

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 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

1. Sections Affected

Rulemaking Action

R20-4-102	Amend
R20-4-901	Repeal
R20-4-901	Reserved
R20-4-902	Repeal
R20-4-902	Reserved
R20-4-903	Amend
R20-4-904	Repeal
R20-4-904	Reserved
R20-4-905	Repeal
R20-4-906	Amend
R20-4-908	Repeal
R20-4-908	Reserved
R20-4-909	Repeal
R20-4-909	Reserved
R20-4-910	Repeal
R20-4-910	Reserved
R20-4-913	Repeal
R20-4-913	Reserved
R20-4-914	Repeal
R20-4-917	Amend
R20-4-918	Repeal
R20-4-918	Reserved
R20-4-921	Amend
R20-4-925	New Section
R20-4-926	New Section
Article 18	New Article
R20-4-1801	New Section
R20-4-1802	New Section
R20-4-1803	New Section
R20-4-1804	New Section
R20-4-1805	New Section
R20-4-1806	New Section
R20-4-1807	New Section
R20-4-1808	New Section
R20-4-1809	New Section
R20-4-1810	New Section
R20-4-1811	New Section

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R20-4-1812	New Section
Article 19	New Article
R20-4-1901	New Section
R20-4-1902	New Section
R20-4-1903	New Section
R20-4-1904	New Section
R20-4-1905	New Section
R20-4-1906	New Section
R20-4-1907	New Section
R20-4-1908	New Section
R20-4-1909	New Section
R20-4-1910	New Section
R20-4-1911	New Section

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

Authorizing statute: A.R.S. § 6-123

Implementing statutes: A.R.S. §§ 6-126, 6-901, 6-902, 6-903, 6-906, 6-907, 6-909, 6-941, 6-942, 6-943, 6-944, 6-946, 6-947, 6-971, 6-972, 6-973, 6-975, 6-976, 6-978, 6-979, 6-983 and 6-984.

3. **The effective date of the rules:**

June 10, 1999

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

Notice of Docket Opening: 3 A.A.R. 3424, December 5, 1997.

Notice of Docket Opening: 4 A.A.R. 1350, June 12, 1998.

Notice of Proposed Rulemaking: 5 A.A.R. 279, January 29, 1999.

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

Name: John P. Hudock, Esq.

Address: Department of Banking
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

Telephone: (602) 255-4421, Ext. 167

Fax: (602) 381-1225

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

The proposed rules are a joint effort by the Banking Department and all 3 industry associations. The rules will clarify and add further specificity to statutory provisions that have raised questions. This clarification will foster consistency of interpretation of the statutes and make it easier for licensees to comply with the statutes' requirements. In addition, the rules define words and phrases previously undefined. Finally, minor typographical errors are also corrected. Article 9 of these rules has been reorganized at the suggestion of Council staff. Specifically, definitions applicable to Articles 9, 18, and 19, and previously stated as individual rules in Article 9, have been repealed, restated, revised and placed in Article 1 of the Banking Department's rules.

New Articles 18 and 19 codify, without revision or innovation, the Department's existing enforcement policy toward the Mortgage Banking and Commercial Mortgage Banking professions. All 3 articles have been drafted, in cooperation with the 3 industries, intending to maintain as much consistency and parallelism as possible in regulating the 3 groups.

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:**

The department does not propose to rely on any study as an evaluator or justification for the proposed rule.

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.

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

A. The Banking Department

Income and expenses to this Agency are negligible.

B. Other Public Agencies

The State will incur normal publishing costs incident to rulemaking.

C. Private Persons and Businesses Directly Affected

Costs of services will not increase to any measurable degree.

D. Consumers

No measurable effect on consumers is expected.

E. Private and Public Employment

There is no measurable effect on private and public employment

F. State Revenues

This rulemaking will not change state revenues.

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

Some typographical, editorial, and stylistic changes were made since publication of the proposed rule to polish the writing and to conform with Secretary of State style rules. These changes include new typography intended to reserve the rule numbers in Article 9, although the text has been repealed. In the proposed rules, the preamble did not clearly indicate the department's intent to reserve the numbers of repealed rules. In addition, Council staff and the department made several changes to the text of the rules to improve clarity and conciseness, and to conform to modern rule writing standards. These changes have been made without changing the substance of the proposed rules.

Finally, these final rules contain 3 new sections that were not separately enumerated in the proposed rules. Council staff has suggested that the proposed definition of "Control of a licensee", at R20-4-102(8), contained material that went beyond defining the term. The department agrees, and has restated that part of the proposed definition as new sections numbered R20-4-926, R20-4-1812, and R20-4-1911. The substance of those sections is unchanged from the definitional provision contained in the proposed rules.

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

The only commentator remarked that the definition of "Compensation" contained in R20-4-102 (6) does not expressly exclude note interest. The Department responded that the relevant statute, A.R.S. § 6-901(2), specifically excludes interest from the definition of compensation. For that reason, the exclusion is not restated in these rules.

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:

There is no material incorporated by reference in these final rules.

14. Was this rule previously made as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 1. GENERAL

Section

R20-4-102. Definitions

ARTICLE 9. MORTGAGE BROKERS

R20-4-901. ~~Compensation~~ Reserved

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- R20-4-902. ~~Mortgage Brokering Activities~~ Reserved
- R20-4-903. Exemption for an ~~Entity~~ Entities Regulated by an Agency of this State, ~~Other~~ other States or by the United States
- R20-4-904. ~~Engaged in the Business of Making Mortgage Loans~~ Reserved
- R20-4-905. ~~Registered to do Business in this State~~ Reserved
- R20-4-906. Equivalent and Related Experience
- R20-4-908. ~~Resident of This State~~ Reserved
- R20-4-909. ~~Active Management~~ Reserved
- R20-4-910. ~~Employees~~ Reserved
- R20-4-913. ~~Reasonable Background Investigation Requirements~~ Reserved
- R20-4-914. ~~Branch Offices~~ Reserved
- R20-4-917. Record Keeping Requirements
- R20-4-918. ~~Generally Accepted Accounting Principles~~ Reserved
- R20-4-921. Authorizations to Complete Blank Spaces
- R20-4-925. Waiver of Examination and Course of Study
- R20-4-926. Acquisition of Additional Interest in Licensee by Majority Owner

ARTICLE 18. MORTGAGE BANKERS

- R20-4-1801. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States
- R20-4-1802. Equivalent and Related Experience
- R20-4-1803. Restrictions on the Term of a Cash Alternative to a Surety Bond
- R20-4-1804. Requirements for a Person Intended to Oversee a Branch Office
- R20-4-1805. Notification of Change of Address
- R20-4-1806. Record Keeping Requirements
- R20-4-1807. Providing Copies of Records
- R20-4-1808. Authorizations to Complete Blank Spaces
- R20-4-1809. Determining Loan Amounts
- R20-4-1810. Delay or Cause Delay
- R20-4-1811. Impound Accounts
- R20-4-1812. Acquisition of Additional Interest in Licensee by Majority Owner

ARTICLE 19. COMMERCIAL MORTGAGE BANKERS

- R20-4-1901. Exemption for an Institutional Investor
- R20-4-1902. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States
- R20-4-1903. Equivalent and Related Experience
- R20-4-1904. Restrictions on the Term of a Cash Alternative to a Surety Bond
- R20-4-1905. Requirements for a Person Intended to Oversee a Branch Office
- R20-4-1906. Notification of Change of Address
- R20-4-1907. Record Keeping Requirements
- R20-4-1908. Impound Accounts
- R20-4-1909. Authorization to Complete Blank Spaces
- R20-4-1910. Delay or Cause Delay
- R20-4-1911. Acquisition of Additional Interest in Licensee by Majority Owner

ARTICLE 1. GENERAL

R20-4-102. Definitions

~~In this Chapter, unless the context otherwise specified requires or unless a different definition appears in this Chapter~~
Article:

1. "Active management" means directing a licensee's activities by a responsible individual, who:
 - a. Is knowledgeable about the licensee's Arizona activities; and
 - b. Supervises compliance with:
 - i. A.R.S. Title 6, Chapter 9 as it relates to the licensee; and
 - ii. Other applicable laws and rules; and
 - c. Has sufficient authority to ensure compliance.
- ~~2. "Affiliate" has the meaning stated at A.R.S. § 6-901 means any Person, other than a natural person, that directly, or indirectly through 1 or more intermediaries, controls or is controlled by, or is under common control with, the Person specified.~~
- ~~3. "Attorney General" means the Attorney General or an assistant Attorney General of the State of Arizona or his duly appointed assistant.~~

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4. “Branch office” means any location within or outside Arizona, including a personal residence, but not including a licensee’s principal place of business in Arizona, where the licensee holds out to the public that the licensee acts as a mortgage broker, mortgage banker, or commercial mortgage banker.
- 5.4. “Business of a savings and loan association or savings bank” means receiving money on deposit subject to payment by check or any other form of order or request or on presentation of a certificate of deposit or other evidence of debt.
6. “Compensation” means, in applying that term’s definition in A.R.S. §§ 6-901, 6-941, and 6-971, anything received in advance, after repayment, or at any time during a loan’s life. This subsection expressly excludes the following items from those definitions of Compensation:
 - a. Charges or fees customarily received after a loan’s closing including prepayment penalties, termination fees, reinvestment fees, late fees, default interest, transfer fees, impound account interest and fees, extension fees, and modification fees. However, extension fees and modification fees are compensation if the lender advances additional funds or increases the credit limit on an open-end mortgage as part of the extension or modification;
 - b. Out-of-pocket expenses paid to independent 3rd parties including appraisal fees, credit report fees, legal fees, document preparation fees, title insurance premiums, recording, filing, and statutory fees, collection fees, servicing fees, escrow fees, and trustee’s fees;
 - c. Insurance commissions;
 - d. Contingent or additional interest, including interest based on net operating income; or
 - e. Equity participation.
7. “Commercial finance transaction,” as that term is used in R20-4-102(13), means a loan made primarily for other than personal, family, or household purposes.
8. “Control of a licensee,” as used in A.R.S. §§ 6-903(O), 6-944(A), or 6-978, does not include acquiring additional fractional equity interests in a licensee by any person who already has the power to vote 51% or more of the licensee’s outstanding voting equity interests.
9. “Correspondent contract,” as that term is used in A.R.S. §§ 6-941, 6-943, 6-971, or 6-973, means an agreement between a lender and a funding source under which the funding source may fund, or is required to fund, loans originated by the lender.
10. “Cushion,” as that term is used in R20-4-1811 or R20-4-1908, means funds that a servicer or lender may require a borrower to pay into an escrow or impound account before the borrower’s periodic payments are available in the account to cover unanticipated disbursements.
11. “Directly or indirectly making, negotiating, or offering to make or negotiate,” as that phrase is used in A.R.S. §§ 6-901, 6-941, or 6-971, means:
 - a. Providing consulting or advisory services in connection with a mortgage loan transaction, a mortgage banking loan transaction, or a commercial mortgage loan transaction;
 - i. To an investor, concerning the location or identity of potential borrowers, regardless of whether the licensee directly contacts any potential borrowers; or
 - ii. To a borrower, concerning the location or identity of potential investors or lenders; or
 - b. Providing assistance in preparing an application for a mortgage loan transaction, a mortgage banking loan transaction, or a commercial mortgage banking loan transaction, regardless of whether the licensee directly contacts any potential investor or lender; and
 - c. Processing a loan, but
 - d. “Directly or indirectly making, negotiating, or offering to make or negotiate” does not include:
 - i. Providing clerical, mechanical, or word processing services to prepare papers or documents associated with a mortgage loan transaction, a mortgage banking loan transaction, or a commercial mortgage banking loan transaction;
 - ii. Purchasing selling, negotiating to purchase or sell, or offering to purchase or sell a mortgage loan, a mortgage banking loan, or a commercial mortgage banking loan already funded;
 - iii. Making, negotiating, or offering to make additional advances on an existing open-ended mortgage loan, mortgage banking loan, or commercial mortgage loan including revolving credit lines;
 - iv. Modifying, renewing, or replacing a mortgage loan, a mortgage banking loan, or a commercial mortgage loan already funded, if the parties to and security for the loan are the same as the original loan immediately before the modification, renewal, or replacement, and if no additional funds are advanced and no increase is made in the credit limit on an open-ended loan. Replacing a loan means making a new loan simultaneously with terminating an existing loan.
12. “Employee” means a natural person who has an employment relationship acknowledged by both that person and the licensee, and:
 - a. The person is entitled to payment, or is paid, by the licensee;
 - b. The licensee withholds payroll deductions for all routine federal and state payroll taxes including Federal Unemployment Tax, and Federal Insurance Contributions Act;
 - c. The licensee has the right to hire and fire the employee and to hire and fire the employee’s assistants;

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- d. The licensee directs the methods and procedures for performing the employee's job; and
 - e. The licensee supervises the employee's business conduct and the employee's compliance with applicable law and rules.
13. "Engaged in the business of making mortgage loans or mortgage banking loans" means, as that phrase is used in A.R.S. §§ 6-902 or 6-942, the direct or indirect making of a total of more than 5 mortgage banking loans or mortgage loans, or both in a calendar year. Each loan counts only once as of its closing date. A person is not "engaged in the business of making mortgage loans or mortgage banking loans" if the person makes loans solely in commercial finance transactions in which no more than 35% of the aggregate value of all security taken by the investor on the closing date is a lien, or liens, on real property.
14. "Generally accepted accounting principles" has the meaning used by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants.
15. "Hold out to the public," as used in subsection (4), means advertising or otherwise informing the public that mortgage banking loans, commercial mortgage loans, or mortgage loans are made or negotiated at a location. "Hold out to the public" includes listing a location on business cards, stationery, brochures, rate lists, or other promotional items. "Hold out to the public" does not include a clearly identified home or mobile telephone number on a business card or stationery.
16. "Loan," as that term is used in A.R.S. §§ 6-126(C)(6) and 6-126(C)(7), means all loans negotiated or closed, without regard to the location of the real property collateral or type of loan.
17. "Loan Processing" means obtaining a loan application's supporting documents for use in underwriting.
- 18.5 "Person" means a natural person or any legal or commercial entity including a ~~an individual~~, corporation, business trust, estate, trust, partnership, limited partnership, joint venture, association, limited liability company, limited liability partnership, or limited liability limited partnership.
19. "Property insurance," as that term is used in A.R.S. §§ 6-909 and 6-947, does not include flood insurance as that term is used in the Flood Disaster Protection Act of 1973, as modified by the National Flood Insurance Reform Act of 1994. 42 U.S.C. § 4001, et seq.
20. "Reasonable investigation of the background," as that term is used in A.R.S. §§ 6-903, 6-943, or 6-976 means a licensee, at a minimum:
 - a. Collects and reviews all the documents authorized by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a;
 - b. Obtains a completed Employment Eligibility Verification (Form I-9);
 - c. Obtains a completed and signed employment application;
 - d. Obtains a signed statement attesting to all of an applicant's felony convictions, including detailed information regarding each conviction;
 - e. Consults with the applicant's most recent or next most recent employer, if any;
 - f. Inquires regarding the applicant's qualifications and competence for the position;
 - g. If for a loan officer, loan originator, loan processor, branch manager, supervisor, or similar position, obtains a current credit report from a credit reporting agency; and
 - h. Investigates further if any information received in the above inquiries raises questions as to the applicant's honesty, truthfulness, integrity, or competence. An inquiry is sufficient after 2 attempts to contact a person, including at least 1 written inquiry.
21. "Registered to do business in this state" means:
 - a. If an Arizona corporation, it is incorporated under A.R.S. Title 10, Chapter 2, Article 1;
 - b. If a foreign corporation, it either transfers its domicile under A.R.S. Title 10, Chapter 2, Article 2, or obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 15, Article 1;
 - c. If a business trust, it obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 18, Article 4;
 - d. If an estate, it acts through a personal representative duly appointed by this state's Superior Court, under the provisions of A.R.S. Title 14, Chapter 3 or 4;
 - e. If a trust, it delivers to the Superintendent an executed copy of the trust instrument creating the trust together with:
 - i. All the current amendments, or
 - ii. A true copy of the trust instrument certified accurate and complete by a trustee of the trust before a notary public;
 - f. If a general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it is organized under A.R.S. Title 29;
 - g. If a foreign general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it is registered with the Arizona Secretary of State's office under A.R.S. Title 29;

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- h. If a joint venture, association, or any entity not specified in this subsection, it is organized and conducts its business in compliance with Arizona law; or
 - i. The entity is exempt from registration.
22. “Resident of this state” means a natural person domiciled in Arizona.
23. “Responsible individual” or “responsible person” as those terms are used in A.R.S. §§ 6-903, 6-943, 6-973, and 6-976, means a resident of this state who:
- a. Lives in Arizona during the entire period of designation as the responsible individual on a license;
 - b. Is in active management of a licensee’s affairs;
 - c. Meets the qualifications listed in A.R.S. §§ 6-903, 6-943, or 6-973; and
 - d. Is an officer, director, member, partner, employee, or trustee of a licensed entity.

ARTICLE 9. MORTGAGE BROKERS

R20-4-901. Compensation Reserved

For the purposes of the definition of compensation at A.R.S. § 6-901(2), “compensation” includes any compensation received at any time over the life of the loan. The following fees or payments are not compensation for the direct or indirect making, arranging for, negotiating, or offering to make, arrange for or negotiate a mortgage loan:

- 1. ~~Charges or fees customarily received subsequent to the closing of the loan including, but not limited to, prepayment penalties, termination fees, reinvestment fees, late fees, default interest, transfer fees, impound account interest and fees, extension fees, and modification fees, except that extension fees and modification fees shall constitute compensation if additional funds are advanced or an increase is made in a credit limit on an open-end mortgage as a part of the extension or modification;~~
- 2. ~~Out-of-pocket expenses paid to independent third parties including, but not limited to, appraisal fees, credit report fees, legal fees, document preparation fees, title insurance premiums, recording, filing and statutory fees, collection fees, servicing fees, escrow fees, and trustee’s fees;~~
- 3. ~~Insurance commissions;~~
- 4. ~~Contingent or additional interest, including interest based on net operating income; or~~
- 5. ~~Equity participations.~~

R20-4-902. Mortgage Brokering Activities Reserved

~~**A.** For the purposes of the definition of a mortgage broker at A.R.S. § 6-901(6), the direct or indirect making, negotiating or offering to make or negotiate a mortgage loan shall include consulting or advisory services in connection with a mortgage loan transaction which services are:~~

- 1. ~~Provided to an investor, wherein advice is given concerning the location or identity of potential borrowers, regardless of whether the consultant directly contacts any potential borrowers; or~~
- 2. ~~Provided to a borrower, wherein advice is given concerning the location or identity of potential investors or lenders, or assistance is provided in preparing an application for a mortgage loan, regardless of whether the consultant directly contacts any potential investor or lender.~~

~~**B.** For the purposes of the definition of a mortgage broker at A.R.S. Section 6-901(6), the following shall not constitute the direct or indirect making, negotiating or offering to make or negotiate a mortgage loan:~~

- 1. ~~Purchasing, negotiating to purchase or offering to purchase an existing mortgage loan;~~
- 2. ~~Making, negotiating or offering to make additional advances on an existing open-end mortgage loan including, but not limited to, revolving credit lines; or~~
- 3. ~~Modifying, renewing or replacing an existing mortgage loan, if the parties to the modified, renewed or replacement loan and the security therefor are the same as the original loan immediately prior to the modification, renewal or replacement and no additional funds are advanced nor is any increase made in the credit limit on an open-end mortgage loan. For the purposes of this rule, replacing a loan is the making of a loan simultaneously with the termination of the loan it replaces.~~

R20-4-903. Exemption for an Entity ~~Entities~~ Regulated by an Agency of this State, Other ~~other~~ States, or by the United States

~~**A.** The exemption Person is exempt under pursuant to A.R.S. § 6-902 (A)(1) only applies to a person whose if all offers to make or negotiate a mortgage loan, as defined in A.R.S. § 6-901, and all mortgage loans made or negotiated by the such person are regulated subject to regulation directly by an agency of this state, any other state, or the United States.~~

~~**B.** The required Such regulation of the transactions listed in subsection (A), must includes:~~

- 1. ~~Rules regulations governing a claimant’s accounting and record-keeping practices of such person;~~
- 2. ~~The authority to examine a claimant’s the books and records of such person relating to its mortgage lending activities;~~ and
- 3. ~~The the ability to place a claimant such person in a receivership or conservatorship with regard to the claimant’s mortgage lending such activities.~~

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R20-4-904. Engaged in the Business of Making Mortgage Loans Reserved

- A.** “Engaged in the business of making mortgage loans” as used in A.R.S. § 6-902(2)(d) is the direct or indirect making of more than five mortgage loans in a calendar year. Each loan shall be counted only once as of its date of closing.
- B.** A person shall not be “engaged in the business of making mortgage loans” if the person makes mortgage loans solely in commercial finance transactions wherein 50 percent or more of the aggregate fair market value of all security taken by the investor is by assignment, purchase or security interest in the accounts receivable of the borrowers.

R20-4-905. Registered to do Business in this State Repealed

“Registered to do business in this state” means that the person has:

- A.** Incorporated under A.R.S. Title 10, Chapter 1, Article 2, or procured authority to transact business under A.R.S. Title 10, Chapter 1, Article 9, if a corporation;
- B.** Formed a partnership meeting the requirements of A.R.S. Title 29, Chapter 2, Article 2, if a general partnership;
- C.** Registered with the Secretary of State pursuant to A.R.S. Title 29, Chapter 3, if a limited partnership; or
- D.** Qualified for an exemption from registration.

R20-4-906. Equivalent and Related Experience

A. An applicant may satisfy the 3 years’ experience requirement of A.R.S. § 6-903 by the types of lending-related experience listed in this subsection. The department counts each month An applicant who has experience in the following types of work experience categories shall be given full credit for such experience towards the 3 years required toward qualifying either for a mortgage broker license, under A.R.S. § 6-903(B), or as a responsible individual, under A.R.S. § 6-903(E). The department counts a fractional month of experience, at least 15 days long, as a full month.:

1. Mortgage broker with an Arizona license, responsible individual, or branch manager for a licensee;
2. Mortgage banker with an Arizona license, responsible individual, or branch manager for a licensee;
3. Loan officer, with responsibility primarily for loans secured by lien interests on real property estate;
4. Lender’s branch ~~Branch~~ manager of lender, with responsibility primarily for loans secured by lien interests ~~interest~~ on real property estate;
5. Mortgage broker with license from another state, or responsible individual for a such mortgage broker licensed in another state;
6. Mortgage banker with license from another state, or responsible individual for a such mortgage banker ~~broker~~ licensed in another state;
7. Attorney certified by any state as a ~~with state bar~~ real estate specialist ~~specialty~~.

B. An applicant with insufficient actual experience of the types listed in subsection (A) may satisfy the remainder of the 3 years’ experience requirement of A.R.S. § 6-903 by the types of related experience listed in this subsection. The department counts each month An applicant who has experience in the following types of work experience categories according to the ratio listed below, of actual experience to equivalent experience, credited towards qualifying for a license, under A.R.S. § 6-903(B), may receive partial credit toward qualifying either for a mortgage broker’s license or as a responsible individual, under A.R.S. § 6-903(E). The department counts a fractional month of experience, at least 15 days long, as a full month. An applicant receives credit Credit may be given in only 1 ~~one~~ area category listed and for not more than 3 three years’ actual experience. Credit given shall be in the ratios of actual years of experience to equivalent years credited toward qualification for a license, as set forth below. The remaining years of experience required to qualify for a license shall be obtained from types of work experiences ~~experience in categories~~ listed in subsection (A). The categories of possible alternative experience for which partial credit is available are:

1. Attorney without state bar certified real estate specialty ~~specialty~~..... 3:2
2. Paralegal with ~~demonstrated~~ experience in real estate matters..... 3:2
3. Loan underwriter..... 3:2
4. Mortgage broker or mortgage banker from another state without license..... 3:2
5. Real estate broker with an Arizona license or license from a state with substantially equivalent licensing requirements..... 3:2
6. Escrow officer..... 3:2
7. Trust officer with a title company 3:2
8. Executive, supervisor, or policy maker involved in administering or operating a mortgage-related business..... 3:1.5
9. Title officer with a title company..... 3:1.5
10. Real estate broker, not qualified under within subsection paragraph (B)(5) above..... 3:1.5
11. Loan processor with responsibility primarily for loans secured by lien interests on real property estate..... 3:1.5
12. Lender’s branch ~~Branch~~ manager of lender with responsibility primarily for loans not secured by lien interests on real property estate..... 3:1.5
13. Real property estate salesperson, with an Arizona license or a license from a state with substantially equivalent licensing requirements..... 3:1

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14. Loan officer, with responsibility primarily for loans not secured by lien interests on real property estate..... 3:1

R20-4-908. Resident of this State Reserved

A resident of this state is a person domiciled in Arizona during the term of the license or during the term as responsible individual.

R20-4-909. Active Management Reserved

To qualify as being in active management of the activities of a licensee, the responsible individual shall be knowledgeable about the Arizona activities of the licensee, shall supervise compliance with applicable law and rules, and shall have sufficient authority to ensure such compliance.

R20-4-910. Employees Reserved

An employee is any individual who has an employment relationship acknowledged by both the employee and the licensee which meets all of the following conditions:

1. The employee receives payment or is paid by the licensee in a manner wherein deductions for Federal Unemployment Tax, Federal Insurance Contributions Act, and other such federal and state taxes have been taken by the licensee;
2. The licensee has the right to hire and fire the employee and hire and fire the employee's assistants;
3. The licensee provides the methods and procedures for performing the employee's services; and
4. The licensee supervises the employee in the conduct of the employee's business and supervises the employee's compliance with applicable law and rules.

R20-4-913. Reasonable Background Investigation Requirements Reserved

- A.** A reasonable investigation pursuant to A.R.S. § 6-903(N) shall consist of, at a minimum, all of the following:
1. A review of the documents as required by the Immigration Reform and Control Act of 1986, 8 U.S.C. 1325, and the completion of the Employment Eligibility Verification (Form I-9);
 2. Completed and signed employment application;
 3. Signed statement attesting to any felony convictions and detailed information regarding the same;
 4. Inquiry with the applicant's most recent or next most recent employer, if any;
 5. Inquiry regarding the applicant's qualifications as to the applicant's competence for the position; and
 6. If for a loan officer, loan originator, loan processor, branch manager, supervisor, or similar capacity, a credit report from a credit reporting agency.
- B.** If any information received raises questions as to the honesty, truthfulness, integrity or competence of the applicant, further investigation shall be undertaken.
- C.** An inquiry shall be deemed sufficient if at least two reasonable attempts to contact a person are made, including at least one written inquiry.

R20-4-914. Branch Offices Repealed

A branch office is any location, including a personal residence, but not the principal place of business, where a licensee holds itself out to the public as acting as a mortgage broker. "Hold out to the public" means advertising or otherwise informing the public that mortgage loans are made or negotiated at that location, or listing that location on business cards, stationery, brochures, rate lists or other promotional items, but does not include listing a home or mobile telephone number on business cards or stationery in addition to listing the telephone number of a licensed place of business.

R20-4-917. Record Keeping Requirements

- A.** The Superintendent shall approve a licensee's use of a computer or mechanical record keeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical record keeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any alteration in the approved system's fundamental character, medium, or function if the alteration changes:
1. Any approved computer or mechanical system back to a paper-based system;
 2. An approved mechanical system to a computer system; or
 3. An approved computer system to a mechanical system.
- B.A.** In addition to any statutory requirement requirements regarding records, a the record records maintained by a mortgage broker shall include, at a minimum, the following:;
1. A list of all executed loan applications or executed fee agreements that includes containing at least the following information:
 - a. Applicant's name ~~Name of applicant;~~
 - b. Application date ~~Date of application;~~
 - c. Amount of initial loan request;

- d. Final Date of final disposition date;
- e. Disposition (funded, denied, etc.); and
- f. Compensation received; and g. Name of loan Loan officer;-
2. A record, such as a cash receipts journal, of all money received in connection with a mortgage loan ~~loans~~ including showing at least:
 - a. Payor's name Name of payor;
 - b. Date received;
 - c. Amount; and
 - d. Receipt's purpose Purpose of receipt, including identification of a the related loan loans to which it relates, if any;-
3. A sequential listing of checks written for each bank account relating to the mortgage broker business, such as a cash disbursement disbursements journal, including showing at least:
 - a. Payee's name Payee;
 - b. Amount;
 - c. Date; and
 - d. Payment's purpose, Purpose of payment including identification of a the related loan to which it relates, if any;-
4. Bank account activity source documents for the mortgage broker business including such as ~~received~~ deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices.
5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
 - a. Borrower's name or co-borrowers' names;
 - b. Loan number, if any;
 - c. Amount received;
 - d. Purpose for the amount received;
 - e. Date received;
 - f. Date deposited into trust account;
 - g. Amount disbursed;
 - h. Date disbursed;
 - i. Disbursement's payee and purpose; and
 - j. Balance;
- 6.5 A file for each application for a mortgage loan containing:
 - a. The agreement Agreement with the customer concerning the broker's services, whether as a in the form of the loan application, fee agreement, or both;
 - b. Document Documents showing the application's final disposition, such as a settlement statement statements, or a denial letter of denial or withdrawal letter;
 - c. Correspondence sent, or received, or both by the licensee broker;
 - d. All Contract contracts, agreement, agreements and escrow instructions to or with any depository;
 - e. Documents showing compliance with the Consumer Credit Protection Act's Act (15 U.S.C. §§ 1601 through 1666j) and the Real Estate Settlement Procedures Act's Act (12 U.S.C. §§ 2601 through 2617) disclosure requirements, to the extent applicable;
 - f. If the loan is funded by an investor that is not a financial institution, an enterprise, a licensed real estate broker or salesman, a profit sharing or pension trust or, an insurance company, the documents required to be provided to the investor under A.R.S. § 6-907, and a copy of the executed note and executed deed of trust or mortgage, and any assignment assignments by the broker to the investor;
 - g. If the loan is closed in the mortgage broker's name, a copy of all closing documents including: closing instructions, any applicable rescission notice, HUD-1 settlement statement, final truth-in-lending disclosure, executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee; and
 - h. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee;
76. Samples of every each piece of advertising relating to the mortgage broker's broker business in Arizona;-
87. Copies of governmental or regulatory compliance reviews;-
98. If the licensee is not a natural person, a corporation, partnership, or joint venture, a file containing:
 - a. Organizational documents for the entity; ; i.e., incorporation or partnership documents;
 - b. Minutes Corporate or partnership minutes;
 - c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
 - d.e Annual report, if required by law;-
109. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction been convicted of a felony, a copy of the judgment or other record of conviction;-

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~~11.40~~ If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous 7 years, been named as a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal, or other final order disposing of the action; and-

~~12.44~~. If the Superintendent ~~has had~~ granted approval to maintain records outside ~~this of the~~ state, the specific address ~~where of the place~~ the records are ~~kept~~ maintained off-site, and ~~a the person's name of the Person~~ to contact for them.

~~C.B.~~ If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) ~~Records shall be reconciled and updated at least once each calendar quarter quarterly if~~ 10 ten or fewer transactions have occurred during the prior quarter. A licensee shall reconcile and update all records specified in subsection (B) and shall be reconciled and updated monthly if more than 10 ten transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.

D. A licensee shall retain the documents ~~Documents~~ described in subsections (B)(1) and (B)(6) for the length of time subsection (A)(1) and (5) are mortgage loan transaction records and shall be retained as provided in A.R.S. § 6-906(A). For the purposes of A.R.S. § 6-906(A), ~~a the date of the mortgage loan's loan~~ closing date, on a loan application ~~that which~~ did not result in the making of a loan, is either:

1. ~~The the~~ date ~~a the~~ licensee receives a written cancellation notice from ~~application was canceled by an the~~ applicant; borrower or
2. ~~The the~~ date ~~a the~~ licensee mails written notice to an applicant that the application has been denied, as required by federal law.

E. A licensee shall maintain all ~~All other~~ records described in this Section, and not included in subsection (D), ~~rule shall be~~ maintained for ~~at least~~ not less than ~~2 two~~ years.

R20-4-918. Generally Accepted Accounting Principles Repealed

Generally accepted accounting principles means generally accepted accounting principles as used by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants.

R20-4-921. Authorizations to Complete Blank Spaces

An authorization, under A.R.S. § 6-909, by a party allowing ~~a the~~ licensee or escrow agent to complete certain blank spaces in a document after it is signed by ~~a that~~ party to the transaction shall:

1. Specifically identify ~~the document and~~ the blank spaces ~~authorized~~ to be completed; ;
2. Be in writing, dated, and signed by ~~that party, the~~ authorizing parties, and
3. ~~Such written authorization~~ Contain the following notice language, conspicuously printed on its face ~~placed on the~~ authorization:

YOUR SIGNATURE BELOW AUTHORIZES YOUR MORTGAGE BROKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN. "EXCEPT FOR EMPLOYMENT VERIFICATIONS, VERIFICATIONS OF MORTGAGES AND LOANS AND DEPOSITS OR ACCOUNT VERIFICATIONS, A PERSON, IN CONNECTION WITH OR INCIDENTAL TO THE MAKING OF ANY MORTGAGE LOAN, SHALL NOT INDUCE, REQUIRE OR PERMIT ANY DOCUMENT TO BE SIGNED BY A PARTY TO THE TRANSACTION IF SUCH DOCUMENT CONTAINS ANY BLANK SPACES TO BE FILLED IN AFTER IT HAS BEEN SIGNED, EXCEPT THAT THE PARTY MAY SPECIFICALLY AUTHORIZE THE LICENSEE OR ESCROW AGENT HANDLING THE TRANSACTION, IN WRITING, TO COMPLETE CERTAIN BLANK SPACES."

R20-4-925. Waiver of Examination and Course of Study

The Superintendent's waiver of the examination and course of study requirement under A.R.S. § 6-903 extends to a person designated as a responsible individual by either an applicant or a licensee under A.R.S. § 6-903.

R20-4-926. Acquisition of Additional Interest in Licensee by Majority Owner

A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

ARTICLE 18. MORTGAGE BANKERS

R20-4-1801. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States

A. The exemption under A.R.S. § 6-942(A)(1) only applies to a person whose offers to make or negotiate a "mortgage banking loan" or a "mortgage loan", as those terms are defined in A.R.S. § 6-941, and all mortgage banking loans and mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.

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- B.** The required regulation of the transactions listed in subsection (A) includes:
1. Rules governing a claimant's accounting and record keeping practices;
 2. The authority to examine a claimant's books and records relating to its mortgage banking activities or mortgage lending activities, or both; and
 3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant's mortgage banking activities, mortgage lending activities, or both.

R20-4-1802. Equivalent and Related Experience

A. An applicant may satisfy the 3 years' experience requirement of A.R.S. § 6-943 by the types of lending-related experience listed in this subsection. The department counts each month in the following types of work experience towards the 3 years required either for a mortgage banker license, or as a responsible individual, both under A.R.S. § 6-943(C). The department counts a fractional month of experience, at least 15 days long, as a full month.

1. Mortgage banker with an Arizona license, responsible individual, or branch manager for a licensee;
2. Mortgage broker with an Arizona license, responsible individual, or branch manager for a licensee;
3. Loan officer with responsibility primarily for loans secured by lien interests on real property;
4. Lender's branch manager with responsibility primarily for loans secured by lien interests on real property;
5. Mortgage banker with license from another state, or responsible individual for the mortgage banker;
6. Mortgage broker with license from another state, or responsible individual for the mortgage broker;
7. Attorney certified by any state as a real estate specialist.

B. An applicant with insufficient actual experience of the types listed in subsection (A) may satisfy the remainder of the 3 years' experience requirement of A.R.S. § 6-943 by the types of related experience listed in this subsection. The department counts each month in the following types of work experience according to the ratio listed below, of actual experience to equivalent experience, credited towards qualifying for a license, or as a responsible individual, both under A.R.S. § 6-943(C). The department counts a fractional month of experience, at least 15 days long, as a full month. An applicant receives credit in only 1 area listed and for not more than 3 years' actual experience. The remaining years of experience required to qualify for a license shall be obtained from types of work experiences listed in subsection (A).

1. Attorney without state bar certified real estate specialty 3:2
2. Paralegal with experience in real estate matters..... 3:2
3. Loan underwriter..... 3:2
4. Mortgage banker or mortgage broker from another state without license..... 3:2
5. Real estate broker with an Arizona license or license from a state with substantially equivalent licensing requirements..... 3:2
6. Escrow officer..... 3:2
7. Trust officer with a title company 3:2
8. Executive, supervisor, or policy maker involved in administering or operating a mortgage-related business..... 3:1.5
9. Title officer with a title company..... 3:1.5
10. Real estate broker, not qualified under subsection (B)(5)..... 3:1.5
11. Loan processor with responsibility primarily for loans secured by lien interests on real property..... 3:1.5
12. Lender's branch manager with responsibility primarily for loans not secured by lien interests on real property 3:1.5
13. Real property salesperson, with an Arizona license or a license from a state with substantially equivalent licensing requirements..... 3:1
14. Loan officer, with responsibility primarily for loans not secured by lien interests on real property..... 3:1

R20-4-1803. Restrictions on the Term of a Cash Alternative to a Surety Bond

A licensee or applicant shall not place a certificate of deposit or investment certificate as a cash alternative to a surety bond with the Superintendent that is renewable or expires earlier than 12 months from the date of issuance.

R20-4-1804. Requirements for a Person Intended to Oversee a Branch Office

A person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, supervise compliance by the branch with applicable law and rules, and have sufficient authority to ensure such compliance. One person may oversee more than 1 branch.

R20-4-1805. Notification of Change of Address

If a licensee changes the licensee's principal place of business, or the location of a branch office, the licensee shall notify the Superintendent within 5 business days after the address change. With the notice, a licensee shall provide the Superintendent with the license for the office changing its address and the fee required by A.R.S. § 6-126 for changing an office address. A copy of the license shall continue to be displayed at the place of business until a new license is issued.

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R20-4-1806. Record Keeping Requirements

- A.** The Superintendent shall approve a licensee's use of a computer or mechanical record keeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical record keeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any alteration in the approved system's fundamental character, medium, or function if the alteration changes:
1. Any approved computer or mechanical system back to a paper-based system; or
 2. An approved mechanical system to a computer system; or
 3. An approved computer system to a mechanical system.
- B.** In addition to any statutory requirement regarding records, a record maintained by a mortgage banker shall include the following:
1. A list of all executed loan applications or executed fee agreements that includes the following information:
 - a. Applicant's name;
 - b. Application date;
 - c. Amount of initial loan request;
 - d. Final disposition date;
 - e. Disposition (funded, denied); and
 - f. Name of loan officer;
 2. A record, such as a cash receipts journal, of all money received in connection with mortgage banking loans or mortgage loans including:
 - a. Payor's name;
 - b. Date received;
 - c. Amount; and
 - d. Receipt's purpose including identification of a related loan, if any;
 3. A sequential listing of checks written for each bank account relating to the mortgage banker business, such as a cash disbursement journal, including:
 - a. Payee's name;
 - b. Amount;
 - c. Date; and
 - d. Payment's purpose including identification of a related loan, if any;
 4. Bank account activity source documents for the mortgage banker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices;
 5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
 - a. Borrower's name or co-borrowers' names;
 - b. Loan number, if any;
 - c. Amount received;
 - d. Purpose for the amount received;
 - e. Date received;
 - f. Date deposited into trust account;
 - g. Amount disbursed;
 - h. Date disbursed;
 - i. Disbursement's payee and purpose; and
 - j. Balance;
 6. A file for each application for a mortgage banking loan or a mortgage loan containing:
 - a. The agreement with the customer concerning the mortgage banker's services, whether as a loan application, fee agreement, or both;
 - b. Document showing the application's final disposition, such as a settlement statement, or a denial or withdrawal letter;
 - c. Correspondence sent, received, or both by the licensee;
 - d. Contract, agreement and escrow instructions to or with any depository;
 - e. Documents showing compliance with the Consumer Credit Protection Act's (15 U.S.C. §§ 1601 through 1666j) and the Real Estate Settlement Procedures Act's (12 U.S.C. §§ 2601 through 2617) disclosure requirements, to the extent applicable;
 - f. If the loan is closed in the licensee's name, and funded by a lender that is not an institutional investor as defined at A.R.S. § 6-943, a copy of the executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee, if any. If any of the documents listed in this subsection have been recorded, the file shall also contain legible copies of the recorded documents, and;

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- g. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee;
- 7. Samples of every piece of advertising relating to the mortgage banker's business in Arizona;
- 8. Copies of governmental or regulatory compliance reviews;
- 9. If the licensee is not a natural person, a file containing:
 - a. Organizational documents for the entity;
 - b. Minutes;
 - c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
 - d. Annual report, if required by law;
- 10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction;
- 11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous 7 years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal or other final order disposing of the action;
- 12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them;
- 13. If a licensee does business in other states, it must be able to separate Arizona loan information from information relating to other states to enable the Superintendent to conduct an examination.
- 14. A licensee shall produce a trial balance of the general ledger monthly to evidence the mortgage banker's net worth.
- C.** If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.
- D.** A licensee shall retain the documents described in Subsections (B)(1) and (6) for the length of time provided in A.R.S. § 6-946. For the purposes of A.R.S. § 6-946, the mortgage banking loan's closing date, on a loan application that did not result in the making of a loan, is either:
 - 1. The date a licensee receives a written cancellation notice from an applicant; or
 - 2. The date a licensee mails written notice to an applicant that an application has been denied, as required by federal law.
- E.** A licensee shall maintain all other records described in this Section, and not included in subsection (D), for at least 2 years.

R20-4-1807. Providing Copies of Records

For each loan closed in an Arizona mortgage broker's name with a concurrent assignment of beneficial interest to a mortgage banker, the mortgage banker licensee shall provide to the mortgage broker in whose name the loan closed a copy of:

- 1. The closing instructions;
- 2. Any applicable rescission notice;
- 3. The HUD-1 settlement statement;
- 4. The final truth-in-lending disclosure;
- 5. The note;
- 6. The executed deed of trust or mortgage; and
- 7. Each assignment of beneficial interest by the mortgage banker licensee.

R20-4-1808. Authorization to Complete Blank Spaces

An authorization, under A.R.S. § 6-947, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:

- 1. Specifically identify the document and the blank spaces to be completed;
- 2. Be in writing, dated, and signed by the authorizing parties, and
- 3. Contain the following notice, conspicuously printed on its face:

YOUR SIGNATURE BELOW AUTHORIZES YOUR MORTGAGE BANKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

R20-4-1809. Determining Loan Amounts

The amount of a mortgage banking loan or a mortgage loan under A.R.S. § 6-947(E) or 6-947(K), is the principal amount of the loan and does not include any points, interest, finance charges, insurance premiums of any kind, compensation paid to 3rd parties, or compensation retained by a mortgage banker or its agents.

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R20-4-1810. Delay or Cause Delay

A mortgage banker does not delay or cause delay if the delay occurs due to events outside the control of the mortgage banker.

R20-4-1811. Impound Account

The total of all funds retained by a mortgage banker from all periodic payments made by a borrower to maintain a cushion, as defined in R20-4-102, shall not exceed 1/6th of the estimated total annual payments from the impound account.

R20-4-1812. Acquisition of Additional Interest in Licensee by Majority Owner

A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

ARTICLE 19. COMMERCIAL MORTGAGE BANKERS

R20-4-1901. Exemption for an Institutional Investor

A. The exemption from the licensure requirement for an institutional investor, solely as that term is used in A.R.S. §§ 6-971, 6-972, and this Article, applies only if a person claiming the exemption meets all the following criteria:

1. The claimant originates or directly or indirectly makes, negotiates, or offers to make or negotiate commercial mortgage loans that are all exclusively funded by the claimant's own resources, as defined in A.R.S. § 6-971;
2. The claimant does so in the regular course of business;
3. The claimant makes only commercial mortgage loans, as defined in A.R.S. § 6-971;
4. The claimant makes each loan on the security of commercial property, as defined in A.R.S. § 6-971; and
5. The claimant makes only loans of more than \$250,000.

B. If a claimant makes even 1 commercial mortgage loan that does not satisfy all the above criteria, any claim of exemption is invalid, and that person shall not engage in any lending activity before obtaining a license.

R20-4-1902. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States

A. The exemption under A.R.S. § 6-972(9) only applies to a person whose offers to make or negotiate a "commercial mortgage loan", as that term is defined in A.R.S. § 6-971, and all commercial mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.

B. The required regulation of the transactions listed in Subsection (A) includes:

1. Rules governing a claimant's accounting and record keeping practices;
2. The authority to examine a claimant's books and records relating to its commercial mortgage lending activities;
3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant's commercial mortgage lending activities.

R20-4-1903. Equivalent and Related Experience

A. An applicant may satisfy the 3 years' experience requirement of A.R.S. § 6-973 by the types of lending-related experience listed in this subsection. The department counts each month in the following types of work experience towards the 3 years required either for a commercial mortgage banker license, or as a responsible individual, both under A.R.S. § 6-973(D). The department counts a fractional month of experience, at least 15 days long, as a full month.

1. Commercial mortgage banker with an Arizona license, or Responsible Individual or branch manager for a licensee;
2. Mortgage broker with Arizona license, or Responsible Individual or branch manager for a licensee;
3. Mortgage banker with an Arizona license, or Responsible Individual or branch manager for a licensee;
4. Loan officer, with responsibility primarily for loans secured by lien interests on commercial real property;
5. Lender's branch manager, with responsibility primarily for loans secured by lien interests on commercial real property;
6. Commercial mortgage banker with license from another state, or Responsible Individual for the commercial mortgage banker;
7. Mortgage broker with license from another state, or Responsible Individual for the mortgage broker;
8. Mortgage banker with license from another state, or responsible individual for the mortgage banker;
9. Attorney certified by any state as a real estate specialist.

B. The experience of an applicant with insufficient actual experience of the types listed in subsection (A) is reviewed and evaluated on a case by case basis.

R20-4-1904. Restrictions on the Term of a Cash Alternative to a Surety Bond

A licensee or applicant shall not place a certificate of deposit or investment certificate as a cash alternative to a surety bond with the Superintendent that is renewable or expires earlier than 12 months from the date of issuance.

R20-4-1905. Requirements for a Person Intended to Oversee a Branch Office

A Person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, supervise compliance by the branch with applicable law and rules, and have sufficient authority to ensure such compli-

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ance. One Person may oversee more than 1 branch.

R20-4-1906. Notification of Change of Address

If a licensee changes the licensee's principal place of business, or the location of a branch office, the licensee shall notify the Superintendent within 5 business days after the address change. With the notice, a licensee shall provide the Superintendent with the license for the office changing its address and the fee required by A.R.S. § 6-126 for changing an office address. A copy of the license shall continue to be displayed at the place of business until a new license is issued.

R20-4-1907. Record Keeping Requirements

A. The Superintendent shall approve a licensee's use of a computer or mechanical record keeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical record keeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any material alteration in the approved system's fundamental character, medium, or function if the alteration changes:

1. Any approved computer or mechanical system back to a paper-based system; or
2. An approved mechanical system to a computer system; or
3. An approved computer system to a mechanical system.

B. In addition to any statutory requirement regarding records, a record maintained by a commercial mortgage banker shall include the following:

1. A list of all executed loan applications or executed fee agreements that includes the following information:
 - a. Applicant's name;
 - b. Application date;
 - c. Amount of initial loan request;
 - d. Final disposition date;
 - e. Disposition (funded, denied); and
 - f. Name of loan officer;
2. A record, such as a cash receipts journal, of all money received in connection with commercial mortgage loans including:
 - a. Payor's name;
 - b. Date received;
 - c. Amount; and
 - d. Receipt's purpose including identification of a related loan, if any;
3. A sequential listing of checks written for each bank account relating to the commercial mortgage banker business, such as a cash disbursement journal, including:
 - a. Payee's name;
 - b. Amount;
 - c. Date; and
 - d. Payment's purpose including identification of a related loan, if any;
4. Bank account activity source documents for the commercial mortgage banker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices.
5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
 - a. Borrower's name or co-borrowers' names;
 - b. Loan number, if any;
 - c. Amount received;
 - d. Purpose for the amount received;
 - e. Date received;
 - f. Date deposited into trust account;
 - g. Amount disbursed;
 - h. Date disbursed;
 - i. Disbursement's payee and purpose, and
 - j. Balance.
6. A file for each application for a commercial mortgage loan containing:
 - a. The agreement with the customer concerning the commercial mortgage banker's services, whether as a loan application, fee agreement, or both;
 - b. The documents showing the application's final disposition, such as a settlement statements, a denial or withdrawal letter, or internal memorandum;
 - c. Correspondence sent, received, or both by the licensee;
 - d. Contract, agreement, and escrow instructions to or with any depository;

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- e. If the loan is closed in the licensee's name, a copy of all closing documents including: closing instructions, copy of the executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee, if any. If any of the documents listed in this subsection have been recorded, the file shall also contain legible copies of the recorded documents, and
 - f. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee.
 - 7. Samples of every piece of advertising relating to the commercial mortgage banker's business in Arizona;
 - 8. Copies of governmental or regulatory reviews;
 - 9. If the licensee is a not a natural person, a file containing:
 - a. Organizational documents for the entity;
 - b. Minutes;
 - c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
 - d. Annual report, if required by law;
 - 10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction.
 - 11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous 7 years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal or other final order disposing of the action.
 - 12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them.
 - 13. If a licensee does business in other states, it must be able to separate Arizona loan information from information relating to other states to enable the Superintendent to conduct an examination.
 - 14. A licensee shall produce a trial balance of the general ledger monthly to evidence the commercial mortgage banker's net worth.
- C.** If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.
- D.** A licensee shall retain the documents described in Subsections (B)(1) and (6) for the length of time provided in A.R.S. § 6-983. For the purposes of A.R.S. § 6-983, the commercial mortgage loan's closing date, on a loan application that did not result in the making of a loan, is either:
- 1. The date a licensee receives a written cancellation notice from the applicant; or
 - 2. The date a licensee mails written notice to an applicant that an application has been denied; or
 - 3. The date of a licensee's internal memorandum closing a loan file.
- E.** A licensee shall maintain all other records described in this Section, and not included in subsection (D), for at least 2 years.

R20-4-1908. Impound Accounts

The total of all funds, if any, retained by the commercial mortgage banker from all periodic payments made by the borrower to maintain a Cushion, as defined in R20-4-102, is limited only by the written agreement of the parties, if at all.

R20-4-1909. Authorization to Complete Blank Spaces

An authorization, under A.R.S. § 6-984, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:

- 1. Specifically identify the document and the blank spaces to be completed;
- 2. Be in writing, dated, and signed by the authorizing party, and
- 3. Contain the following notice, conspicuously printed on its face:
YOUR SIGNATURE BELOW AUTHORIZES YOUR COMMERCIAL MORTGAGE BANKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

R20-4-1910. Delay or Cause Delay

A commercial mortgage banker does not delay or cause delay if the delay occurs due to events outside the control of the commercial mortgage banker.

R20-4-1911. Acquisition of Additional Interest in Licensee by Majority Owner

A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver

the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.