House Engrossed Senate Bill

State of Arizona
Senate
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 100

SENATE BILL 1140

AN ACT

AMENDING SECTIONS 32-2101, 32-2121, 32-2124, 32-2125, 32-2130, 32-2151.01, 32-2153, 32-2157, 32-2163, 32-2173, 32-2174, 32-2194.01, 32-2194.05, 32-2194.10, 32-2194.28, 32-2194.30 AND 32-2197.20, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 20, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 32-2194.14 AND 32-2194.33; RELATING TO REAL ESTATE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 32-2101, Arizona Revised Statutes, is amended to read:

32-2101. Definitions

In this chapter, unless the context otherwise requires:

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

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

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

(b) Communications to stockholders as follows:

(i) Annual reports and interim financial reports.

(ii) Proxy materials.

(iii) Registration statements.

(iv) Securities prospectuses.

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

(vi) Prospectuses.

(vii) Property reports.

(viii) Offering statements.

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

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

5. "Barrier" means a mountain, cliff, river, canyon, canal or lake that prevents parcels from being united or reunited and that was not caused or created by the owner of the parcels during the five years immediately preceding any sale or lease of the subject property.

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

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

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

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

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

(a) A burial park, for earth interments.

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

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

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

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

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

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

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

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

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

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

14. "Common promotional plan" means a plan, undertaken by a person or a group of persons acting in concert, to offer lots for sale or lease. If the land is offered for sale by a person or group of persons acting in concert, and the land is contiguous or is known, designated or advertised as a common unit or by a common name, the land is presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan. Separate subdividers selling lots or parcels in separately platted subdivisions within a master planned community shall not be deemed to be offering their combined lots for sale or lease as part of a common promotional plan.

1 15. "Compensation" means any fee, commission, salary, money or other
2 valuable consideration for services rendered or to be rendered as well as the
3 promise of consideration whether contingent or not.
4 16. "Contiguous" means lots, parcels or fractional interests that share
5 a common boundary or point. Lots, parcels or fractional interests are not
6 contiguous if they are separated by either of the following:
7 (a) A barrier.
8 (b) A road, street or highway that has been established by this state
9 or by any agency or political subdivision of this state, that has been
10 designated by the federal government as an interstate highway or that has
11 been publicly maintained by this state or by any agency or political
12 subdivision of this state and has been used continuously by the public for
13 at least the last five years.
14 17. "Control" or "controlled" means a person who, through ownership,
15 voting rights, power of attorney, proxy, management rights, operational
16 rights or other rights, has the right to make decisions binding on an entity,
17 whether a corporation, a partnership or any other entity.
18 18. "Corporation licensee" means a lawfully organized corporation that
19 is registered with the Arizona corporation commission and that has an officer
20 licensed as the designated broker pursuant to section 32-2125.
21 19. "Department" means the state real estate department.
22 20. "Designated broker" means the natural person who is licensed as a
23 broker under this chapter and who is either:
24 (a) Designated to act on behalf of an employing real estate, cemetery
25 or membership camping entity.
26 (b) Doing business as a sole proprietor.
27 21. "Developer" means a person who offers real property in a
28 development for sale, lease or use, either immediately or in the future, on
29 the person's own behalf or on behalf of another person, under any of the
30 provisions of this chapter. Developer does not include a person whose
31 involvement with a development is limited to the listing of property within
32 the development for sale, lease or use.
33 22. "Development" means any division, proposed division or use of real
34 property that the department has authority to regulate, including subdivided
35 and unsubdivided lands, cemeteries, condominiums, timeshares, membership
36 campgrounds and stock cooperatives.
37 23. "Employing broker" means a person who is licensed or is required
38 to be licensed as a:
39 (a) Broker entity pursuant to section 32-2125, subsection A.
40 (b) Sole proprietorship if the sole proprietor is a broker licensed
41 pursuant to this chapter.
42 24. "Fractional interest" means an undivided interest in improved or
43 unimproved land, lots or parcels of any size created for the purpose of sale
44 or lease and evidenced by any receipt, certificate, deed or other document
45 conveying the interest. Undivided interests in land, lots or parcels created

in the names of a husband and wife as community property, joint tenants or tenants in common, or in the names of other persons who, acting together as part of a single transaction, acquire the interests without a purpose to divide the interests for present or future sale or lease shall be deemed to constitute only one fractional interest.

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

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

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

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

29. "License period" means the two year period beginning with the date of original issue or renewal of a particular license.

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

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

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

33. "Master planned community" means a development that consists of two or more separately platted subdivisions and that is either subject to a master declaration of covenants, conditions or restrictions, is subject to restrictive covenants sufficiently uniform in character to clearly indicate a general scheme for improvement or development of real property or is governed or administered by a master owner's association.

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

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

1 (a) Sells, purchases, lists, exchanges or leases membership camping
2 contracts.
3 (b) Offers to sell, purchase, exchange or lease membership camping
4 contracts.
5 (c) Negotiates or offers, attempts or agrees to negotiate the sale,
6 purchase, exchange or lease of membership camping contracts.
7 (d) Advertises or holds himself out as being engaged in the business
8 of selling, buying, exchanging or leasing membership camping contracts or
9 counseling or advising regarding membership camping contracts.
10 (e) Assists or directs in the procuring of prospects calculated or
11 intended to result in the sale, purchase, listing, exchange or lease of
12 membership camping contracts.
13 (f) Performs any of the foregoing acts as an employee or on behalf of
14 a membership camping operator or membership contract owner.
15 36. "Membership camping contract" means an agreement offered or sold
16 in this state evidencing a purchaser's right or license to use the camping
17 or outdoor recreation facilities of a membership camping operator and
18 includes a membership that provides for this use.
19 37. "Membership camping operator" means an enterprise, other than one
20 that is tax exempt under section 501(c)(3) of the internal revenue code of
21 1986, as amended, that solicits membership paid for by a fee or periodic
22 payments and has as one of its purposes camping or outdoor recreation
23 including the use of camping sites primarily by members. Membership camping
24 operator does not include camping or recreational trailer parks that are open
25 to the general public and that contain camping sites rented for a per use fee
26 or a mobile home park.
27 38. "Membership camping salesperson" means a natural person who acts
28 on the person's own behalf or through and on behalf of a professional limited
29 liability company or a professional corporation engaged by or on behalf of
30 a licensed membership camping or real estate broker, or by or on behalf of
31 a corporation, partnership or limited liability company that is licensed as
32 a membership camping or real estate broker, to perform any act or participate
33 in any transaction in a manner included in the definition of membership
34 camping broker.
35 39. "Partnership licensee" means a partnership with a managing general
36 partner who is licensed as the designated broker pursuant to section 32-2125.
37 40. "Permanent access", as required under article 4 of this chapter,
38 means permanent access from the subdivision to any federal, state or county
39 highway.
40 41. "Perpetual or endowed-care cemetery" means a cemetery wherein lots
41 or other burial spaces are sold or transferred under the representation that
42 the cemetery will receive "perpetual" or "endowed" care as defined in this
43 section free of further cost to the purchaser after payment of the original
44 purchase price for the lot, burial space or interment right.

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

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

44. "PRIVATE CEMETERY" MEANS A CEMETERY OR PLACE THAT IS NOT LICENSED UNDER ARTICLE 6 OF THIS CHAPTER, WHERE BURIALS OR INTERMENTS OF HUMAN REMAINS ARE MADE, IN WHICH SALES OR TRANSFERS OF INTERMENT RIGHTS OR BURIAL PLOTS ARE NOT MADE TO THE PUBLIC AND IN WHICH NOT MORE THAN TEN INTERMENTS OR BURIALS OCCUR ANNUALLY.

~~44.~~ 45. "Promotion" or "promotional practice" means advertising and any other act, practice, device or scheme to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in or use of real property subject to the provisions of this chapter, including meetings with prospective purchasers, arrangements for prospective purchasers to visit real property, travel allowances and discount, exchange, refund and cancellation privileges.

~~45.~~ 46. "Real estate" includes leasehold-interests and any estates in land as defined in title 33, chapter 2, articles 1 and 2, regardless of whether located in this state.

~~46.~~ 47. "Real estate broker" means a person, other than a salesperson, who, for another and for compensation:

(a) Sells, exchanges, purchases, rents or leases real estate or timeshare interests.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~47.~~ 48. "Real estate sales contract" means an agreement in which one party agrees to convey title to real estate to another party upon the satisfaction of specified conditions set forth in the contract.

~~48.~~ 49. "Real estate salesperson" means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation engaged by or on behalf of a licensed real estate broker, or by or on behalf of a limited liability company, partnership or corporation that is licensed as a real estate broker, to perform any act or participate in any transaction in a manner included in the definition of real estate broker subject to the provisions of section 32-2155.

1 ~~49.~~ 50. "Sale" or "lease" includes every disposition, transfer or
2 offer or attempt to dispose of or transfer real property, or an interest, use
3 or estate in the real property, including the offering of the property as a
4 prize or gift if a monetary charge or consideration for whatever purpose is
5 required.
6 ~~50.~~ 51. "Salesperson", when used without modification, means a natural
7 person who acts on the person's own behalf or through and on behalf of a
8 professional limited liability company or a professional corporation licensed
9 under any of the provisions of this chapter or any person required to be
10 licensed as a salesperson under any of the provisions of this chapter.
11 ~~51.~~ 52. "School" means a person or entity that offers a course of
12 study towards completion of the education requirements leading to licensure
13 or renewal of licensure under any of the provisions of this chapter.
14 ~~52.~~ 53. "Stock cooperative" means a corporation to which all of the
15 following apply:
16 (a) The corporation is formed or used to hold title to improved real
17 property in fee simple or for a term of years.
18 (b) All or substantially all of the shareholders of the corporation
19 each receives a right of exclusive occupancy in a portion of the real
20 property to which the corporation holds title.
21 (c) The right of occupancy may only be transferred with the concurrent
22 transfer of the shares of stock in the corporation held by the person having
23 the right of occupancy.
24 ~~53.~~ 54. "Subdivider" means any person who offers for sale or lease six
25 or more lots, parcels or fractional interests in a subdivision or who causes
26 land to be subdivided into a subdivision for the subdivider or for others,
27 or who undertakes to develop a subdivision, but does not include a public
28 agency or officer authorized by law to create subdivisions.
29 ~~54.~~ 55. "Subdivision" or "subdivided lands" means improved or
30 unimproved land or lands divided or proposed to be divided for the purpose
31 of sale or lease, whether immediate or future, into six or more lots, parcels
32 or fractional interests. Subdivision or subdivided lands include a stock
33 cooperative and include lands divided or proposed to be divided as part of
34 a common promotional plan. This paragraph shall not apply to leasehold
35 offerings of one year or less or to the division or proposed division of land
36 located in the state of Arizona into lots or parcels each of which is, or
37 will be, thirty-six acres or more in area including to the ~~center line~~
38 CENTERLINE of dedicated roads or easements, if any, contiguous to the lot or
39 parcel and provided further that this definition shall not be deemed to
40 include the leasing of agricultural lands, or of apartments, offices, stores,
41 hotels, motels, pads or similar space within an apartment building,
42 industrial building, rental recreational vehicle community, rental
43 manufactured home community, rental mobile home park or commercial building,
44 except that residential condominiums as defined in title 33, chapter 9 shall
45 be included in this definition, nor shall this definition include the

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

~~55.~~ 56. "Timeshare" or "timeshare property" means real property ownership or right of occupancy in real property pursuant to article 9 of this chapter. For the purposes of this chapter, a timeshare is not a security unless it meets the definition of a security under section 44-1801.

~~56.~~ 57. "Trustee" means:

(a) A person designated under section ~~32-2194.11~~ 32-2194.27 to act as a trustee for an endowment-care cemetery fund.

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

~~57.~~ 58. "Unimproved lot or parcel" means a lot or parcel of a subdivision that is not an improved lot or parcel.

~~58.~~ 59. "Unsubdivided lands" means land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into six or more lots, parcels or fractional interests and the lots or parcels are thirty-six acres or more each but less than one hundred sixty acres each, or that are offered, known or advertised under a common promotional plan for sale or lease, except that agricultural leases shall not be included in this definition.

Sec. 2. Section 32-2121, Arizona Revised Statutes, is amended to read:

32-2121. Applicability of article; exemption

A. The provisions of this article do not apply to:

1. A natural person, a corporation through its officers, a partnership through its partners or a limited liability company through its members or managers that deals in selling, exchanging, purchasing, renting, leasing, managing or pledging the person's or entity's own property, including cemetery property and membership camping contracts, and that does not receive special compensation for a sales transaction or does not receive special compensation or other consideration including property management fees or consulting fees for any property management services performed, if the majority of an officer's, partner's, member's or manager's activities do not involve the acts of a real estate broker, cemetery broker or membership camping broker as defined in section 32-2101.

2. A person holding a valid power of attorney that is being used for a specific purpose in an isolated transaction and not as a method of conducting a real estate business.

3. An attorney in the performance of the attorney's duties as an attorney. Nothing in this paragraph shall be construed to allow an attorney to otherwise engage in any acts requiring a license under this article.

4. Any receiver, a trustee in bankruptcy or any other person acting under an order of a court.

5. A trustee selling under a deed of trust.

6. Natural persons who are acting as residential leasing agents or ON-SITE managers of residential rental property, who are performing residential leasing activities on residential income property at no more than one location during the period of the agents' or ON-SITE managers' regular workday, who do not receive special compensation for the acts described in subdivisions (a) through (e) of this paragraph and who are employed by the owner or the owner's licensed management agent to perform the duties customarily associated with that employment. A bonus that is paid to a residential leasing agent or ON-SITE manager working under the supervision of a licensed real estate broker and that is based on performance, that is received no more frequently than monthly and that does not exceed one-half of the agent's or ON-SITE manager's total compensation for the time period does not constitute special compensation for the acts described in subdivisions (a) through (e) of this paragraph. For purposes of this paragraph "residential leasing agents or ON-SITE managers" means natural persons employed by the owner or the owner's licensed management agent whose normal duties and responsibilities include any one or a combination of the following:

(a) Preparing and presenting to any person a residential lease, application or renewal or any amendment of the lease.

(b) Collecting or receiving a security deposit, a rental payment or any related payment for delivery to and made payable to a property, a property manager, an owner or the location.

(c) Showing a residential rental unit to any prospective tenant.

(d) Executing residential leases or rental agreements adopted under title 33, chapter 10.

(e) Acting on behalf of the owner or the owner's licensed management agent to deliver notice pursuant to title 12, chapter 8 and title 33, chapters 10 and 11.

7. Any officer or employee of a governmental agency who is not a contract or temporary employee of the agency in the conduct of the officer's or employee's official duties.

8. One natural person who acts as a property manager for one nonresidential income property or for two or more contiguous nonresidential income properties that are under common ownership and who is employed by the owner or the owner's licensed management agent to perform the duties customarily associated with that employment.

9. Natural persons who are in the employ of an employing broker or of a person or entity exempt under this section, who perform clerical, bookkeeping, accounting and other administrative and support duties, who are not engaged in any other acts requiring a license under this chapter and whose employment is not conditioned on or designed to perform duties otherwise requiring a license under this chapter.

10. Natural persons who are in the employ of an employing broker and who perform telemarketing services that are limited to soliciting interest

1 in engaging the services of a licensee or broker or gathering demographic
2 information that will be used by a licensee or broker to solicit prospective
3 buyers, sellers, lessees and lessors.
4 11. Communications media or their representatives that are primarily
5 engaged in advertising real estate and that perform no other acts requiring
6 a real estate license, if:
7 (a) The communications media or their representatives do not, directly
8 or indirectly, compile or represent that they compile information about
9 specific prospective purchasers or tenants, except that general information
10 about prospective purchasers or tenants, such as demographic and marketing
11 information, may be compiled.
12 (b) The communications media or their representatives do not make
13 representations to prospective real property sellers or landlords, or their
14 representatives, concerning specific prospective purchasers or tenants or
15 specific sales or leasing leads.
16 (c) The fee charged for advertising is based solely on the advertising
17 services provided.
18 (d) The advertisements provide for direct contact between the seller
19 or landlord and the prospective buyers or tenants, or for contact through a
20 licensed real estate broker or property management firm. The communications
21 media or their representatives shall not act as intermediaries or assist in
22 any intermediary action between prospective parties to a real estate
23 transaction, except that additional information about advertised properties
24 may be provided to prospects upon request.
25 12. Persons who perform residential property management services or
26 marketing and promotional services solely for nursing care institutions as
27 defined in section 36-401 or pursuant to life care contracts as defined in
28 section 20-1801.
29 13. A person who offers to sell or lease property that constitutes a
30 security as defined in section 44-1801 and that is offered, sold or leased
31 in compliance with title 44, chapter 12 if the person is a registered
32 securities dealer or salesperson pursuant to title 44, chapter 12, article 9.
33 14. A person who manages a hotel, motel or recreational vehicle park.
34 15. A person who, on behalf of another, solicits, arranges or accepts
35 reservations or money, or both, for occupancies of thirty-one or fewer days
36 in a dwelling unit in a common interest development.
37 16. An escrow agent in the performance of the escrow agent's duties as
38 an escrow agent, a title insurer in the performance of the title insurer's
39 duties as a title insurer or a title insurance agent in the performance of
40 the title insurance agent's duties as a title insurance agent. Nothing in
41 this paragraph shall be construed to allow an escrow agent, a title insurer
42 or a title insurance agent to otherwise engage in acts requiring a license
43 under this article.

17. Notwithstanding paragraph 1 of this subsection, a corporation through its officers and employees that purchases, sells, exchanges, rents, leases, manages or pledges its property if both of the following apply:

(a) The activity is only incidental to the business of the corporation.

(b) The officers and employees engaged in the activity do not receive special compensation or other consideration for the activity.

18. A trust company owned by a bank holding company regulated by the federal reserve board or a bank in exercising its fiduciary duties under the terms of a trust agreement to which real property is subject.

19. A person who receives a finder fee pursuant to section 32-2176 or 32-2197.21.

B. The commissioner may grant an exemption from the licensure requirements of this article to any corporation that applies for an exemption on a finding that both of the following apply:

1. The corporation is a nonprofit corporation that provides project-based housing services and operates solely as a charitable organization as defined in section 44-6551.

2. The corporation's sole activities related to real estate involve ownership or management of residential property owned or controlled by the corporation.

Sec. 3. Section 32-2124, Arizona Revised Statutes, is amended to read:

32-2124. Qualifications of licensees

A. Except as otherwise provided in this chapter, the commissioner shall require proof, through the application or otherwise, as the commissioner deems advisable with due regard to the interests of the public, as to the honesty, truthfulness, good character and competency of the applicant and shall require that the applicant has:

1. If for an original real estate broker's license, at least three years' actual experience as a licensed real estate salesperson or real estate broker during the five years immediately preceding the time of application.

2. If for an original cemetery broker's license, either a current real estate broker's license, or if the applicant does not have a current real estate broker's license, at least three years' actual experience as a cemetery salesperson or broker or as a licensed real estate salesperson or broker during the five years immediately preceding the time of application.

3. If for an original membership camping broker's license, either a current real estate broker's license, or if the applicant does not have a current real estate broker's license, at least three years' actual experience as a licensed membership camping salesperson or broker or as a licensed real estate salesperson or broker during the five years immediately preceding the time of application.

4. If for any type of broker's or salesperson's license, not had a license denied within one year immediately preceding application in this state pursuant to section 32-2153 or a similar statute in any other state.

5. If for any type of broker's or salesperson's license, not had a license revoked within the two years immediately preceding application in this state pursuant to section 32-2153 or a similar statute in any other state.

6. If reapplying for a license that expired more than one year before the date of application, met all current education and experience requirements and retakes the examination the same as if the applicant were applying for the license for the first time.

7. If for a real estate, cemetery or membership camping broker's license, other than a renewal application, an equivalent amount of active experience within the immediately preceding five years in the field in which the applicant is applying for the broker's license, as a substitute for the licensed active experience otherwise required in paragraphs 1, 2 and 3 of this subsection. The licensed active experience required may be met if the applicant can demonstrate to the commissioner's satisfaction that the applicant has an equivalent amount of experience in the past five years that, if the applicant had held a license, would have been sufficient to fulfill the licensed experience requirement.

B. All applicants other than renewal applicants under section 32-2130 for a real estate salesperson's license shall show evidence satisfactory to the commissioner that they have completed a real estate salesperson's course, prescribed and approved by the commissioner, of at least ninety classroom hours, or its equivalent, of instruction in a real estate school certified by the commissioner and have satisfactorily passed an examination on the course. In no case shall the real estate salesperson's course completion or its equivalent be more than ten years before the date of application unless, at the time of application, the commissioner determines in the commissioner's discretion that the applicant has work experience in a real estate related field and education that together are equivalent to the prelicensure education requirement. The commissioner may waive all or a portion of the prelicensure course requirement, other than the twenty-seven hour Arizona specific course, for an applicant who holds a current real estate license in another state.

C. All applicants other than renewal applicants under section 32-2130 for a real estate broker's license shall show evidence satisfactory to the commissioner that they have completed a real estate broker's course, prescribed and approved by the commissioner, of at least ninety classroom hours, or the equivalent, of instruction in a real estate school certified by the commissioner and have satisfactorily passed an examination on the course. In no case shall the real estate broker's course completion or its equivalent be more than ten years before the date of application unless, at the time of application, the commissioner determines in the commissioner's discretion that the applicant has work experience in a real estate related field and education that together are equivalent to the prelicensure education requirement. The commissioner may waive all or a portion of the

1 prelicensure course requirement, other than the twenty-seven hour Arizona
2 specific course, for an applicant who holds a current real estate license in
3 another state.
4 D. Prior to receiving any license provided for by this chapter, an
5 applicant shall be at least eighteen years of age.
6 E. The commissioner shall ascertain by written, electronic or any
7 other examination method that an applicant for a real estate license has:
8 1. An appropriate knowledge of the English language, including
9 reading, writing and spelling, and of arithmetical computations common to
10 real estate practices.
11 2. At a minimum, an understanding of the general purpose and legal
12 effect of any real estate practices, principles and related forms, including
13 agency contracts, real estate contracts, deposit receipts, deeds, mortgages,
14 deeds of trust, security agreements, bills of sale, land contracts of sale
15 and property management, and of any other areas that the commissioner deems
16 necessary and proper.
17 3. A general understanding of the obligations between principal and
18 agent, the principles of real estate and business opportunity practice, the
19 applicable canons of business ethics, the provisions of this chapter and
20 rules made under this chapter.
21 F. The commissioner shall ascertain by written, electronic or any
22 other examination method that an applicant for a license as a cemetery broker
23 or a cemetery salesperson has:
24 1. Appropriate knowledge of the English language, including reading,
25 writing and spelling, and of elementary arithmetic.
26 2. A general understanding of:
27 (a) Cemetery associations, cemetery corporations and duties of
28 cemetery directors and officers.
29 (b) Plot ownership, deeds, certificates of ownership, contracts of
30 sale, liens and leases.
31 (c) Establishing, dedicating, maintaining, managing, operating,
32 improving, preserving and conducting a cemetery.
33 (d) The provisions of this chapter and rules made under this chapter
34 relating to the organization and regulation of cemeteries and the licensing
35 and regulation of cemetery brokers and cemetery salespersons.
36 3. A general understanding of the obligations between principal and
37 agent, the principles of cemetery practice and the canons of business ethics
38 pertaining to the operation of cemeteries and the sale of cemetery property.
39 G. The commissioner shall ascertain by written, electronic or any
40 other examination method that an applicant for a license as a membership
41 camping broker or a membership camping salesperson has:
42 1. An appropriate knowledge of the English language, including
43 reading, writing and spelling, and of elementary arithmetic.
44 2. A general understanding of:

1 (a) The general purposes and legal effect of contracts and agency
2 contracts.
3 (b) Establishing, maintaining, managing and operating a membership
4 campground.
5 (c) The provisions of this chapter and rules adopted under this
6 chapter relating to the organization and regulation of membership campgrounds
7 and the licensing and regulation of membership camping brokers and membership
8 camping salespersons.
9 3. A general understanding of the obligations between principal and
10 agent and the canons of business ethics pertaining to the operation and
11 promotion of membership campgrounds.
12 H. No renewal applicant for a real estate, cemetery or membership
13 camping broker's or salesperson's license shall be required to submit to an
14 examination if the application is made within twelve months after the license
15 expires and the license is not cancelled, terminated or suspended at the time
16 of application.
17 I. The examination for a broker's license shall be more exacting and
18 stringent and of a broader scope than the examination for a salesperson's
19 license.
20 J. An applicant for a real estate salesperson's or broker's license
21 who currently holds at least an equivalent license in another state may be
22 exempt from taking the national portion of the real estate examination if the
23 applicant can demonstrate having previously passed a national examination
24 within the past five years that is satisfactorily similar to the one
25 administered by the department.
26 K. Identification of each applicant whose licensing requirement was
27 allowed to be met by an equivalent alternative pursuant to this section shall
28 be included in the annual performance report presented by the board to the
29 governor pursuant to section 32-2104.
30 L. An applicant for an original real estate salesperson's license,
31 after completion of the requirements of subsection B of this section and
32 before activation of the person's license, shall provide certification to the
33 department evidencing completion of six hours of instruction in real estate
34 contract law and contract writing. This instruction shall include
35 participation by the applicant in the drafting of contracts to purchase real
36 property, listing agreements and lease agreements.
37 M. The commissioner shall not issue a license to a person who has been
38 convicted of a felony offense and who is currently incarcerated for the
39 conviction, paroled or under community supervision and under the supervision
40 of a parole or community supervision officer or who is on probation as a
41 result of the conviction.
42 N. AN APPLICANT OR LICENSEE WHO WANTS TO OBTAIN A LICENSE SPECIALIZING
43 IN SALES OF BUSINESSES AFTER COMPLETION OF THE REQUIREMENTS OF SUBSECTION B
44 OF THIS SECTION AND BEFORE ACTIVATION OF THE PERSON'S LICENSE SHALL PROVIDE
45 CERTIFICATION TO THE DEPARTMENT EVIDENCING COMPLETION OF TWENTY-FOUR HOURS

1 OF INSTRUCTION IN BUSINESS BROKERAGE. THIS INSTRUCTION SHALL INCLUDE
2 SATISFACTORY PROOF OF PASSING A TEST THAT IS ACCEPTABLE TO THE DEPARTMENT.
3 Sec. 4. Section 32-2125, Arizona Revised Statutes, is amended to read:
4 32-2125. Licenses for corporations, limited liability companies
5 or partnerships
6 A. A corporation, limited liability company or partnership applying
7 for a broker's license for the entity shall designate a natural person who
8 is licensed as a broker and who is an officer of the corporation, manager of
9 the limited liability company if management of the limited liability company
10 is vested in one or more managers, member of the limited liability company
11 if management is vested in the members or partner of the partnership who
12 shall act as designated broker. The license shall extend no authority to act
13 as designated broker to any other person. This subsection does not apply to
14 a corporation or limited liability company applying for a license under
15 subsection B of this section. An entity's broker's license issued pursuant
16 to this subsection shall conform to section 32-2129.
17 B. An employing broker may engage the services of salespersons and
18 associate brokers who act through and on behalf of professional corporations
19 or professional limited liability companies that are licensed by the
20 department. A DESIGNATED BROKER WHO ACTS ON BEHALF OF AN EMPLOYING REAL
21 ESTATE ENTITY IS PERMITTED TO BECOME A PROFESSIONAL CORPORATION OR A
22 PROFESSIONAL LIMITED LIABILITY CORPORATION. Any person so engaged shall be
23 separately licensed. The department shall issue to or renew a license under
24 this subsection only for a professional corporation or a professional limited
25 liability corporation whose shareholders, members or managers hold active
26 real estate licenses. A corporation licensed under this subsection shall
27 meet the requirements of title 10, chapter 20. A limited liability company
28 licensed under this subsection shall meet the requirements of title 29,
29 chapter 4, article 11.
30 C. The license of a corporation or limited liability company licensed
31 under subsection B of this section terminates only upon the death of a
32 shareholder, member or manager or any other change of shareholders, members
33 or managers, except that any remaining shareholder, member or manager who was
34 an authorized officer and shareholder prior to the change remains authorized
35 to continue business under the corporation's or limited liability company's
36 license for up to an additional ninety days pending the issuance of a new
37 license.
38 D. The commissioner may suspend, revoke or deny renewal or the right
39 of renewal of the license of a corporation, limited liability company or
40 partnership licensed under this section if the corporation, limited liability
41 company or partnership or any shareholder, officer, agent, partner or member
42 of a corporation, limited liability company or partnership violates any of
43 the provisions of this chapter.

E. Nothing in this section shall be construed to enlarge the functions of salespersons, to permit salespersons to assume any of the responsibilities or functions of brokers or to relieve the commissioner of any regulatory power or authority over salespersons or brokers.

F. A corporation, limited liability company or partnership licensed under subsection A of this section or a professional corporation or professional limited liability company licensed under subsection B of this section is exempt from the education requirements imposed pursuant to this chapter. The commissioner shall not charge a license fee or a renewal fee pursuant to section 32-2132 to a corporation, professional corporation, limited liability company, professional limited liability company or partnership licensed or approved under this section.

G. A corporation, limited liability company or partnership licensed under this section shall report to the department within ten days:

1. Any change in officers, directors, members, managers or partners or any change of control of the entity.

2. Any amendment to its articles of incorporation or organization or to its partnership agreement.

3. If a corporation, when a person becomes an owner of ten per cent or more of the stock in the corporation.

Sec. 5. Section 32-2130, Arizona Revised Statutes, is amended to read:

32-2130. Renewal of licenses

A. A license may be renewed in a timely manner by filing an application for renewal on a form provided by the commissioner, by paying the renewal fee specified in this chapter if that fee is paid on or before the expiration date of the license, and by presenting evidence of attendance at a school certified by the commissioner during the preceding license period of twenty-four clock-hours, or a lesser number of clock-hours prescribed by the commissioner, of real estate oriented continuing education courses prescribed and approved by the commissioner. If an applicant is renewing a license within one year after it expired, the applicant may apply continuing education hours completed after the expiration toward the continuing education required for renewal. Each renewal application shall contain, as applicable, the same information required of an original applicant pursuant to section 32-2123. The department shall maintain a current list of approved courses. The commissioner may withdraw or deny certification or approval of educational courses for good cause. The commissioner may waive all or a portion of the continuing education requirement for good cause shown. Cemetery brokers and salespersons and membership camping brokers and salespersons are exempt from the educational requirements of this section. Nothing in this section shall require a licensee to attend department produced or sponsored courses if the approved courses are otherwise available. IF THE RENEWAL APPLICANT IS RETAINING THE SPECIALIZATION IN SALES OF BUSINESSES DESIGNATION, THE APPLICANT IS REQUIRED TO COMPLETE AN ADDITIONAL TWELVE CLOCK-HOURS OF BASIC BUSINESS BROKERAGE

1 COURSES AND PASS A SCHOOL TEST FOR EACH COURSE FOR THE FIRST RENEWAL. THE
2 TWELVE CLOCK-HOURS ARE IN ADDITION TO THE CLOCK-HOURS PRESCRIBED BY THE
3 COMMISSIONER FOR LICENSE RENEWAL PURSUANT TO THIS SUBSECTION. SUBSEQUENT
4 LICENSE RENEWALS FOR APPLICANTS SELLING BUSINESSES DO NOT REQUIRE A TEST.
5 B. Between the expiration date of the license and the date of renewal
6 of the license, the rights of the licensee under the license expire. While
7 the license is expired it is unlawful for a person to act or attempt or offer
8 to act in a manner included in the definition of a real estate, cemetery or
9 membership camping broker or salesperson. If the license of an employing
10 broker expires under this subsection, the licenses of persons who are
11 employed by the employing broker shall be severed from the employing broker
12 on the license expiration date of the employing broker. These persons may
13 be rehired on renewal of the employing broker's license. The department
14 shall terminate a license that has been expired for more than one year.
15 C. No more than one year after the license expiration date, the
16 department shall renew a license without requiring the applicant to submit
17 to an examination if the applicant holds a license that is not canceled or
18 suspended at the time of application. The license period for a license
19 renewed pursuant to this subsection commences the day after the expiration
20 date of the expired license. Except as provided in section 32-2131,
21 subsection A, paragraph 4 or 6, an applicant whose license has been
22 terminated or revoked does not qualify for license renewal.
23 D. Any employee or immediate family member of any employee of this
24 state who, pursuant to section 32-2110 or any other law, rule or requirement,
25 is prohibited from using a license issued under this chapter shall have, on
26 the request of the employee or family member, the license placed on inactive
27 status, shall have the right to renew the license and shall not be required
28 to pay further fees until the employee or family member is again eligible to
29 use the license. Renewal fees for the license shall not be required for only
30 as long as the employee or family member is prohibited from using the
31 license.
32 E. The department shall not renew the license of a person who has been
33 convicted of a felony offense and who is currently incarcerated for the
34 conviction, paroled or under community supervision and under the supervision
35 of a parole or community supervision officer or who is on probation as a
36 result of the conviction. This subsection does not limit the commissioner's
37 authority and discretion to deny the renewal for any other reason pursuant
38 to this chapter.
39 Sec. 6. Section 32-2151.01, Arizona Revised Statutes, is amended to
40 read:
41 32-2151.01. <u>Broker requirements; record keeping requirements</u>
42 A. Each licensed employing broker shall keep records of all real
43 estate, cemetery, time-share or membership camping transactions handled by
44 or through the broker and shall keep employment records, including copies of
45 employment status, for all current and former employees. The records

1 required by this section shall include copies of earnest money receipts,
2 CONFIRMING THAT THE EARNEST MONEY HAS BEEN HANDLED IN ACCORDANCE WITH THE
3 TRANSACTION, closing statements showing all receipts, disbursements and
4 adjustments, sales contracts and, if applicable, copies of ~~listing contracts~~
5 EMPLOYMENT AGREEMENTS. The records shall be open at all reasonable times for
6 inspection by the commissioner or the commissioner's representatives. The
7 records of each transaction and employment records shall be kept by the
8 broker for a period of at least five years from the date of the termination
9 of the transaction or employment. The records shall be kept in the employing
10 broker's principal office or licensed branch office in this state or at an
11 off-site storage location in this state if the broker provides prior written
12 notification of the street address of the off-site storage location to the
13 department.
14 B. Except as provided by section 32-2174, subsection C, a broker shall
15 not grant any person authority to withdraw monies from the broker's trust
16 fund account unless that person is a licensee under that broker's license.
17 C. A broker shall specifically state in the real estate purchase
18 contract, lease agreement or receipt for earnest money the type of earnest
19 money received in any real estate transaction, whether it is cash, a check,
20 a promissory note or any other item of value.
21 D. All licensees shall promptly place all cash, checks or other items
22 of value received as payment in connection with a real estate transaction in
23 the care of the designated broker.
24 E. The broker shall maintain each real estate purchase contract or
25 lease agreement and the transaction folder in which it is kept in a
26 chronological log or other systematic manner that is easily accessible by the
27 commissioner or the commissioner's representatives.
28 F. Sales transaction folders shall include:
29 1. Confirmation that the earnest monies or other monies handled by or
30 through the broker were handled according to instructions given by or agreed
31 to by the parties to the transaction.
32 2. A complete copy of the sales contract, any escrow account receipt,
33 any closing or settlement statement and, if applicable, a copy of the escrow
34 instructions, listing agreement, employment agreement and release of escrow
35 monies.
36 G. The designated broker shall review each listing agreement, purchase
37 or nonresidential lease agreement or similar instrument within five days of
38 the date of execution by placing the broker's initials and the date of review
39 on the instrument on the same page as the signatures of the parties. A
40 designated broker may authorize in writing an associate broker who the
41 designated broker employs to review and initial these instruments on the
42 designated broker's behalf.

1 H. The broker shall retain all real estate purchase and nonresidential
2 lease contracts and employment agreements, or copies of these documents, in
3 the employing broker's principal office or licensed branch office or at an
4 off-site storage location in this state if the broker provides prior written
5 notification of the street address of the off-site storage location to the
6 department.
7 I. The broker shall retain an original, a copy or a microfilm copy of
8 any document evidencing a rejected offer to purchase real property as a
9 matter of record for at least one year. In instances that result in binding
10 contracts, the broker shall retain prior rejected offers for at least five
11 years.
12 J. If real property in a development is sold or leased by a developer
13 without the services of a listing or selling broker, the developer shall keep
14 all records required by subsections A and C of this section.
15 Sec. 7. Section 32-2153, Arizona Revised Statutes, is amended to read:
16 32-2153. Grounds for denial, suspension or revocation of
17 licenses; letters of concern; provisional license;
18 retention of jurisdiction by commissioner;
19 definitions
20 A. The commissioner may suspend or revoke a license, deny the issuance
21 of a license, issue a letter of concern to a licensee, issue a provisional
22 license or deny the renewal or the right of renewal of a license issued under
23 the provisions of this chapter if it appears that the holder or applicant,
24 within five years immediately preceding, in the performance of or attempt to
25 perform any acts authorized by the license or by this chapter, has:
26 1. Pursued a course of misrepresentation or made false promises,
27 either directly or through others, whether acting in the role of a licensee
28 or a principal in a transaction.
29 2. Acted for more than one party in a transaction without the
30 knowledge or consent of all parties to the transaction.
31 3. Disregarded or violated any of the provisions of this chapter or
32 any rules adopted by the commissioner.
33 4. Knowingly authorized, directed, connived at or aided in the
34 publication, advertisement, distribution or circulation of any material false
35 or misleading statement or representation concerning the licensee's business
36 or any land, cemetery property, subdivision or membership campground or
37 camping contract offered for sale in this or any other state.
38 5. Knowingly used the term "real estate broker", "cemetery broker" or
39 "membership camping broker" without legal right to do so.
40 6. Employed any unlicensed salesperson or unlicensed associate broker.
41 7. Accepted compensation as a licensee for the performance of any of
42 the acts specified in this chapter from any person other than the licensed
43 broker to whom the licensee is licensed, the licensed professional
44 corporation of which the licensee is an officer and shareholder or the

1 licensed professional limited liability company of which the licensee is a
2 member or manager.
3 8. Represented or attempted to represent a broker other than the
4 broker to whom the salesperson or associate broker is licensed.
5 9. Failed, within a reasonable time, to account for or to remit any
6 monies, to surrender to the rightful owner any documents or other valuable
7 property coming into the licensee's possession and that belongs to others,
8 or to issue an appraisal report on real property or cemetery property in
9 which the licensee has an interest, unless the nature and extent of the
10 interest are fully disclosed in the report.
11 10. Paid or received any rebate, profit, compensation or commission in
12 violation of this chapter.
13 11. Induced any party to a contract to break the contract for the
14 purpose of substituting a new contract with the same or a different
15 principal, if the substitution is motivated by the personal gain of the
16 licensee.
17 12. Placed a sign on any property offering it for sale or for rent
18 without the written authority of the owner or the owner's authorized agent.
19 13. Solicited, either directly or indirectly, prospects for the sale,
20 lease or use of real property, cemetery property or membership camping
21 contracts through a promotion of a speculative nature involving a game of
22 chance or risk or through conducting lotteries or contests that are not
23 specifically authorized under the provisions of this chapter.
24 14. Failed to pay to the commissioner the biennial renewal fee as
25 specified in this chapter promptly and before the time specified.
26 15. Failed to keep an escrow or trust account or other record of funds
27 deposited with the licensee relating to a real estate transaction.
28 16. Commingled the money or other property of the licensee's principal
29 or client with the licensee's own or converted that money or property to the
30 licensee or another.
31 17. Failed or refused upon demand to produce any document, contract,
32 book, record, information, compilation or report that is in the licensee's
33 possession or that the licensee is required by law to maintain concerning any
34 real estate, cemetery or membership camping business, services, activities
35 or transactions involving or conducted by the licensee for inspection by the
36 commissioner or the commissioner's representative.
37 18. Failed to maintain a complete record of each transaction which
38 comes within the provisions of this chapter.
39 19. Violated the federal fair housing law, the Arizona civil rights law
40 or any local ordinance of a similar nature.
41 20. Tendered to a buyer a wood infestation report in connection with
42 the transfer of residential real property or an interest in residential real
43 property knowing that wood infestation exists or that the wood infestation
44 report was inaccurate or false as of the date of the tender or that an

1 inspection was not done in conjunction with the preparation of the wood
2 infestation report.
3 21. As a licensed broker, failed to exercise reasonable supervision
4 over the activities of salespersons, associate brokers or others under the
5 broker's employ or failed to exercise reasonable supervision and control over
6 the activities for which a license is required of a corporation, limited
7 liability company or partnership on behalf of which the broker acts as
8 designated broker under section 32-2125.
9 22. Demonstrated negligence in performing any act for which a license
10 is required.
11 23. Sold or leased a property to a buyer or lessee that was not the
12 property represented to the buyer or lessee.
13 24. Violated any condition or term of a commissioner's order.
14 25. Signed the name of another person on any document or form without
15 the express written consent of the person.
16 B. The commissioner may suspend or revoke a license, deny the issuance
17 of a license, issue a letter of concern to a licensee, issue a provisional
18 license or deny the renewal or the right of renewal of a license issued under
19 the provisions of this chapter when it appears that the holder or applicant
20 has:
21 1. Procured or attempted to procure a license under the provisions of
22 this chapter for the holder or applicant or another by fraud,
23 misrepresentation or deceit, or by filing an original or renewal application
24 which is false or misleading.
25 2. Been convicted in a court of competent jurisdiction in this or any
26 other state of a felony or of any crime of forgery, theft, extortion,
27 conspiracy to defraud, a crime of moral turpitude or any other like offense.
28 3. Made any substantial misrepresentation.
29 4. Made any false promises of a character likely to influence,
30 persuade or induce.
31 5. Been guilty of any conduct, whether of the same or a different
32 character than specified in this section, which constitutes fraud or
33 dishonest dealings.
34 6. Engaged in the business of a real estate, cemetery or membership
35 camping broker or real estate, cemetery or membership camping salesperson
36 without holding a license as prescribed in this chapter.
37 7. Not shown that the holder or applicant is a person of honesty,
38 truthfulness and good character.
39 8. Demonstrated incompetence to perform any duty or requirement of a
40 licensee under or arising from this chapter. For the purposes of this
41 paragraph, "incompetence" means a lack of basic knowledge or skill
42 appropriate to the type of license the person holds or a failure to
43 appreciate the probable consequences of the licensee's action or inaction.

1 9. Violated the terms of any criminal or administrative order, decree
2 or sentence.
3 10. Violated any federal or state law, regulation or rule that relates
4 to real estate or securities or that involves forgery, theft, extortion,
5 fraud, substantial misrepresentation, dishonest dealings or violence against
6 another person or failure to deal fairly with any party to a transaction that
7 materially and adversely affected the transaction. This paragraph applies
8 equally to violations of which the licensee was convicted in any lawful
9 federal or state tribunal and to any admissions made in any settlement
10 agreement by the licensee to violations.
11 11. FAILED TO RESPOND IN THE COURSE OF AN INVESTIGATION OR AUDIT BY
12 PROVIDING DOCUMENTS OR WRITTEN STATEMENTS.
13 C. A judgment based on a court's finding or stipulation of fraud by
14 a licensee following a trial on the merits or a criminal conviction of a
15 licensee that results in a payment from the real estate recovery fund is
16 prima facie evidence of a violation and grounds for discipline under this
17 section.
18 D. The commissioner may deny, suspend or revoke the issuance of a
19 license upon application by a corporation, a limited liability company or a
20 partnership if it appears that an owner, officer, director, member, manager,
21 partner, stockholder owning ten per cent or more of the stock in the
22 corporation or limited liability company or person exercising control of the
23 entity is a current or former licensee whose license as a broker or a
24 salesperson has been denied, suspended or revoked.
25 E. The lapsing or suspension of a license by operation of law or by
26 order or decision of the commissioner or a court of law or the voluntary
27 surrender of a license by a licensee shall not deprive the commissioner of
28 jurisdiction to do any of the following:
29 1. Proceed with any investigation of or action or disciplinary
30 proceeding against the licensee.
31 2. Render a decision suspending or revoking the license, or denying
32 the renewal or right of renewal of the license.
33 3. Assess a civil penalty pursuant to section 32-2160.01.
34 F. For the purposes of this section:
35 1. "Letter of concern" means an advisory letter to notify a licensee
36 that, while the conduct or evidence does not warrant other disciplinary
37 action, the commissioner believes that the licensee should modify or
38 eliminate certain practices and that continuation of the activities may
39 result in further disciplinary action against the licensee.
40 2. "Provisional license" means a license that the department issues
41 and that allows a licensee to practice as a salesperson or broker subject to
42 either a consent order as prescribed in section 32-2153.01 or the
43 commissioner's terms, conditions and restrictions.

1 Sec. 8. Section 32-2157, Arizona Revised Statutes, is amended to read:
2 32-2157. Written notice of charges; summary suspension; hearing
3 A. Except as provided in ~~subsection~~ SUBSECTIONS B AND C of this
4 section, before suspending, revoking or denying the renewal or the right of
5 renewal of any license, or issuing any order prohibiting the sale or lease
6 of property or the sale of cemetery lots or membership camping contracts as
7 provided by this chapter, the commissioner shall present the licensee, owner,
8 operator, agent or developer with written notice of the charges filed against
9 the person, or reasons for prohibiting the sale or lease, and shall afford
10 the person an opportunity for a hearing pursuant to title 41, chapter 6,
11 article 10. Within twenty days after service of a notice of hearing, the
12 respondent shall appear by filing a written answer to the complaint.
13 B. If the commissioner finds that the public health, safety or welfare
14 imperatively requires emergency action, and incorporates a finding to that
15 effect in the commissioner's order, summary suspension of a license or sales
16 may be ordered. Grounds for issuance of an order of summary suspension
17 include the violation of any of the provisions of section 32-2153 and the
18 termination of a license pursuant to section 32-2188, subsection I. A
19 licensee, owner, operator, agent or developer may request a hearing pursuant
20 to title 41, chapter 6, article 10. A summary suspension shall be deemed to
21 be final if a request for a hearing is not received within thirty days as
22 provided by section 41-1092.03.
23 C. The department may issue a summary suspension when the department
24 receives notice that a person licensed pursuant to this chapter has been
25 convicted of a felony offense and is currently incarcerated for the
26 conviction, paroled or under the supervision of a parole or community
27 supervision officer or is on probation as a result of the conviction. This
28 subsection does not limit the commissioner's authority to seek revocation of
29 a license or other disciplinary action pursuant to this chapter.
30 Sec. 9. Section 32-2163, Arizona Revised Statutes, is amended to read:
31 32-2163. Unlawful acts; out-of-state broker; cooperation
32 agreement
33 A. It is unlawful for any licensed broker in this state to employ or
34 compensate, directly or indirectly, any person for performing any of the acts
35 within the scope of this chapter if the person is not also a licensed broker
36 in this state, or a salesperson licensed under the broker employing or
37 compensating him, except that a licensed broker in this state may pay
38 compensation to and receive compensation from a broker lawfully operating in
39 another state.
40 B. Notwithstanding that pursuant to subsection A OF THIS SECTION, a
41 licensed broker in this state may pay to and receive compensation from an
42 out-of-state broker, this authority shall not be construed to permit an
43 out-of-state broker to conduct activity in this state that would otherwise
44 require a broker's license issued by the department.

C. A LICENSED BROKER IN THIS STATE MAY COOPERATE WITH AN OUT-OF-STATE BROKER WHO WOULD OTHERWISE REQUIRE LICENSURE IN THIS STATE IF:

1. THE LICENSED BROKER AND THE OUT-OF-STATE BROKER ENTER INTO A WRITTEN COOPERATION AGREEMENT BEFORE THE OUT-OF-STATE BROKER CONDUCTS ANY ACTIVITY OTHERWISE REQUIRING A BROKER'S LICENSE PURSUANT TO THIS CHAPTER. THE COOPERATION AGREEMENT SHALL INCLUDE THE FOLLOWING:

(a) A LIST OF THE REAL ESTATE ACTIVITIES TO BE CONDUCTED BY THE OUT-OF-STATE BROKER.

(b) A STATEMENT THAT THE OUT-OF-STATE BROKER AGREES TO FULLY COMPLY WITH THE LAWS OF THIS STATE AND SUBMIT TO THE REGULATORY JURISDICTION OF THE DEPARTMENT FOR ACTIVITIES SUBJECT TO REAL ESTATE BROKER LICENSURE PURSUANT TO THIS CHAPTER.

(c) A STATEMENT THAT THE LICENSED BROKER IN THIS STATE UNDERSTANDS AND ACCEPTS RESPONSIBILITY FOR THE ACTS OF THE OUT-OF-STATE BROKER.

2. ALL NEGOTIATIONS IN THIS STATE OR WITH PEOPLE WHO OWN PROPERTY IN THIS STATE SHALL BE CONDUCTED THROUGH THE LICENSED BROKER IN THIS STATE.

3. THE LICENSED BROKER IN THIS STATE ASSUMES ALL RESPONSIBILITY FOR THE ACTS OF THE OUT-OF-STATE BROKER.

4. ALL PRINCIPAL FUNDS HANDLED BY EITHER THE LICENSED BROKER IN THIS STATE OR THE OUT-OF-STATE BROKER SHALL BE SUBJECT TO THE DEPOSIT AND HANDLING REQUIREMENTS OF SECTION 32-2151.

D. THE OFFERING OF REAL ESTATE BROKERAGE SERVICES SPECIFIED BY SECTION 32-2101, PARAGRAPH 47 FOR COMPENSATION OR ANY OTHER THING OF VALUE PERTAINING TO REAL PROPERTY LOCATED IN THIS STATE THROUGH AN INTERNET WEB SITE CONSTITUTES ACTIVITY THAT REQUIRES A BROKER'S LICENSE ISSUED BY THE DEPARTMENT.

E. THIS SECTION DOES NOT ALLOW AN OUT-OF-STATE BROKER WHO IS NOT LICENSED IN THIS STATE TO LIST, MARKET OR ADVERTISE IN THIS STATE REAL PROPERTY LOCATED IN THIS STATE FOR SALE, LEASE OR EXCHANGE.

F. SIGNS SHALL NOT BE PLACED ON REAL PROPERTY IN THIS STATE BY AN OUT-OF-STATE BROKER. AN OUT-OF-STATE BROKER SHALL NOT USE A COOPERATION AGREEMENT AS AUTHORITY TO SELL, LEASE, RENT, EXCHANGE OR ATTEMPT TO SELL, LEASE, RENT OR EXCHANGE REAL PROPERTY TO A RESIDENT OF THIS STATE.

Sec. 10. Section 32-2173, Arizona Revised Statutes, is amended to read:

32-2173. <u>Property management agreements; contents, termination</u>

A. ~~The~~ A property management firm shall write property management agreements in clear, unambiguous language, and the property management agreements:

1. Shall:

(a) State all material terms and conditions of the property management firm's services, obligations, duties and responsibilities to the property owner.

(b) Be signed by the property owner or his agent and the property management firm's designated broker or the broker's authorized real estate licensee.

(c) Specify a beginning and an ending date.

(d) Contain cancellation provisions that are agreeable to both parties.

(e) Provide for the manner of disposition of all monies collected by the property management firm, INCLUDING ANY TENANT DEPOSITS.

(f) Specify the type and frequency of status reports to the owner.

(g) State the amount and purpose of monies the property management firm holds as an operating reserve for emergency and other purposes.

(h) Provide for the disposition and allocation of interest earned on trust account monies.

(i) State the terms and conditions of compensation the property owner pays for services pursuant to the property management agreement.

(j) Not be assigned to another licensee or licensed entity without the express written consent of the property owner.

2. May:

(a) Contain an automatic renewal provision, if the property management firm sends the owner a reminder notice at least thirty days before the renewal date. The notice does not negate any other cancellation term otherwise agreed to.

(b) Provide for reasonable liquidated damages or cancellation fees for early termination of the agreement.

(c) Allow the property management firm's broker to authorize a licensed or unlicensed person in the direct employment of the broker, pursuant to section 32-2174, subsection C, to transfer monies from or to be a signatory on a property management trust account to which the property management firm deposits the owner's monies.

(d) Require more than one signature on checks written from a property management account.

(e) Contain any other provisions that are agreed to between the property management firm and the owner and that are not in conflict with the requirements of this chapter.

B. Immediately on termination of a property management agreement, the property management firm shall provide the owner with:

1. All originals or other copies of all rental agreements or related documents in the property management firm's possession for current and previous tenants. These documents shall include any applications, property inventories, leases, pet permits, default notices, lease amendments or addenda in the property management firm's possession. The broker is not required to keep copies of residential rental lease agreements or related rental lease documents after termination of the property management agreement.

2. All building plans, environmental studies, conditions, covenants and restrictions, inspection reports, contracts, keys, warranties, personal property or other documents in the possession of the property management firm.

C. On termination of the property management agreement the property management firm shall provide the owner with a final accounting of the property's financial status that includes at a minimum:

1. Within five days, a list of all tenant security obligations.

2. Within thirty-five days, reimbursement for all monies remaining in the property accounts maintained by the property management firm, except for monies needed for unpaid obligations incurred during the term of the property management agreement.

3. Within seventy-five days, a final accounts receivable and payable list.

4. Within seventy-five days, a final bank account reconciliation.

D. If there is an on-site management office and any of the records or documents described in subsection B of this section are located on site, the property management firm may leave the items there for the benefit of the owner on termination of the property management agreement. The property management firm shall inform the owner in writing immediately as to the location of these records.

Sec. 11. Section 32-2174, Arizona Revised Statutes, is amended to read:

32-2174. Property management accounts

A. All property management accounts shall be designated as trust accounts and shall include descriptive wording, substantially similar to one of the following, in the trust account title:

1. "Trust account".

2. "Fiduciary account".

3. "In trust for (individual or entity name)".

4. "Trustee for (individual or entity name)".

5. "Fiduciary for (individual or entity name)".

B. A broker's trust account is required for all of the owner's monies, except if the owner directs the broker to deposit the monies directly into the owner's account. The broker shall not have access to the owner's account. Trust accounts may be interest bearing.

C. The designated broker for a property management firm may authorize either a licensee or an unlicensed natural person in the direct employ of the broker to transfer monies or to be a signatory on the property management firm's trust accounts. If the person who is designated to sign on behalf of the designated property management broker is an unlicensed person, that person shall be a bona fide officer, member, principal or employee of the property management firm. The broker may require dual signatures on checks and may use a facsimile signature according to the broker's business policies and procedures. The designation of a licensed or unlicensed person to

1 transfer monies or to be a signatory on trust accounts does not lessen the
2 broker's responsibility or liability for any monies handled.
3 D. Within three banking days after receiving monies that are not
4 subject to dispute or contingency, the property management firm shall deposit
5 the monies in either the owner's direct account or the property management
6 firm's trust account for the benefit of the owner. A property management
7 firm may remit an owner's monies under its control to or for the owner by any
8 lawful means available.
9 E. EACH RENTAL AGREEMENT EXECUTED BY A PROPERTY MANAGER SHALL INCLUDE
10 A PROVISION THAT CLEARLY STATES THE DISPOSITION OF ANY TENANT DEPOSITS.
11 Sec. 12. Section 32-2194.01, Arizona Revised Statutes, is amended to
12 read:
13 32-2194.01. Notice to commissioner of intention to sell
14 cemetery property; exceptions; restrictions
15 A. Before offering cemetery plots for sale, the owner or agent shall
16 notify the commissioner in writing and the notice shall contain:
17 1. The name and address of the owner. If the holder of any ownership
18 interest in the cemetery is other than an individual, such as a corporation,
19 partnership or trust, a statement naming the type of legal entity and listing
20 the interest and the extent of such interest of each principal in the
21 entity. For the purposes of this paragraph, "principal" means any person or
22 entity having a ten per cent or more financial interest or, if the legal
23 entity is a trust, each beneficiary of the trust holding a ten per cent or
24 more beneficial interest.
25 2. The legal description and area of the lands.
26 3. A true statement of the condition of the title to the land,
27 including all encumbrances on the land.
28 4. The terms and conditions on which it is intended to dispose of the
29 land, together with copies of any real estate sales contract, conveyance,
30 lease, assignment or other instrument intended to be used, and other
31 information the owner or agent desires to present.
32 5. A map of the cemetery which has been filed in the office of the
33 county recorder in the county in which the cemetery is located.
34 6. A comprehensive statement describing the land on and the locality
35 in which the cemetery is located.
36 7. A true statement of the use or uses for which the proposed cemetery
37 will be offered.
38 8. A true statement of the provisions, if any, limiting the use of the
39 plots in the cemetery, together with copies of any restrictive covenants
40 affecting all or part of the cemetery.
41 9. The name and business address of the designated broker selling
42 within this state plots in the cemetery. If the designated broker is changed
43 the cemetery shall advise the department in writing without the requirement
44 of an amended filing.

1 10. A true statement of the approximate amount of indebtedness which
2 is a lien on the cemetery or any part of the cemetery and which was or will
3 be incurred to pay for the construction of any on-site or off-site
4 improvement or other facilities.
5 11. A true statement or reasonable estimate, if applicable, of the
6 amount of any indebtedness which has been or is proposed to be incurred by
7 an existing or proposed special district, entity, taxing area or assessment
8 district within the boundaries of which the cemetery or any part of the
9 cemetery is located and any amounts which are to be obtained by ad valorem
10 tax or assessment, or by a special assessment or tax on the cemetery or any
11 part of the cemetery.
12 12. Proof of financial responsibility for completing the cemetery and
13 its related facilities for its initial development.
14 13. A true statement of provisions made for financing any related
15 facilities to be included. The statement shall include evidence of
16 assurances for delivery of such facilities and a statement of the provisions,
17 if any, for the continued maintenance of such facilities.
18 14. A true statement that the cemetery is not subject to any known
19 flooding or drainage hazards.
20 15. A true statement of the nature of any improvements to be installed
21 in the developed portion of the cemetery, the estimated schedule for
22 completion and the estimated costs related to such improvements which shall
23 be borne by the developed portion of the cemetery.
24 16. A true statement of the availability of department of health
25 services approved water and sewage disposal facilities and other public
26 utilities including electricity, gas and telephone facilities in the
27 cemetery, the estimated schedule for their installation and the estimated
28 costs related to such facilities and utilities which shall be borne by the
29 cemetery.
30 17. If the subdivider is a subsidiary corporation, a true statement
31 identifying the parent corporation and any cemeteries in this state in which
32 the parent or any of its subsidiaries are or have been involved in the last
33 five years.
34 18. Such other information and such other documents as the commissioner
35 may reasonably require.
36 19. IF THE CEMETERY HAS BEEN PREVIOUSLY LICENSED IN THIS STATE AND THE
37 OWNERSHIP OR CONTROL OF THE CEMETERY HAS TRANSFERRED, A STATEMENT FROM A
38 CERTIFIED PUBLIC ACCOUNTANT CERTIFIED PURSUANT TO CHAPTER 6 OF THIS TITLE,
39 SHOWING THAT ALL REQUIRED FUNDS HAVE BEEN DEPOSITED IN THE IRREVOCABLE TRUST
40 FUND AND THAT ONLY LAWFUL WITHDRAWALS WERE MADE. AN AUDIT THAT MEETS
41 GENERALLY ACCEPTED ACCOUNTING STANDARDS SHALL BE USED BY THE CERTIFIED PUBLIC
42 ACCOUNTANT TO PREPARE THE STATEMENT REQUIRED BY THIS PARAGRAPH.
43 B. The commissioner may require the owner or agent to supplement the
44 notice of intention to develop a cemetery and may require the filing of

1 periodic reports to update the information contained in the original notice
2 of intention to develop a cemetery.
3 C. The conveyance of a plot in a cemetery does not limit the right of
4 the purchaser or ~~his~~ THE PURCHASER'S representative to appear and testify
5 before any public body regarding changes or other official acts affecting the
6 cemetery property. All contractual provisions which conflict with this
7 subsection are deemed to be against public policy.
8 D. THE COMMISSIONER MAY BY SPECIAL ORDER EXEMPT FROM ANY ONE OR ALL
9 OF THE PROVISIONS OF THIS ARTICLE CERTAIN CEMETERIES OTHERWISE REQUIRED TO
10 COMPLY WITH THIS ARTICLE ON WRITTEN PETITION AND ON A SHOWING BY THE
11 PETITIONER, SATISFACTORY TO THE COMMISSIONER, THAT COMPLIANCE WITH THIS
12 ARTICLE IS NOT ESSENTIAL TO THE PUBLIC INTEREST OR FOR THE PROTECTION OF
13 BUYERS BY REASON OF THE SPECIAL CHARACTERISTICS OF THE CEMETERY.
14 Sec. 13. Section 32-2194.05, Arizona Revised Statutes, is amended to
15 read:
16 32-2194.05. Advertising material; contents; order prohibiting
17 use; costs of investigation
18 A. ~~Twenty-one~~ WITHIN TEN days ~~before use~~ AFTER REQUEST BY THE
19 COMMISSIONER, the cemetery owner or agent shall file with the commissioner
20 a copy of any promotional and advertising material of any kind used directly
21 or indirectly in connection with the sale of cemetery plots or any material
22 changes in the material. ~~It is not necessary to make repetitive filings of~~
23 ~~material which is the same as or varies only in minor details from material~~
24 ~~which has previously been filed with the commissioner for the cemetery.~~
25 B. No advertising, communication or sales literature of any kind,
26 including oral statements by salespersons or other persons, may contain:
27 1. Any untrue statement of material fact or any omission of material
28 fact which would make the statement misleading in light of the circumstances
29 under which the statement was made.
30 2. Any statement, representation or pictorial presentation of proposed
31 improvements or nonexistent scenes without clearly indicating that the
32 improvements are proposed and the scenes do not exist.
33 C. All advertising and sales literature shall be consistent with the
34 information contained in the notice of intention pursuant to section
35 32-2194.01 and shall otherwise comply with the rules of the commissioner.
36 D. If it appears to the commissioner that any person is or has engaged
37 in advertising or promotional practices in violation of this article, the
38 commissioner may hold a hearing as a contested case under the provisions of
39 title 41, chapter 6, article 10 and issue such order or orders as he deems
40 necessary to protect the public interest or the commissioner may bring an
41 action in any court of competent jurisdiction against the person to enjoin
42 the person from continuing the violation.
43 E. The commissioner may adopt rules and guidelines necessary to
44 protect the public interest and to assure that all advertising and

promotional practices with respect to land subject to the provisions of this article are not false or misleading.

F. It is unlawful for any owner or agent of a cemetery or other person with intent directly or indirectly to sell plots subject to the provisions of this article to authorize, use, direct or aid in any advertising, communication, sales literature or promotional practice which violates this section.

G. Nothing ~~contained~~ in this section applies to the owner or publisher of a newspaper, magazine or other publication of printed matter in which such advertisement appears or to the owner or operator of a radio or television station which disseminates such advertisement if the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser.

Sec. 14. Section 32-2194.10, Arizona Revised Statutes, is amended to read:

32-2194.10. Change of cemetery plan after approval by commissioner; notice

A. It is unlawful for any owner or agent, after submitting to the commissioner the plan under which cemetery plots are to be offered for sale and securing his approval, to change the plan materially without first notifying the commissioner in writing of the intended change. Material changes covered by this section shall be prescribed in the rules of the commissioner. On receipt of any notice of a material change, the commissioner, if he determines such action to be necessary for the protection of purchasers, may suspend his approval of sale pending amendment of the notice as required by section 32-2194.01.

B. A filing fee of ~~five hundred dollars or such lesser fee as determined by the commissioner~~ ONE-HALF OF THE FEE THAT WAS CHARGED FOR THE INITIAL CERTIFICATE OF AUTHORITY PURSUANT TO SECTION 32-2194.02 BUT NOT LESS THAN TWO HUNDRED FIFTY DOLLARS shall accompany any amendment required by subsection A of this section.

Sec. 15. Title 32, chapter 20, article 6, Arizona Revised Statutes, is amended by adding section 32-2194.14, to read:

32-2194.14. Cemetery brokers; disclosures

BEFORE OFFERING CEMETERY PROPERTY OR INTERMENT RIGHTS FOR SALE IN A LICENSED CEMETERY, A CEMETERY BROKER WHO IS NOT A DESIGNATED BROKER FOR THE CEMETERY SHALL OBTAIN AND COMPLY WITH ALL OF THE LICENSED CEMETERY'S RULES AND SHALL DISCLOSE TO THE PURCHASER ALL FEES AND TIME FRAMES OF TRANSFER AND RECORDATION OF INTERMENT RIGHTS OR DEEDS ON THE CEMETERY RECORDS.

Sec. 16. Section 32-2194.28, Arizona Revised Statutes, is amended to read:

32-2194.28. Deposit in endowed-care fund from sales

A. In addition to establishing a trust fund as required by this article, every perpetual or endowed-care cemetery shall deposit into its trust fund according to the following schedule for each sale ~~consummated~~

WITHIN THIRTY DAYS AFTER THE CONTRACT FOR THE PURCHASE OF CEMETERY PROPERTY IS PAID IN FULL:

1. Two dollars seventy-five cents per square foot for each grave.
2. Thirty-six dollars for each niche.
3. One hundred twenty dollars for each crypt.

B. In addition to the deposits required in subsection A of this section, a cemetery may deposit in its trust fund up to fifteen per cent of the gross sales price of a grave, niche or crypt.

C. ~~The provisions of~~ This section ~~shall apply~~ APPLIES to every cemetery which in any way represents that it is a perpetual or endowed-care cemetery, regardless of whether it operated as a perpetual or endowed-care cemetery before July 2, 1963.

D. In the case of a perpetual or endowed-care cemetery which was in operation as a perpetual or endowed-care cemetery before July 2, 1963, the fund created by the deposits which subsection A of this section requires ~~shall be~~ IS subject to the same restrictions to which the trust funds required by sections 32-2194.24 and 32-2194.25 are subject.

Sec. 17. Section 32-2194.30, Arizona Revised Statutes, is amended to read:

32-2194.30. Restriction on use of care funds

Endowment care funds shall not be used for any purpose other than to provide income for the care of burial spaces as stated above. In investing these funds the trustee shall exercise the judgment and care OF A PRUDENT INVESTOR under the circumstances then prevailing ~~which persons of prudence, discretion and intelligence exercise in the management of their own affairs~~, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, and subject to any express provisions or limitations contained in any particular trust instrument, a trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, and stocks, preferred or common, ~~which persons of prudence, discretion and intelligence~~ THAT PRUDENT INVESTORS acquire for their own account.

Sec. 18. Title 32, chapter 20, article 6, Arizona Revised Statutes, is amended by adding section 32-2194.33, to read:

32-2194.33. Cemetery property owners; address notification reclamation; abandoned cemetery plot

A. FOR THE PURPOSES OF THIS SECTION, AN OWNER OF CEMETERY PROPERTY IN ANY CEMETERY LICENSED UNDER THIS CHAPTER SHALL KEEP THE CEMETERY INFORMED IN WRITING OF THE OWNER'S CURRENT RESIDENCE ADDRESS. BEFORE INITIATING A NOTICE OF ABANDONMENT, THE CEMETERY SHALL NOTIFY EACH CEMETERY PROPERTY OWNER BY LETTER AT THE OWNER'S LAST KNOWN ADDRESS AND NOTIFY ALL FUTURE CEMETERY PROPERTY OWNERS, IN THE CONTRACT FOR SALE AND THE CERTIFICATE OF OWNERSHIP,

1 OF THE REQUIREMENT TO KEEP THE CEMETERY INFORMED IN WRITING OF THEIR CURRENT
2 RESIDENCE ADDRESS.
3 B. THERE IS A PRESUMPTION THAT CEMETERY PROPERTY IN ANY CEMETERY
4 LICENSED UNDER THIS CHAPTER HAS BEEN ABANDONED WHEN AN OWNER OF UNUSED
5 CEMETERY PROPERTY HAS FAILED TO PROVIDE THE CEMETERY WITH A CURRENT RESIDENCE
6 ADDRESS FOR A PERIOD OF FIFTY CONSECUTIVE YEARS AND AS A RESULT THE CEMETERY
7 IS UNABLE TO COMMUNICATE BY CERTIFIED MAIL WITH THE OWNER OF THE UNUSED
8 CEMETERY PROPERTY. THERE IS NOT A PRESUMPTION OF ABANDONMENT IF EITHER OF
9 THE FOLLOWING OCCURS:
10 1. CEMETERY PROPERTY HELD IN COMMON OWNERSHIP IS ADJOINING WHETHER IN
11 A GRAVE SPACE, PLOT, MAUSOLEUM, COLUMBARIUM OR OTHER PLACE OF INTERMENT AND
12 IS USED WITHIN COMMON OWNERSHIP.
13 2. ANY TYPE OF MEMORIAL MARKER HAS BEEN PLACED ON OR ATTACHED TO THE
14 CEMETERY PROPERTY.
15 C. ON THE OCCURRENCE OF A PRESUMPTION OF ABANDONMENT AS PRESCRIBED BY
16 SUBSECTION B OF THIS SECTION, A CEMETERY MAY FILE WITH THE DEPARTMENT A
17 CERTIFIED NOTICE ATTESTING TO THE ABANDONMENT OF THE CEMETERY PROPERTY. THE
18 NOTICE SHALL DO THE FOLLOWING:
19 1. DESCRIBE THE CEMETERY PLOT CERTIFIED TO HAVE BEEN ABANDONED.
20 2. SET FORTH THE NAME OF THE LAST KNOWN OWNER OF THE CEMETERY PLOT OR,
21 IF THE OWNER IS KNOWN TO THE CEMETERY TO BE DECEASED, THE NAMES, IF KNOWN TO
22 THE CEMETERY, OF CLAIMANTS THAT ARE HEIRS AT LAW, NEXT OF KIN OR SPECIFIC
23 DEVISEES UNDER THE WILL OF THE OWNER.
24 3. DESCRIBE THE FAILURE OF THE OWNER OR CLAIMANTS AS PRESCRIBED BY
25 PARAGRAPH 2 OF THIS SUBSECTION TO KEEP THE CEMETERY INFORMED OF THE OWNER'S
26 CURRENT RESIDENCE ADDRESS FOR A PERIOD OF FIFTY CONSECUTIVE YEARS OR MORE.
27 4. CERTIFY THAT CEMETERY PROPERTY HAS NOT BEEN INCLUDED THAT IS HELD
28 IN COMMON OWNERSHIP WITH ANY ABANDONED CEMETERY PROPERTY AS PRESCRIBED BY
29 SUBSECTION B OF THIS SECTION AND THAT A MEMORIAL MARKER HAS NOT BEEN PLACED
30 ON OR ATTACHED TO THE CEMETERY PROPERTY.
31 D. IRRESPECTIVE OF DIVERSITY OF OWNERSHIP OF THE CEMETERY PROPERTY,
32 A CEMETERY MAY INCLUDE IN ITS CERTIFICATION CEMETERY PROPERTIES OF VARIOUS
33 TYPES.
34 E. THE CEMETERY SHALL PUBLISH A NOTICE OF THE APPROVED ABANDONED
35 CEMETERY PROPERTY ONCE EACH WEEK FOR TWO CONSECUTIVE WEEKS IN A NEWSPAPER OF
36 GENERAL CIRCULATION IN THE COUNTY IN WHICH THE CEMETERY PROPERTY IS LOCATED.
37 F. AFTER ONE HUNDRED TWENTY DAYS FROM THE FINAL PUBLICATION OF THE
38 NOTICE AS PROVIDED IN SUBSECTION E OF THIS SECTION, IF THERE HAS BEEN NO
39 NOTIFICATION OF THE ADDRESS OF THE CURRENT OWNER, THE CEMETERY SHALL HAVE THE
40 RIGHT TO RESELL THE CEMETERY PROPERTY AND TRANSFER THE OWNERSHIP OF THE
41 CEMETERY PROPERTY AS PROVIDED IN THE CEMETERY'S CERTIFICATE OF AUTHORITY.
42 G. ON THE SALE OF EACH LOT, GRAVE, NICHE OR CRYPT RECLAIMED PURSUANT
43 TO THIS SECTION, THE CEMETERY SHALL CONTRIBUTE TO THE ENDOWED-CARE TRUST FUND
44 THE AMOUNT CURRENTLY REQUIRED BY SECTION 32-2194.28.

H. ON SHOWING OF EVIDENCE OF RIGHT OF OWNERSHIP, PERSONS OR THEIR HEIRS WHO WERE OWNERS OF CEMETERY PROPERTY THAT WAS SOLD UNDER THIS SECTION SHALL HAVE THE RIGHT AT ANY TIME TO OBTAIN EQUIVALENT CEMETERY PROPERTY IN THE CEMETERY WITHOUT ADDITIONAL CHARGE. IF NO CEMETERY PROPERTY IS DESIRED, THE PERSONS OR THEIR HEIRS MAY OBTAIN AND RECOVER THE AMOUNT ORIGINALLY PAID TO THE CEMETERY FOR THE CEMETERY PROPERTY.

I. THE CEMETERY SHALL MAKE AVAILABLE CEMETERY PROPERTY EQUAL TO TEN PER CENT OF THE ABANDONED CEMETERY PROPERTY SOLD UNDER THIS SECTION FOR THE USE OF PERSONS OR THEIR HEIRS WHO WERE OWNERS OF CEMETERY PROPERTY THAT WAS SOLD UNDER THIS SECTION AND WHO HAVE THE RIGHT AT ANY TIME TO OBTAIN CEMETERY PROPERTY IN THE CEMETERY UNDER THIS SECTION.

J. PERSONS WHO PURCHASE CEMETERY PROPERTY RECLAIMED PURSUANT TO THIS SECTION SHALL HAVE THE RIGHT TO SELL, ALIENATE OR OTHERWISE TRANSFER THE CEMETERY PROPERTY SUBJECT TO AND IN ACCORDANCE WITH THE RULES OF THE CEMETERY AND PAYMENT OF ANY APPLICABLE TRANSFER FEE.

Sec. 19. Section 32-2197.20, Arizona Revised Statutes, is amended to read:

32-2197.20. Civil penalty

A. Any developer who is subject to the jurisdiction of the department and who has violated any provision of this article or any rule or order ~~promulgated~~ ADOPTED by the commissioner, who has deviated substantially from the provisions of a public report or who has engaged in any unlawful practices defined in section 44-1522 with respect to the sale or lease of timeshare interests may be assessed a civil penalty by the commissioner, after a hearing, in an amount ~~not to exceed five hundred dollars for each infraction~~ OF AT LEAST ONE THOUSAND DOLLARS AND NOT MORE THAN FIVE THOUSAND DOLLARS PER INFRACTION.

B. Actions to recover penalties pursuant to this section shall be brought by the attorney general in the name of this state in the superior court in the county in which the violation occurred or in a county in which the commissioner maintains an office.

APPROVED BY THE GOVERNOR APRIL 16, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 16, 2004.

Passed the House March 29, 20 04,

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate March 2, 20 04,

by the following vote: 27 Ayes,

0 Nays, 3 Not Voting

Ken Bennett
President of the Senate

Charmin Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20___,

at _____ o'clock _____ M.

_____
Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20___,

at _____ o'clock _____ M.

_____
Secretary of State

S.B. 1140

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 12, 2004,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

12th day of April, 2004,

at 4:44 o'clock P M.

Secretary to the Governor

Approved this 16 day of

April, 2004,

at 12:05 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 16 day of April, 2004,

at 4:33 o'clock P M.

Janice K. Brewer

Secretary of State

S.B. 1140