

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 28. REAL ESTATE DEPARTMENT

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
R4-28-101	Renumber
R4-28-101	New Section
R4-28-102	Repeal
R4-18-102	Renumber
R4-28-102	Amend
R4-28-103	Repeal
R4-28-103	New Section
Table 1	New Table
R4-28-104	New Section
Article 2	Reserved
R4-28-201	Repeal
Article 3	Amend
R4-28-301	Amend
R4-28-302	Repeal
R4-28-302	New Section
R4-28-303	Repeal
R4-28-303	New Section
R4-28-304	Repeal
R4-28-304	New Section
R4-28-305	Repeal
R4-28-305	New Section
Article 4	Amend
R4-28-401	Amend
R4-28-402	Repeal
R4-28-402	New Section
R4-28-403	Repeal
R4-28-403	Amend
R4-28-404	Repeal
R4-28-404	Amend
R4-28-501	Repeal
R4-28-502	Amend
R4-28-503	Amend
R4-28-504	Amend
Article 7	Amend
R4-28-701	Amend
R4-28-801	Repeal
R4-28-802	Amend
R4-28-803	Amend
R4-28-804	Amend
R4-28-805	New Section
R4-28-1001	Amend
R4-28-1002	New Section
R4-28-1101	Amend
R4-28-1102	Amend
Article 12	Amend
R4-28-1201	Repeal
R4-28-1203	Repeal

Arizona Administrative Register

Notices of Final Rulemaking

R4-28-1204	Repeal
Part A	New Part
R4-28-A1201	New Section
R4-28-A1202	New Section
R4-28-A1203	New Section
R4-28-A1204	New Section
R4-28-A1205	New Section
R4-28-A1206	New Section
R4-28-A1207	New Section
R4-28-A1208	New Section
R4-28-A1209	New Section
R4-28-A1210	New Section
R4-28-A1211	New Section
R4-28-A1212	New Section
R4-28-A1213	New Section
R4-28-A1214	New Section
R4-28-A1215	New Section
R4-28-A1216	New Section
R4-28-A1217	New Section
R4-28-A1218	New Section
R4-28-A1219	New Section
R4-28-A1220	New Section
R4-28-A1221	New Section
R4-28-A1222	New Section
R4-28-A1223	New Section
Part B	New Part
R4-28-B1201	New Section
R4-28-B1202	New Section
R4-28-B1203	Renumber
R4-28-B1203	Amend
R4-28-B1204	New Section
R4-28-B1205	Renumber
R4-28-B1205	Amend
R4-28-B1206	New Section
R4-28-B1207	New Section
R4-28-B1208	New Section
R4-28-B1209	New Section
R4-28-B1210	New Section
R4-28-B1211	New Section
Article 13	Amend
R4-28-1301	Repeal
R4-28-1302	Amend
R4-28-1303	Amend
R4-28-1304	Amend
R4-28-1305	Amend
R4-28-1306	Repeal
R4-28-1307	Amend
R4-28-1308	Repeal
R4-28-1309	Repeal
R4-28-1310	Amend
R4-28-1311	Repeal
R4-28-1312	Repeal
R4-28-1313	Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §§ 32-2107, 32-2183.01(E), 32-2194.05(E), 32-2195.05(E), 32-2198.10(D), 41-1073

Implementing statute: A.R.S. Title 32, Chapter 20, A.R.S. Title 41, Chapter 6, Article 7.1, and A.R.S. §§ 33-1215 and 33-1219

3. The effective date of the rules:

February 3, 1999

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 3 A.A.R. 867, March 28, 1997.

Notice of Proposed Rulemaking: 4 A.A.R. 1678, July 10, 1998.

Arizona Administrative Register
Notices of Final Rulemaking

Notice of Public Hearing On Proposed Rulemaking: 4 A.A.R. 2131, July 31, 1998.
Notice of Public Information: 4 A.A.R. 3345, October 23, 1998.

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Cindy Wilkinson
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6. An explanation of the rule, including the agency's reasons for initiating the rule:

In March 1997, the Department opened a rulemaking docket and began drafting new rules for real estate activities in Arizona. The Department anticipated that a final draft would be ready for G.R.R.C. review in October 1997. The task, however, turned out to be bigger than anticipated. The Articles and Sections required restructuring so that stakeholders could more easily understand and find specific licensing requirements; many substantive policy statements needed to be included within the rules; new statutory time-frame requirements compelled the Department to review how files were handled and to develop common licensing procedures that could be applied to the overall licensing program; and forms were analyzed to verify whether certain information was necessary for licensing.

After the 1st draft was completed, the Department sent key stakeholders and associations a copy of the 77-page, October 29, 1997 draft, noticed real estate stakeholders in the Real Estate Bulletin, and sent other real estate businesses a letter informing them that the draft was available for review on the Department's web site. At the request of the Arizona Association of Realtors (AAR), the Department extended the November 28, 1997, comment deadline to January 15, 1998. The AAR was 1 of 12 stakeholders providing written comments on the October draft, and made 212 written comments. Of that 212, the Department made 153 changes. An additional 12 comments were format related and dealt with writing style.

The Department sent an updated draft on March 23, 1998, again noticing stakeholders in the Real Estate Bulletin, and posting a summary and the draft on the web page on March 26th. Three stakeholders contributed comments on the March draft. Of these 3, the AAR made written comments on 90 rules, of which the Department made 51 changes.

The Commissioner and key members of the Department met with members of the AAR on May 21, 1998, to discuss the Association's concerns on specific issues. Consensus was reached in many areas and the Department explained specifically which issues could not be remedied to the Association's satisfaction, such as adding a new Article dealing with prosecution and enforcement; requiring that licensees make copies of documents for parties; limitations on promotional activities; and developers' placing of down payments and earnest monies in a general operating account instead of a neutral account or escrow.

The proposed rulemaking package was published on the Department's web page on June 22, 1998, and in the *Arizona Administrative Register* on July 10, 1998. Due to an error in calculating the dates for the published August 4th and 5th public hearings, the Department renoticed the public hearing dates and scheduled them for August 24th and 25th. Then, the Office of the Secretary of State inadvertently omitted printing the notice and the hearing dates were again rescheduled, for September 3rd and 4th. As a result of these errors, stakeholders were provided with an additional month to comment on this rulemaking.

Although the AAR attended the public hearing and testified on specific issues in the rulemaking, AAR representatives indicated that written comments would also be submitted by the close of record. Because these written comments were faxed after 8 p.m., September 4th, the Department initially did not consider them as part of the official record. However, in the interest of fair play, the Department has reviewed and considered these comments in the final analysis.

The record was reopened on September 25, 1998, and additional meetings were held with stakeholders on October 14, 1998. In addition, the October Real Estate Bulletin requested stakeholder additional comments on the proposed rule package.

This rulemaking establishes an up-to-date program for Arizona real estate licensees. The program, administered by the Arizona Department of Real Estate (Department), governs licensure, education, advertising, compensation, franchises, public reports and the professional conduct of licensees. The program assures any Department licensee and real estate purchaser of clear, understandable and consistent standards.

The rules incorporate all current substantive policies that impose a requirement or standard on the regulated community and include the requirements of A.R.S. §§ 25-320(K) and 25-502(E) by requesting social security numbers of all licensees who are individuals.

Most of the rules have not been revised in at least 10 years. Many of the current rules duplicate statutory provisions, are inconsistent with statutes, are too narrowly focused, or are difficult to interpret.

The extensive editing and additional language may give the appearance that new requirements are being included in this rulemaking. Much of the information that appears new, however, is already required as part of the license application and had not previously been included within the rules.

Arizona Administrative Register
Notices of Final Rulemaking

As a result of AAR comments, the Department carefully examined this rulemaking to ensure that the terms "disclose" and "disclosure" were further described as information that would be revealed in writing, or if used in circumstances other than written advertising, the information would be orally revealed.

SPECIFIC SECTION BY SECTION EXPLANATION OF THIS PROPOSAL

R4-28-101. Definitions. This Section sets forth the terms used within the rules governing the real estate community, pursuant to A.R.S. Title 32, Chapter 20, and will simplify interpretation of responsibility and clarity of purpose.

Some of the definitions in R4-28-201 were moved to R4-28-101 as a more logical location for information relating to the entire Chapter. Terms such as "associate broker," "department," "employing broker," and "member" were already defined in statute and have not been transferred. The term "Attorney General" needs no further clarification. The term "classroom hour" has been replaced with the term "credit hour." Terms "ADEQ" and "ADWR" have been defined to eliminate confusion when explaining "Department" requirements and responsibilities.

In the past, there was confusion when dealing with 'trade names,' 'fictitious names' and 'd.b.a.' names. These definitions were so intertwined that it became confusing to remember which one was registered with the county or which one was registered with the Office of the Secretary of State. The Department defines 'fictitious' to broadly encompass all 3 terms when dealing with a name other than a person's legal name since it deals with all 3 in essentially the same manner.

R4-28-102. Document Filing; Computation of Time. This Section clearly explains the necessary standard for the delivery to, and receipt by, the Department for correspondence, forms, legal filings and other documents. It clarifies when a document is considered filed and gives criteria for calculating time periods. It also allows for use of the "postmark date" for determining the timeliness of applications for original or renewal licensure received by the Department.

R4-28-103. Licensing Time-frames. A.R.S. Title 41, Chapter 6, Article 7.1, requires agencies to adopt rules establishing time-frames for the granting or denial of licenses. A.R.S. § 41-1001(10) defines a "license" as *the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but it does not include a license required solely for revenue purposes.* The rules must specify:

1. An "administrative completeness time-frame" (the time it takes the agency to determine if an application is complete);
2. A "substantive review time-frame" (the time it takes the agency to review the application and determine if the applicant meets the substantive criteria for licensure); and
3. An "overall time-frame" (a combination of the administrative completeness and substantive review time-frames.)

The law also requires an agency to notify applicants within the established time-frame whether the application is complete (administrative completeness) and whether a license or certification is being issued (substantive review).

The Department researched all licenses, certifications, approvals, permits and registrations to determine what constituted a "license" as contemplated by A.R.S. § 41-1073. R4-28-103 contains the final listing of those licenses that fall under the requirements of the new law.

According to legislation, time-frames are required only for licenses that require an application for processing. A.R.S. § 41-1073 prescribes that . . . *an agency that issues licenses shall have in place final rules establishing an overall time-frame during which the agency will either grant or deny each type of license that it issues.* The definition of "overall time-frame" is *the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license.* The determination of whether a license requires an application, or is summarily issued upon request is the basis for whether the Department is required to develop time-frames. The Department does issue licenses based upon review of an application, and under § 41-1073 has developed time-frames.

The term "application" is not defined in the administrative procedures statutes. However, an application is generally a written request in which the information provided is used in determining if the applicant meets the necessary qualifications for a license. This also has served as a guide when reviewing the licenses that require an application.

The language of A.R.S. § 41-1073(C) was carefully considered in reviewing and establishing the time-frames in R4-28-103. In particular, the potential impact of delay on the regulated community is weighed against the resources of the agency. It is not anticipated that the fully allotted time-frames will be used, particularly in cases when the administrative completeness review is all that is necessary.

The Department has not included a time-frame for a precensure education waiver or a continuing education waiver. These waivers are authorized by statute and although they both require the submission of a letter and supporting documentation to determine if the applicant meets the necessary qualifications for the waiver, the waivers are not required by law but are an option. Rejection of the request does not mean that the applicant is denied a real estate license or license renewal, it simply means that the applicant cannot take a "short-cut" in the licensing or renewal procedure.

The special order of exemption is not included for the same reason. If the petitioner for an exemption does not meet the qualifications for the exemption, the petitioner cannot avoid the "license procedures" but instead must apply for a public report pursuant to the statutory requirements.

Arizona Administrative Register
Notices of Final Rulemaking

The "expedited registration" for a development is not included as the time-frame is already established within A.R.S. §§ 32-2183(B) and 32-2195.03(B).

A subdivider, time-share developer or membership campground operator is required to obtain approval of advertising which includes a lottery or contest. A membership camping operator must submit an application, fee and description of the proposed lottery or contest prior to use; subdividers and time-share developers merely submit the advertising prior to use when a lottery or contest is included as part of the advertisement. A time-share developer must also submit advertising to the Department prior to its use if the advertisement offers a premium. The statutes require that the advertising does not contain untrue or misleading statements or misrepresentations and is consistent with statutory provisions. The licensee is not prohibited from advertising if the advertising requirements are met, thus no time-frames, except to hold a lottery or contest, are included for these approvals.

R4-28-104. Fees. All license fees specified in statute have been transferred to this Section including the fees from R4-28-301(I). This Section also establishes specific fees when the statute provides for a range of permissible fees.

The current rule specifies that the broker exam fee is \$50. (A.R.S. § 32-2132(A)(2)) The current rule, however does not address the A.R.S. § 32-2132(A)(1) requirement for a broker's examination application fee. Currently the testing agency is charging \$60 for the examination application fee. The combined amounts are now reflected in R4-28-104(A)(1).

The current rule specifies that the salesperson's exam fee is \$25. (A.R.S. § 32-2132(A)(6)) The current rule, however does not address the A.R.S. § 32-2132(A)(5) requirement for a salesperson's examination application fee. Currently the testing agency is charging \$60 for the examination application fee. The combined amounts are now reflected in R4-28-104(A)(5).

Fourteen percent of all salespersons and brokers renew their licenses late. The Department proposes to reduce this percentage by including in this rulemaking new fees for untimely renewals. These late renewal fees reflect the recommendations of the Real Estate Advisory Board and the AAR to require additional fees for salespersons and brokers who fail to renew their licenses on time. The fees do not exceed the total amount specified in A.R.S. § 32-2132 which maintains caps of \$250 for broker renewal and \$150 for salesperson renewal.

R4-28-301. General License Requirements. This Section removes any information duplicated in A.R.S. §§ 32-2123 and 32-2130(A) and establishes a clear process for license application. It moves specific requirements to new Sections dealing with the appropriate topics, such as branch offices and fees.

The amended R4-28-301 now establishes a clear process for licensure. Specific information currently required on a broker's application has been listed so that the applicant knows what is required. Information necessary for a partnership, corporation, limited liability company, foreign entity, self-employed broker, or nonresident broker has been placed into separate categories so the applicant can find the information easily.

Requirements for limited liability company licensure were added based on law change to A.R.S. § 32-2125 (A).

A.R.S. § 25-320(K) requires a licensee or certificate holder to provide a social security number to licensing agencies. Thus, any individual licensee who holds any type of Department-issued license is being required to provide their social security number. Federal tax identification numbers are not required of licensed entities.

Subsection (A). Stakeholders suggested that the phrase "any person exercising control" be included in the rule to mean those people responsible for submitting licensing information.

Although stakeholders wish to limit disclosure to only final actions, the Department feels strongly it is necessary to be apprised when a judgment or sentence has been deferred.

The restriction for a professional corporation and a professional limited liability company to adopt a fictitious name has been moved to R4-28-1001(C).

R4-28-302. Employing or Designated Broker's License; Nonresident Broker. After discussion with industry, this provision was amended to consider a change of designated broker timely if the required documents were submitted the same day or by the next business day. This timely submission would ensure that a licensed entity is not "out-of-business" for the weekend if its designated broker resigns on a Friday afternoon. The entity can locate a new designated broker, complete the paperwork, and submit it to the Department on the following Monday without having to temporarily close its offices and sever all its licensed employees.

R4-28-302(H) and (I). A.R.S. § 32-2153(A)(21) states that grounds for discipline include a broker's failure to exercise reasonable supervision over the activities of salespersons, associate brokers or others under the broker's employ or failed to exercise reasonable supervision and control over the activities for which a license is required of a corporation, limited liability company or partnership on behalf of which a broker acts as designated broker under section 32-2125.

Currently R4-28-303(H) places responsibility for all associate brokers, salespersons and other employees acting in the course of their employment upon the employing broker; R4-28-304(D) places responsibility for the acts of the partnership, the associate brokers, salespersons and employees of the partnership upon the designated broker; R4-28-305(C), placed the responsibility for the acts of the corporation, the associate brokers, salespersons and employees of the corporation upon the designated broker.

The last 5-Year Review reported that the Attorney General opined that the Department was exceeding its authority regarding the responsibility of an employing or designated broker. The Department is not aware of the basis of the comment, however to require only reasonable supervision over the licensee's activities does not take into consideration the phrase, "or control over the

Arizona Administrative Register
Notices of Final Rulemaking

activities for which a license is required." The Department's earlier rulemaking drafts required employing or designated brokers to supervise employees rather than be responsible for their acts. This requirement drew opposition from 1 segment of the real estate industry. When the Department changed the draft requiring the employing or designated brokers to merely supervise, another segment of the real estate industry objected. Rulemaking discussions with the AAR centered on their concern that responsibility for acts of employees licensees was placed on the designated broker, rather than on the employing broker. This rulemaking addresses this issue in this subsection by requiring a designated broker to supervise and notify the Department when a salesperson or broker leaves the broker's employment, and an employing broker to be responsible for supervision and for the acts of salespersons, associate brokers and other employees.

R4-28-303. License Renewal; Reinstatement; License Changes. As in the previous two Sections, this rule establishes a clear process for license renewal, reinstatement and license changes. License changes have been grouped into 3 categories: those changes requiring written notification, changes requiring a completed change form, and changes which must be preapproved before implementation.

Requirements for a professional corporation and professional limited corporation licensure were added based on law change to A.R.S. § 32-2125 (B) and (C).

R4-28-304. Branch Office; Branch Office Manager. This Section consolidates all the requirements concerning a branch office and its manager into 1 location. It specifies the information required on the application and establishes the permissible responsibilities of the branch office manager.

R4-28-305. Temporary License; Certificate of Convenience. This Section specifies the information necessary for the temporary broker's or cemetery salesperson's license, or certificate of convenience as authorized under A.R.S. §§ 32-2133, 32-2134 and 32-2134.01.

R4-28-401. Prelicensure Education Requirements; Waiver. The language in subsection (A) was replaced by 1989 and 1993 amendments to A.R.S. § 32-2124(B) and (C), by Laws 1989, Chapter 230 (S.B. 1054), effective April 1, 1990, and Laws 1993, Chapter 140 (S.B. 1250), effective April 20, 1993. Subsection (A) has been stricken.

This Section explains how to qualify for a prelicensure waiver, describes how the waiver will be granted or denied, and identifies what information is required in a request for a waiver of the pre-license requirements. The rule also places a limit on obtaining daily prelicensure credits.

Industry commented that rules should state that the Commissioner will not consider education taken more than 10 years earlier. A.R.S. § 32-2124(B) and (C) already addresses this limitation and it is not necessary to repeat in rule.

R4-28-402. Continuing Education Requirements; Waiver. An education review committee recommended reducing the number of continuing education hours in the mandated topics for renewal from 18 hours to 12 hours, although the total number of required hours for renewal (24) is unchanged. The committee determined that by eliminating 2 of the previous 6 categories, licensees would be encouraged to take courses that were relevant to their area of specialization, thus eliminating the need to take classes that are not applicable in their speciality. Industry comment has caused the fair housing class requirement to be restored.

This Section contains information found currently in R4-28-401 and removes the mandatory environmental category, leaving 5 mandatory 3 credit hour topics.

Additional examples for good cause have been included for the continuing education waiver. The rule also places a limit on the daily continuing education credits the Department will recognize.

Subsection (B) describes when the Commissioner is likely to consider a waiver of the continuing education requirement for license renewal and clarifies that if additional time is granted, the licensee is expected to complete the continuing education classes within the additional time allowed.

Industry is supportive of education on relevant "hot topics," but is concerned that schools, brokers, and salespersons may not be adequately notified of the topic, content, and criteria. Industry is also concerned that the Department may require a "hot topic" class after the broker or salesperson completes their required hours, but has not yet submitted their renewal. The Department addressed this concern by allowing the salesperson or broker to submit the course topics which were required at the beginning or at the end of the preceding license period. The Department also agreed to work with the schools on establishing course content. Industry is comfortable with this resolution.

R4-28-403. License Examinations. This Section contains duplicative information found in A.R.S. §§ 32-2123(A), 32-2124 (B) and 32-2125.01 and that information has been stricken.

The amendment to Subsection (A) clarifies that the Department may contract with a third-party provider for the administration of the state examination, and that the exam is administered at least weekly, rather than on a monthly basis.

R4-28-404. Real Estate School Requirements; Course and Instructor Approval. Subsections (A) and (B) have been rewritten for clarity, and information currently required on the application is listed. Subsection (B) allows the applicant limited use of video and audio tapes as instructional aids.

Subsection (C) establishes the qualifications for an instructor and requires that an instructor receive approval before teaching a class for credit.

Arizona Administrative Register
Notices of Final Rulemaking

It is unnecessary for the Department to receive a copy of year-end documentation. Old subsection (F) requiring unnecessary record duplication and storage has been stricken.

The information currently in subsection (I) is found in A.R.S. §§ 32-2153(A)(1), 32-2153(A)(3), 32-2153(A)(5), 32-2153(B)(1) and 32-2153(B)(2), and R4-28-502. This information has been stricken.

New subsection (H) provides specific time-frames and information required of the school when any change occurs in a school, course or instructor, consistent with A.R.S. § 32-2135 and similar requirements on other "license" holders.

The information in subsection (J) overlaps the requirements in A.R.S. Title 41, Chapter 6, Article 6, Adjudicative Proceedings, and Article 10, Uniform Administrative Appeals Procedure, and has been stricken.

R4-28-502. Advertising by a Licensee. Subsection (B) clarifies an existing requirement, based on R4-28-1101(E), that the salesperson or broker disclose their status as a salesperson or broker when selling their own property. This requirement, although not new, poses no new economic impact on the salesperson or broker. When selling their property, the salesperson or broker only needs to disclose "owner/agent" in the advertisement. This allows prospective purchasers to know before contacting the seller that they are dealing with a licensed professional.

This Section, which is updated for clarity, includes the 'trade name' requirements transferred from R4-28-1001, and allows the terms 'group' and 'team' to be used. It also incorporates electronic media advertising.

A Certificate of Trade Name is no longer required and an applicant may apply to the Department for a name on a first-come, first-served basis. If the proposed name is not misleading and another licensee has not already been issued a license under a similar name, the applicant will obtain permission to use the name requested.

This Section clarifies that "Internet" or "web site" promotion by a licensee qualifies as advertising and is subject to the provisions of applicable statutes and rules.

R4-28-503. Promotional Activities. This Section deals only with promotional activities. Statutory requirements for advertising material specifically prohibit any *untrue statement of material fact or any omission of material fact which would make such statement misleading in light of the circumstances under which such statement was made*. Since this prohibition is already specific with regard to false advertising, the old subsection (A) is unnecessary.

The Department is including "leasing" as a restriction in the use of an award or prize in advertising. Sufficient differences do not exist between sales and leasing to cause the 2 types of transactions to be treated differently. Use of the terms "prize" or "award" is misleading if the item being offered is used as a promotional incentive and not something that has been won. If a consumer is buying a property or leasing a property, the same safeguards should apply. If someone signs a lease for a year, they should not be misled into thinking they have won a prize when in fact they are being offered a premium.

Subsection (D) contains information required on the application for operating a lottery, contest drawing or game of chance. Although the statutes require approval before a subdivider, time-share developer, or membership campground operator may hold a lottery or game of chance, no rule previously existed to implement the process or to identify what information is required.

R4-28-504. Development Advertising. Statutes clearly prohibit advertising of a development before approval to sell except under a conditional approval or lot reservation which must be clearly identified. Old subsection (A) has been stricken.

Statutes require a subdivider to submit advertising only upon request, cemetery operators to submit advertising within 21 days before use of new or substantially changed advertising, and membership campground operators to submit advertising as part of their application for approval of the development. Unsubdivided land developers submit any original advertising with the application for public report, as do membership campground operators, and submit any subsequent advertising within 21 days of use, as required of cemetery operators. Time-share developers are required to submit advertising, offering a premium to the Department before use. Consequently, old subsection (B) is unnecessary.

Subsections (C) through (F) are duplicative of statute and have been stricken. Adult and retirement community advertising requirements in old subsection (P) are covered in statute and the federal fair housing act and have been stricken.

Elements of subsection (R) are in conflict with both Department practice and statutory provisions. The only time marketing may lawfully take place without a public report is under a conditional sales exemption while in the process of obtaining a public report, or by utilizing lot reservations. In the case of a lot reservation or a conditional sale, adequate protection is provided and sales price quotes are not prohibited. This subsection has been stricken.

R4-28-701. Compensation Sharing; Disclosure. Subsection (A) has been rewritten for clarity. The last sentence of subsection (A) and subsection (B), pertaining to compensation and commission disputes, were added to statute in 1997 (A.R.S. § 32-2152(B) and (C)) and have been stricken.

R4-28-802. Conveyance Documents. This Section has been edited for clarity and conciseness.

AAR believed our initial revision to this Section was too broad in that it required a salesperson or broker to provide to others a copy of any, or all, documents in a transaction. AAR's fear was that these documents may contain information to which the party was not entitled and should not have received. AAR believes that providing these documents would result in a violation of the broker's fiduciary duty and suggested that the broker or salesperson be required to provide a copy of an executed document only to the broker's or salesperson's "client." The Department believes this requirement would be too narrow. For example, in a

Arizona Administrative Register
Notices of Final Rulemaking

"for sale by owner" situation, a broker representing the buyer should be obligated to provide the owner with a copy of the contract and addenda, if any, even though the seller is not the broker's "client."

Additionally, to eliminate the obligation of the "professional" in a real estate transaction to provide each party signing a transaction document with a legible copy is, in the Department's opinion, moving in the wrong direction.

R4-28-803. Contract Disclosures. This Section establishes specific language for placement of information in a contract and sets up the requirements for the developer.

The law does not require earnest money to be placed in an escrow account. The law does, however, prohibit commingling of earnest money. To verify the location of earnest money, subsection (C) requires that the contract disclose where the money will be deposited. Subsection (D) requires the Department to place a disclosure in the public report when a developer is not depositing a buyer's earnest money in a neutral escrow account, thereby warning the purchaser of possible problems. Statutes clearly require a developer to keep and maintain records of all sales transactions and to make them available for Department examination.

R4-28-804. Rescission of Contract. This Section has been edited for clarity and conciseness.

R4-28-805. Public Report Receipt. This Section contains, with editing, the public report receipt information currently found in R4-28-803. The burden of maintaining the receipt is placed upon the developer. The developer may designate another party to maintain the receipt, but this requirement will allow the Department to have only 1 responsible party to deal with.

R4-28-1001. Fictitious Names. It is important to be able to identify licensees through their fictitious names. However, when the protection of the public is considered, it is apparent the current rule is too restrictive.

This rule addresses the 5-Year Review comment to expand the broker's ability to adopt fictitious names and contains information on fictitious names transferred from Article 5. Many restrictions in the current rule have been eliminated. The rule now requires a broker to comply with the filing requirements for a fictitious name and to inform the Department of the broker's choice. The broker has flexibility to use a name that does not conflict with a name already on file.

The 'trade name' information has been moved to R4-28-502(J) and has been stricken from this Section.

R4-28-1002. Franchises. This new Section contains the information previously required (R4-28-201(10)) from an applicant before a franchise is acquired, relinquished or transferred.

R4-28-1101. Duties to Client. This Section has been edited for clarity and conciseness.

R4-28-1102. Property Negotiations. This Section has been edited for clarity and conciseness.

Part A. Development, R4-28-A1201. through R4-28-A1223. This Part contains information currently required to demonstrate compliance with statute requirements when applying for a public report or for a certificate of authority to operate a cemetery. It also includes the specific information required from a corporation, partnership, limited liability company, trust, or a subsidiary corporation.

Part B. General Information, R4-28-B1201. through R4-28-B1211. This Part contains general public report information and lists material changes that require amending the public report.

A public report must be amended whenever a change occurs that causes the public report to be incorrect or incomplete. However, if the change does not relate to information printed in the public report, no amendment to the public report is generally required.

In the proposed Part, the Department has tried to provide consumer protection while at the same time recognizing business practicalities. Notice to the Department of all changes is still required, but the Commissioner, in R4-28-B1203, has the flexibility to classify what would require public report amendment.

The change in number of lots in R4-28-B1207, from "4 to 10 lots inclusive" (current R4-28-1204) to "6 or more lots" is a result of a previous legislative change in A.R.S. § 32-2101(54).

R4-28-1302 through R4-28-1313. Administrative Procedures. This Article has been edited to remove any requirement already covered in 41 A.R.S. 6, Article 6, Adjudicative Proceedings, and Article 10, Uniform Administrative Appeals Procedures.

7. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:
None.
8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not Applicable.
9. The summary of the economic, small business, and consumer impact:
This rulemaking establishes clear procedures for a license applicant, particularly when applying for a public report.
 - A. *Estimated Costs and Benefits to the Arizona Department of Real Estate.*

Arizona Administrative Register

Notices of Final Rulemaking

This rulemaking clarifies the 1989 and 1993 amendments to A.R.S. § 32-2124(B) and (C), by Laws 1989, Chapter 230 (S.B. 1054), effective April 1, 1990, and Laws 1993, Chapter 140 (S.B. 1250), effective April 20, 1993, and Laws 1996, Ch. 102, § 42 which require agencies to adopt rules establishing time-frames for the granting or denial of licenses. The Department does not anticipate that penalties will be incurred for noncompliance with the overall time-frame.

Management of licensing records is a major function within the Department. The following information reflects the anticipated economic impact of implementing licensing time-frames:

	<u>EMPLOYEE HOURS</u>	<u>AVG. # OF APPLICATIONS</u>	<u>IMPACT PER APPLICATION</u>	<u>TOTAL INCREASE PER YEAR</u>
Licensing				
Implementation	2,860	33,781	\$.91	\$30,742.40
Training	64			629.12
Revise/Develop Forms	128			1,258.24
Development Applications				
Implementation	1,040	1,300	\$10.24	\$13,305.67
Training	28			380.86
Revise/Develop Forms	113.5			1,895.59
Education				
Implementation	130	776	\$1.95	\$1,511.25
Training				
Revise/Develop Forms				
	<u>4,363.5</u>	<u>37,057</u>		<u>\$49,723.13</u>

During the past five years, the following licenses have been issued:

LICENSES	1993	1994	1995	1996	1997
Salesperson (Incl. Non Resident)					
New	3,436	4,085	4,000	4,056	3,939
Renewal	11,418	11,653	11,065	12,269	10,765
Broker (Incl. Non Resident)					
New	633	601	631	932	610
Renewal	4,210	4,000	6,115	5,762	4,843
Temporary Broker				1	3
Corporation (Calendar Year)					
New	222	216	225	217	321
Renewal	288	157	153	380	#
Limited Liability Company					
New	20	59	72	109	128
Renewal	1	3	4	21	#
Partnership					
New	24	15	14	7	11
Renewal	30	12	12	20	#
Branch Office					
New	108	127	149	164	13
Renewal	111	61	75	163	#
Certificate of Convenience Temporary Cemetery Salesperson	23**	59**	62**	100**	68**
School Approval	106	96	83	83	89
Course Approval (New/Revised)	640	745	504	510	302
Instructor Approval	342	305	228	115	138
Public Report Application	1,783**	1,259**	1,295**	770	637
Amended Public Report	*	*	*	513	360

* Combined entities ** Combined temporary licenses *** Combined application and amended reports

1997 entity renewal numbers are not available because of a design error in the Department's custom software.

In the last 5 years, salespersons and brokers have made the following number of changes to their licenses:

Arizona Administrative Register
Notices of Final Rulemaking

1993 35,663
1994 35,385
1995 22,788
1996 23,305
1997 22,207

It is estimated that ½ of these changes require only written notification to the Department of the change.

In 1995, the Department promulgated rules that increased the 12 classroom hours of continuing education on mandatory topics to 18 hours by adding fair housing and environmental issue categories. The increase in mandatory topics was to accommodate the addition of the 2 new categories. It was thought that these categories would reduce the number of fair housing violation complaints and actual violations of the fair housing laws, and inform the industry of the environmental issues including underground storage tanks and the superfund sites.

In the past 3 years the fair housing complaints have decreased. Although these categories were beneficial to licensees, business brokers and licensees dealing with commercial and agricultural property complained that fair housing did not apply to them. As previously mentioned in the explanation of the rule, a committee of stakeholders appointed to study the issue concluded that 'fair housing' and 'environmental law' were not necessary categories for mandating a minimum of 3 renewal credit hours. The committee concluded that licensees should have more flexibility in selecting classes applicable to their specific field, which could occur if the number of mandated topics were reduced and the number of elective hours increased.

In the last 5 years, the following fair housing complaints have been received by the Attorney General's Office:

1993 204
1994 281
1995 169
1996 135
1997 114

Homebuilders Marketing, Inc., a private market research company which tracks various real estate activities (such as building permits and new home starts) within the state, reports the following number of escrows recorded for residential transactions within the metropolitan Phoenix area¹ during 1997.

27,076 closings (new homes)
57,373 closings (resale homes)
84,449 total closings recorded

¹ Phoenix metropolitan areas as defined by the SMSA (federal government) includes Maricopa County and portions of Pinal County, such as Queen Creek and Apache Junction.

The 114 fair housing complaints filed with the Attorney General's Office statewide during 1997 is 0.13%, or less than 2/10 of 1%, of the escrow closings within the Phoenix metropolitan area. Obviously the percentage would be significantly less if the 1997 fair housing complaints were compared to statewide closings.

AAR has taken the position that fair housing should remain a required topic. Although the designated broker could require employees to attend fair housing as a condition of employment, or licensees could choose to attend a fair housing class, due to industry opinion, the Department has included fair housing as a mandatory category.

The Department believes that there can and will be changes in the public report information initially provided under A.R.S. § 32-2181 which are either so obvious or so inconsequential that they should not be considered material changes for purposes of A.R.S. § 32-2184 and should not require the developer to suspend sales pending an amendment to the public report. Suspension of sales may have a significant adverse impact on many persons, including the purchaser and subdivider. For instance, the creation of a new utility easement over 1 lot in a subdivision: If the developer is required to suspend all new sales as well as pending escrow closings while obtaining a new title report and awaiting the issuance of an amended public report, serious consequences can result. Loan commitments could expire; buyers who have planned to close escrow on the sale of their existing residence upon acquiring a new residence may lose their sale; interest rates may increase pending the deal; buyers may have terminated leases expecting immediate possession; or buyers may have made arrangements to have their possessions transported. A suspension of new sales may have an adverse effect on existing owners. Delayed closings may create significant cash flow problems for the developer who is anticipating closing proceeds and the developer may lose seasonal buyers. While the easement may affect a buyer of the 1 lot, it does not necessarily affect all lots.

B. Estimated Costs and Benefits to Political Subdivisions.

Political subdivisions of this state are not directly affected by the implementation and enforcement of this proposed rulemaking.

Arizona Administrative Register
Notices of Final Rulemaking

C. *Businesses Directly Affected By the Rulemaking. (Salespersons, brokers, corporations, limited liability companies, partnerships, trusts, managers of real property, real estate schools, real estate teachers.)*

All current practices, forms, and substantive policy statements that impose requirements on the regulated communities have been incorporated into this rulemaking to provide a regulatory inclusive document for businesses. Because an applicant is expected to submit a complete application, the Department is providing an inclusive list of, or statutory citation to, information and documents required for a complete application. These requirements have been in place, based on statute, however the actual documents required were not consistently listed in rule.

The rules are structured and formatted to create a logical process for any person when applying for, or understanding, the various provisions in this program.

The Department included all license fees in this rulemaking. This all-inclusive reference should provide an intangible benefit to the businesses directly affected by this rulemaking. No new fees have been added.

The current rule specifies that the broker exam fee is \$50. (A.R.S. § 32-2132(A)(2)) The current rule, however does not address the A.R.S. § 32-2132(A)(1) requirement for a broker's examination application fee. Currently the testing agency is charging \$60 for the examination application fee. The combined amounts are now reflected in R4-28-104(A)(1).

The current rule specifies that the salesperson's exam fee is \$25. (A.R.S. § 32-2132(A)(6)) The current rule, however does not address the A.R.S. § 32-2132(A)(5) requirement for a salesperson's examination application fee. Currently the testing agency is charging \$60 for the examination application fee. The combined amounts are now reflected in R4-28-104(A)(5).

Development fees stated in R4-28-104(B) reflect all fees pertaining to developments found in Title 32, Chapter 20.

The fees required in R4-28-104(A)(4) and (A)(8) reflect a graduated renewal fee designed to encourage timely renewals. These late renewal fees reflect the recommendations of the Real Estate Advisory Board and the AAR to require additional fees for salespersons and brokers who fail to renew their licenses on time. The fees do not exceed the total amount specified in A.R.S. § 32-2132 which maintains caps of \$250 for broker renewal and \$150 for salesperson renewal.

Currently R4-28-403(A) requires that the state licensing examination be held each calendar month. This created an economic disadvantage for applicants because they were not able to take the test in a timely manner. After the test was taken, the applicant had to wait up to 2 weeks for the results to be mailed. Approximately 6 years ago, the Department stopped holding its own testing. Third-party contractors have provided testing since that time.

This rulemaking establishes 1 state licensing examination each week. The Department contracts with a 3rd-party provider to provide weekly state examinations. These examinations are administered in Phoenix, (5 days per week, twice per day) Tucson and Las Vegas, NV (once weekly). The examination testing facilities are each staffed by 1 person who oversees only a small number of applicants. The 3rd-party provider always knows how many examinations are scheduled because the applicant has made a reservation for the examination 3 days in advance. If no applicant schedules a reservation, the 3rd-party provider is not required to be at the testing facility. This service is well received by stakeholders and provides instant test scoring.

R4-28-502(B) clarifies an existing requirement, based on R4-28-1101(E), that the salesperson or broker disclose their status as a salesperson or broker when selling their own property. This requirement is not new, and poses no new economic impact on the salesperson or broker. When selling their property, the salesperson or broker only needs to disclose "owner/agent" in the advertisement.

R4-28-502(L) provides an additional medium for advertising. Enforcement of electronic advertising will follow the same established procedures as enforcement for other media currently available to the salesperson or broker. This additional advertising method may provide a significant economic advantage or benefit depending upon the marketing strategies of the salesperson or broker.

R4-28-503(A). The inclusion of "leasing" as a restriction in promoting an award or prize in advertising will require advertisers to revise the wording in their ads. There should be no adverse economic impact to advertisers because advertisers can still offer the premium. The only change is that the premium cannot be called a "prize," "gift," or "award."

R4-28-B1211(3) states that the Department will perceive a buyer to be at risk if earnest money and down payments are not deposited in a neutral depository. The following are specific examples where the Department would perceive a risk to the buyer:

(1) In satisfying assurance requirements for completion of improvements, subdividers may utilize a city or county's occupancy program which includes no escrow closings until all improvements are complete. See A.R.S. § 32-2183(D)(3) and (D)(4) and proposed R4-28-A1211(5) and (6). These methods of assurance can put purchasers at risk if projected completion dates are far into the future and specially if the sale is for a vacant lot on which the timing for construction of a dwelling is unknown.

(2) Developers have financial problems from time-to-time which result in the commencement of foreclosure actions and the filing of mechanic's liens against their property. To protect purchasers from losing their earnest money because of these problems, we sometimes need to require developers to deposit purchasers' earnest money into neutral depositories.

(3) Developers often request public report amendments to extend completion dates. This situation places those earnest money deposits that are not in escrow or some other neutral depository at more of a risk. Developers who continually fail to

meet their projections are more prone to have something go wrong with their project, thus more risk to purchasers' earnest money.

(4) Issuing public reports on property which has been sold for delinquent taxes and on which a Certificate of Purchase has been issued presents an unreasonable risk on prospective purchasers of the property. There is no law in Arizona that requires real estate transactions be handled by licensed real estate agents or handled through title insurance companies. Therefore, unsophisticated purchasers are at risk to be defrauded by unscrupulous developers trying to sell land with delinquent property taxes.

The Department is often faced with marginal situations on whether to issue or deny public reports. Sometimes a developer's agreement to deposit earnest money in neutral depositories is the tool used to justify issuing the public report.

D. *Estimated Costs and Benefits to Private and Public Employment.*

Private and public employment of this state are not directly affected by the implementation and enforcement of this proposed rulemaking.

E. *Estimated Costs and Benefits to Consumers and the Public.*

Although the rules apply to the real estate development and brokerage communities, consumers and the public will benefit through the implementation of clear, understandable and consistent standards, and the contract disclosure and rescission requirements.

By eliminating rules which are no longer relevant and updating the real estate program to remove inconsistencies and unfair practices, this rulemaking will provide consumers with a clear understanding of what is required of the regulated professional with whom they are dealing.

The Department has included all substantive policy statements that imposed requirements on the regulated community and requirements which have evolved from practice/regulation/experience into this rulemaking and provides that information to the public through its rules.

F. *Estimated Costs and Benefits to State Revenues.*

Consistently, 14% of all salespersons and brokers do not renew their licenses in a timely manner. If this trend continues, late fees could provide additional state revenues of \$15,071 to \$90,426 for salespersons and \$13,560 to \$81,362 for brokers, depending upon the number of months past the expiration date the renewal applications are filed.

10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

This rulemaking was a mammoth undertaking for the Department, requiring Department personnel to put aside 'old' thinking and become creative in how the agency could work toward providing better service to its stakeholders. The Department is encouraged that personnel have taken an active role in writing, analyzing, and continuously reviewing the contents of the rules. Through this continuous appraisal and with recommendations from stakeholders, the Department has made the following changes:

R4-28-101(8). The statute term of "natural person" really means an "individual." Therefore, "individual" has been defined for clarity.

R4-28-101(9). The term "material change" is defined to make clear what criteria a developer must follow to consider whether a change is considered "material."

R4-28-101(10). The term 'lot' was moved from after 'including' to before 'parcel.'

R4-28-102(B). The Department is concerned that 2 sets of standards will exist, and confusion result, if the "less than 11 days" time period excluding Saturdays, Sundays, and legal holidays time period is kept in the rulemaking. This time period would have counted only 'work days' while the primary computation of time counted calendar days.

R4-28-103(B)(3). Because of the volume of information contained in some of the applications, it is counterproductive for the Department to hold open an application if the applicant fails to submit missing information. By changing 'may' to 'shall' the Department is removing its responsibility to expend additional employee time to continue tracking and handling deficient applications that have not been corrected. Unless the applicant requests an extension" was added at the end of the sentence. As the last sentence states, the applicant still has the opportunity to refile an application when the missing information is acquired. The location of the time-frame matrix was changed from subsection (D) to Table 1.

Table 1. When the Department reviewed and analyzed its internal process, it became apparent that when a broker submits a completed branch office application, the license is automatically issued and no other criteria or substantive review is necessary. Therefore, this time-frame has been removed from the table. The substantive completeness review and the additional information period were inadvertently omitted from a temporary cemetery salesperson's license. The correct time-frames of 90/60 days (which are the same as the temporary broker license and membership camping certificate of convenience) have been added to the table. The Department inadvertently omitted the additional information period from the school and instructors' approval. The correct time-frame of 15 days has been added. Revised courses have been deleted from Table 1, with the understanding, however, that if a course has been revised to the extent that it is, in essence, a "new" course, the time-frame for a new course will apply. The Department also added appropriate rule numbers in the authority column.

Arizona Administrative Register
Notices of Final Rulemaking

At the request of G.R.R.C. staff, additional time-frames for advertising dealing with drawings, contests, and lotteries have been added for subdivisions, and time-shares.

R4-28-104(B). The intent of this Section is to include all license fees, even those prescribed by statute. The timeshare exemption fee of \$300, and the new and amended cemetery certificate of authority fees of \$500 were omitted and have been added.

R4-28-104(C). This subsection implies that a fee is being charged for an inspection. This is not true. The fee is based upon statutory authorities, A.R.S. §§ 32-2182, 32-2194.02, 32-2195.02, 32-2197.05, and 32-2198.04, which requires that the subdivider be responsible for *the total cost of travel and subsistence expenses incurred by the department in the examination*. The Department has changed this subsection accordingly.

R4-28-301(A). By revising R4-28-301(A) to pick up the statutory description of "who" must complete the questionnaire (A.R.S. § 32-2108(C)), it will be clear that the Department is authorized to evaluate the qualifications of everyone, even those who will own or control a licensed entity. Thus, the lead-in language to R4-28-301(A) reads:

An applicant for or holder of any Department-issued license, renewal, or amended license, 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:

R4-28-301(A)(1) and (A)(2). The Department did not intend to require repetitive disclosure of information. The requirement to provide a completed questionnaire and supporting documentation for disclosures not already provided has been added to R4-28-303(A)(2), License Renewal; Reinstatement; License Change.

R4-28-301(A)(1)(c). The words "reprimand, censure, fine or other penalty" have been replaced with "civil penalty."

R4-28-28-301(A)(1)(e). The Department is not going to decide before the fact whether an applicant or licensee is guilty of a pending charge. The phrase "[I]f the applicant has any formal charges pending" has been removed.

R4-28-301(A)(5). State law (A.R.S. § 25-320(K)) requires that all agencies issuing licenses record the social security number of every applicant. This requirement allows the Department of Economic Security (DES) to "locate" a parent who is not paying ordered child support. Recently DES indicated that its interpretation of the law does not require a licensing agency to record the federal tax identification number of a corporation or limited liability company, or the social security number of a partnership that is licensed; that doing so would go beyond the intent of the legislation. Therefore, the Department has removed this requirement from the rulemaking. Individuals ("natural persons" under Title 32, Chapter 20) seeking licensure or renewal must still provide their social security number.

R4-28-302(B)(2)(a), (C)(2) and (D)(2), and R4-28-A1201(C)(3). The social security number request has been fulfilled in R4-28-301(A)(5), therefore, the request for social security numbers in these subsections have been deleted.

R4-28-302(B)(2)(e). The previous subsections (e) and (f) requiring Articles of Incorporation and Articles of Organization have been replaced with:

"[A] copy of the registration application stamped 'Received and Filed' by the Secretary of State;" and

R4-28-302(H)(1). "Supervise a salesperson's or broker's business activity and be" has been deleted. "Be" has been inserted before "responsible," "supervising" has been inserted after "for," and "the acts of" has been deleted.

R4-28-302(I). A new subsection (I) has been added, and the current subsections (I) and (J) have been renumbered. New subsection (I) is as follows:

The employing broker shall be responsible for:

- 1. The acts of all associate brokers, salespersons, and other employees acting within the course of their employment;*
- 2. Supervising the associate brokers, salespersons, and employees of the employing broker within the course of their employment.*

R4-28-303(A)(2). The Department did not intend to require repetitive disclosure of information. The phrase "in addition to the requirements in R4-28-301(A)" and "if not already provided on earlier applications" have been deleted and a new subsection (e) was added to clarify that a completed Certification Questionnaire and supporting documents are required upon submission of a renewal or reinstatement application when changes in certification information have occurred which were not previously disclosed.

R4-28-303(B)(1) through (B)(4). This information is already contained on the renewal application. There is no need for the applicant to provide this information. Subsections (B)(1) through (B)(4) have been removed.

R4-28-303(F)(1)(b) and (F)(2)(b). Allowing cemetery or membership camping salespersons or associate brokers to be professional corporations or professional limited liability companies is inconsistent with A.R.S. § 32-2125(B). "Cemetery or membership camping" and "as applicable" has been deleted.

R4-28-303(G)(1)(b). To reduce the number of Administrative Severance Requests deemed incomplete because the applicant has failed to provide a stamped envelope pre-addressed to the broker, the Department has determined it will simplify the process by removing this requirement from this subsection.

Notices of Final Rulemaking

R4-28-401.01 through R4-28-403 have been renumbered to R4-28-402 through R4-28-404.

R4-28-402 (A)(1). This Section has been renumbered and fair housing has been included as a mandatory category.

R4-28-404(C)(6). The internship program, while a good idea, needs to be further defined if there is a requirement. "1 year of supervised internship with a school approved by the Department and at least" has been deleted.

R4-28-404(D)(1). Requiring that a school keep the address of all students when those addresses change often is not practical. "And address" has been deleted.

R4-28-502(I). The referenced subsections, (F) and (G), should have been (E) and (F) and have been changed accordingly.

R4-28-502(K)(3) and (4). Two of the conditions which must be met for "team" or "group" advertising have been reconsidered and rewritten. The revised subsections now read:

3. *The designated broker maintains and files with the Department a current list of all members of each group or team in the broker's employ; and*

4. *The advertising otherwise complies with statutes and rules.*

R4-28-503(B). The Department has incorporated the restrictions found in the current substantive policy statement concerning when "free" can be used in advertising. The phrase "If the offer is without condition the term 'free' or other similar term may be used." is unnecessary and has been deleted.

R4-28-504(E). Subsection (E)(3), clarifying construction improvements, provided the stakeholder with information but was not a requirement and has been deleted.

R4-28-701. Clarification was made that the disclosure applies to "real estate" brokers. It is common sense to consumers that cemetery and membership campground salespersons and brokers work for the seller. The term "compensation" is necessary in this Section. The phrase "a portion of the commission" has been changed to "compensation." In order to include disclosure of all licensees being compensated, including the licensee, the word "other" has been deleted. The word "person" has been replaced with "licensee" to clarify that disclosure of rebates to principals is not required. The time of the disclosure is confirmed with the addition of the phrase "before completion of the transaction." Thus, it now reads:

A real estate broker representing a party in a transaction shall disclose to all the parties in the transaction, in writing before completion of the transaction, the identity of any licensee receiving compensation.

R4-28-802(A). The AAR is concerned that principals or parties receive appropriate copies, not individual persons. AAR requests that "person" is deleted and replaced with "party." The change has been made.

R4-28-802(C). The provision governing records was clarified to read:

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.

R4-28-803(A), (B) and (D). "Property interest" was defined in R4-28-101(10) to include all of the various types of real estate interests. Since the term "lot" is included in that definition, the term "property interest" is more correct for these subsections and has been changed accordingly.

R4-28-1101 (E). The phrase "or concurrent with" has been deleted.

R4-28-A1201(B). The current information relating to social security numbers has been moved to R4-28-301(A)(5) and all subsequent subsections have been renumbered.

R4-28-A1201(C)(1). Articles of Incorporation are unnecessary in this instance and the requirement has been removed.

R4-28-A1201(C)(3). (See R4-28-301) A corporation does not have a social security number and requiring the federal tax identification number of a licensed entity exceeds the intent of A.R.S. § 25-320(K).

R4-28-A1205(15) is amended to clarify that the water adequacy report is required when the development is outside a groundwater active management area, as follows:

If the development is a subdivision or part of a subdivision located outside of a groundwater active management area, a water adequacy report from ADWR.

R4-28-A1205(17) is amended, as follows, to require the applicant to merely provide the information, rather than providing a copy of the CC&N:

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.

R4-28-A1206(12) was also changed, to mirror the change to R4-28-A1205(17), as follows:

Arizona Administrative Register
Notices of Final Rulemaking

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.

R4-28-A1211(B)(5). The 1st sentence has been changed as follows:

"The municipal or county government shall prohibit occupancy and the subdivider shall not close escrow on lots sold in the subdivision until all proposed or promised subdivision improvements are complete."

R4-28-A1211(B)(5)(b). This subsection was rewritten as follows:

"The subdivider shall submit a written statement that no escrow shall close on any lot until all subdivision improvements are complete."

R4-28-A1211(B)(5)(g). The phrase "or if the scheduled completion date for an improvement is more than 1 year into the future," was deleted.

R4-28-A1211(B)(1)(a), (2)(a), (3)(a), and (4)(a): These subsections were revised by deleting everything after the 1st sentence.

R4-28-A1211(B)(1)(e), (2)(e), (3)(e), and (4)(e): Each subsection was revised by inserting "architect's, or contractor's" after the word "engineer's."

R4-28-A1213 (11). Eliminate this requirement and rely upon (10) as currently written.

R4-28-B1201 (A)(1)(b). In addition to correcting the statutory citation, this rule is revised for clarity, as follows:

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

R4-28-B1203. This Section was completely rewritten to recognize concerns of AAR and local developers in how the information was stated. No substantive information was changed or added to make it more clear. References to "cemetery", "§ 32-2194", and "certificate of authority" and the requirement (for cemetery operators) to notify the Department of material changes are moved to and organized within a new Section, R4-28-B1204, Cemetery Notice; Amendments.

R4-28-B1204. Provisions relating to notice of material changes by a cemetery operator, and amendment of information contained in the notice have been moved to a new section dealing solely with cemeteries, rather than developments in general, based on comments from stakeholders, as follows:

A change to information required pursuant to the provisions of A.R.S. 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.

R4-28-B1207(E). After "applicant" replace "for" with "of."

R4-28-B1210(3). After further consideration and discussion, requiring a Certificate of Occupancy program or its equivalent doesn't fit within this Section and has been removed.

R4-28-1307. The words "or law" have been added after "question of fact" and "or" has been changed to "and" after "costs or delay."

R4-28-1310(D). 1998 legislation (A.R.S. § 41-1092.09(D), changed the filing time for response to 15 days from the request. This subsection reflects that change.

R4-28-1310(E). Based on A.R.S. § 41-1092.09(D), "[T]he Commissioner shall issue a ruling on the request within 15 days after receipt of the request," thus, that has been removed from this subsection.

At the request of G.R.R.C. staff, many grammatical and clarification rule changes were made throughout the rule package. No substantive changes were made.

11. A summary of the principal comments and the agency response to them:

The Department received many comments with which it agreed and made the changes to the appropriate Sections. Changes made in this manner are not addressed in this summary, but addressed in question #10.

R4-28-103, Table 1.

Comment. Thirty-day time-frame for a new or revised course is too long, too restrictive, inhibits school's flexibility to compete in the marketplace. Fourteen days should be enough.

Response. The time periods identified for the administrative completeness review (10 days) and the substantive completeness review (20 days) of a new or substantially revised course are the maximum. At this time, those time periods are considered appropriate due to Department resources. Further, it is consistent with A.R.S. § 32-2135(F). No change was made.

R4-28-301(A)(1) and (A)(2).

Comment. Requires repetitive disclosure and resubmission of information, documents; substantive increase in renewal application requirements.

Notices of Final Rulemaking

Response. This was not the Department's intent. See question #10 for specific changes.

Comment. The Department should screen prior licensees whose licenses were revoked from participation in licensed entity, pursuant to A.R.S. § 32-2153(C); Department should capture that information and use it to disqualify the prior licensees.

Response. No change is needed. The Department already gathers the information concerning those over whom the Department has statutory authority, and uses it when applicable or appropriate. If someone who does not have ownership or control over an entity and is not performing activities within the Department's jurisdiction, the Department cannot stop that person from conducting or prevent an entity from hiring that person to conduct activities that are not under the Department's jurisdiction.

Comment. AAR requested the Department's "Front Counter Guide" to be included in this Section. This "Guide" directed licensing clerks in their review of license applications.

Response. The Department has not used this "Guide" for 2 years. The "Guide" contained information that was inappropriate and incorrect. As such, including this document within this rulemaking is not appropriate.

Comment. The certification questionnaire requires disclosure of a misdemeanor or felony, or has had a judgment or sentencing deferred. The AAR is concerned that licensees would be required to disclose traffic violations.

Response. The Attorney General confirmed that minor traffic violations are civil, not criminal, therefore minor traffic violations would not rise to the level requiring disclosure.

R4-28-302(F)(1).

Comment. This addition is a substantive change and increases the liability of a designated broker.

Response. See question #10 for specific changes.

R4-28-303(A)(2).

Comment. Requires repetitive disclosure and resubmission of information, documents; substantive increase in renewal application requirements.

Response. This was not the Department's intent. See question #10 for specific changes.

R4-28-303(C).

Comment. The Commissioner has an informal policy that a late application for license renewal will be immediately renewed and no disciplinary action taken. That policy should be incorporated into this rulemaking.

Response. A late renewal will be processed under the time-frames proposed in R4-28-103, Table 1. If administratively complete and qualified for renewed licensure, the license will be renewed within the overall time-frame identified. No violations are involved or disciplinary action is warranted due to late submission of a renewal application. It is believed that the real issue being raised is a salesperson or broker who continues to act as such after the license has expired. As part of the application for late renewal, the applicant must disclose whether the applicant continued to conduct activities that required licensure while the applicant was not currently licensed. The Commissioner's position is that this late application for renewal of a license, in which *unlicensed activity by the applicant is revealed*, will not be delayed unless there are extenuating circumstances requiring investigation. Further, if it is the 1st instance of similar violations by that licensee, the Commissioner has determined that disciplinary action will not be taken absent a complaint. A complaint likely would not be filed with and known by the Department until much later. This position will be adopted as a substantive policy statement. While recognizing industry's desire for reassurance, it is appropriate for the facts of the case and the philosophy of the Commissioner to determine the significance to place on a violation of laws.

R4-28-401.01(A). (Now R4-28-402)

Comment. Define the mandated topics.

Response. Mandating categories within this Section will create a narrow scope of continuing education topics. The Department already has a substantive policy citing examples and feels that this is a more appropriate place for this information. The policy will be revised to reflect any new category.

R4-28-401.01(A)(1). (Now R4-28-402)

Comment. Several people testified that the Department should not eliminate fair housing as a required class for renewal of a real estate license. They said that the low complaint rate is due to classes. Huge turnover in industry and constantly changing licensee base needs continual updating; case law and interpretation changes require dissemination. One person commented that fair housing should not be a required course; the punishment (for fair housing violation) is severe; and brokers know the liability, not only for the agent, but for themselves.

Response. In the past, the Department received written protests to the categories of fair housing and environmental as required courses. Business and commercial brokers complained that fair housing did not apply to them. A committee of stakeholders appointed to study the issue concluded that 'fair housing' was not a necessary category for mandating a minimum of 3 renewal credit hours. The committee concluded that licensees should have more flexibility in selecting classes applicable to their specific field, which could occur if the number of mandated topics were reduced and the number of elective hours increased. Although

Arizona Administrative Register
Notices of Final Rulemaking

representatives from the AAR were on the committee, it has taken the position that fair housing should remain a required topic. The Department feels that, if concerned, the designated broker can require employees to attend fair housing as a condition of employment. Alternatively licensees may choose to attend a fair housing class. However, because fair housing complaints have decreased since it has been a required class and due to industry comment, the Department has included fair housing as a mandatory category. See question #10 for specific changes.

R4-28-401.01(B). (Now R4-28-402)

Comment. Before waiving the continuing education course hours required for license renewal, the Commissioner should require that a state employee or legislator demonstrate specific work experience on the specific categories being waived.

Response. The statute grants the Commissioner the authority to grant a waiver in his discretion for good cause. No changes have been made.

Comment. The rules should state that the Commissioner will not consider education taken more than 10 years earlier.

Response. A.R.S. § 32-2124(B) and (C) already addresses this limitation and it is not necessary to repeat in rule.

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

Comment. Industry is supportive of education on relevant "hot topics," but is concerned that schools, brokers, and salespersons may not be adequately notified of the topic, content, and criteria. Industry is also concerned that the Department may require a "hot topic" class after the broker or salesperson completes their required hours, but has not yet submitted their renewal.

Response. The Department addressed this concern by allowing the salesperson or broker to submit the course topics which were required at the beginning or at the end of the preceding license period. The Department also agreed to work with the schools on establishing course content. Industry is comfortable with this resolution.

R4-28-403(B). (Now R4-28-404)

Comment. Delete the prohibition from including a "quiz" used as a teaching tool to promote discussion and debate in calculation of classroom hours.

Response. A quiz or short test as a teaching tool, or used to promote discussion is permissible, and may be included when calculating credit hours. The rule as written is clear and consistent with past practice, that a test used "for overall evaluation" may not be included when calculating credit hours. No changes have been made.

R4-28-403(C)(6). (Now R4-28-404)

Comment. Either enhance and define the internship program, mentor and mentor responsibilities, or delete. Internship is a good idea but the proposed rule doesn't give thorough definition.

Response. The internship program was removed from the Section and will be addressed in a future rulemaking. See question #10 for specific changes.

R4-28-403(D)(1). (Now R4-28-404)

Comment. Do not require schools to keep addresses of students. Since licensee addresses change often, the records would be incorrect in many cases.

Response. See question #10 for specific changes.

R4-28-503(A).

Comment. The addition of "leasing" to the advertising rules regarding offering incentives created substantive and undesired restriction of apartment complexes/lessors offering incentives to lessees. Should delete "leasing."

Response. The phrase 'or leasing' was added at the request of the AAR early in the rulemaking process, and eliminated at the Arizona Multi-housing Association's request, then, returned based on further comments by the AAR. The Department does enforce the advertising rules when it becomes aware of a violation or abuse.

Comment. The words "prize" or "award" are used pervasively in promotions and the current rule prohibiting the use of such words is not enforced. It serves no purpose. Eliminate the restriction on using these words.

Response. A premium offered to promote sales is clearly not a "prize" or an "award" won or earned by the offeree, which is the impression intended. It is a premium or inducement offered to attract potential buyers.

R4-28-503(B).

Comment. Use of the word "free" should be permitted, as provided in the current substantive policy statement on the subject, provided all conditions are included in the advertisement. This would also adversely affect the apartment/multi-housing business.

Response. See question #10 for specific changes.

Arizona Administrative Register
Notices of Final Rulemaking

R4-28-701.

Comment. The Department neither complies with nor enforces the rule. Typically only the handling broker's compensation is disclosed; referral fees, and rebates to buyers after close of escrow are not disclosed. The Department does not recognize the problems with this rule that practitioners do. Among the problems are: (1) only "commission" is mentioned, not "compensation"; (2) each licensee is individually required to make disclosure to all other parties; (3) the licensee only has to disclose amounts going to any other person, not himself; (4) the amount a principal may receive must be disclosed; (5) the referring broker/salesperson may not know who gets how much, thus is unable to make the required disclosures; (6) the method of disclosure is not stated, and; (7) the time of disclosure is not stated. Recommendation is that the rule be deleted.

Response. The Department sees a need for this rule and does not agree that it is not being enforced when the Department is aware of nondisclosure. See question #10 for specific changes.

R4-28-802(A).

Comment. This Section needs rewriting for clarity as to (1) which licensee delivers what documents and to whom; (2) that all important documents, whether specified in A.R.S. Title 32, Chapter 20 or elsewhere, are delivered to appropriate parties; (3) that principals or parties get appropriate copies, not individual persons; (4) that certain confidential documents, like the listing agreement or financial application, not be delivered to an adverse party; (5) that duplication of documents be minimized; and (6) that 'all other parties' do not mean licensees. In the case of a "for sale by owner," the final sales agreement is in the hands of the owner. The rule needs to be entirely rewritten to be useful.

Response. The proposed rule is clear with the exception of #3. (1) pertains to documents directly relating to the real estate transaction, and that the document copies to be provided are those that a party to the document has signed. A licensee who provides a document to a person for signature has an obligation to give that person a copy of the executed document. If the licensee verifies that the person has made a copy for himself or has received an executed copy from another source, there is no need to provide a 2nd copy; (2) the Department (only) has jurisdiction concerning real estate transaction documents pursuant to Title 32, Chapter 20; (3) see question #10 for specific changes on this comment; (4) this does not apply—the person has signed it and so is privy to the document's contents; (5) as previously stated, if a person has a copy of a document he has executed, there is no need for a licensee to provide a 2nd copy; (6) another party to a transaction may be a licensee if acting as a principal. If both parties to a transaction have signed a document (buyer, seller, or both, lessor, lessee, or both) and a salesperson or broker represents each party, each party's agent would be responsible for ensuring that the agent's client or clients received 1 copy of executed documents, but would not each have to give all signers a copy. In the case of a "for sale by owner," upon acceptance of the offer, the seller *might* make a copy of the executed agreement before conveying acceptance to the buyer or buyer's representative. The buyer's representative would not have to provide a 2nd copy to the seller. If the seller did not make a copy of the final agreement, the Department would require the salesperson or broker to provide the seller with a copy after confirming that the seller did not have one. In the case where both principals are unlicensed, the Department does not have jurisdiction.

R4-28-A1203(3)(b).

Comment. A request that the description of all current and proposed adjacent land uses are "within ½ mile from the subdivision."

Response. The Department rejected this suggestion limiting adjacent land use to ½ mile as too restrictive. For instance, a ½-mile limitation from a slaughter establishment, rendering plant, or feedlot would not meet the needs of the prospective homeowner. Or, ½-mile from a fairground, racetrack, airport, or industrial facility spewing noxious fumes may be inadequate.

R4-28-A1204(7).

Comment. The developer must state in a public report application the cost to be passed on to consumers. A range of total costs and fees rather than a specific amount was requested.

Response. The Department disagrees and believes the consumer should be provided with the information required by statute.

R4-28-A1205(3).

Comment. The ADEQ frequently makes paper work mistakes about a water or sewer system and paper reports from the agency are of some concern. Telephonic compliance reports should be accepted by the Department.

Response. In order to protect the buyers, the Department must have written documentation of the compliance status of the water provider for the public report.

R4-28-A1205(9).

Comment. The developer must state in a public report application the cost to be passed on to consumers. A range of total costs and fees rather than a specific amount was requested.

Response. The Department disagrees and believes the consumer should be provided with the information required by statute.

R4-28-A1206(8).

Comment. The developer must state in a public report application the cost to be passed on to consumers. A range of total costs and fees rather than a specific amount was requested.

Arizona Administrative Register
Notices of Final Rulemaking

Response. The Department disagrees and believes the consumer should be provided with the information required by statute.

R4-28-A1211(B)(5)(b).

Comment. The question was raised about the written agreement between a subdivider and title company concerning development improvements. (1) Does the proposed rule contemplate 1 title company handling the whole subdivision? Otherwise, the title company really does not know what sales are being made in that subdivision; (2) When the title company is to notify the Department that improvements are complete, is the title company entitled to rely upon a statement by the subdivider/developer?; (3) The proposed rule talks about notifying the Department of sales not being processed, but how can a title company know if the subdivider, developer, or both, is selling certain lots at a particular time?

Response. In reviewing this rule, it appears to place obligations and requirements on title companies, which was not the intent. See question #10 for specific changes.

Comment. Some thought needs to be given on how to make sure that the requirements for a vote of the homeowners is complied with in the future. A bond proposal in subsections (B)(1)(a), (B)(2)(a), (B)(3)(a), and (B)(4) (a) would do that by having the bond state that the insurance company will not accept any decision or direction without proof that the decision or direction was approved by the members of the homeowner's association.

Response. The Department removed all the language after the 1st sentence in the subsections (B)(1)(a), (B)(2)(a), (B)(3)(a) and (B)(4) (a) to avoid confusion in what is required for release or modification of financial assurances.

R4-28-A1211(B)(5)(g).

Comment. A request was made to allow earnest money held by the subdivider or broker in the sale of an unimproved (vacant) lot to be placed in a trust account.

Response. Although this request seems reasonable, the Department has had a recent experience whereby money was given to the subdivider and, although the contract provided that the money be placed in the broker's trust account, the money was not there when it was needed. In many cases the broker and subdivider are closely allied and this can lead to inappropriate use of escrow monies. Therefore, the Department is requiring that monies be kept in a neutral account and not in the control of the developer.

R4-28-B1203.

Comment. AAR contends that if the developer notifies the Department of a material change, yet the Department doesn't require amendment of the public report, the buyer and the licensee are left 'holding the bag.' The licensee is required to disclose negative material information under the licensing rule (R4-28-1101). AAR believes that the Department should identify the items as not being material, unless the Department requires amendment of the public report. AAR further states that even if the Department did this, it wouldn't be doing its job of protecting the public.

Response. The Department doesn't agree with this assessment and believes that the developer should provide the Department with notice of all changes identified by statute and rule. Once identified, the Department can determine whether the changes are material. It makes no sense to require an amendment of the public report if the change is not going to appear in the public report.

R4-28-1303.

Comment. AAR proposes that investigative files remain confidential "... unless the Commissioner determines the disclosure of the information or the production of the documents is in the public interest."

Response. The current rule, which has not been substantially changed, states that "... unless the Commissioner authorizes the disclosure of the information or the production of the documents as not being contrary to the public interest." Public record documents concerning investigations require that files remain confidential only until the investigation is completed. At that time the file becomes public information. The Commissioner should not have to determine whether disclosure of the documents is in the best interest of the public, rather the Commissioner should determine when disclosure of the documents is not in the best interest of the public.

R4-28-1310.

Comment. AAR strongly recommends that the Department add the following subsection to this Section. "That a finding of fact or conclusion of law rendered by the administrative law judge pursuant to A.R.S. § 41-1902-08 is based on an interpretation by the Department of a statute or rule which had not previously been communicated by the Department to licensees under the Department's jurisdiction and which is not abundantly clear from reading the statute or rule."

Response. The Department has spent a considerable amount of time rewriting this Chapter and working with stakeholders to obtain consensus. The resulting final rulemaking adds clarity and understanding to the real estate program and provides the regulated person with a document that is easy to follow. Adding this language to rule is inconsistent with the responsibilities of administrative law judges and legislative requirements. If statutes are unclear, stakeholders should make changes legislatively.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

13. Incorporations by reference and their location in the rule:
None.
14. Was this rule previously adopted as an emergency rule:
No.
15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 28. REAL ESTATE DEPARTMENT

ARTICLE 1. GENERAL PROVISIONS

- Section
R4-28-101. Definitions
R4-28-102. Department action
R4-28-101. R4-28-102. Filing and notices Document Filing; Com-
putation of Time
R4-28-103. Fingerprinting
R4-28-103. Licensing Time-frames
Table 1. Time-frames
R4-28-104. Fees

ARTICLE 2. DEFINITIONS RESERVED

- R4-28-201. General Definitions

ARTICLE 3. LICENSE APPLICATIONS; TYPES; REGULATIONS LICENSURE

- R4-28-301. Licenses: Application; Use; Exemption General
License Requirements
R4-28-302. Salespersons and Brokers: Licenses; Requirements
R4-28-302. Employing or Designated Broker's License: Non-
resident Broker
R4-28-303. Brokers: Regulations; Duties
R4-28-303. License Renewal; Reinstatement; License Changes
R4-28-304. Partnerships: licenses; requirements
R4-28-304. Branch Office; Branch Office Manager
R4-28-305. Corporations: licenses; requirements
R4-28-305. Temporary License; Certificate of Convenience

ARTICLE 4. EDUCATION; EXAMINATIONS, SCHOOLS, INSTRUCTORS

- R4-28-401. Prelicensure Education: Requirements; Curricula
Waiver
R4-28-402. Continuing Education Requirements; Waiver
R4-28-402. R4-28-403. License Examinations
R4-28-403. R4-28-404. Real Estate Schools: Licensing; Regula-
tion Requirements; Course and Instructor Approval

ARTICLE 5. ADVERTISING

- R4-28-501. Advance fee rental: duties; requirements
R4-28-502. Advertising by licensee a Licensee
R4-28-503. Licensees and developments: promotional activi-
ties Promotional Activities
R4-28-504. Developments: advertising Advertising

ARTICLE 7. COMMISSIONS COMPENSATION

- R4-28-701. Commission sharing Compensation Sharing; Dis-
closure

ARTICLE 8. DOCUMENTS

- R4-28-801. Sales Listing Agreements
R4-28-802. Conveyance Documents: Execution; Offer; Rejec-
tion; Delay; Form
R4-28-803. Contract disclosures: public report; receipt; nature

of document; monies paid directly to seller Disclo-
sures

- R4-28-804. Rescission of contract; disclosure Contract
R4-28-805. Public Report Receipt

ARTICLE 10. FRANCHISES AND FICTITIOUS NAMES

- R4-28-1001. Fictitious names; franchises; regulations; duties
Names
R4-28-1002. Franchises

ARTICLE 11. PROFESSIONAL CONDUCT

- R4-28-1101. Duties to client to Client
R4-28-1102. Property Negotiations concerning property

ARTICLE 12. SUBDIVISIONS DEVELOPMENTS

- R4-28-1204. Public Reports

PART A. APPLICATION

- R4-28-A1201. Development Name; Lot Sales; Applicant
R4-28-A1202. Development Map; Location; Land Characteristics
R4-28-A1203. Flood and Drainage; Land Uses; Adverse Condi-
tions
R4-28-A1204. Utilities
R4-28-A1205. Water Supply
R4-28-A1206. Sewage Disposal
R4-28-A1207. Streets and Access
R4-28-A1208. Flood Protection and Drainage Improvements
R4-28-A1209. Common, Community, or Recreational Improve-
ments
R4-28-A1210. Master Planned Community
R4-28-A1211. Assurances For Completion and Maintenance of
Improvements
R4-28-A1212. Schools and Services
R4-28-A1213. Property Owners' Association
R4-28-A1214. Development Use
R4-28-A1215. Development Sales
R4-28-A1216. Title Report and Encumbrances
R4-28-A1217. ADEQ Approval
R4-28-A1218. Registrations in Other Jurisdictions
R4-28-A1219. Condominium Developments
R4-28-A1220. Foreign Developments
R4-28-A1221. Cemetery Developments
R4-28-A1222. Membership Camping Developments
R4-28-A1223. Affidavit

PART B. GENERAL INFORMATION

- R4-28-B1201. Expedited Registration For Improved Subdivision
Lots and Unsubdivided Lands
R4-28-B1202. Conditional Sales Exemption
R4-28-1203; R4-28-B1203. Material change: definition; require-
ments Change; Public Report Amendments
R4-28-B1204. Cemetery Notice; Amendments
R4-28-1204; R4-28-B1205. General provisions Contiguous Par-
cels

Arizona Administrative Register
Notices of Final Rulemaking

R4-28-B1206. Filing with HUD
R4-28-B1207. Subsequent Owner
R4-28-B1208. Public Report Correction
R4-28-B1209. Options; Blanket Encumbrances; Releases
R4-28-B1210. Earnest Money
R4-28-B1211. Recordkeeping

ARTICLE 13. HEARINGS; RULES OF PRACTICE AND ADMINISTRATIVE PROCEDURES

R4-28-1301. Commencement of action
R4-28-1302. Service of pleadings subsequent to complaint and notice Pleadings Subsequent to Complaint and Notice
R4-28-1303. Information obtained in investigation Obtained in an Investigation
R4-28-1304. Answers; motions for more definite statement Responses; Default
R4-28-1305. Notice of Appearance and practice before department of Counsel
R4-28-1306. Evidence
R4-28-1307. Hearings Consolidation of Procedures
R4-28-1308. Extensions of time
R4-28-1309. Opinion of administrative law judge and service to parties
R4-28-1310. Request for rehearing Rehearing or Review of Decision; Response; Decision
R4-28-1311. Response to request for rehearing
R4-28-1312. Final action by Commissioner
R4-28-1313. Correction of clerical mistakes Clerical Mistakes

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:

1. "ADEQ" means the Arizona Department of Environmental Quality.
2. "ADWR" means the Arizona Department of Water Resources.
3. "Credit hour" means 50 minutes of instruction.
4. "Course" means a class, seminar, or presentation.
5. "D.b.a." means 'doing business as.'
6. "Fictitious name" means any name used to conduct business other than a person's legal name, and includes a d.b.a. name or trade name.
7. "Franchise" means a contract or agreement, either express or implied, oral or written, between 2 or more persons by which:
 - a. A franchisee is granted the right to engage in the business of offering, selling, and distributing goods or services under a marketing plan or system prescribed in substantial part by a franchiser; and
 - b. The operation of the franchisee's business pursuant to the plan or system is substantially associated with the franchiser's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchiser or its affiliate; and
 - c. The franchisee is required to pay, directly or indirectly, a franchise fee.
8. "Individual" means a natural person.
9. "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.

10. "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.

R4-28-102. Department action

Any action to be taken by the Commissioner pursuant to these rules may be performed by the Department members or by such officers, employees, agents or representatives of the Department as permitted by law and authorized by the Commissioner.

R4-28-101 R4-28-102. Filing and notices Document Filing; Computation of Time

Whenever filing with, or notice to, the Arizona State Real Estate Department is required by these rules, or pursuant to A.R.S. Chapter 20, Title 32, such correspondence shall be delivered in person or mailed to the Department at its principal place of business or designated branch. The date of such filing or notice, unless otherwise specifically provided in these rules, shall be the date upon which the document is received by the Department. Copies of all forms referred to in these rules are available at the office of the Arizona Real Estate Department.

- A. All documents shall be considered filed on the date received by the Department. An original or renewal application post-marked 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, and default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday. When the period of time allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

R4-28-103. Fingerprinting

Since it appears there is a need for fingerprint investigations for purposes of licensing and subdivision regulation, the Commissioner, upon his own initiative, may require the following to submit to fingerprinting as provided by Arizona real estate law:

1. Brokers and salespersons upon application for an original license pursuant to A.R.S. § 32-2123;
2. Brokers and salespersons upon application for a renewal of license pursuant to A.R.S. § 32-2130;
3. Persons directly involved in subdividing within the state pursuant to A.R.S. § 32-2181;
4. Persons directly involved in the sale or lease of unsubdivided lands within this state pursuant to A.R.S. § 32-2195.01.

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 adminis-

trative 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. 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.
 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.
- E. 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 or has answered in the affirmative to any question on the

license questionnaire, the Department shall process the application as a modified or amended application.

R4-28-104, Fees

A. Licensing Fees.

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|-----|---|------------------|
| 1. | <u>Broker's exam and examination application,</u> | <u>\$110.00;</u> |
| 2. | <u>Broker's license,</u> | <u>\$125.00;</u> |
| 3. | <u>Broker's renewal (Timely),</u> | <u>\$125.00;</u> |
| 4. | <u>Broker Renewal pursuant to A.R.S. 32-2130(C),</u> | <u>\$20.00;</u> |
| | <u>(Additional per month fee, Maximum \$120)</u> | |
| 5. | <u>Salesperson's exam and examination application fee,</u> | <u>\$85.00;</u> |
| 6. | <u>Salesperson's license,</u> | <u>\$60.00;</u> |
| 7. | <u>Salesperson's renewal (Timely),</u> | <u>\$60.00;</u> |
| 8. | <u>Salesperson's renewal pursuant to A.R.S. 32-2130(C),</u> | <u>\$10.00;</u> |
| | <u>(Additional per month fee, Maximum \$60)</u> | |
| 9. | <u>Branch office license,</u> | |
| | <u>12 months or less,</u> | <u>\$35.00;</u> |
| | <u>13 to 24 months,</u> | <u>\$50.00;</u> |
| | <u>Renewal,</u> | <u>\$50.00;</u> |
| 10. | <u>Change of name and address,</u> | <u>\$10.00;</u> |
| 11. | <u>Temporary broker's license,</u> | <u>\$50.00;</u> |
| 12. | <u>Temporary cemetery salesperson's license,</u> | <u>\$50.00;</u> |
| 13. | <u>Membership camping Certificate of Convenience,</u> | <u>\$50.00.</u> |

B. Development fees.

- | | | |
|----|--|------------------|
| 1. | <u>Public Report,</u> | <u>\$500.00;</u> |
| | <u>Subdivision public report, amended,</u> | <u>\$250.00;</u> |
| | <u>Unsubdivided land public report, amended,</u> | <u>\$500.00;</u> |
| | <u>Membership camping public report amended/renewal,</u> | <u>\$300.00;</u> |
| | <u>Timeshare Exemption,</u> | <u>\$300.00;</u> |
| 2. | <u>Time-share public report (per interval, maximum \$1,000),</u> | <u>\$20.00;</u> |
| 3. | <u>Membership camping lottery or drawing application,</u> | <u>\$250.00;</u> |
| 4. | <u>Cemetery Certification,</u> | <u>\$500.00;</u> |
| | <u>Cemetery Amendment,</u> | <u>\$500.00;</u> |
| 5. | <u>Conditional Sales Exemption,</u> | <u>\$100.00;</u> |
| 6. | <u>Special Order of Exemption,</u> | <u>\$100.00.</u> |

- C.** 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.

Arizona Administrative Register
Notices of Final Rulemaking

TABLE 1. TIME-FRAMES

(Calendar Days)

<u>License</u>	<u>Authority</u>	<u>Administra- tive Completeness Review</u>	<u>Response to Completion Request</u>	<u>Substantive Review</u>	<u>Response to Additional Information</u>	<u>Overall Time-frame</u>
Broker and Salesperson (Individual)	§ 32-2122 R4-28-301	15	15	45	30	60
Renewal (without change)	R4-28-302	15	15	0	0	15
Modified/Amended	R4-28-303	15	15	45	30	60
Corp/LLC/Partnership/ PC/PLC	§ 32-2125	30	30	90	60	120
Renewal (without change)	R4-28-301	30	30	0	0	30
Modified/Amended	R4-28-303	30	30	90	60	120
Temporary Broker	§ 32-2133	30	30	90	60	120
Temp Cemetery Salesper- son	§ 32-2134	30	30	90	60	120
Membership Camping Cert. of Convenience	§ 32-2134.01 R4-28-305	30	30	90	60	120
School Approval	§ 32-2135(A) R4-28-404	10	15	20	15	30
Course Approval: New	§ 32-2135 R4-28-404	10	15	20	15	30
Instructor Approval	§ 32-2135 R4-28-404	10	15	20	15	30
ADVERTISING Membership Campground (only for lottery or draw- ing)	§ 32-2198.10(D) § 32-2198.14 R4-28-503(D)	15	5	0	0	15
Subdivision (only for drawing or con- test)	§ 32-2183.01(I) R4-28-503(D)	15	5	0	0	15
Time-Share (only for drawing or con- test)	§ 32-2197.11(I) R4-28-503(D)	15	5	0	0	15
Time-Share (the offer of a premium)	§ 32-2197.11(K) R4-28-503(D)	15	5	0	0	15
Development Application	§ 32-2183(A) § 32-2195.03(A) § 32-2197.06 § 32-2198.02 R4-28-B1203	20	20	50	20	70
Amended Report	§ 32-2184 § 32-2195.10 § 32-2197.03 § 32-2198.01(D) R4-28-B1203	10	10	10	10	20
Certificate of Authority	§ 32-2194.03(A)	20	20	50	20	70
Amended Certificate	§ 32-2194.10 R4-28-B1204	10	10	10	10	20
WAIVERS Pre-license	§ 32-2124 R4-28-401	15	60	30	0	45
Continuing Education	§ 32-2130 R4-28-402	5	10	7	0	12

Arizona Administrative Register
Notices of Final Rulemaking

EXEMPTIONS						
Subdivision	§ 2181.01 R4-28-B1202	20	20	20	0	40
Unsubdivided Land	§ 32-2195.01 R4-28-B1202	20	20	20	0	40
Time-Share	§ 32-2197.13	20	20	20	0	40
Membership Camping	§ 32-3198.03	20	20	20	0	40

ARTICLE 2. DEFINITIONS RESERVED

R4-28-201. General Definitions

In these rules, unless specifically defined otherwise within the text, the following definitions shall apply:

1. All definitions are included in A.R.S. § 32-2101, except those which may be modified by definitions as set forth in this rule.
2. "Advance fee rental agent" means:
 - a. A real estate licensee who negotiates rentals or furnishes rental information to prospective tenants whereby they are obligated to pay a fee in advance of services, whether or not a rental is obtained through such services; or
 - b. A real estate licensee who solicits or obtains rental listings from landlords or managers in expectation of compensation by including the listings in rental information to be furnished to prospective tenants.
3. "Associate broker" means the holder of a broker's license, other than a designated broker, who is entitled to act as a broker only as an officer or agent of a corporation or partnership through corporate resolution or as a member of the partnership through partnership agreement, and pursuant to A.R.S. § 32-2125.
4. "Attorney General" means the duly elected or acting Attorney General of Arizona and his duly appointed assistants.
5. "Change fee" means a fee payable upon filing of changes in licensee status.
6. "Classroom hour" means a period of 50 minutes of actual classroom instruction.
7. "Department" means the Arizona State Department of Real Estate.
8. "Development" means any division or proposed division of real property which the Department has authority to regulate, including but not limited to: Subdivided or unsubdivided lands, cemeteries, condominiums, time shares, membership campgrounds and stock cooperatives.
9. "Employing broker" shall mean one of the following:
 - a. A lawfully organized corporation having an officer licensed as the designated real estate or cemetery broker pursuant to A.R.S. § 32-2125(A). The "manager" of a close corporation organized pursuant to A.R.S. § 10-201 et seq. shall be an officer within the meaning of this rule.
 - b. A partnership having a member licensed as the designated real estate or cemetery broker pursuant to A.R.S. § 32-2125(A).
 - c. A sole proprietorship if the sole proprietor is a licensed real estate or cemetery broker. For purposes of this rule, a sole proprietor is a person who owns, has exclusive title or legal right to the business.
10. "Franchise" means a contract or agreement, either express or implied, oral or written, between two or more persons by which:

- a. A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor; and
 - b. The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate; and
 - e. The franchisee is required to pay, directly or indirectly, a franchise fee.
11. "Member," when used in the context of a partnership, means a partner of a partnership pursuant to A.R.S. § 32-2101(11), A.R.S. § 32-2125, and for purposes of these rules.

ARTICLE 3. LICENSE APPLICATIONS; TYPES; REGULATIONS LICENSURE

R4-28-301. Licenses; Application; Use; Exemption General License Requirements

- A. An application for a license or license renewal shall be completed by the applicant, signed by the applicant and filed by mail or in person at any office of the Department. License applications or renewals shall be on a form furnished by the Department. The appropriate fee shall accompany the application.
- B. Prior to renewal of any license, the Commissioner may require the applicant to provide additional information to reaffirm the good moral character of the applicant as set forth in A.R.S. § 32-2130(D).
- C. Every licensee shall, within ten days of each occurrence, notify the Commissioner of:
 1. Any misdemeanor and felony conviction.
 2. Any adverse decision of a court of competent jurisdiction rendered as the result of a civil suit or judgment in which the licensee appeared as the defendant, and in which the subject matter involved a real estate transaction to which he/she was a party.
 3. Any restriction, suspension, or revocation of any professional or occupational license or registration held by the licensee in any state, district or possession of the United States or under authority of any federal agency or body or the imposition of any reprimand, censure, fine or other penalty under such license or the denial of application or reapplication for any such license.
- A. An applicant for or holder of any Department-issued license, renewal or amended license, 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:
 1. A signed certification questionnaire sworn before a notary public, or witnessed by department personnel, disclosing any:

Arizona Administrative Register
Notices of Final Rulemaking

- 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, and 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 the racketeering laws.
2. If any response to subsection(A)(1) is answered in the affirmative, the applicant shall provide all of the following written documentation for each person who answered in the affirmative:
- a. 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.
 - b. Three written 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 1 year before the date of receipt of the application;
 - c. A 10-year work history, reflecting the employer's name and address, supervisor's name and telephone number, and dates of employment, including any periods of unemployment;
 - d. A certified copy of any document, such as the findings of fact, conclusions of law, and order, assessing a civil penalty or denying, suspending, restricting or revoking any professional or occupational license held or previously held by the applicant within the last 10 years;
 - e. A certified copy of any civil judgment awarded by a court of competent jurisdiction in which the applicant was a party and which included findings of fraud or dishonest dealings by the applicant;
 - f. A certified copy of any document of a payment against, or repayment by, the applicant as a judgment debtor by 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.
 - g. A certified copy of any temporary or permanent order of injunction entered against the applicant;
 - h. 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), any person applying for a salesperson's or broker's license shall meet the qualifications listed in A.R.S. § 32-2124, R4-28-401, and R4-28-403, and shall submit a certified license history from each state in which the applicant holds, or has held, a professional occupational license within the 5 years preceding the application.
- C.** The Department shall not issue a broker's license to any person who is an actively licensed salesperson in this state until the salesperson is severed by the employing broker or is administratively severed as prescribed in R4-28-303(E)(4) or (G).
- D.** Except as provided by A.R.S. § 32-2125.01, no licensee shall hold more than one Arizona real estate license. A licensee shall neither hold himself or herself out to engage in, nor actually engage in, any real estate brokerage business in Arizona other than the one for which he or she is licensed by the Department.
- E.D.** No name will be placed on a license except the Only the legal name of the licensee or any such and any additional nickname, corporate, or fictitious name which that the Commissioner finds is not detrimental to the public interest shall be placed on a license certificate. No corporation licensed pursuant to A.R.S. § 32-2125(B) may adopt a fictitious name.
- F.E.** Every licensee salesperson and broker who is the holder of an active holding a current license shall maintain on file with the Commissioner both the address of the licensee's salesperson's or broker's principal place of business, if any, and a current residence address. Every licensee shall notify the Commissioner within ten working days of any change of address on a form furnished by the Department, accompanied by a change fee.
- G.** When a licensee has made a complete application for the renewal of a license or a license change prior to expiration, the existing license remains in effect until the application has been fully acted upon by the Department. Upon denial of the application, it shall be unlawful for a person to act, or attempt to act, as a real estate or cemetery licensee.
- F.** Except as prescribed in A.R.S. §§ 32-2184, 32-2194.10, 32-2195.10, 32-2197.03 and 32-2198.01(D), every licensee shall, within 10 days of each occurrence, notify the Commissioner, in writing, of any change in information contained in the license certification questionnaire specified in subsection (A)(1)(a) through (A)(1)(d) and provide documentation pursuant to (A)(2).
- H.** A branch office license issued pursuant to A.R.S. § 32-2127 is not required if an office is established exclusively for the original on site sale of properties within the immediate area of a subdivision or unsubdivided lands. Operation of said office shall be under the direct supervision of the broker named in the application for approval to sell or lease subdivided or unsubdivided lands. The subdivision or unsubdivided land name shall be used concurrently with the licensed name of the broker on the specific properties of said office in a conspicuous and reasonable manner calculated to attract the attention of the public.
- I.** Fees charged by the Department of Real Estate shall be as follows:

1. Broker's examination fee, \$50.00.
2. Broker's license fee, \$125.00.
3. Broker's renewal fee, \$125.00; except if the renewal is pursuant to A.R.S. § 32-2130(C), the fee is \$135.00.
4. Salesperson's examination fee, \$25.00.
5. Salesperson's license fee, \$60.00.
6. Renewal fee for salesperson's license, \$60.00; except if the renewal is pursuant to A.R.S. § 32-2130(C), the fee is \$70.00.
7. Branch office broker's license fee, \$35.00 for 12 months or less; \$50.00 for 13 to 24 months; and \$50.00 for renewal of a branch office broker's license.
8. Change fee, \$10.00.
9. Temporary broker's license fee, \$50.00.
10. Membership camping registration fee for salesperson or broker, \$50.00.
11. Renewal fee for membership camping registration for salesperson or broker, \$50.00.
12. Fee for processing fingerprints, \$14.00.

R4-28-302. Salespersons and Brokers: Licenses; Requirements

- A. A salesperson's license shall not be issued until the completed license application is submitted and the appropriate fee paid.
- B. When a real estate or cemetery salesperson or an associate broker enters the employ of a real estate or cemetery broker, the employing broker shall notify the Commissioner of that fact and the licensee shall not be authorized to conduct business until such notification is received. This notification shall be made on a form furnished by the Department, signed by the broker and the licensee, and accompanied by a change fee. Submission of this notification by the broker shall mean that the broker agrees to assume responsibility for supervision of the licensee's business activity.

R4-28-302. Employing or Designated Broker's License: Nonresident Broker

- A. Any person applying for an employing or designated broker's license shall provide the following information:
 1. The name, business address, telephone number, fax number, if any, license number and expiration date of the employing and designated broker's licenses, and the signature of the designated broker;
 2. The type of broker's license held;
 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. An applicant seeking to be a designated broker of a partnership shall:
 - a. If the general partner is a partnership, be an individual who is a partner of the general partner;
 - b. If the general partner is a corporation, be an individual who is a corporate officer of the corporate partner;
 - c. If the general partner is a limited liability company, be an individual who is a member or manager of the limited liability company;
 - d. If a limited partner, not be eligible to be a designated broker for the partnership.

2. In addition to the information provided in subsection (A), the partnership broker applicant 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. An affidavit 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;
 - v. The name of the partnership complies with A.R.S. § 29-245 and 4 A.A.C. 28, Article 10, and is not likely to be misleading or confusing.
 - d. A copy of the partnership agreement and any amendments;
 - e. A copy of the registration application stamped "Received and Filed" by the 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), a corporate broker applicant 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 1 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. An affidavit 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.

Arizona Administrative Register
Notices of Final Rulemaking

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), a limited liability company broker applicant 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 1 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. An affidavit 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 designated broker shall:
1. Be responsible for supervising the associate brokers, salespersons and employees of the employing broker within the course of their employment;
 2. Notify the Department on the Change Form within 10 days after a salesperson or broker leaves a broker's employment.
- I. The employing broker shall be responsible for:
1. The acts of all associate brokers, salespersons, and other employees acting within the course of their employment; and
 2. Supervising the associate brokers, salespersons, and employees of the employing broker within the course of their employment.
- J. A broker's license shall not be used to enable a salesperson or associate broker nominally employed by the 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. If the employing broker is changing its designated broker, the current designated broker shall submit a letter of resignation and return the designated broker's and the employing broker's licenses to the Department. If by partnership agreement, or corporate or company resolution, the designated broker is removed, the employing broker shall return the employing broker's and designated broker's licenses.
 2. If the entity continues business without interruption, the incoming designated broker shall simultaneously with, or on the next business day following, the departure or removal:
 - a. Complete, sign, and submit the Change Form as prescribed in R4-28-303; and
 - b. If the entity is a corporation or limited liability company, submit a resolution appointing the new broker to act on its behalf; or
 - c. If the entity is a partnership, submit an amendment to the partnership agreement naming the new broker to act on its behalf or a new application, as applicable.
 3. If the designated broker has not been fingerprinted, the broker shall submit a full set of fingerprints with the application and fee as required in A.R.S. § 32-2108.01.
- L. Non-resident broker.
1. If a licensed nonresident broker maintains a principal office outside Arizona, the broker 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. If a licensed nonresident broker employs a licensed salesperson or broker within the state, the broker shall:

Notices of Final Rulemaking

- 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. A nonresident broker shall notify the Department within 10 days if any information required under this Section changes.

- request period, the license will expire on the license expiration date.
 - b. If the application is denied, the person shall not act, or attempt to act, as a salesperson or broker.
2. Any salesperson or broker applying for a license renewal shall submit the following information on the Application for License Renewal form:

R4-28-303. Brokers: Regulations; Duties

- A. ~~The holder of a broker's license may, during the term of that license, request inactivation of his broker's license and, upon filing the appropriate application and fee, be issued a salesperson's license. This procedure does not require passage of a salesperson's examination.~~
- B. ~~Except as prescribed in subsection (D), a broker's license shall not be issued to a salesperson until the broker who previously employed said licensee files an appropriate notice on a form furnished by the Department, accompanied by a change fee.~~
- C. ~~An employing broker shall notify the Department within ten days after a licensee leaves his or her employment. Such notification shall be given on an appropriate form to the Department, accompanied by a change fee. The Commissioner shall have authority, upon written request of the licensee and upon notification to the employing broker, to sever such licensee from employment on Department records prior to receipt of the appropriate form. A change fee will be charged for this service.~~
- D. ~~A broker who is employed by another broker shall not be licensed as a salesperson except after inactivation of the broker's license pursuant to these rules. The license of the employed broker shall be issued using the following words: "Associate Broker."~~
- E. ~~Copies of employment status forms for all present and former employees shall be retained by the employing broker in readily accessible form for a period of five years.~~
- F. ~~Any broker employed by the business entity and acting as a branch office manager under A.R.S. § 32-2127 may perform the functions and duties of the sole proprietor broker or designated broker in connection with transactions arising out of the branch office if authorized to do so in writing by the sole proprietor or designated broker. The authorization shall be filed with the Commissioner within ten days and shall be retained in the principal office of the broker for five years.~~
- G. ~~A broker shall not permit the use of his or her license to enable salespersons nominally employed by the broker to establish and carry on a real estate or cemetery brokerage business wherein if the broker's only interest is the receipt of a fee for the use of the broker's license by others and the broker does not exercise actual supervision over the salespersons.~~
- H. ~~The employing broker shall assume responsibility for the acts of all associate brokers, salespersons and other employees acting within the course of their employment.~~

- a. Any change or correction to the applicant's licensing information;
 - b. Whether the renewal application is late;
 - c. The date and signature of the designated broker, or authorized branch office manager, if the renewal is for an active license. If the renewal is signed by the authorized representative, a copy of the authorization shall be attached.
 - d. The signature of the applicant, attesting to 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, as required by R4-28-301(A).
- B. Late renewal. In addition to the information required in subsection (A), any person applying for a late renewal shall specify whether activities requiring a license were conducted after license expiration or without proper employment by a broker.
- C. Unlicensed activity. A person who has conducted activities requiring a current and active license while not properly licensed shall, upon request, submit:
- 1. A copy of any offer or contract to sell, lease, exchange, transfer, or manage real estate, cemetery property, or membership camping contracts;
 - 2. A written explanation of why the unlicensed activity occurred, attesting that there are no unreported transactions;
 - 3. A copy of all listing agreements, buyer-broker employment agreements, purchase contracts, escrow settlement statements, management agreements, rental agreements, and leases executed while not properly licensed;
 - 4. Documentation listing all compensation received or to be received by the applicant, the designated broker, and the employing broker, resulting from the applicant's activities;
 - 5. The person shall attest that activities requiring a license shall not be conducted until a current and active license is issued to the person.
- D. Reinstatement.
- 1. Any salesperson or broker applying for license reinstatement 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;

R4-28-303. License Renewal; Reinstatement; License Changes

- A. Renewal.
 - 1. If a salesperson or broker applies for a license renewal before expiration, the existing license remains in effect until the application has been approved or denied by the Department.
 - a. If the application is deemed administratively incomplete and the applicant has not provided the requested information within the completion

Arizona Administrative Register
Notices of Final Rulemaking

- 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 status was active at the time of suspension, cancellation, revocation, or termination, the Department may require the applicant to submit an Unlicensed Activity Form and supporting documents.
- E. License Changes.** A salesperson or broker shall notify the Commissioner of the following information and changes:
1. In writing or on a Change Form, whichever is appropriate:
 - a. The type of change being made;
 - b. The legal name, address, and telephone number of the salesperson or broker;
 - c. The prior name of the person, if changing name;
 - d. The prior address of the main or branch office, if changing address;
 - e. The salesperson's or broker's license number, expiration month, and year; and
 - f. The date of the application and signature of the salesperson or broker.
 2. In writing, within 10 days of the change:
 - a. Personal name, including proof of the change, or
 - b. Personal address.
 3. On a Change Form, within 10 days of the change:
 - a. Active to inactive status:
 - i. The legal name and fictitious name, if any, of the severing broker; and
 - ii. The date and signature of the severing broker.
 - b. The employing broker's business address;
 - c. The business mailing address, if different than the business address;
 - d. A transfer between employer's offices by a salesperson or associate broker;
 - e. The appointment of temporary broker due to a designated broker's death or incapacity;
 - f. A branch office closing;
 - g. Branch office manager;
 - h. Disclosure of certification information; or
 - i. Opening, closing, or relocation of a broker's trust account.
 4. On a Change Form, and obtain approval from the Commissioner before conducting business. The existing license remains in effect until the application has been approved or denied.
 - a. The broker's business name;
 - b. The employing broker, including:
 - i. The legal name and fictitious name, if any, of the severing and hiring brokers; and
 - ii. The date and signatures of the severing and hiring brokers.
 - c. Inactive to active status:
 - i. The legal name of the hiring broker; and
 - ii. The date and signature of the hiring broker.
 - d. Designated broker by an entity;
 - e. Adopting, changing, or relinquishing professional corporation or professional limited liability company license status;
 - f. Membership of a professional corporation or professional limited liability company, or the license status of a member;
 - g. Broker change of status to or from associate broker;
 - h. Designated broker or entity change from resident to nonresident broker's license; or
 - i. Designated broker or entity change from nonresident to resident broker's license.
 5. Within 30 days of any change in structure of the licensed entity, the name of any:
 - a. Director, officer, or person holding, or controlling 10% or more of the shares, if a corporation;
 - b. Partner if a partnership; or
 - c. Member or manager if a limited liability company.
 6. If in making a license change the previously issued license is not returned, the salesperson or broker or the designated broker, if applicable, shall submit a written statement explaining why it is not being returned.
- F. In addition to the information required in subsection (D)(1), a salesperson or associate broker shall submit the following information when the change is in a:**
1. Professional corporation.
 - a. The name of the professional corporation which 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; and
 - c. A copy of the Articles of Incorporation 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, and membership camping services, or real estate, cemetery, and membership camping services.
 - ii. If more than 1 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 broker to submit a Certificate of Good Standing from the Arizona Corporation Commission.
 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 stamped "Received and Filed" by the Arizona Corporation Commission:
 - i. The Articles of Organization shall state that the company's sole purpose is to provide professional real estate, cemetery, and membership camping services, or real estate, cemetery, and membership camping services.
 - ii. If more than 1 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 limited liability company, the Department shall require the broker to

Notices of Final Rulemaking

submit a Certificate of Good Standing from the Arizona Corporation Commission.

d. A copy of the operating agreement, as amended.

G. Administrative severance.

1. A salesperson or broker may request that the Department immediately sever the salesperson's or broker's license from the employing broker.

a. After notifying the designated broker, the salesperson, or broker shall provide the following information on a Request for Administrative Severance form:

i. The name and license number of the applicant.

ii. Whether the applicant is a salesperson or an associate broker.

iii. The name of the employing broker from whom the license is being severed.

iv. The reason why the applicant seeks administrative severance, and.

v. The date and signature of the applicant.

b. The applicant shall submit the severance form to the Department.

c. After receipt of the severance form, the Department shall administratively sever the license and mail a copy of the severance to the employing broker.

2. After a license has been administratively severed, another employing broker may hire the applicant by submitting a Change Form and fee.

R4-28-304. Partnerships: licenses; requirements

A. The following information and documents must be furnished to the Department where the applicant desires a broker's license for a partnership:

1. The names and addresses of each partner, director and managerial employee, and the names of any other persons with a beneficial or membership interest in the partnership.

2. An agreement signed by all partners, stating the name of the member-designated broker.

3. An affidavit from each partner stating that each is aware of the fact the named partnership has applied for a license to sell real estate in the state of Arizona, that each has read the complete file on the named partnership as submitted to the Commissioner, and that all of the facts contained therein are true. More than one partner may join in making a single affidavit.

4. An affidavit stating whether the applicant or any other person referred to in subsection (A), paragraph (1) of this rule has been convicted of any misdemeanor or felony, and whether any such person has previously had a real estate or cemetery license revoked or suspended.

B. If, after a license has been issued, there is a change in any of the facts submitted, the designated broker shall file a verified supplemental statement in writing, giving notice of the change to the Commissioner within ten (10) days after the change.

C. In addition to the above, an application for a partnership license shall include any information the Commissioner may request concerning the honesty and character of persons referred to therein and shall be filed by the designated broker.

D. The designated broker shall assume responsibility for the acts of the partnership, the associate brokers, salespersons and employees of the partnership. If the designated broker has not been fingerprinted, he or she must be fingerprinted prior to application approval pursuant to A.R.S. § 41-1750(G). All

requirements must be completed before the application can be accepted and the partnership licensed to act as a real estate broker in Arizona.

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

A. The designated broker shall submit the following information for each branch office 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 fictitious 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.

B. Branch office manager. An associate broker or salesperson, acting as a branch office manager, may perform any of the following duties of the designated broker at the branch office if authorized in writing by the designated broker. 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 5 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 un subdivided land.

1. The broker named in the application for approval shall supervise operation of the temporary office to sell or lease the subdivided or un subdivided land.

2. The broker shall display the subdivision or un subdivided land name with the licensed name of the broker in a conspicuous manner.

R4-28-305. Corporations: licenses; requirements

A. The following information and documents must be furnished to the Department where the applicant desires a broker's license for a corporation:

1. The names and addresses of each officer, director and managerial employee, and the names and addresses of each stockholder controlling or holding more than ten

Arizona Administrative Register
Notices of Final Rulemaking

- (10) percent of the issued and outstanding common shares or ten (10) percent of any other proprietary, beneficial or membership interest in the corporation.
2. Certification that a copy of the Articles of Incorporation has been received and filed by the Corporation Commission. A copy of the Articles must be supplied to the Department. If more than one year has elapsed between the original filing with the Corporation Commission and the application for the corporate license, a Certificate of Compliance and Good Standing from the Corporation Commission must also be submitted.
 3. A corporate resolution stating that the designated broker was elected or appointed a corporate officer, naming the office held, and stating that the individual was appointed to act as designated broker for the corporation.
 4. An affidavit from each officer or director to the effect that each is aware of the fact the named corporation has applied for a real estate or cemetery broker's license in the state of Arizona, has read the complete file on the named corporation as submitted to the Commissioner, and all of the facts contained therein regarding its officers, directors and stockholders are true. More than one officer or director may join in making a single affidavit.
 5. An affidavit disclosing whether the applicant or any other person referred to in subsection (A), paragraph (1) of this rule has been convicted of any misdemeanor or felony, and whether any such person has had a real estate or cemetery license revoked or suspended.
- B. If, after a license has been issued, there is a change in any of the facts submitted the designated broker shall file a verified supplemental statement in writing, giving notice of the change to the Commissioner within ten (10) days after the change.
- C. In addition to the above, an application for a corporate license shall be completed in detail, including any information the Commissioner may request to attest to the honesty and good moral character of persons referred to therein, and shall be filed by the designated broker who will assume responsibility for the acts of the corporation, the associate brokers, salespersons and employees of the corporation. If the designated broker has not been fingerprinted, he or she must be fingerprinted prior to application approval pursuant to A.R.S. § 41-1750(G). All requirements must be completed before the application can be accepted and the corporation licensed to act as a real estate broker in Arizona.

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 pursuant to A.R.S. § 32-2134 or 32-2134.01 for:

1. A temporary cemetery license stating that the applicant has been trained in cemetery and contract law; or
 2. A 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.

ARTICLE 4. EDUCATION-EXAMINATIONS, SCHOOLS, INSTRUCTORS

R4-28-401. Prelicensure Education-Requirements; Curricula Waiver

- A. Every applicant for an original real estate broker's or salesperson's license shall file on a form furnished by the Department a certification of the following:
1. If an applicant for a salesperson's license, completion of 45 classroom hours or its equivalent;
 2. If an applicant for a broker's license, completion of 90 classroom hours or the equivalent. Courses offered to comply with the educational requirements of a salesperson's license will not be considered in computing the classroom hours required for a broker's license.
- B. The time allocated by any school for examination shall not be included as classroom hours for the purposes of satisfying applicable requirements.
- C. The course of education in real estate subjects to qualify an applicant for a license shall be prescribed by the Commissioner and subject to change as the Commissioner deems necessary. Copies of the revised school curricula shall be available upon request to the Department.
- D. The course of study offered by an approved school shall closely follow the guidelines of the education curricula in reference to subject and requisite hours as promulgated by the Commissioner.
- E. A real estate salesperson, within 90 days after issuance by the Department of an original license, shall provide certification evidencing completion of six hours of continuing education in real estate contract law and contract writing. Such course shall include participation by licensees in the drafting of contracts to purchase, listing agreements and lease agreements.
- F. A license renewal applicant shall provide certification evidencing compliance with continuing education requirements upon submission of an application for a license.
- G. Compliance with the continuing education requirements means that a broker or salesperson, licensed under any status, must complete 24 classroom hours of real estate education of which three hours must be devoted to each of the following areas:
1. Arizona real estate law;
 2. The Commissioner's rules;
 3. Agency law;
 4. Contract law;
 5. Fair housing issues; and
 6. Environmental issues.
- H. Pursuant to A.R.S. § 32-2130, the Commissioner may waive all or a portion of the continuing education requirement when

Arizona Administrative Register
Notices of Final Rulemaking

a licensee shows good cause for such a waiver, including, but not limited to, the following case: A person employed by the state of Arizona, who has surrendered his or her license due to possible conflict of interest, establishes to the satisfaction of the Commissioner that his or her employment during the prior license period involved real estate-related matters.

- A.** Any individual applying for a real estate license shall either:
1. Complete the required 90-hour preclicensure 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 preclicensure 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 1 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 1 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 5 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 preclicensure course content to any person requesting it.
- E.** A person shall not receive credit for more than 10 hours of preclicensure education classes per day.

R4-28-402. Continuing Education Requirements; Waiver

A. Continuing education requirements.

1. Any individual applying for real estate license renewal shall complete 24 credit hours from a real estate school that meets the requirements in R4-28-404, of which a minimum of 3 hours are completed in each of the following categories:
 - a. Agency law;
 - b. Contract law;
 - c. Commissioner's standards;
 - d. Real estate legal issues; and
 - e. Fair housing.
 2. The Department may require individuals applying for renewal to obtain credit hours in specific legal issue areas based upon significant current issues in the real estate community.
 3. Continuing education credit may be granted for an unapproved course if the applicant demonstrates to the satisfaction of the Commissioner that the course meets the course approval requirements prescribed in R4-28-404.
 4. The equivalent subject matter hours within a 90-hour preclicensure course, if taken since the last license renewal, may be substituted for the 24-hours of continuing education required in subsection (A)(1).
 5. If any change in the continuing education course requirements falls within a renewal applicant's license period, the renewal applicant may fulfill the continuing education requirements by satisfying the requirements in effect at the beginning or the end of the license period.
- B. Continuing education waiver.**
1. Pursuant to A.R.S. § 32-2130, the Commissioner may waive all or a portion of the continuing education requirement when a salesperson or broker submits a written request to the Commissioner and shows good cause for the waiver, such as when:
 - 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. Any other extraordinary circumstance exists or is demonstrated;
 - d. A substitution for education is demonstrated;
 - e. An approved real estate instructor requests a waiver for a course the instructor has taught.
 2. If the Commissioner grants a salesperson or broker additional time to complete the continuing education hours under a conditional waiver, the salesperson or broker shall complete the continuing education hours within the time-frame prescribed in the waiver, unless additional time is granted.
- I. Implementation**
1. All licensees whose real estate licenses expire prior to April 1, 1995, may satisfy the continuing education requirements by completing hours and subjects set forth in R4-28-401(G)(1)-(4).
 2. All licensees whose real estate licenses expire on, or after April 1, 1995, and who completed 12 or more hours of continuing education prior to before April 1, 1995, may satisfy the continuing education requirements by completing the hours and subjects set forth in R4-28-401(G)(1)-(4).

Arizona Administrative Register
Notices of Final Rulemaking

3- All real estate licensees whose licenses expire after March 31, 1995, and who have not completed at least 12 hours of continuing education prior to April 1, 1995, shall satisfy the continuing education requirements set forth in R4-28-401(G)(1)-(6) subsection (G)(1) through (G)(6), except that, pursuant to A.R.S. § 32-2130(A), the Commissioner shall waive the continuing educational requirements of R4-28-401(G)(5) and (6) for any real estate licensee who files an affidavit stating that prior to June 1, 1995, the licensee was unable to fulfill those course requirements due to insufficient advance notice of the effective date of the requirements or non-availability of the courses in the county in which the licensee resides.

C. A person shall not receive credit for more than 9 hours of continuing education classes per day.

R4-28-402. R4-28-403. License Examinations

A. The Department shall hold, or contract for, at least 1 state licensing examination will be held in each week calendar month and at such other times as the Commissioner deems necessary.

B. Applications for an original license shall be accompanied by an examination fee and certification of completion of educational requirements. The name of applicants shall be placed on an eligible applicant list in the order in which applications were approved. Applicants shall be scheduled accordingly to attend the next examination at which space is available.

C. Examination papers written by an applicant A state license examination shall not be returned to the applicant. An The applicant will shall be notified by mail in person of the results of the examination by the words "passed" or "did not pass" only. 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.

D. Upon successful completion of the examination, the applicant shall pay the appropriate licensing fee and file a bond, if applicable, within one year from the date of the examination. Failure to satisfy the requirements set forth in this subsection within the specified time will result in cancellation of the application and forfeiture of fees.

E. The grant of approval 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.

R4-28-403. R4-28-404. Real Estate Schools: Licensing, Regulation Requirements, Course and Instructor Approval

A. Licensing. Before any school may engage in or transact any business offering a course of study for completion of the education requirements leading to licensure of real estate applicants or to license renewal requirements under Arizona real estate law, it must file an application for a Certificate of Approval to operate a school with the Arizona Department of Real Estate. A community college or university, which is accredited by an accrediting organization which is approved by the Council on Post Secondary Accreditation or the U.S. Department of Education, offering courses in real estate is exempt from the requirements of R4-28-403(A)(1). 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. Such application shall be made on forms approved by the Arizona Department of Real Estate and shall contain:

a. Name, The name, address, and telephone number, and fax number, if any, of the school; owner. If the holder of any ownership interest in the school is other than an individual, such as a corporation, partnership or trust, a statement naming the type of legal entity and listing the interest and the extent of such interest of each principal in the entity. For the purpose of this regulation, a "principal" means any person or entity having a ten percent or more financial interest, or, if the legal entity is a trust, each beneficiary of the trust holding a ten percent or more beneficial interest

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 precensure verifications, or both;

6. b. Name, The name, business address, and telephone number of all current and prospective administrators, directors, and instructors;

7. e. For 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. i. Educational background; Education,

b. ii. Past teaching Teaching experiences, and

c. iii. Employment history;

iv. Prior criminal convictions;

v. Whether a real estate license is held;

vi. Whether any professional license has been suspended or revoked;

vii. Fingerprints, if the Department does not have a fingerprint exemplar on file.

d. The Commissioner may require any additional information which may be reasonably necessary to process such application.

e. A true statement of the provisions made for maintenance of facilities, equipment and materials which will be used for the stated program. All facilities shall meet applicable state and local laws concerning safety and zoning.

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;

Notices of Final Rulemaking

- d. The Articles of Incorporation or Organization, as amended.
10. The location of school registration and licensing certification records.
- B. Filing course information with Department. An Application for Certificate of Course Approval must be filed with the Arizona Department of Real Estate. Such application shall include: 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. School, The school name, address, and telephone number, and fax number, if any;
 2. Authorized The authorized representative's name, title, and signature;
 3. Course The title of the course or seminar title;
 4. An A detailed outline of course material content, including time allotments for topics in 50-minute increments that clearly lists the subject matter to be covered;
 5. Date The date, time, and location of the anticipated presentation, if known;
 6. Number 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. Category The category of approval requested;
 8. Definition A definition of segments if the course is to be offered in part as well as and in its entirety;
 9. If video or audio tapes will be used as instructional aids, the percentage of the class they will comprise;
 - 9-10. Instructor's name(s). 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 1 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 2 years of post-secondary 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 3 years real estate or specific subject experience; or
 7. Other education or experience determined by the Commissioner to qualify the applicant as an instructor.
- G-D. Student records. The school must shall maintain a record for 5 years of each student who attended such attending the school for a period of five years. Such The record shall include:
1. Name and address The name of each student;
 2. Date(s) The dates of attendance;
 3. Title(s) of course(s) taken The title of each course taken;
 4. Number of hours; The course number, category, and credit hours awarded;
 5. Final The final grade or score in pre-license each prelicensure courses; and
 6. The original signature roster for each course or course segment taught.
- D-E. Disclosures to students. Any The prospective student shall sign an agreement or application to enroll, presented to a the student by any the school representative, shall be signed by the prospective student and shall include that includes the following, in bold type and capital letters:
1. Title of The course or course segment title or courses within a curriculum;
 2. Total classroom The total credit hours (total applicable for licensure or renewal);
 3. Price The cost of each course;
 4. A true and complete statement of the refund policy; and
 5. A true and complete statement of any job placement services.
- E-F. Job placement services. Job The Department does not consider lists of employers given to graduates to be a placement service. The school may advertise job placement services may be advertised only if:
1. Student referrals result from direct contact between the school placement service and prospective employers;
 2. Documented evidence of student referrals shall be is maintained and shall include:
 - a. Referrals The number of referrals to prospective employers per student;
 - b. Results of referrals;
 - c. Final placement or other disposition.
 3. Lists of employers given to graduates will not be considered a placement service.
- F. Reports to Department. A report containing the following information shall be submitted to the Department at the end of each calendar year:
1. Total enrollment during the preceding calendar year of:
 - a. Sales pre-licensure students;
 - b. Broker pre-licensure students;
 - e. Continuing education students;
 2. Attendance recordkeeping procedure;
 3. Total number of employees, including staff, instructors and representatives;
- G. Advertising:
1. Claims or representations contained in the advertising shall be accurate.
 2. Advertising shall fully state factual material so as to neither misrepresent the facts nor create misleading impressions.
 3. All printed advertising will include the school name, address and phone number.
- H. Powers and duties of the Commissioner to make investigations. The Commissioner on his own motion may, and upon a verified complaint in writing shall, investigate the actions of any school, owner, administrator, director or instructor acting on behalf of the school and may at any time examine the books and records of said school used in connection with the offering of approved courses.
- 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.

Arizona Administrative Register
Notices of Final Rulemaking

I. Grounds for denial, suspension or revocation of Certificate of Approval to operate a school or Certificate of Course approval:

1. The Commissioner may deny, suspend or revoke a Certificate of Approval to Operate a School or a Certificate of Course Approval issued under the provisions of this regulation if it appears that any school, owner, administrator, director or person acting on behalf of the school in the performance of or attempt to perform any acts authorized by such certificate or approval, has:
 - a. Failed to submit all required forms as set forth in this rule 30 days prior to offering real estate education courses;
 - b. Made any false or misleading promises or misrepresentations of material fact to a student, a prospective student, or to the Department of Real Estate;
 - c. Authorized the distribution of publications or advertisements of any false material statement or representation concerning the operation of a real estate school or the offering of a real estate education course;
 - d. Used or advertised the term "approved real estate school", or "approved real estate course" without prior Real Estate Department certification;
 - e. Failed or refused upon demand to produce any document, book, or record concerning real estate students for inspection by the Commissioner or his representative;
 - f. Failed to maintain a complete record of each student's attendance;
 - g. Issued false certification of real estate course attendance to any student;
 - h. Violated any Order of the Commissioner of Real Estate or any of the provisions of A.R.S. Title 32 Chapter 20 or any rules promulgated by the Commissioner of Real Estate.
2. The Commissioner may suspend, revoke or deny a Certificate of Approval to Operate a School or a Certificate of Course Approval if it appears that any school owner, administrator or director has:
 - a. Procured or attempted to procure a certificate pursuant to the provisions of this rule for himself or another by fraud, misrepresentation or deceit or by filing an application which is false or misleading;
 - b. Been convicted of a felony, forgery, theft, theft by extortion, extortion, conspiracy to defraud, or a crime of moral turpitude.

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.
 - 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.

J. Hearing:

1. Upon the Commissioner's denial, suspension or revocation of a Certificate to Operate a School, or Certificate of Course Approval, a hearing may be requested in accordance with the provisions of A.R.S. Title 32, Chapter 20, Article 3. Rules of practice and procedure for such hearings and rehearings shall be as provided in Article 13 of these rules (R4-28-1301 through R4-28-1313).

ARTICLE 5. ADVERTISING

R4-28-501. Advance fee rental duties, requirements

- A. All licensees who act as "advance fee rental agents" shall make a written registry of all advertisements published, together with the address of the property advertised, the name of the party who offered the property for rent, and his or her telephone number, if any. Said register shall be retained by the broker for a period of five years.
- B. An advance fee rental agent shall not refer a prospective tenant to a rental listing unless the availability of the listing has been verified within three calendar days of the referral.
- C. No rental information shall be furnished a prospective tenant unless express authorization to offer said property for rent has been given by the owner or his authorized agent. Such authorization may be in the form of either a written statement from the owner or his authorized agent or a sworn statement from the rental agent that he received verbal authorization from the owner or the owner's authorized agent. Record of such authorization shall be retained for a period of not less than five years.

R4-28-502. Advertising by licensee a Licensee

- A. A licensee salesperson or broker acting as an agent shall not advertise property in a manner which implies that no licensee salesperson or broker is taking part in the offer for sale, lease, or exchange.
- B. The Commissioner may refuse to issue licenses to entities desiring to operate under names he determines to be potentially misleading or detrimental to the public interest. 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 in the advertisement.
- C. Advertising of any service for which a license is required shall not be under the name of a salesperson unless the name of the employing broker is also set forth. A salesperson or broker shall ensure that all advertising contains accurate claims and representations, and fully states factual material. A salesperson or broker shall not misrepresent the facts or create misleading impressions.
- D. All advertising by licensees, including, but not limited to, newspapers, magazines, circulars and business cards, shall include either the name in which the employing broker's license is held or the fictitious name contained on the real estate or cemetery license. Any advertising of Department approved courses shall include the school name, address, and telephone number.

Arizona Administrative Register
Notices of Final Rulemaking

- E.** In all advertisements the lettering used for the All advertising shall include either the name in which the employing broker's license is held or the fictitious name contained on the license certificate. The lettering used for the name of the employing broker shall appear in a clear and manner which is conspicuous manner, and reasonably calculated to attract the attention of the public.
- F.** All advertising shall be under the direct supervision of the employing and, if applicable, the designated broker. The designated broker or the school owner shall supervise all advertising, as applicable.
- G.** A licensee shall not use the term "acre," either alone or modified, unless referring to an area of land representing 43,560 square feet.
- G.H.** Prior to before placing or erecting any a sign giving notice that specific property is being offered for sale, lease, rent, or exchange, a licensee salesperson or broker must shall secure the written consent of the property owner, and any such the sign shall be promptly removed upon request of the property owner.
- H.I.** The provisions of subsections (D), (E) and (F) shall not apply to advertising done by any franchisor or franchisee so long as such if the advertising does not refer to any specific real estate.
- J.** 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 following legend, "Each (TRADE NAME or FRANCHISE) office is independently owned and operated," or a similar legend approved by the Commissioner, shall be used to attract the attention of the public.
- K.** A real estate salesperson or broker may use the terms "team" or "group" to advertise and promote real estate services if those terms do not constitute the use of a trade or d.b.a. name, and all of the following are true:
- 1.** The team or group is comprised of real estate salespersons or brokers,
 - 2.** The team or group members are employed by the same employing broker,
 - 3.** The designated broker maintains and files with the Department a current list of all members of each group or team in the broker's employ, and
 - 4.** The advertising otherwise complies with statutes and rules.
- L.** The use of electronic media, such as the Internet or web-site technology, which targets Arizona residents with the offering of a property interest constitutes the dissemination of advertising as defined in A.R.S. § 32-2101(2).

R4-28-503. Licensees and developments: promotional activities Promotional Activities

- A.** Unless an offer of a gift, product or item made in connection with a sales promotion, by a licensee or in connection with a development, is without conditions, the terms "free", "no obligation," or terms of similar import may not be used to describe that which is offered. Any gift, product or item shall be clearly described, with the approximate retail value thereof disclosed, and any costs or conditions associated with the gift shall be disclosed before the offeree participates in the offer.
- B.A.** Offers of travel, accommodations, meals or entertainment Licensees shall not describe a premium offered at no cost or reduced cost; the purpose of which is to promote sales, shall not be described or leasing as an "awards," or "prizes," or

by use a similar term, words of similar import. Any costs, limitations or restrictions upon such offers shall be fully disclosed.

- C.B.** An offer or inducement to purchase which purports to be limited as to quantity, or restricted as to time, shall set forth the numerical quantity and/or time applicable to the offer or inducement. Any other restrictions upon eligibility or conditions upon the acceptance of the offer shall be fully set forth in the advertisement. The terms, costs, conditions, restrictions, and expiration date of an offer of a premium shall be clearly disclosed in writing before the offeree participates in the offer.

D.C. No Unless otherwise provided by law, a person shall not solicit, sell, or offer to sell an interest in a development by conducting lotteries or a lottery contests contest, drawing, or game of chance or offering prizes for the purpose of influencing to influence a purchaser or prospective purchaser of an interest in a development. This subsection does not apply to membership camping contracts, as provided in A.R.S. § 33-1617.

D. A subdivider, time-share developer, or membership camping operator may apply for approval to conduct a lottery, contest, drawing, or game of chance by submitting to the Department, the information required in A.R.S. §§ 32-2183.01(I), 32-2197.11(I) 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.

R4-28-504. Developments: advertising Advertising

- A.** The provisions of this rule apply to all advertising done in connection with sales or offers for sale of any interest in a development of real property, as defined in R4-28-201(A)(8) herein, except with respect to membership camping contracts, as provided in A.R.S. § 33-1617. If the developer has obtained a conditional sales exemption, pursuant to R4-28-B1202, or registers a notice of intent with the Department to accept lot reservations pursuant to 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.** Within 21 days of its use, a copy of all new advertising used in connection with the offering of an interest in a development must be submitted to the Department.
- C.** To the extent that it is feasible, the copy submitted to the Department shall be an accurate account, transcript or depiction of the advertisement and shall be supplemented by any information necessary to accurately explain the use of the advertisement. The Commissioner may, upon his own initiative, request further information regarding any advertisement regulated hereby.
- D.B.** Advertising agencies so authorized by their clients may file advertising directly on behalf of those clients. The developer remains responsible for the content of said advertising. Only a developer or the developer's authorized representative shall file advertising for a development with the Department.
- E.** Claims or representations contained in the advertising shall be accurate and provable.
- F.** Advertising shall fully state factual material so as to neither misrepresent the facts nor create misleading impressions.

Arizona Administrative Register
Notices of Final Rulemaking

G.C. Any advertisement of specific properties property made in connection with the offering of an interest in a development must shall include the name of the development as registered with the Department. The Commissioner may, by reason of the special characteristics of the development or fractional interest therein, or the limited character and duration of the offer for sale, lease or financing, or the special characteristics or limited number of fractional interests offered, waive application of this rule, subsection if the Commissioner determines that the public interest is not affected.

H.D. The advertising of A developer shall not advertise a monthly payment, total price, or interest rate which is not available to all prospective purchasers, whether it is or restricted, by qualification, condition, or otherwise, is prohibited unless the lack of availability or the restriction is conspicuously disclosed within the advertisement to all prospective purchasers.

I.E. There shall be no reference to proposed or uncompleted private facilities, whether within or without a development; A developer shall not advertise proposed or incomplete improvements unless both subsections (E)(1) and (E)(2) have been met:

1. The estimated date of completion is set forth specified or, if there is no estimated date of completion, that fact shall be disclosed, and unless a prominent disclosure is made in the advertisement that the improvement is proposed only and no warranty is given or implied that the improvement will be completed, and unless
2. Sufficient If a completion date is specified, sufficient evidence has been presented to the Commissioner Department that the completion and operation of the facilities are reasonably assured and, if completion date has been set forth, that completion will be within the time represented in the advertisement or promotional materials.

J.F. Reference shall not be made in advertising Reference to a proposed public facility or project which that purports to affect the value or utility of an interest in a development shall not be made without written disclosure of the existing status of the proposed facility. Said The disclosure must shall be based upon information supplied or verified by the authority responsible for the public facility or project and forwarded to the Commissioner Department.

K.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 (e.g., artist's conception,) and a legend identifying shall identify those improvements therein which that are not then proposed and not in existence.

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

M.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. The map or diagram shall be prepared to approximate scale and shall include a scale of miles.

N.J. No advertisement A developer shall not express 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.

O.K. There shall be no reference in advertising A developer shall not refer to availability for use by owners, 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 verify the existence of said the facilities, indicating that availability for use by owners of an interest in the development is at the pleasure of the owners of the facility.

P. Advertising which represents a development as a "retirement community", an "adult community", or any other type of community for which the name or promotional description implies that adults only will be allowed to reside therein, shall be permitted only if there exists a valid restrictive covenant which specifically prohibits the residence of minors within such development, and which specifically prohibits the sale or lease of real property within such development to any person with whom a minor will be cohabiting. A restrictive covenant must be recorded in the office of the County Recorder to be valid.

Q.L. When a standing body of water is described as a feature of a subdivision 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 subdivision development is not permanent, or fluctuates substantially in size or volume, then such the developer shall disclose this fact shall be disclosed in all advertisements describing such the feature.

R. All advertising and promotional material disseminated prior to issuance of the Public Report shall contain the following statement: "No offer to sell or lease may be made and no offer to purchase or lease may be accepted prior to issuance of the Final Arizona Subdivision Public Report". No specific proposed selling price may be used in connection with any advertising prior to issuance of the Final Subdivision Public Report.

S.M. Offers, or solicitations, or trip reservations When any incentive is offered to visit subdivided property, or any other place where a sales presentation for subdivided property a development is to be made, shall set forth the developer shall disclose in writing all conditions, limitations, or recipient qualifications that will be applied before the recipient will be allowed to make the trip.

T.N. Advertising shall not include testimonials or endorsements which contain statements which that a subdivider or licensee would be precluded, by law or regulation rule, from making on his the licensee's own behalf.

ARTICLE 7. COMMISSIONS COMPENSATION

R4-28-701. Commission-sharing Compensation Sharing; Disclosure

A. A acting in his or her capacity as broker or salesperson in a transaction shall disclose to all other parties the identity of any other person receiving any portion of the commission. Nothing herein authorizes payment of commissions to unlicensed persons as prohibited by A.R.S. §§ 32-2155 and 32-2163. A real estate broker representing a party in a transaction shall disclose to all the parties in the transaction, in writing before completion of the transaction, the identity of any licensee receiving compensation.

B. The Commissioner shall not entertain complaints regarding purely civil disputes between licensees concerning the earning, splitting, or nonpayment of commissions.

ARTICLE 8. DOCUMENTS

R4-28-801. Sales Listing Agreements

A. Except as provided otherwise by these rules, all real estate listing agreements shall:

Arizona Administrative Register
Notices of Final Rulemaking

1. ~~Be in writing;~~
 2. ~~Fully set forth all material terms;~~
 3. ~~Have a definite duration or expiration date, showing dates of inception and expiration; and~~
 4. ~~Be signed by the parties thereto.~~
- ~~B. A listing agreement shall not be assigned by a broker to another licensed entity without the express written consent of the client.~~
- ~~C. All real estate listing agreements shall also:~~
1. ~~State the price at which the property is to be offered or, if a net listing agreement, then the minimum net amount the seller will accept;~~
 2. ~~Not contain any provision requiring the seller to notify the broker of his intention to cancel but shall be deemed to be cancelled as of the expiration date shown therein.~~
- ~~D. A licensee shall not procure, or attempt to procure, a listing agreement for property which is already subject to an existing exclusive listing agreement unless the seller is notified in writing that the execution of additional listings could expose the seller to liability for additional commissions. Nothing herein shall be construed to abrogate any civil liability of a licensee arising out of such conduct.~~

R4-28-802. Conveyance Documents: Execution; Offer; Rejection; Delay; Form

- A. Upon execution of any instrument in connection with a real estate transaction document prescribed pursuant to A.R.S. Title 32, Chapter 20, a licensee salesperson or broker shall, as soon as reasonably practical, deliver a legible copy of the original instrument signed document and final agreement to each party signing the document each of the parties thereto. It shall be the responsibility of the licensee to prepare sufficient copies of such instruments to satisfy this requirement.
- B. In addition to any other obligations imposed by law or contract during the term of a listing agreement, a licensee who has a listing agreement entitling that licensee to offer property for sale salesperson or broker shall:
1. Promptly promptly submit all offers to purchase or lease the listed property to the client. This duty to The salesperson or broker shall submit offers continues until the sale or lease is final or close of escrow and is not terminated released from this duty by the client's acceptance of an offer unless the client instructs the licensee salesperson or broker to cease submitting offers or unless otherwise provided for in the listing agreement, lease, or purchase contract. Nothing in this subsection prohibits a broker from submitting The salesperson or broker may voluntarily advise the seller or lessor of offers notwithstanding any limitations contained in the listing agreement and may submit offers after his obligation to do so the listing agreement has terminated.
 2. Submit to the client all offers received from any source whatsoever during the period of time that the licensee is obligated to submit offers. This obligation is binding upon the licensee unless otherwise provided in the listing agreement. Nothing in this subsection shall prohibit a licensee from voluntarily advising the seller of offers notwithstanding any limitations contained in the listing agreement.
- C. Transaction statements.
The broker in any real estate transaction shall deliver to the seller at the time the transaction is closed a complete detailed statement showing all of the receipts and disbursements handled by the broker and shall deliver any other documents requested by the seller pertaining directly to such transaction.

1. ~~The In addition to the requirements of A.R.S. §§ 32-2151.01 and 32-2174, the broker shall retain true copies of these statements in his or her files, including evidence of delivery, all receipts and disbursements, or~~
2. ~~Retention by the broker of properly executed and delivered copies of the executed and delivered escrow closing statements which that evidence all receipts and disbursements handled by the broker will be satisfactory compliance with this rule in the transaction.~~

R4-28-803. Contract disclosures: public report; receipt; nature of document; monies paid directly to seller Disclosures

- A. Pursuant to A.R.S. § 32-2185.06 any agreement or contract for the purchase or lease of subdivided lands or unsubdivided lands sale or lease of a property interest in a development that requires a public report shall contain substantially the following language in boldfaced type large or bold print above the signature portion of such the document:
THE PURCHASER MUST SHALL BE GIVEN A COPY OF THE PUBLIC REPORT OF THE ARIZONA DEPARTMENT OF REAL ESTATE PRIOR TO BEFORE THE SIGNING OF THIS DOCUMENT.
- B. A record verifying the receipt of a copy of the Public Report by the prospective purchaser shall be maintained at the office of the owner, agent or subdivider for a period of not less than five (5) years. A receipt in the form attached to this rule as an exhibit is approved by the Commissioner and must be used when the prospective purchaser or lessee receives a copy of the Public Report.
- ~~C. B.~~ Any agreement or contract for the sale or lease of subdivided lands a property interest in a development shall disclose conspicuously disclose the nature of the document at or near the top of the face of such 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 purchase or lease of subdivided lands or unsubdivided lands sale or lease of a property interest in a development where a down payment, or 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 be required to sign or initial this provision indicating approval thereof 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.

EXHIBIT

REQUIRED RECEIPT FOR PUBLIC REPORT

The law and regulations of the Real Estate Commissioner require that the owner, agent or subdivider of this subdivision (or unsubdivided land) furnish you, as a prospective customer, with a copy of the public report. It is recommended that you read the report before you make any written offer to purchase or lease an interest in subdivided or unsubdivided

Arizona Administrative Register
Notices of Final Rulemaking

land and before you pay any money or other consideration toward the purchase or lease of an interest in subdivided or unsubdivided land.

FOR YOUR PROTECTION, PLEASE DO NOT SIGN THIS RECEIPT UNTIL YOU HAVE RECEIVED A COPY OF THE REPORT AND HAVE HAD THE OPPORTUNITY TO READ IT.

(File No.) (Tract No. or Name)
I understand the report is not a recommendation or endorsement of the subdivision but is for information only.

(Name) (Address)

(Date)

R4-28-804. Rescission of contract; disclosure of Contract

- A. Any agreement or contract for the purchase or lease of
1. An unimproved, subdivided lot or parcel, or
2. Any unimproved, any unsubdivided land, shall contain substantially the following language in boldface type large or bold print above the signature portion of such the document:
THE PURCHASER OR LESSEE HEREUNDER 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 UNTIL MIDNIGHT OF THE SEVENTH CALENDAR DAY FOLLOWING THE DAY THE PURCHASER OR LESSEE EXECUTED SUCH AGREEMENT BY SENDING OR DELIVERING WRITTEN NOTICE OF RESCISSION TO THE SELLER. FURTHER, IF THE PURCHASER OR LESSEE DOES NOT INSPECT THE LOT OR PARCEL PRIOR TO THE EXECUTION OF THE AGREEMENT, THE PURCHASER OR LESSEE SHALL HAVE A PERIOD TO INSPECT THE LOT OR PARCEL, AND AT THE TIME OF INSPECTION SHALL HAVE THE RIGHT TO UNILATERALLY RESCIND THE AGREEMENT.

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 7th 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. At the time of inspection, the subdivider, owner or agent developer of either subdivided or unsubdivided land shall secure an affidavit from the buyer stating that the lot or parcel has been inspected by the buyer.
B. Any agreement or contract for the purchase or lease of a time-share interval shall contain the following language in large or bold print 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 7th calendar day following the day the purchaser or lessee executed the agreement.

- C. An adequate opportunity to exercise the seven (7) day right of rescission shall be provided by conspicuously disclosing conspicuously the complete current name, and address, and telephone number of the seller on the face of all agreements and contracts.

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

ARTICLE 10. FRANCHISES AND FICTITIOUS NAMES

R4-28-1001. Fictitious names; franchises; regulations; duties Names

- A. A broker shall not have or use a name similar to that of any broker already authorized that would cause uncertainty or confusion. If there is a conflict of names between 2 brokers, the Commissioner shall require the newly authorized broker to supplement or modify the broker's name.
A.B. No A person shall not be licensed as a real estate or cemetery broker or salesperson under more than one 1 fictitious name, and no a person shall not conduct or promote a real estate or cemetery brokerage business except under unless the person uses the name under which such the person or brokerage is licensed, except that a broker authorized to conduct business as a franchisee may use both the approved franchise name and the broker's fictitious name as licensed.
C. A professional corporation or professional limited liability company licensed pursuant to A.R.S. § 32-2125(B) shall not adopt a fictitious name.
B. Any real estate broker who enters into an agreement which authorizes such broker to utilize the name or trade name of any other entity in the conduct of real estate business shall file written proof of such agreement on forms provided by the

Arizona Administrative Register
Notices of Final Rulemaking

Department. Such a trade name may only be used concurrently with the licensed name of the broker.

- C. Any broker using a trade name, the use of which required obtaining permission from another who has an existing and continuing right in that trade name by virtue of any state or federal law, in advertising, other than of specific properties for sale, jointly with other brokers under a trade name, shall cause the following legend to appear in a conspicuous and reasonable manner calculated to attract the attention of the public:
Each (TRADE NAME) office (or franchise) is independently owned and operated.
This legend may be rephrased if the consent of the Commissioner is secured.
- D. Any licensee using a trade name owned by another on business cards, letterheads, contracts, or other documents relating to real estate transactions, shall clearly and unmistakably include the employing broker's name, as registered with the Department, in a conspicuous and reasonable manner calculated to attract the attention of the public and shall also include the following legend:
Each (TRADE NAME) office (or franchise) is independently owned and operated.
This legend may be rephrased if the consent of the Commissioner is secured.
- E. Any broker using a trade name owned by another on signs displayed at his place of business shall clearly and unmistakably include such broker's name, as registered with the Department, on such signs in a conspicuous and reasonable manner calculated to attract the attention of the public and shall also include the following legend either on such signs or on an additional sign prominently displayed on the premises:
Each (TRADE NAME) office (or franchise) is independently owned and operated.
This legend may be rephrased if the consent of the Commissioner is secured.

R4-28-1002. Franchises

Before establishing, acquiring, relinquishing, or transferring a franchise in Arizona, the franchisee shall submit to the Department the following, as applicable:

1. A letter authorizing the assignment and use of the trade name, signed by the person who is authorized to assign franchise rights and use of the trade name,
2. A copy of the franchise logotype or trademark and the trade name,
3. The name of the franchise,
4. The name of the employing broker acquiring or relinquishing the franchise and if it is an acquisition or relinquishment,
5. The new name under which the franchisee will be operating,
6. The signature of the designated broker for the employing broker who is acquiring or relinquishing the franchise, and
7. The previous name under which the employing broker was operating.

ARTICLE 11. PROFESSIONAL CONDUCT

R4-28-1101. Duties to client to Client

- A. A licensee owes a fiduciary duty to his the client and shall protect and promote the client's interests of the client. The licensee shall also deal fairly with all other parties to a transaction.
- B. ~~Each~~ A licensee participating in a real estate transaction shall disclose in writing to all other parties to the transaction any

information which the licensee possesses which that materially and adversely affects the consideration to be paid by any party to the transaction, including, ~~but not limited to,~~ the following matters:

1. Any information that the seller or lessor is or may be unable to perform due to defects in title;
 2. Any information that the buyer or lessee is, or may be, unable to perform due to insolvency or otherwise;
 3. Any material defects existing in any the property being transferred; and
 4. The possible existence of any a lien or encumbrance on any the property being transferred ~~in connection with the real estate transaction.~~
- C. A licensee shall expeditiously perform as ~~expeditiously~~ as possible all acts required of him or her which result resulting from entry into an agreement authorized by the holding of a real estate license. Delays Any delay in such performance, either intentional or through neglect, are is prohibited.
- D. A licensee shall not allow a controversy with another licensee to jeopardize, delay, or in any way interfere with the initiation, processing, or finalizing of a real estate transaction on behalf of a client.
- E. A licensee salesperson or broker shall not act as a principal, directly or indirectly, in a real estate transaction without informing the other parties to the transaction, in writing and prior to or concurrent with before any binding agreement, that he or she the salesperson or broker has a real estate license and is acting as a principal.
- F. A licensee shall not accept compensation from or represent both parties to a transaction without the prior written consent of both parties.
- G. A licensee shall not accept any profit from, or compensation for, rebates, or profit for transactions made on behalf of a client without the written consent of the client.

R4-28-1102. Property Negotiations concerning property

Negotiations Except for owner listed properties, negotiations shall be conducted exclusively through the listing principal's broker or his the broker's representative unless:

1. The seller or lessor principal waives this requirement in writing, and
2. No licensed representative of the listing broker is available for a period of twenty-four (24) hours.

ARTICLE 12. SUBDIVISIONS DEVELOPMENTS

R4-28-1204. Public reports

- A. The owner, agent or subdivider who is a successor in interest to 4 to 10 lots, inclusive, within a subdivision previously approved by the Commissioner shall be required to file with the Commissioner a short form subdivision questionnaire furnished by the Department. The successor in interest shall be required to receive approval by the Commissioner prior to offering any of the lots for sale or lease.
- B. In a subdivision where the previous subdivider has completed all amenities in accordance with the Public Report:
1. The information required shall include only the changes in ownership in such lots, together with any material changes, as defined in R4-28-1203, occurring subsequent to the Commissioner's original approval of the subdivision within which such lots are located. The answers shall also refer to the previous approval of the subdivision by the Commissioner. Answers to the questionnaire shall be deemed to incorporate all notices and accompanying documents previously filed with the Commissioner relative to the same subdivision and shall constitute one consolidated filing.

Arizona Administrative Register
Notices of Final Rulemaking

2. ~~No payment to the subdivision recovery fund shall be required.~~
 3. ~~The Commissioner may grant an exemption from this requirement to the successor in interest if he determines that full compliance with this Regulation is not necessary for the protection of purchasers or lessees.~~
- C. ~~The subsequent owner of four or more parcels in a subdivision where the previous subdivider has failed to complete proposed amenities in accordance with the estimated completion date specified in the Public Report shall not be issued an amended Public Report until the requirements of subsection (B) of this Section are met and any one of the following occurs:~~
1. ~~The subsequent owner obtains a performance bond in favor of the state or local authority and for the benefit of lot purchasers, securing his promise to complete the previously proposed amenities by a designated date; or~~
 2. ~~The subsequent owner becomes obligated to place all sales funds in a neutral escrow depository until the Commissioner is furnished satisfactory evidence that all proposed amenities have been completed and/or accepted by the county; or~~
 3. ~~Permission is obtained from all previous purchasers in the subdivision for completion of the proposed amenities by the new designated date for completion; or~~
 4. ~~The subsequent owner establishes to the satisfaction of the Commissioner that adequate financial arrangements have been made to assure completion of the proposed amenities; or~~
 5. ~~The Commissioner concludes that the subsequent owner has not become obligated to complete amenities.~~
- D. ~~Upon request of the Commissioner the owner, subdivider or agent shall accompany the subdivision filing with reports prepared by competent authorities substantiating the assurances made for the proposed subdivision. The Commissioner will determine the sufficiency of the data so submitted and the qualifications of the parties preparing such data.~~
- E. ~~The requirements of subsections (A) through (D) of this Section apply to both subdivided and unsubdivided lands.~~

PART A. APPLICATION

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 1 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 1 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 1 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.

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.

Notices of Final Rulemaking

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.

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 ongoing 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.

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.

R4-28-A1205. Water Supply

The applicant shall include information about any water supply to the development, including:

1. Whether the water supply will be provided by 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 the federal and state environmental laws, as of the date of the application. If in noncompliance, provide an explanation;
4. The location of the present water utility or water utility closest to the development;
5. The name of the person responsible for extending the water utility to the lot lines;
6. The estimated completion date for extending the utility to the lot lines and how the utility will be completed;
7. The estimated cost a lot purchaser will be required to pay for completion of the utility to the purchaser's lot line;
8. 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;
9. Upon completion of the utility, 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 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 the private well, will the purchaser 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 supplier if water for domestic use will be transported or hauled to individual lots by the lot purchaser. A cost estimate computed on a monthly basis for a 4-member family, including the cost

Arizona Administrative Register
Notices of Final Rulemaking

of water, cistern, and other holding tanks, pumps, or any other costs necessary to install an operational water system;

15. If the development is a subdivision or part of a subdivision located outside of a groundwater active management area, a water adequacy report from ADWR;
16. If the development is unsubdivided lands, a water availability report from the ADWR. 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.

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.

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.

Notices of Final Rulemaking

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.

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.

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.

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.

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. The applicant shall provide 1 or more of the following assurances for completion:

1. A surety or completion bond from an insurance company licensed to do business 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 3rd 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 and clearly state when and how the 3rd party may draw on the funds;
- d. Be in an amount 10% greater than the estimated amount to complete all improvements; and
- e. 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 3rd 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 and clearly state when and how the 3rd party may draw on the funds;
- d. Be in an amount 10% greater than the estimated amount to complete all improvements;
- e. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements;
- f. State that repayment is the responsibility of the developer and not of the 3rd party; and
- g. State that the irrevocable letter of credit is noncancelable.

3. A loan commitment and agreement from a lender licensed to do business in Arizona. The loan commitment and agreement shall specify which improvements are included and shall:

- a. Be stipulated by and payable to a 3rd 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 and clearly state when and how the 3rd party may draw on the funds;
- d. Be in an amount 10% greater than the estimated amount to complete all improvements;
- e. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements; and
- f. State that repayment is the responsibility of the developer and not of the 3rd party even if the 3rd party draws on the funds.

Arizona Administrative Register
Notices of Final Rulemaking

4. A trust or escrow account with a financial institution or escrow company licensed to do business in Arizona. The trust or escrow account shall specify which improvements are included and shall:
 - a. Be stipulated by and payable to a 3rd 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 and shall clearly state when and how the 3rd party may draw on the funds;
 - d. Be in an amount 10% greater than the estimated amount to complete all improvements;
 - e. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements; and
 - f. 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. Subdivisions. The municipal or county government shall prohibit occupancy and the subdivider shall not close escrow on lots sold in the 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. The subdivider shall submit a written statement that no escrow shall close on any lot until all subdivision improvements are complete.
 - c. The subdivider shall submit a copy of the subdivider's purchase contract containing in large or bold print the condition that escrow shall not close until the city or county issues its occupancy clearance and all subdivision improvements are complete.
 - d. Escrow may close on a lot before completion of all improvements if the 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.
 - e. 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.
 - f. Any improvement offered or promised to purchasers that is scheduled for completion in a later phase shall have its completion assured by an alternative method of assurance listed in this Section.
 - g. If the subdivider's sales include unimproved (vacant) lots, the subdivider shall deposit all earnest money into a neutral escrow depository until escrow closes.
 6. City and county trust agreement. Any municipal or county government may enter into an assurance agreement with a trustee to hold a lot conveyance until improvements are completed, provided:
 - a. The trustee is an escrow company licensed to do business in Arizona, and
 - b. The agreement is recorded.
 7. 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 not close any escrow until all improvements are complete. The agreement shall contain the following stipulations:
 - a. The funds shall not be released nor the purchaser's deed or other relevant documents recorded until certification is given to the Department and the escrow agent by the developer's architect or engineer 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 shall give purchasers notice that completion dates were not met and an updated completion schedule.
 - ii. A purchaser may 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.
 - 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.
- 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 ½ 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.

Notices of Final Rulemaking

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.

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 1 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.

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 released;
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.

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.

R4-28-A1217. ADEQ Approval

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

Arizona Administrative Register
Notices of Final Rulemaking

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.

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.

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.

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.

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.

R4-28-A1223. Affidavit

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

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 2-hole punched at the top in standard placement. The application is placed on a 2-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 4 A.A.C. 28, Article 12, Part A and Title 32, Chapter 20, Article 4.
 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.
- 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.

Arizona Administrative Register

Notices of Final Rulemaking

R4-28-1203, R4-28-B1203. Material change—definition; requirements Change: Public Report Amendments

- A.** Pursuant to A.R.S. § 32-2184, material change in the plan under which a subdivision is offered for sale or lease include but are not limited to: The developer shall notify the Department of all material changes in the information required by Title 32, Chapter 20, Articles 4, 7, 9, and 10, or 4 A.A.C. 28, Article 12, Part A.
- B.** Pursuant to the material changes reported in subsection (A), the Department may require the developer to amend the public report.
- C.** A developer may apply to amend the public report by submitting payment of the applicable amendment fee and the following information:
1. Items listed in subsection (A) of A.R.S. § 32-2181;
 2. Addition, alteration, termination or extension of completion date of any public utility services to a subdivision;
 3. Change in business or corporate name of the subdivider;
 4. Any change in the use or uses for which a subdivision will be offered, including any amendments or changes in recorded restrictions;
 5. Any change in lot or street lines or relocation of easements to a subdivision plat, previously approved by the Commissioner. This shall include any sale of a lot whose boundaries differ from the lot lines set forth in the recorded plat.
 6. When, for any reason, the subdivider is unable to fulfill agreements, assurances and representations given by the subdivider to the Commissioner in the application for a Public Report or to a political subdivision authorized to regulate subdivisions;
 7. Creation or discovery of latent hazards affecting the subdivision such as adverse geologic conditions not apparent at the time of issuance of the Public Report for the subdivision.
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 (D) 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.
- D. Completion Date Extension.**
1. A developer may apply 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 1st 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 a written agreement to voluntarily 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).

- 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 pursuant to A.R.S. § 32-2157, the Department may accept a developer's written agreement to voluntarily suspend sales until the amended public report has been issued by the Department.
- E.** 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.

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.

R4-28-1201, R4-28-B1205. General provisions Contiguous Parcels

- A.** Except for lots in a platted subdivision, if 2 or more contiguous parcels of land are acquired by a single owner, they the Department shall thereafter be considered to be classify the lots as a single parcel for purposes of subdivision laws.
- B.** A licensee shall not use the term "acre", either alone or modified, unless referring to quantities of land representing 43,560 square feet as an "acre".

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.

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 6 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 6 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.

Arizona Administrative Register
Notices of Final Rulemaking

- 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 1 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 subsequent 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 that application until the Department approves or denies the pending application. Once the pending application is acted upon, the subsequent owner may file an application for a public report.

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.

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 1 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.

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.

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).

ARTICLE 13. HEARINGS: RULES OF PRACTICE AND ADMINISTRATIVE PROCEDURES

R4-28-1301. Commencement of action

A. A hearing may be commenced:

1. By an applicant for a license, pursuant to A.R.S. § 41-1065; or
2. Upon the filing of charges pursuant to A.R.S. § 32-2157 by either the Commissioner, the Assistant Commissioner, or an authorized Deputy Commissioner.

B. In the case of a proceeding commenced by an applicant, the written request for a hearing shall be construed to be the complaint. Upon its receipt, the Commissioner shall cause a hearing thereon to be scheduled promptly. He shall give written notice of the date, time, and place thereof to the applicant in accordance with the requirements of A.R.S. § 41-1061, and in lieu of an answer, shall set forth the grounds for the application denial. When the hearing is commenced by the Commissioner, the Assistant Commissioner, or an authorized deputy, the party or parties against whom the charges are filed shall be given notice of the date, time, and place set for hearing at the time of service of complaint.

R4-28-1302. Service of pleadings subsequent to complaint and notice Pleadings Subsequent to Complaint and Notice

- A.** How service made: Service of documents subsequent to complaint and notice under these rules (except subpoenas, which may be personally served) shall be made by personal service on, or by mail addressed to, the Department, the party or his attorney or other agent for service. Service of pleadings subsequent to complaint and notice of hearing shall be deemed made at the time of by personal service; or, if mailed, by mail to the last known address of record of the party or the party's counsel when received by the Department. If a party makes service is made by mail, any specific limitations on the time within which the person on whom such mail service has been made may respond thereto response time shall be increased by three (3) 5 days. Service by mail is complete upon mailing.
- B.** Proof of service: Proof of service must be made by filing with the Commissioner a statement in writing that service has been made.
- C.** Copies of all pleadings or briefs which are filed under these rules shall be served upon the Attorney General. Any person filing a pleading or brief with the Department shall also file with the Attorney General.

R4-28-1303. Information obtained in investigation Obtained in an Investigation

Information The Department shall ensure that any information or documents obtained by the Department in the course of any an examination or investigation remains confidential shall, unless made a matter of public record, be deemed to be confidential. Officers and employees of the Department are hereby prohibited from making such shall not make confidential information or documents available to anyone other than the Attorney General or his the Attorney General's representative, or a member, officer, or employee of the Department, unless the Commissioner authorizes the disclosure of such the information or the production of such documents as not being contrary to the public interest.

Arizona Administrative Register
Notices of Final Rulemaking

**R4-28-1304. ~~Answers; motions for more definite statement~~
~~Response; Default~~**

- A.** ~~Time to file Answer:~~ A party respondent shall file an Answer to the complaint within the time provided and in the manner prescribed pursuant to A.R.S. § 32-2157.
- B.A.** ~~Requirements of Answer; effect of failure to deny:~~ Unless otherwise directed by the Commissioner, an Answer A response filed pursuant to A.R.S. § 32-2157 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 shall be is deemed to be admitted. When a party intends in good faith to deny only a part of an allegation, he the party shall admit so much of it as is true and shall deny the remainder. Any affirmative defenses shall be stated in the Answer.
- C.** ~~Motion for more definite statement:~~ Such a motion shall state the respects in which, and the reasons why, each such matter of fact should be required to be made more definite. If the motion is granted, the order granting such motion will set the time in which such statement, and any answer thereto, shall be filed; the answer shall be filed no less than five calendar days following the date of the amended statement.
- D.B.** ~~Effect of failure to file Answer:~~ If the respondent party fails to file a notice of defense response or after being served notice, fails to appear at a hearing after receiving notice thereof within the time provided by the statute under which the hearing is commenced, the Commissioner, Assistant Commissioner, or Deputy Commissioner Department may file an Affidavit of Default against the respondent party, and the Commissioner may then proceed to take any action against the respondent party authorized by law, based upon the allegations of the charges against the respondent. This action may be taken prior to before the hearing date set forth established in the Department's Notice of Hearing. The respondent party may file a motion to vacate sueh 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 or administrative law judge may vacate a default and any action taken thereon and reschedule a hearing.
- E.C.** ~~Signature on Answer; requirement and effect:~~ Every Answer response filed pursuant to this rule Section shall be signed by the filing party filing it or by at least one 1 attorney, in his the attorney's individual name, who represents sueh the party, and shall be verified.

**R4-28-1305. ~~Notice of Appearance and practice before~~
~~department Of Counsel~~**

- A.** A party may appear on his own behalf participate in the party's own behalf or be represented by a member of the State Bar of Arizona. The Attorney General may make an appearance.
- B.** ~~Notice of appearance:~~ When an attorney other than the Attorney General or his representative appears before the Commissioner or administrative law judge in a representative capacity, he shall advise the Commissioner or administrative law judge of his name, address and telephone number and the name and address of the person on whose behalf he appears. 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.

- C.** ~~Contemptuous conduct:~~ Contemptuous conduct at any hearing before the Commissioner or an administrative law judge shall be grounds for exclusion from said hearing.

R4-28-1306. Evidence

- A.** ~~Presentation and admission of evidence:~~ All witnesses at a hearing shall testify under oath or affirmation. The parties may make an opening and closing statement (opening argument and summation). Evidence in support of the charges or Commissioner's order or application denial shall be presented first, then the respondent may present evidence in support of his position, and then there may be rebuttal and surrebuttal evidence. The parties may present evidence and conduct cross-examination. The administrative law judge shall rule upon the admissibility of evidence sua sponte or upon objection.
- B.** ~~Subpoena; motions to quash or modify:~~
1. The Commissioner, the administrative law judge, or any other officer designated by the Commissioner for such purposes in connection with any hearing may:
 - a. Issue subpoenas requiring the attendance and testimony of witnesses whose testimony is material, and
 - b. Issue Subpoenas duces tecum, requiring the production of documentary or other tangible evidence at any designated place of hearing, upon written application by any party, which shall include a showing of the general relevance, materiality and reasonable particularity of the documentary or other tangible evidence desired, and the facts to be proved by them.
 - c. Subpoenas shall be prepared by the party requesting such issuance.
 2. Process issued by the Commissioner may be served by such persons and in such manner as authorized by the Arizona Revised Statutes relating to the state Real Estate Department. It shall be the responsibility of the party requesting the subpoena to serve it.
 3. Any person to whom a subpoena is directed may, prior to the time specified therein for compliance but in no event more than five days after the date of service of such subpoena, move the administrative law judge or the Commissioner to quash or modify such subpoena, accompanying such motion with a brief statement of reasons therefor. The Commissioner or the administrative law judge shall thereafter rule on such motion.
- C.** ~~Judicial notice:~~ The administrative law judge may take judicial notice of any matter which might be judicially noticed by a superior court of the state of Arizona, any matter in the public official records of the Commissioner or Department, or any matter which is peculiarly within the knowledge of the Department as an expert body.
- D.** ~~Depositions:~~ Depositions may be taken as provided by A.R.S. § 32-2158(A).

R4-28-1307. Hearings Consolidation of Procedures

- A.** ~~Presiding officers, public hearings:~~ All hearings shall be presided over by an administrative law judge. All such hearings shall be open to the public except as provided otherwise by R4-28-1305(C). The administrative law judge shall be empowered to administer oaths to witnesses.

Arizona Administrative Register
Notices of Final Rulemaking

- B. Disqualification of administrative law judge:** Any challenge of the administrative law judge shall be made no later than ten days prior to the commencement of the hearing and the reasons therefor set forth in writing. The challenge shall be ruled upon by the Commissioner prior to the hearing.
- C. Functions of administrative law judge:** The administrative law judge shall regulate the course of the hearing in an impartial manner and shall rule upon procedural and evidentiary matters incidental thereto. The administrative law judge may question witnesses. Upon motion of any party, a witness may be excluded from the hearing by the administrative law judge prior to that witness' testimony. The Commissioner may be present at any hearing.
- D. Rulings by administrative law judge:** All motions and objections made during the course of a hearing shall be made to the administrative law judge, who shall rule thereon or take them under advisement for later determination. Objections to the admission or exclusion of evidence must be made on the record and shall state the grounds of objections relied upon.
- E. Stenographic transcription of hearings:** The proceedings at hearings shall be stenographically reported by a certified court reporter, or mechanically recorded under the direction of the administrative law judge who shall retain control of the used reel or tape following conclusion of the hearing.
- F. Filing of motions:** Any motions pertaining to a hearing shall be filed with the Commissioner or administrative law judge in writing, provided, however, that motions during a hearing may be oral. In the case of prehearing motions, any party may file an answering memorandum of authorities within five days after service upon him of such motion or other application unless otherwise directed by the Commissioner or administrative law judge. Rulings on motions shall be based on the memoranda. No oral argument will be heard on such matters filed prior to the commencement of the hearing unless the Commissioner or administrative law judge so directs.
- G. Intervention:** Upon timely application, anyone may be permitted to intervene in a hearing when a statute confers a right to intervene, when an applicant's claim or defense and the main proceedings have a question of law or fact in common, or when such intervention would serve the interests of justice, at the discretion of the Commissioner or administrative law judge. A person desiring to intervene shall serve a motion to intervene on the Commissioner or administrative law judge and upon all parties affected thereby.
- H. Consolidation:** By order of the Commissioner or the administrative law judge, may consolidate proceedings involving a common question of fact or law, or a common respondent may be consolidated for hearing of any or all of the matters at issue where such if the consolidation may tend to will avoid unnecessary costs or delay and will not adversely affect the rights of any party.

R4-28-1308. Extensions of time

- A.** Except as otherwise provided by law, the Commissioner or administrative law judge, for good cause, may extend any time limits prescribed by these rules.
- B.** The Commissioner or administrative law judge may postpone commencement of a hearing to a subsequent time and place upon agreement of the parties thereto or upon request therefor by any of the parties to the proceeding. Following such initial adjournment of the hearing date, no further adjournments shall be granted any party except upon written motion addressed to the Commissioner or the administrative law judge accompanied by a full statement of the reasons therefor.

- C.** For the purpose of calculating the time set forth in R4-28-1309 and R4-28-1312, conclusion of a hearing shall mean the close of evidentiary proceedings plus any additional time granted any party by the Commissioner or administrative law judge to submit exhibits or memoranda for consideration.

R4-28-1309. Opinion of administrative law judge and service to parties

- A.** Within 45 days after the conclusion of a hearing, the administrative law judge shall issue a written opinion which shall include the administrative law judge's findings of facts and conclusions of law. The opinion shall be transmitted to the Commissioner for final order. If the Commissioner is the administrative law judge, the opinion shall include an order adjudicating the complaint which may impose any sanctions or penalties authorized by law.
- B.** Within 15 days of the transmitting of the administrative law judge's opinion, the Commissioner shall issue his written order which shall adjudicate the complaint and may impose any sanctions or penalties authorized by law. Copies of the administrative law judge's opinion and the Commissioner's order shall be served upon the parties to the hearing, including the Attorney General, as provided by R4-28-1302.

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

- A.** Request for rehearing: Within 15 days after service of the Commissioner's final order, any aggrieved party may request a new hearing. Such request shall be in writing and shall be filed with the Department as provided by R4-28-101, and a copy shall be served upon all other parties to the hearing, including the Attorney General if the Attorney General is not the party filing the claim of error. Unless otherwise provided by law or rule, any party to a hearing before the Department 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 it is ruled upon by the Commissioner.
- B.** Grounds for request for rehearing: A request for rehearing or review of the decision shall may be based upon one or more grounds causes which have materially affected the rights of a party moving party's rights:
1. Irregularity in the hearing proceedings or Department investigation, or any order or abuse of discretion by the administrative law judge, whereby the which deprived a party filing the claim of error was deprived of a fair hearing;
 2. Misconduct by the Department, administrative law judge, or another party to the hearing the prevailing party;
 3. Accident or surprise which could not have been prevented by ordinary prudence;
 4. Material Newly discovered material evidence, newly discovered, which could not with reasonable diligence could not have been discovered and produced at the original hearing;
 5. Excessive or insufficient sanctions or penalties imposed;
 6. Error in the admission or rejection of evidence, or other errors of law occurring at the hearing or during the progress of the action proceeding;

Arizona Administrative Register
Notices of Final Rulemaking

7. That the adjudication, penalty or sanction was the result of bias or prejudice of the administrative law judge or the Commissioner; That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
 8. That the adjudication, penalty or sanction findings of fact or decision is not justified supported by the evidence or is contrary to law.
- C. Presenting specific claims of error grounds for rehearing or review, affidavits and relief sought:
1. Each request motion for rehearing or review shall specify which of the eight grounds of listed in subsection (B) it is based upon and shall set forth specific facts and/or laws and law in support of the claim rehearing or review. Each request motion may cite relevant portions of testimony by reference to pages or lines of the reporter's transcript of the hearing and may cite hearing exhibits by reference to the exhibit number.
 2. When a request motion for rehearing or review is based upon an affidavits, they it shall be attached to and filed with the request motion unless leave for later filing of an affidavits is granted by the administrative law judge Commissioner. Such The leave may be granted ex parte.
 3. Each request motion for rehearing should also or review shall specify the specific relief sought by the request motion, such as a different adjudication, sanction decision or penalty, a new hearing, a dismissal of the complaint, or other relief. A request motion for rehearing or review may seek multiple forms of relief, in the alternative.
- D. All requests for rehearing from the Commissioner's final order which may be presented under this rule, which are not timely made, shall be deemed to be waived for the purpose of judicial review, and a party who fails to request a rehearing from the Commissioner's final order under this rule shall thereafter be barred from raising such a claim in any proceeding in which the Commissioner, administrative law judge, or Department is a party.
- 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.

R4-28-1311. Response to request for rehearing

- A. Response to request for rehearing: Each party served with a request for rehearing pursuant to R4-28-1310(A) shall be per-

mitted to file a response within 15 days after service. This response shall be designated as a "response to request for rehearing" and shall be in writing. Affidavits may be attached to and filed with the response and shall not be filed thereafter unless leave for later filing of affidavits is granted by the administrative law judge or Commissioner. Such leave may be granted ex parte. The original shall be filed with the Department as provided by R4-28-101, and one copy shall be served upon all other parties to the hearing, including the Attorney General if the Attorney General is not the party filing the response.

- B. Hearing or oral argument on request for rehearing: The administrative law judge or Commissioner may, in his discretion, conduct a hearing or hear oral argument on a request for rehearing either upon motion of a party or upon his own initiative.
- C. Time for ruling upon request for rehearing: The administrative law judge or Commissioner shall rule upon a request for rehearing:
1. Within 25 days of its filing if no response is filed thereto, or
 2. Within 15 days of the filing of a response thereto, or
 3. Within 15 days of any hearing or oral argument.
- D. Limitation of issues to be considered in new hearing: A new hearing, if granted, shall be limited to the question or issue set forth in the order granting rehearing if such question or issue is separable. If a new hearing is granted solely because the sanction or penalty imposed is or may be excessive or inadequate, then the new hearing shall be limited to the question of the sanction or penalty which may be imposed.

R4-28-1312. Final action by Commissioner

- A. The Commissioner's order adjudicating the complaint which may have imposed any sanction or penalty, along with all rulings upon any request for rehearing, the final order resulting therefrom shall constitute a "decision" of the Commissioner for the purpose of judicial review pursuant to A.R.S. § 32-2159(A).
- B. Effective date of Commissioner's orders: Except as provided otherwise by A.R.S. § 32-2157(A) 32-2157(B), all orders by the Commissioner shall become effective 15 days after service of the Commissioner's order upon the parties, unless a request for rehearing is filed, in which event the order of the Commissioner shall become effective either:
1. Fifteen days after service upon the parties of the Commissioner's ruling on the request for rehearing, or
 2. Fifteen days after service upon the parties of any further order of the Commissioner which is authorized by, or based upon, a ruling by the Commissioner on a request for rehearing.

R4-28-1313. Correction of clerical mistakes Clerical Mistakes

Clerical mistakes in opinions, orders, rulings, any process issued by the Department, or other parts of the record, and errors therein 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 such transmission of the file, either upon the initiative of the administrative law judge or Commissioner, or upon motion of any party.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE DIVISION

PREAMBLE

- | | |
|---|---|
| 1. <u>Sections Affected</u>
R17-4-226
Appendix A | <u>Rulemaking Action</u>
Amend
Amend |
|---|---|
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 28-366
Implementing statutes: A.R.S. § 28-4148, as amended by Laws 1998, Ch. 288, § 5, effective August 21, 1998.
- 3. The effective dates of the rules:**
February 10, 1999.
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 4 A.A.R. 161, January 9, 1998.
Notice of Proposed Rulemaking: 4 A.A.R. 1748, July 10, 1998.
Notice of Rulemaking Docket Opening: 4 A.A.R. 4353, December 28, 1998.
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Lynn S. Golder, Rules Attorney
Address: Arizona Department of Transportation
Motor Vehicle Division
1801 West Jefferson Street, Mail Drop 507M
Phoenix, Arizona 85007
Telephone: (602) 712-7941
Fax: (602) 241-1624
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

The Motor Vehicle Division (Division) is amending insurance company reporting rule R17-4-226 to implement statutory requirements enacted since 1995, to acknowledge new technology, and to correct the citation of a statute that was renumbered. The final rule amends R17-4-226 through July 31, 1999. The amended rule provides guidance while insurance companies and the Division work through the details of computer-to-computer reporting and a reporting format that is "Year 2000 (Y2K) compliant" (contains safeguards against the misreading by computers of dates after December 31, 1999). The reporting format through July 31, 1999, set forth at Appendix A, requires 2-digit reporting of the year. Therefore, the Division is developing a Y2K-compliant reporting format to be in place by August 1, 1999. The new reporting format will be based on the standard format, referred to as "X12" or "X12-811," designed by the American National Standards Institute. The X12-811 format facilitates the exchange of insurance industry information. The Division is also developing computer-to-computer reporting requirements to be in place by August 1, 1999.

On December 2, 1998, the Division filed a Notice of Rulemaking Docket Opening with the Secretary of State's Office regarding rulemaking on R17-4-226 and R17-4-226.01. This notice is published at 4 A.A.R. 4353, December 28, 1998. The R17-4-226 rulemaking will address insurance company reporting requirements beginning August 1, 1999. The R17-4-226.01 rulemaking will address a new reporting format beginning August 1, 1999. The Division anticipates timely development of the proposed rules, publication of the Notice of Proposed Rulemaking, and conducting of oral proceedings.

The final rule implements the statutory requirement that, after July 31, 1998, insurance companies with 10,000 or more motor vehicle liability policies in place report motor vehicle liability policy cancellations, nonrenewals or new policy issues to the Division at least every 7 days. Insurance companies with fewer than 10,000 motor vehicle liability policies in place as of August 21, 1998, may maintain a 30-day reporting period through July 1999. By statute, a 7-day reporting period will be required of all insurance companies after July 31, 1999.

Additionally, the law requires that insurance companies report to the Division by electronic data interchange (EDI) on a schedule specified by the Division. EDI is defined in this rule to include both computer-to-computer reporting and cartridge tape reporting. The final rule limits any potential economic impact of computer-to-computer reporting to only those companies that choose to make use of the technology before August 1, 1999.

Lastly, the final rule corrects the statutory reference from A.R.S. § 28-1262 to § 28-4148, in accordance with the renumbering of A.R.S. Title 28, effective October 1, 1997.

Arizona Administrative Register
Notices of Final Rulemaking

7. **A reference to any studies that the agency proposes to rely on in its evaluation of or justification for the proposed rule, and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

The Division reviewed the following study for the final rule: Arizona Department of Insurance, "Private Passenger Automobile Liability/ 1996 Ranking of Top [25] Companies by Premiums Written/ (\$000 Omitted)." The study is on file with the Division. The public may obtain or review the study at the Arizona Department of Transportation, Motor Vehicle Division, Mandatory Insurance Reporting Unit, 1801 West Jefferson, Phoenix, Arizona 85007, 8 a.m. to 5 p.m., Monday through Friday, excluding holidays.

8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

9. **The summary of economic, small business, and consumer impact:**

Benefits of insurance company reporting. Insurance company reporting to the Division of lapsed motor vehicle liability policies helps the Division identify uninsured vehicles. Identification of uninsured vehicles is the 1st step in removing such vehicles from the roads through the Division's suspension of the vehicle registrations and number plates. The end result is a decrease in the number of uninsured motor vehicle accidents. The Notice of Proposed Rulemaking stated that in 1996 only 6% of vehicle registrations and number plates of vehicles that insurance companies reported as having lapsed policies were ultimately suspended by the Division. This statement was incorrect. In fact, in 1996 the Division suspended 33% of vehicles whose owners received intent-to-suspend notices based on insurance company reports. As of August 1998, the vehicle suspension rate was approximately 56%. These vehicle suspension rates demonstrate that insurance company reporting enables the Division to appropriately target uninsured vehicles and remove them from the roads. Thus, there is a greater likelihood that people injured in motor vehicle accidents have financial means available for medical aid and their families are protected from severe financial burdens. The statutory requirements, based in part on advances in information technology, allow for more frequent and efficient reporting by insurance companies, resulting in more successful removal of uninsured vehicles from the roads and fewer accidents involving uninsured motor vehicles.

Economic impact of promulgation of R17-4-226 and its subsequent amendment. The Division incurred moderate costs for computer programming and personnel when insurance company reporting began in 1992. In 1994, the Division incurred minimal costs for reprogramming in accordance with statutory changes. Insurance companies initially incurred moderate programming costs followed by minimal monthly costs of reporting by tape to the Division and minimal reprogramming costs in 1994. Consumers of motor vehicle liability insurance incurred minimal costs from any shifting by insurers of programming and report expenses, offset by the benefit to consumers of fewer uninsured motor vehicle accidents. As to the small business impact of R17-4-226 in 1992, small businesses constituted less than 10% of the many insurance companies authorized to write motor vehicle liability policies in Arizona. While the cost of reporting was recognized as potentially prohibitive for a company writing only a few policies in Arizona each year, the Division had no practical way to reduce the impact on small businesses and still satisfy the statutory requirements.

Current statutory requirements. Electronic data interchange reporting was statutorily required as of January 1, 1998. The Division has reasonably determined that all insurance companies may, through July 31, 1999, use either cartridge tape reporting or computer-to-computer reporting. Currently, 200 insurance companies continue to report by cartridge tape and 54 companies use computer-to-computer reporting, reflecting an increase of 34 in the number of companies reporting computer-to-computer in the last 6 months. Weekly reporting is statutorily required after July 31, 1998, for insurance companies with 10,000 or more motor vehicle liability policies in place in Arizona, and after July 31, 1999, for all other insurance companies.

Economic impact of weekly cartridge tape reporting. The Division incurred substantial costs to prepare for weekly cartridge tape reporting by insurance companies and to process 3 additional cartridge tape reports each month from companies required by statute to report weekly after July 31, 1998. Weekly cartridge tape reporting also results in moderate costs to insurance companies, including charges for mailing cartridge tapes to the Division. On the other hand, weekly cartridge tape reporting benefits businesses that prepare reports for insurance companies and transmit those reports to the Division.

Economic impact of weekly computer-to-computer reporting. Computer-to-computer reporting by insurance companies makes use of advances in information technology. Such reporting facilitates both insurance companies' transmission of reports and the Division's processing of those reports. Insurance companies that use computer-to-computer before August 1, 1999, alleviate some of the accumulation of cartridge tapes due to weekly reporting.

As to computer-to-computer reporting, the Division has incurred and will incur substantial costs for programming, personnel, and accepting reports through outside services such as IBM Global Services, Network Services in association with AAMVAnet. Insurance companies may incur software program costs and the costs of obtaining a value added network or service provider. These costs can range from minimal to substantial, depending on the company and the form of computer-to-computer transmission of insurance company reporting.

A review of the statement in the Notice of Proposed Rulemaking that insurance companies writing motor vehicle liability policies have computer hardware in place neglected to consider that some very small companies (referred to as "niche operators") may not have computer hardware and could incur computer hardware costs for computer-to-computer reporting. The Notice of Proposed Rulemaking stated that the 3 biggest companies write 80% of Arizona motor vehicle liability policies and 20 companies do 95% of the Arizona motor vehicle liability business. Actually, a study provided by the Arizona Department of Insurance ranking the top 25 insurance companies by the dollar amount of noncommercial vehicle premiums written in 1996 indicates that

Arizona Administrative Register
Notices of Final Rulemaking

the top 3 companies wrote approximately 42% of the total noncommercial vehicle premiums for Arizona in 1996 and the top 25 companies wrote approximately 78% of the total noncommercial vehicle premiums for Arizona in 1996. These data indicate a more competitive environment. Indeed, the 34 insurance companies that recently began computer-to-computer reporting also recently began writing motor vehicle liability policies in Arizona.

The voluntary computer-to-computer reporting through July 31, 1999, as established by the final rule, will not diminish competition. The weekly reporting requirement is mandated by statute. Any increase in costs that may be shifted to consumers should be offset by the more efficient and expeditious reporting of lapsed policies to the Division

Benefits of weekly reporting outweigh costs. The Division has determined that the final rule provides for compliance with all statutory requirements through July 31, 1999, in an efficient and practical manner. Allowing insurance companies to use either cartridge tape reporting or computer-to-computer reporting pending resolution of mandatory computer-to-computer reporting and a Y2K-compliant reporting format, directly responds to public concerns. While weekly cartridge tape or computer-to-computer reporting by insurance companies is not without costs, the benefits to the public of fewer uninsured vehicles and fewer uninsured motor vehicle accidents outweigh the economic impact on consumers, insurance companies, small businesses, and the Division.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The final rule contains numerous changes from the proposed rule. The Division made the changes in response to oral and written comments from members of the insurance industry that were received and considered through November 5, 1998. Because of the changes, the final rule imposes considerably less regulation than would have resulted from the proposed rule.

In accordance with A.R.S. § 41-1025, the Division determined that the final rule is not substantially different from the published proposed rule. First, the Division considered the extent to which all persons affected by the rule should have understood that the published proposed rule would affect their interests. The Division concluded that insurance companies fully understood that the proposed rule would affect their interests, and expressed their understanding in oral and written comments. Consumers and businesses engaged in preparing and transmitting insurance company reports to the Division, or businesses interested in engaging in that activity, were afforded ample opportunity to present their concerns to the Division and did not do so. The Division concluded that lack of comments by consumers and report preparation and transmission businesses did not indicate a lack of understanding. Rather, silence on the part of consumers and report preparation and transmission businesses indicated a realization that they are beneficiaries of the R17-4-226 rulemaking.

The Division also considered the extent to which the subject matter of the rule, or the issues determined by that rule, are different from the subject matter or issues involved in the published proposed rule. The frequency of periodic reports by insurance companies and the method of submitting those reports to the Division constitute the subject matter or issues of both the proposed rule and the final rule.

Finally, the Division considered the extent to which the effects of the rule differ from the effects of the published proposed rule if it had been made instead. The proposed rule would have required insurance companies with 10,000 or more policies in place in Arizona to immediately begin computer-to-computer reporting as well as the statutorily directed 7-day reporting. The proposed rule would have required companies with fewer than 10,000 policies in place in Arizona to begin both computer-to-computer reporting and 7-day reporting by August 1, 1999. Although 7-day reporting is statutorily mandated, the Division could and did heed insurance companies' concerns regarding costs of computer-to-computer reporting and time needed for Y2K remediation (correction of computer problems associated with dates after December 31, 1999). The Division determined that allowing companies with 10,000 or more policies in place in Arizona as well as those with fewer than 10,000 policies to continue to report by cartridge tape through July 31, 1999, would not adversely affect the public. A cartridge tape report, like a computer-to-computer report, must contain information on all lapsed policies processed by the insurance company during the applicable reporting period. Unlike a computer-to-computer report that is entered almost immediately into the Division's information system upon production of the report, a cartridge tape report is mailed to the Division and then plugged into the Division's information system. The more cumbersome cartridge tape reporting process will, however, result in no unreported lapsed motor vehicle liability policies and no outbreak of uninsured motor vehicle accidents through July 31, 1999. Therefore, the final rule allows all companies to use either cartridge tape reporting or computer-to-computer reporting until August 1, 1999. The final rule increases regulation only to the minimum necessary for implementation of A.R.S. § 28-4148 through July 31, 1999, pending resolution of the issues of mandatory computer-to-computer reporting and a Y2K-compliant reporting format.

Based on its A.R.S. § 41-1025 analysis, the continuation of public comment well beyond the August 17, 1998, scheduled date for closing the rulemaking record, and the fact that the final rule represents deregulation from the proposed rule, the Division determined that no supplemental notice was necessary. The changes between the proposed rule and the final rule are set forth below

Because computer-to-computer reporting is not mandatory during the effective period of the final rule, the Division changed R17-4-226(A) to improve clarity and conciseness. Subsection (A) of the final rule contains the following changes from the proposed rule:

1. The numbering of each definition is deleted;
2. The definitions of "American Association of Motor Vehicle Administrators," "file transfer protocol," "information exchange," "network job entry," "node," "remote job entry," "service provider,"

Arizona Administrative Register
Notices of Final Rulemaking

“trading partner,” “trading partner account number,” “value added network,” and “x12 811 or x12” are deleted;

3. The phrase “the state of” is deleted from the definition of “company;”
4. The definition of “electronic data interchange” is now a definition of “EDI,” and extraneous words have been removed from the definition; and
5. A definition of “motor vehicle liability policy” is added, referencing the statutory definition.

The final rule consolidates within R17-4-226(B) the 6 reporting requirements effective through July 31, 1999. Because computer-to-computer reporting is not mandatory during the effective period of the final rule, the changes to subsection (B) provide for a more clear and concise rule. The final rule deletes from subsection (B) the proposed rule’s discussion of “EDI reporting forms.” In the final rule, subsection (B)(1) addresses cartridge-tape reporting. Subsection (B)(2) instructs a company to call the Division to initiate voluntary computer-to-computer reporting before August 1, 1999. Subsection (B)(3) implements weekly reporting every Friday for companies with 10,000 or more policies in place in Arizona. Subsection (B)(4) extends through July 15, 1999, monthly reporting by companies with fewer than 10,000 policies in place in Arizona. Subsection (B)(5) provides for a July 30, 1999, reporting by a company with fewer than 10,000 policies in place in Arizona to cover the transition from monthly to weekly reporting. Finally, subsection (B)(6) sets forth the procedure for a company to follow if there are no reportable activities.

For clarity, the final rule adds “in Arizona” to the phrase “policies in place” in R17-4-226(B)(3) through R17-4-226(B)(5).

The final rule deletes subsections (C) through (H) of the proposed rule.

The final rule also deletes subsection (I) of the proposed rule. A.R.S. § 20-237 provides for enforcement of insurance company compliance with the provisions of § 28-4148 by the Department of Insurance. Deletion of the noncompliance provisions from the administrative rule increases the conciseness of the final rule.

The final rule adds a new subsection (C), making R17-4-226 and Appendix A effective only through July 31, 1999.

11. A summary of the principal comments and the agency response to them:

The principal written and oral comments were made by the Alliance of American Insurers (Alliance) and by the American Insurance Association (Association). In response to the comments of the Alliance and the Association, the final rule allows all insurance companies to use either cartridge tape reporting or computer-to-computer reporting through July 31, 1999, pending resolution of mandatory computer-to-computer reporting and Y2K issues. However, the final rule retains the 2nd July 1999 report required of insurance companies with fewer than 10,000 policies in place in Arizona. The 2nd July 1999 report results from the transition from 30-day to 7-day reporting by those companies.

The Alliance submitted a written comment dated July 20, 1998. The written comment was made part of the record at the oral proceeding in Phoenix, Arizona on August 11, 1998, on the proposed rule. The Alliance’s comments explained the hardship to small insurance companies resulting from 7-day reporting and computer-to-computer reporting. The Alliance recommended that the Division “[r]evis[e] the report initiation time-frame for large carriers to allow 6 months for system development,” and “permit small carriers the option to continue indefinitely reporting in current formats on tape or cartridge.”

Division personnel met with the Alliance’s representatives on several occasions through November 5, 1998. The Division personnel explained that 7-day reporting by large insurance companies is statutorily required after July 31, 1998, and 7-day reporting by smaller insurance companies is statutorily required after July 31, 1999. It was further explained that the reporting format, set forth at Appendix A to R17-4-226, is not Y2K compliant and that a format based on X12 cannot be used in cartridge tape reporting. Subsequent to the November 5, 1998 meeting, the Alliance provided the Division with parts of a document prepared by the American Association of Motor Vehicle Administrators (AAMVA) Financial Responsibility committee and the Insurance Industry Committee on Motor Vehicle Administration (IICMVA) which includes a version of a reporting format based on X12. The Division is considering this material.

On August 17, 1998, the Association submitted written comment on proposed R17-4-226 to the Division. The comment stated that the proposed rule requires insurance companies with more than 10,000 policies in place in Arizona make weekly computer-to-computer reports using IE, NJE or RJE transmission methods “through July [sic] 30, 1999.” The comment continues:

After June 30, 1999, all carriers must transmit the required data by File Transfer Protocol (“FTP”) of X12 standards . . . The proposed regulations, however, impose significant costs upon “large” carriers by requiring [2] very different EDI reporting methods to be implemented with a [1]-year time-frame, with no corresponding advancement of the intent behind Senate Bill 1273. It appears as though the rationale for this proposed regulation is not statutory compliance, but rather administrative convenience . . . In fact, there is no discussion at all regarding a variety of implementation issues, including Year 2000 issues, in ADOT’s analysis.

The comment suggested July 1, 1999, as a realistic compliance deadline, providing a cost effective compliance schedule for the insurance industry. On August 24, 1998, Division personnel met in person with the Association’s representatives and by telephone on September 16, 1998. Division personnel explained that X12 is in fact a reporting format and not a method of com-

Arizona Administrative Register
Notices of Final Rulemaking

puter-to-computer transmission. It was further explained that the Division did not intend to require companies with 10,000 or more policies in place in Arizona to change from IE, NJE or RJE transmission to FTP transmission after June 30, 1999.

Additionally, the Division received and responded to the following oral comments:

Northland Insurance Company in St. Paul, Minnesota stated it was unclear from the proposed rule what a small company was supposed to do between August 1, 1998, and August 21, 1998. The final rule at R17-4-226(B)(4) clarifies that companies with fewer than 10,000 policies in place in Arizona may continue 30-day reporting through July 15, 1999.

Great West Casualty Company in South Sioux City, Nebraska stated it was unclear from the proposed rule that "motor vehicle liability policies in place" meant policies in place in Arizona. The final rule adds "in Arizona" to the phrase "policies in place" in R17-4-226(B)(3) through R17-4-226(B)(5).

12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.
13. **Incorporations by reference and their location in the rules:**
Not applicable.
14. **Was this rule previously adopted as an emergency rule?**
No.
15. **The full text of the rules follows:**

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE DIVISION

ARTICLE 2. TITLES AND REGISTRATION

Section

R17-4-226. Insurance Company Reporting Requirements
Appendix A. Cartridge Tape Specifications and Record-Layout Reporting Format Through July 31, 1999

ARTICLE 2. TITLES AND REGISTRATION

R17-4-226. Insurance Company Reporting Requirements

A. Definitions Definitions.

In this Section, unless the context otherwise requires:

"Cartridge tape" means reeled magnetic tape, contained in a case, that conforms to the cartridge tape specifications described in Appendix A.

"Company" means any an insurance or indemnity company authorized to write motor vehicle liability coverage in the state of Arizona.

"Division" means the Arizona Department of Transportation, Motor Vehicle Division.

"EDI" means electronic data interchange, consisting of either computer-to-computer reporting or cartridge tape reporting from a company to the Division.

"Motor vehicle liability policy" has the meaning prescribed in A.R.S. § 28-4001(4).

"Tape reporting" "Reporting" means the monthly magnetic tape reporting, as described in Appendix A of this rule, periodic EDI transmission from a company to the Division of motor vehicle insurance cancellations, nonrenewals, and new issues on a vehicle in Arizona as required by A.R.S. § 28-4262(A) 28- 4148 from a company to the Motor Vehicle Division and in accordance with this Section.

B. Reporting requirements.

1. The A company wishing to submit cartridge tape reporting shall be submitted do so in conformance accordance with the cartridge tape specifications and record-layout reporting format described in Appendix A of this rule.

Cartridge tape reporting may be used through July 31, 1999.

2. A company wishing to submit computer-to-computer reporting shall contact the Division's Mandatory Insurance Reporting Unit, 1801 West Jefferson, Mail Drop 532M, Phoenix, Arizona 85007, telephone number (602) 712-8308.

~~2.3.~~ On or before the 15th day of each month, each company every Friday, a company with 10,000 or more motor vehicle liability policies in place in Arizona shall submit to the Motor Vehicle Division a tape reporting of all cancellations, nonrenewals, or new policy issues which have occurred at least 30 days prior to the reporting date and which have not been previously reported processed by the company 7 or fewer days before the reporting date.

4. Through Thursday, July 15, 1999, a company with fewer than 10,000 motor vehicle liability policies in place in Arizona as of August 21, 1998, shall submit to the Division by the 15th day of each month a reporting of all cancellations, nonrenewals or new policy issues processed by the company 30 or fewer days before the reporting date.

5. On Friday, July 30, 1999, a company with fewer than 10,000 motor vehicle liability policies in place in Arizona as of August 21, 1998, shall submit to the Division a reporting of all cancellations, nonrenewals or new policy issues processed by the company from the date of the reporting submitted by July 15, 1999, through July 29, 1999.

~~3-6.~~ If there were are no reportable activities as of the reporting date, the a company shall submit to the Division a written report declaring such declaration of inactivity in lieu of the tape reporting.

C. Noncompliance.

Arizona Administrative Register

Notices of Final Rulemaking

1. ~~Noncompliance with any provision of this rule shall be investigated by the Motor Vehicle Division.~~
2. ~~The Director of the Motor Vehicle Division shall forward to the Department of Insurance for appropriate action a certified report of the investigation.~~

This Section and Appendix A to this Section shall be repealed on August 1, 1999.

APPENDIX A

CARTRIDGE TAPE SPECIFICATIONS AND RECORD LAYOUT REPORTING FORMAT THROUGH JULY 31, 1999

Cartridge Tape Specifications

Record Length	197 Bytes	Tape Density	<u>1600 BPI only Standard 3480, Not Compressed</u>
Blocking Factor	1970 (10 records per block)		
Tape Medium	<u>9 Track EBCDIC Standard IBM 3480 Cartridge</u>	Tape Internal Label	NL (Nonlabeled tapes)

Record Layout Reporting Format Through July 31, 1999

<u>Information Required</u>	<u>Bytes</u>	<u>Field Type</u>	<u>Field Description</u>
VIN [except as provided in A.R.S. § 28-4148(D)]	25	Alpha/Numeric	Complete VIN, left justified
Make	5	Alpha	
Year	2	Numeric	
Cancel Date	6	Numeric	MMDDYY (all zeroes for new issues; no future dates for cancellations)
Policy Number	30	Alpha/Numeric	Left Justified
Insurance Code	4	Numeric	
Name (Last, First)	40	Alpha/Numeric	Left Justified
Address	40	Alpha/Numeric	Left Justified
City	25	Alpha/Numeric	Left Justified
State	2	Alpha	
Zip Code	9	Numeric	Left Justified
Driver's License Number	9	Alpha/Numeric	Left Justified, optional