting the provisions that enable a buyer to acquire title to a lot, free of the blanket encumbrance.

Historical Note
Section R4-28-B1209 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-B1210. Earnest Money
The developer shall deposit earnest money and down payments in a neutral depository if:
1. The seller is in bankruptcy;
2. The sale is conditional pursuant to R4-28-B1202; or
3. The Department perceives a risk to the buyer.

Historical Note
Section R4-28-B1210 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-B1211. Recordkeeping
If real property in a development is sold or leased by a developer without the services of a listing or selling broker, the developer shall keep all records as required by A.R.S. § 32-2151.01(A) and (C).

Historical Note
Section R4-28-B1211 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

ARTICLE 13. ADMINISTRATIVE PROCEDURES

R4-28-1301. Repealed

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Former Section R4-28-33 renumbered without change as Section R4-28-1301 (Supp. 87-1). Section R4-28-1301 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1302. Service of Pleadings Subsequent to Complaint and Notice

A. Service of pleadings subsequent to complaint and notice of hearing shall be made by personal service or by mail to the last known address of record of the party or the party's counsel. If service is made by mail, response time shall be increased by five days. Service by mail is complete upon mailing.

B. Any person filing a pleading or brief with the Department shall also file with the Attorney General.

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-34 renumbered without change as Section R4-28-1302 (Supp. 87-1). Section R4-28-1302 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1303. Information Obtained in an Investigation

A. The Department shall ensure that information and documents in open audits and investigations remain confidential. Officers and employees of the Department shall not make confidential information or documents available to anyone other than the Attorney General or the Attorney General's representative, or authorized employees of the Department, unless the Commissioner authorizes disclosure of the information or production of documents as being in the public interest.

B. Upon request, the Department shall disclose the existence of and make available for review audit and investigative files that were closed within five years of the request for the information, subject to redaction of confidential or privileged information such as date of birth, social security number, bank and trust account numbers, home address and telephone number of active-status licensees, criminal history reports, attorney-client privileged communications, work product, and information regarding settlement negotiations.

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-35 renumbered without change as Section R4-28-1303 (Supp. 87-1). Section R4-28-1303 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-1304. Response; Default

A. A response shall specifically admit, deny, or state that the party does not have, or is unable to obtain, sufficient information to admit or deny each allegation in the complaint. A statement of a lack of information shall have the effect of a denial. Any allegation not denied is deemed to be admitted. When a party intends in good faith to deny only a part of an allegation, the party shall admit so much of it as is true and shall deny the remainder.

B. If the party fails to file a response or after being served notice, fails to appear at a hearing within the time provided by the statute under which the hearing is commenced, the Department may file an Affidavit of Default against the party, and proceed to take action against the party based upon the allegations of the charges. This action may be taken before the hearing date established in the Notice of Hearing. The party may file a motion to vacate the default and any action taken by the Commissioner within 15 days after receiving a copy of the default and the action or order by the Commissioner. For good cause, the Commissioner may vacate a default and any action taken and reschedule a hearing.

C. Every response filed pursuant to this Section shall be signed by the filing party or by at least one attorney, in the attorney's individual name, who represents the party, and shall be verified.

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-36 renumbered without change as Section R4-28-1304 (Supp. 87-1). Amended subsection (D) effective November 27, 1987 (Supp. 87-4). Section R4-28-1304 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1305. Notice of Appearance of Counsel

A. A party may participate in the party's own behalf or be represented by a member of the State Bar of Arizona.

B. Any person intending to appear at a contested case hearing or appealable agency action as counsel or representative of a party shall file a Notice of Appearance which shall advise the Department of the person's intent to appear on behalf of a party. The notice shall be filed with the Office of Administrative Hearings and served on all parties and shall contain:
1. The title of the case,
2. The name of the agency ordering the hearing,
3. The current address and telephone number of the person appearing, and
4. The name of the party for whom the person is appearing.

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-37 renumbered without change as Section R4-28-1305 (Supp. 87-1). Amended subsections (B) and (C) effective November 27, 1987 (Supp. 87-4). Section R4-28-1305 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1306. Repealed

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-38 renumbered without change as Section R4-28-1306 (Supp. 87-1). Amended subsections (A), (B), and (C) effective November 27, 1987 (Supp. 87-4). Section R4-28-1306 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1307. Expired

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Amended subsection (E) effective March 13, 1981 (Supp. 81-2). Former Section R4-28-39 renumbered without change as Section R4-28-1307 (Supp. 87-1). Amended effective November 27, 1987 (Supp. 87-4). Section R4-28-1307 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1893, effective February 29, 2004 (Supp. 04-2).

R4-28-1308. Repealed

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Former Section R4-28-40 renumbered without change as Section R4-28-1308 (Supp. 87-1). Amended effective November 27, 1987 (Supp. 87-4). Section R4-28-1308 repealed by final

rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1309. Repealed

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended effective June 23, 1983 (Supp. 83-3). Former Section R4-28-41 renumbered without change as Section R4-28-1309 (Supp. 87-1). Amended effective November 27, 1987 (Supp. 87-4). Section R4-28-1309 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1310. Rehearing or Review of Decision; Response; Decision

A. Unless otherwise provided by statute or rule, any party to a hearing before the Office of Administrative Hearings who is aggrieved by a decision rendered in a case may, pursuant to A.R.S. § 41-1092.09, file with the Commissioner a written motion for rehearing or review of the decision. The motion shall specify the particular grounds for rehearing or review. The moving party shall serve copies upon all other parties. A motion for rehearing or review under this Section may be amended at any time before the Commissioner rules upon the motion.

B. A rehearing or review of the decision may be granted for any one of the following causes that materially affect the moving party's rights:

1. Irregularity in the proceedings or any order or abuse of discretion by the administrative law judge that deprived a party of a fair hearing;
2. Misconduct by the Department, administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring during the proceeding;
7. That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
8. That the findings of fact or decision is not supported by the evidence or is contrary to law.

C. Presenting specific grounds for rehearing or review, affidavits and relief sought.

1. Each party filing a motion for rehearing or review shall specify in the motion which of the grounds listed in subsection (B) the motion is based upon and shall set forth specific facts and law in support of the rehearing or review. The party may cite relevant portions of testimony by reference to pages or lines of the reporter's transcript of the hearing or to the date and time range of the Office of Administrative Hearings audio record, and may cite hearing exhibits by reference to the exhibit number.
2. When a party files a motion for rehearing or review based upon an affidavit, the person shall attach the affidavit to the motion before filing the motion unless leave for later filing of an affidavit is granted by the Commissioner. The leave may be granted ex parte.
3. Each party filing a motion for rehearing or review shall specify the specific relief sought by the motion, such as a different decision or penalty, a new hearing, a dismissal of the complaint, or other relief. A party may seek multiple forms of relief, in the alternative.

D. Any party may file a written response to the motion. An affidavit may be attached to and filed with the response and shall not be later filed unless leave for later filing of affidavits is granted by the Commissioner. The original response shall be filed with the Department pursuant to R4-28-102, within 15 days after the date the motion for rehearing or review is filed, and a copy shall be served upon all other parties to the hearing.

E. Within 30 days after a decision is rendered, the Commissioner may, on the Commissioner's own initiative, order a rehearing or review of a decision for any reason for which a motion for rehearing or review might have been granted. The Commissioner shall specify the grounds for rehearing or review in the order.

F. Upon review of a motion for rehearing or review of the decision, and any response, the Commissioner shall issue a ruling granting or denying the motion. If granted, the Commissioner may modify the decision or grant a rehearing. An order granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the rehearing shall cover only those matters specified. All parties to the hearing may participate as parties at any rehearing.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Amended effective June 23, 1983 (Supp. 83-3). Former Section R4-28-42 renumbered without change as Section R4-28-1310 (Supp. 87-1). Amended subsections (B), (C), and (D) effective November 27, 1987 (Supp. 87-4). Section R4-28-1310 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-1311. Repealed

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended effective June 23, 1983 (Supp. 83-3). Former Section R4-28-43 renumbered without change as Section R4-28-1311 (Supp. 87-1). Amended subsections (A), (B), and (C) effective November 27, 1987 (Supp. 87-4). Section R4-28-1311 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1312. Repealed

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended subsection (B) effective March 13, 1981 (Supp. 81-2). Amended effective June 23, 1983 (Supp. 83-3). Former Section R4-28-44 renumbered without change as Section R4-28-1312 (Supp. 87-1). Section R4-28-1312 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1313. Correction of Clerical Mistakes

Clerical mistakes in opinions, orders, rulings, any process issued by the Department, or other parts of the record, and errors arising from oversight or omission, may be corrected by the administrative law judge before transmission of the Department hearing file to the Commissioner, or by the Commissioner after transmission of the file, either upon the initiative of the administrative law judge or Commissioner, or upon motion of any party.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-45 renumbered without change as Section R4-28-1313 (Supp. 87-1). Amended effective November 27, 1987 (Supp. 87-4). Section R4-28-1313 amended by

final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

ARTICLE 14. REPEALED

R4-28-1401. Repealed

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-46 renumbered without change as Section R4-28-1401 (Supp. 87-1). Repealed effective November 27, 1987 (Supp. 87-4).