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Title 32, Chapter 20 REAL ESTATE

Article 1 Real Estate Department

32-2101. Definitions

In this chapter, unless the context otherwise requires:

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

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

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

(b) Communications to stockholders as follows:

(i) Annual reports and interim financial reports.

(ii) Proxy materials.

(iii) Registration statements.

(iv) Securities prospectuses.

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

(vi) Prospectuses.

(vii) Property reports.

(viii) Offering statements.

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

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

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

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

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

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

9. "Business broker" means a real estate broker who acts as an intermediary or agent between sellers or buyers, or both, in the sale or purchase, or both, of businesses or business opportunities where a lease or sale of real property is either a direct or incidental part of the transaction.

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

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

(a) A burial park, for earth interments.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A barrier.

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

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

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

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

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

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

(b) Doing business as a sole proprietor.

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

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

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

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

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

25. "Fractional interest" means an undivided interest in improved or unimproved land, lots or parcels of any size created for the purpose of sale or lease and evidenced by any receipt, certificate, deed or other document conveying the interest. Undivided interests in land, lots or parcels created in the names of a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Assists or directs in the procuring of prospects calculated or intended to result in the sale, purchase, listing, exchange or lease of membership camping contracts. (f) Performs any of the foregoing acts as an employee or on behalf of a membership camping operator or membership contract owner.

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

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

39. "Membership camping salesperson" means a natural person who acts on the person’s own behalf or through and on behalf of a professional limited liability company or a professional corporation engaged by

or on behalf of a licensed membership camping or real estate broker, or by or on behalf of a corporation, partnership or limited liability company that is licensed as a membership camping or real estate broker, to perform any act or participate in any transaction in a manner included in the definition of membership camping broker.

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

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

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

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

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

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

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

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

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

(a) Sells, exchanges, purchases, rents or leases real estate, businesses and business opportunities or timeshare interests.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) Acts as a business broker.

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

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

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

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

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

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

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

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

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

55. "Subdivider" means any person who offers for sale or lease six or more lots, parcels or fractional interests in a subdivision or who causes land to be subdivided into a subdivision for the subdivider or for others, or who undertakes to develop a subdivision, but does not include a public agency or officer authorized by law to create subdivisions.

56. "Subdivision" or "subdivided lands":

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

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

(c) Does not include:

(i) Leasehold offerings of one year or less.

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

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

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

(v) A sale or lease of a lot, parcel or fractional interest that occurs ten or more years after the sale or lease of another lot, parcel or fractional interest if the other lot, parcel or fractional interest is not subject to this article and is treated as an independent parcel unless, upon investigation by the commissioner, there is evidence of intent to subdivide. (Effective 09.30.2011)

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

58. "Trustee" means:

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

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

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

60. "Unsubdivided lands":

(a) 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.

(b) Includes any land that is sold that would otherwise constitute the sixth lot, parcel or fractional interest if the sale occurs ten or more years after the earliest of the previous five sales and if all of the sales consist of property that was originally contained within the same parcel that is thirty-six acres or more and less than one hundred sixty acres.

32-2102. Administration of chapter by real estate department; purpose

This chapter shall be administered by the state real estate department under the direction of the real estate commissioner. The purpose of the department in administering this chapter is to protect the public interest through licensure and regulation of the real estate profession in this state.

32-2103. Placement of monies collected; revision of fees

A. The department shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under the provisions of this chapter in the state general fund unless otherwise prescribed by law.

B. Each year the commissioner shall revise all fees collected under this chapter within the limits prescribed by this chapter in such a manner that the revenue derived from such fees equals at least ninety-five per cent but not more than one hundred ten per cent of the anticipated appropriated budget for the department for the succeeding fiscal year. If the revenue derived from the fees exceeds one hundred ten per cent of the anticipated appropriated budget for the department for the succeeding fiscal year, the commissioner shall lower the fees in the succeeding year in proportion to the excess.

32-2104. Real estate advisory board; members; terms; qualifications; compensation; chairman; duties

(*Amended by Laws 2014, Ch. 74)*

A. The real estate advisory board is established composed of ten members who are appointed by the governor. The term of office of each member is six years, and the terms of three members expire on January 31 of each odd numbered year. Appointment to fill a vacancy occurring other than by expiration of term shall be filled by appointment for the unexpired portion of the term only.
B. The membership of the board shall consist of:

1. Two members, each of whom is a real estate broker with at least five years of brokerage experience in this state. Not more than one member shall be appointed from any one county.
2. Three members, two of whom have been engaged in residential real estate brokerage for the five years immediately preceding appointment, and one of whom has been engaged in multifamily residential rental property management with a real estate broker license for the five years immediately preceding appointment.
3. Two members who are primarily engaged in subdividing real property.
4. Three public members who are not related within the third degree of consanguinity or affinity to any person holding a broker's or salesperson's license from this state.

C. Members of the board shall receive no compensation but shall be reimbursed for subsistence expenses pursuant to section 38-624 and travel expenses pursuant to section 38-623.
D. The board annually shall select from its membership a chairperson for the board.
E. The board shall provide the commissioner with such recommendations as it deems necessary and beneficial to the best interests of the public. The board shall also provide recommendations on specific questions or proposals as the board deems necessary or as requested by the commissioner.
F. The board annually shall present to the governor an evaluation of the performance of the real estate commissioner and the real estate department.
G. Not more than five members of the board from any one county may serve concurrently.

32-2105. Meetings of the state real estate advisory board
A. The board shall meet for the transaction of business not less than once each quarter-year at a place within the state it designates. The board may hold other meetings it deems advisable upon five days' written notice of the time and place of the meeting, signed by the commissioner or a majority of the members of the board.
B. A majority of the board shall constitute a quorum. A vacancy on the board shall not impair the rights or powers of the remaining members.

32-2106. Real estate commissioner; appointment; qualifications
A. The real estate commissioner shall be appointed by the governor, pursuant to section 38-211. The real estate commissioner shall serve at the pleasure of the governor.
B. To be a candidate for the position of real estate commissioner a person shall have at least five years' experience in the real estate industry, title insurance industry, banking or mortgage broker industry and three years' administrative experience and shall not at the date of acceptance of appointment be financially interested in any real estate or brokerage firm, nor act as a broker, and salesman or agent therefor except through a trust over which the applicant has no control.

32-2107. Powers and duties of commissioner; compensation; administration of department; seal; revolving fund
A. The commissioner shall have charge of the department with power to administer it in accordance with the provisions of and to carry out the purposes of this chapter. The commissioner shall adopt a seal which shall bear the words "real estate commissioner, state of Arizona", which shall be used for the authentication of proceedings of the department and the official documents thereof. The commissioner's principal office shall be at the state capitol. The commissioner may have branch offices the commissioner deems necessary in other cities.
B. The commissioner shall receive compensation as determined pursuant to section 38-611.
C. The commissioner shall prepare and cause to be produced and circulated among the licensees and the general public educational matter the commissioner deems helpful and proper for the guidance and assistance of both licensees and the public. The commissioner may assess a fee for each of these educational products that does not exceed a level reasonably estimated to be sufficient to recover production and distribution costs.

D. In cooperation with industry educators, content experts and other professionals, the commissioner may develop, sponsor or hold educational seminars and workshops for the benefit of licensees.
E. A real estate department education revolving fund is established consisting of monies received from the sale of educational matter under subsection C of this section and grants of monies to be used in the production of educational products. Monies in the fund shall be used for the printing of a compilation of real estate laws and rules and other educational publications and for other educational efforts the commissioner deems helpful and proper for the guidance and assistance of licensees and the public, including sponsoring and holding educational seminars or workshops for educators and other licensees. The department shall establish the revolving fund as a separate account. The department shall make a full accounting of its use to the department of administration annually or as required by the department of administration. Expenditures from the fund and reimbursement to the fund shall be as prescribed by rules of the department of administration. Monies received in the real estate department education revolving fund are not subject to reversion, except that all monies in the fund in excess of twenty-five thousand dollars at the end of the fiscal year revert to the state general fund.
F. The commissioner shall adopt rules, in accord with this chapter, as the commissioner deems necessary to carry out this chapter.
G. The commissioner may approve standardized legal forms for use in the sale or lease of real estate for the purpose of recognizing compliance of the forms with this chapter and the rules adopted pursuant to this chapter.

32-2107.01. Recorded disclaimer of unlawful restrictions
A. The commissioner shall execute and record in the office of the county recorder in each county in this state a document that disclaims the validity and enforceability of certain restrictions and covenants. The document shall contain a disclaimer in substantially the following form:
"It is the law of this state that any covenants or restrictions that are based on race, religion, color, handicap status or national origin are invalid and unenforceable. If the invalid covenant or restriction is contained in a document that is recorded in this county, it is hereby declared void".
B. The document that is executed and recorded by the commissioner shall include the legal description specified by title 11, chapter 1, article 1 for the appropriate county.
C. This section does not affect any other covenant, condition or restriction.

32-2108. Powers and duties of commissioner to make investigations and require information
A. The commissioner on the commissioner's own motion may, and upon a verified complaint in writing shall, investigate the actions of any natural person or entity engaged in the business or acting in the capacity of a broker, salesperson or developer and may at any time examine the books and records used in connection with the business insofar as the commissioner reasonably believes the books or records pertain to the transfer, sale, rental, lease, use or management of real property. In connection with an investigation, the commissioner or the commissioner's representative may take testimony and may examine and copy documents and other physical evidence that relate to the investigation. If necessary, the commissioner or the commissioner's representative may issue subpoenas to compel the testimony of witnesses and the production of documents and other evidence. If a person refuses to comply with a subpoena, the commissioner or the commissioner's representative may apply to the superior court for an order to compel compliance.
B. The commissioner shall establish a certification and enforcement unit that is charged with investigative duties relevant to the rules of the commissioner and the laws of this state, including applications for certification, investigations and enforcement and other duties as the commissioner prescribes.
C. The commissioner may require any additional information and documents that are reasonably necessary to determine the good moral character of an applicant for or holder of a license or public report or renewal or amendment of a license or public report. For the purposes of this subsection, "applicant" or "holder" means a person and, if an entity, any officer, director, member, manager, partner, owner, trust beneficiary holding ten per cent or more beneficial interest, stockholder owning ten per cent or more stock and person exercising control of the entity. The information may include:

1. Prior criminal records.
2. A valid fingerprint clearance card issued pursuant to section 41-1758.03.
3. An affidavit setting out whether the applicant or holder has:
    (a) Been convicted of a felony or a misdemeanor.

(b) Had any business or professional license denied, suspended or revoked or had any other disciplinary action taken or administrative order entered against the applicant or holder by any regulatory agency.
(c) Had a public report denied or suspended.
(d) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate, cemetery property, time-share intervals, membership camping campgrounds or contracts or securities or involving consumer fraud or the racketeering laws of this state.
(e) Had any adverse decision or judgment entered against the applicant or holder arising out of the conduct of any business in or involving a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts involving fraud, dishonesty or moral turpitude.
(f) Filed, or is subject to, a petition under any chapter of the federal bankruptcy act.
(g) Participated in, operated or held an interest or exercised control in any entity to which subdivision (b), (c), (d), (e) or (f) applies.

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

A. Before receiving and holding a license issued pursuant to this chapter, each license applicant shall obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.
B. The license applicant is responsible for providing the department with a valid fingerprint clearance card.
C. The department shall not issue a license to an original license applicant before receiving a valid fingerprint clearance card pursuant to this section. However, the department shall suspend the license if the fingerprint clearance card is determined to be invalid and an applicant who was issued a license fails to submit a new valid fingerprint clearance card within ten days after being notified by the department.
D. This section does not affect the department's authority to otherwise issue, deny, cancel, terminate, suspend or revoke a license.
E. For the purposes of this section, "license applicant" means:
1. Each original real estate, cemetery and membership camping salesperson and broker applicant pursuant to article 2 of this chapter.
2. Each natural person, or for an entity applicant, any person exercising control of the entity, who applies for an original certificate of approval to operate a real estate school, or for a renewal certificate, any natural person or person exercising control who has not previously submitted a fingerprint card to the department.
3. Any natural person, or for an entity applicant, any person exercising control of the entity, on whom the department has evidence of a criminal record that has not been previously reviewed or evaluated by the department and who applies for a:
(a) License renewal pursuant to section 32-2130.
(b) Public report to:
(i) Sell or lease subdivided lands pursuant to article 4 of this chapter.
(ii) Sell or lease unsubdivided lands pursuant to article 7 of this chapter.
(iii) Sell or lease time-share estates pursuant to article 9 of this chapter.
(iv) Sell membership camping contracts pursuant to article 10 of this chapter.
(c) Certificate of authority to sell cemetery lots pursuant to article 6 of this chapter.

32-2109. Employment; compensation

Subject to title 41, chapter 4, article 4, the commissioner shall appoint a secretary and such deputies, assistants, and clerks as are necessary. The compensation of all such employees shall be as determined pursuant to section 38-611.

32-2110. Interest of department officer or employee in real estate company prohibited

No officer or employee of the department shall be connected with or directly or indirectly interested in any real estate company or real estate brokerage firm.

32-2111. Attorney general as legal adviser and representative of commissioner
The attorney general shall act for the commissioner in all legal actions or proceedings and shall advise him upon all questions of law arising out of the administration of this chapter.

32-2112. Admissibility of certified copies of department records in evidence
Properly certified copies of records of the department or documents filed therein shall be received in evidence in all courts of the state equally and with like effect as the originals.

32-2113. Recorded disclosure for territory in the vicinity of a military airport or ancillary military facility
A. The commissioner shall execute and record in the office of the county recorder in each county in this state that includes territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461 a document, applicable to property located within territory in the vicinity of a military airport or ancillary military facility, with the following disclosure: "This property is located within territory in the vicinity of a military airport or ancillary military facility and may be subject to increased noise and accident potential."
B. The attorney general shall prepare in recordable form the document that is executed and recorded by the commissioner pursuant to this section.
C. The document that is executed and recorded by the commissioner shall include a legal description of the territory in the vicinity of a military airport or ancillary military facility. The military airport shall cause the legal description of territory in the vicinity of the military airport or ancillary military facility defined in section 28-8461 to be prepared and shall provide the legal description to the commissioner and the state land department in recordable form in twelve point font on eight and one-half inch by eleven inch paper.
D. The state land department shall prepare maps with the legal descriptions pursuant to section 37-102.

32-2114. Recorded disclosure for land under a military training route or restricted air space
A. The commissioner shall execute and record in the office of the county recorder in each county in this state that includes land under a military training route as defined in section 28-8461 and as delineated in the military training route map prepared by the state land department pursuant to section 37-102 a document, applicable to land under a military training route as delineated in the military training route map, disclosing that the land is under a military training route.
B. The commissioner shall execute and record in the office of the county recorder in each county in this state that includes land under restricted air space as delineated in the restricted air space map prepared by the state land department pursuant to section 37-102 a document, applicable to land under restricted air space as delineated in the restricted air space map, disclosing that the land is under restricted air space.
C. If a military training route changes and people who were notified pursuant to subsection A of this section no longer have property under a military training route as delineated in the military training route map, the commissioner shall execute and record in the office of the county recorder in the county in which the property is located a document disclosing that the land is not under a military training route.
D. If restricted air space changes and people who were notified pursuant to subsection B of this section no longer have property under restricted air space as delineated in the restricted air space map, the commissioner shall execute and record in the office of the county recorder in the county in which the property is located a document disclosing that the land is not under restricted air space.
E. The attorney general shall prepare in recordable form the documents that are executed and recorded by the commissioner pursuant to this section.
F. The documents that are executed and recorded by the commissioner pursuant to this section shall include a legal description of the military training route as delineated in the military training route map and a legal description of the restricted air space as delineated in the restricted air space map.

32-2114.01. Military electronics range
A. The commissioner shall execute and record in the office of the county recorder in each county in this state that includes a military electronics range as delineated in the military electronics range map prepared by the state land department pursuant to section 37-102 a document that applies to land contained in a military electronics range and that discloses that the land is contained in a military electronics range.

B. If a military electronics range changes and persons who were notified pursuant to subsection A of this section no longer have property contained in a military electronics range as delineated in the military electronics range map, the commissioner shall execute and record in the office of the county recorder in the county in which the property is located a document disclosing that the land is not contained in a military electronics range.
C. The attorney general shall prepare in recordable form the documents that are executed and recorded by the commissioner pursuant to this section.
D. The documents that are executed and recorded by the commissioner pursuant to this section shall include a geospatial description of the military electronics range as delineated in the military electronics range map.

32-2115. Department's website; military training route map; restricted air space map; military electronics range map
The department shall post on its website the following maps prepared by the state land department as prescribed by law:
1. The military training route map.
2. The restricted air space map.
3. The military electronics range of a military installation.

32-2116. Military training routes; contacts
A. Each year the department shall contact the chairperson of the Arizona military airspace working group and request the name, address and telephone number of the chairperson.
B. The department shall post the information it receives pursuant to subsection A on the department's web site.

32-2117. Earth fissure maps; posting; immunity
A. On receipt of maps from the Arizona Geological Survey, the state real estate department shall provide any earth fissure map to any member of the public in printed or electronic format on request and provide access on its website to the earth fissure maps prepared by the Arizona Geological Survey pursuant to section 27-106, paragraph 3. The following notice shall be displayed below each map:

Notice

"The state of Arizona has made a reasonable effort to ensure the accuracy of this map when it was produced, but errors may be present and the state of Arizona does not guarantee its accuracy. The map supplements, and is not a substitute for, a professional inspection of property for defects and conditions."
B. This section does not deny a person rights guaranteed by the Arizona Constitution, and notwithstanding any other law, a subdivider, owner or licensee is not liable to any person or governmental entity for any act or failure to act in connection with:

1. The disclosure of real estate subject to earth fissures if the subdivider, owner or licensee provides a written disclosure or includes notice in a public report, issued pursuant to section 32-2183 or 32-2195.03, with respect to real estate subject to earth fissures, of the map and website described in subsection A of this section. The written disclosure or notice in a public report, issued pursuant to section 32-2183 or 32-2195.03, of the map and website does not create an independent cause of action.
2. Any disclosure that occurred before the date the map described in subsection A of this section is posted on the website if the subdivider, owner or licensee had no actual knowledge that the land was subject to earth fissures before the map was posted.

32-2118. Competition with private enterprise; prohibition
The department shall not create, endorse or sponsor any activity that may be legally performed by a licensee in any way that constitutes competition with the private sector, unless there is no licensee that is capable and willing to create, endorse or sponsor the activity. This section does not apply to license approval processes or procedures under this chapter or to educational activities under section 32-2107.

32-2119. Consumer education; water supply definitions; map
A. The department of real estate shall post on its website information advising prospective home buyers to investigate water availability before purchasing real property and shall include a link to the website of

the department of water resources for definitions of the following terms that apply in areas of the state outside active management areas, as required by section 45-108.05:

1. Adequate water supply.
2. Inadequate water supply.
3. Property served by a water provider currently designated as having an adequate water supply.
4. No water supply determination.

B. The department of real estate shall display on its website a current map of all areas in this state that are outside active management areas established pursuant to title 45, chapter 2, article 2.

Article 2 Licensing

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 in engaging the services of a licensee or broker or gathering demographic information that will be used by a licensee or broker to solicit prospective buyers, sellers, lessees and lessors.

11. Communications media or their representatives that are primarily engaged in advertising real estate and that perform no other acts requiring a real estate license, if:

(a) The communications media or their representatives do not, directly or indirectly, compile or represent that they compile information about specific prospective purchasers or tenants, except that general information about prospective purchasers or tenants, such as demographic and marketing information, may be compiled.

(b) The communications media or their representatives do not make representations to prospective real property sellers or landlords, or their representatives, concerning specific prospective purchasers or tenants or specific sales or leasing leads.

(c) The fee charged for advertising is based solely on the advertising services provided.

(d) The advertisements provide for direct contact between the seller or landlord and the prospective buyers or tenants, or for contact through a licensed real estate broker or property management firm. The communications media or their representatives shall not act as intermediaries or assist in any intermediary action between prospective parties to a real estate transaction, except that additional information about advertised properties may be provided to prospects upon request.

12. Persons who perform residential property management services or marketing and promotional services solely for nursing care institutions as defined in section 36-401 or pursuant to life care contracts as defined in section 20-1801.

13. A person who offers to sell or lease property that constitutes a security as defined in section 44-1801 and that is offered, sold or leased in compliance with title 44, chapter 12 if the person is a registered securities dealer or salesperson pursuant to title 44, chapter 12, article 9.

14. A person who manages a hotel, motel or recreational vehicle park.

15. A person who, on behalf of another, solicits, arranges or accepts reservations or money, or both, for occupancies of thirty-one or fewer days in a dwelling unit in a common interest development.

16. An escrow agent in the performance of the escrow agent's duties as an escrow agent, a title insurer in the performance of the title insurer's duties as a title insurer or a title insurance agent in the performance of the title insurance agent's duties as a title insurance agent. Nothing in this paragraph shall be construed to allow an escrow agent, a title insurer or a title insurance agent to otherwise engage in acts requiring a license 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.

32-2122. License required of brokers and salespersons

A. This article applies to any person acting in the capacity of a:

1. Real estate broker.
2. Real estate salesperson.
3. Cemetery broker.
4. Cemetery salesperson.
5. Membership camping broker.
6. Membership camping salesperson.

B. It shall be unlawful for any person, corporation, partnership or limited liability company to engage in any business, occupation or activity listed in subsection A without first obtaining a license as prescribed in this chapter and otherwise complying with the provisions of this chapter.

C. A person, corporation, partnership or limited liability company that is licensed as a salesperson or broker pursuant to this article or that is engaging in any work for which a license is required under this article is subject to the requirements of this chapter in the performance of any acts included in the definition of a broker unless otherwise provided in this chapter.

D. Any act, in consideration or expectation of compensation, which is included in the definition of a real estate, cemetery or membership camping broker, whether the act is an incidental part of a transaction or the entire transaction, constitutes the person offering or attempting to perform the act of a real estate broker or real estate salesperson, a cemetery broker or cemetery salesperson or a membership camping broker or a membership camping salesperson within the meaning of this chapter.

32-2123. Application for license as broker or salesperson

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

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

1. The legal name and residence address of the applicant.
2. The applicant's employers and employment history for the immediately preceding ten years and any experience in real estate sales, appraisals, transfers or similar business in which the applicant previously engaged, if the commissioner determines that this information is needed to reasonably evaluate the good moral character of the applicant.
3. The name and place of business of the applicant's present employer, if any.
4. Whether the applicant has ever been convicted of a felony and, if so, the nature of the felony, where and when committed and the disposition of the conviction, or whether the applicant has been disbarred or suspended from the practice of law.
5. Whether the applicant has ever been refused a broker's or salesperson's license or any other occupational license in this or any other state, whether the applicant's license as a broker or salesperson has been revoked or suspended in this or any other state or whether the applicant has had any other occupational or professional license, certificate or registration revoked or suspended in this or any other state.
6. The name of any corporation, company or partnership that is or ever has been licensed by the department in which the applicant exercised any control.
7. If the applicant is a natural person, the applicant's social security number. If the applicant, due to bona fide religious convictions or other bona fide reasons that the applicant documents on the application to the satisfaction of the commissioner, does not have a social security number, the applicant may provide the applicant's federal tax identification number with the application. The state real estate department shall use the applicant's social security number or federal tax identification number to aid the department of economic security in locating noncustodial parents or the assets of noncustodial parents, and for no other purpose.

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

1. The name under which the business is to be conducted.
2. The situs and mailing address of the applicant's place of business, or if more than one, the situs and mailing addresses of each.

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

1. Prior criminal records.
2. A valid fingerprint clearance card issued pursuant to section 41-1758.03.
3. An affidavit setting out whether the applicant has participated in, operated or held an interest in any land development company which has filed, or is subject to, a petition under any chapter of the federal bankruptcy act.

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

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 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.

D. Prior to receiving any license provided for by this chapter, an applicant shall be at least eighteen years of age.

E. The commissioner shall ascertain by written, electronic or any other examination method that an applicant for a real estate license has:

1. An appropriate knowledge of the English language, including reading, writing and spelling, and of arithmetical computations common to real estate practices.

2. At a minimum, an understanding of the general purpose and legal effect of any real estate practices, principles and related forms, including agency contracts, real estate contracts, deposit receipts, deeds, mortgages, deeds of trust, security agreements, bills of sale, land contracts of sale and property management, and of any other areas that the commissioner deems necessary and proper.

3. A general understanding of the obligations between principal and agent, the principles of real estate and business opportunity practice, the applicable canons of business ethics, the provisions of this chapter and rules made under this chapter.

F. The commissioner shall ascertain by written, electronic or any other examination method that an applicant for a license as a cemetery broker or a cemetery salesperson has:

1. Appropriate knowledge of the English language, including reading, writing and spelling, and of elementary arithmetic.

2. A general understanding of:

(a) Cemetery associations, cemetery corporations and duties of cemetery directors and officers.

(b) Plot ownership, deeds, certificates of ownership, contracts of sale, liens and leases.

(c) Establishing, dedicating, maintaining, managing, operating, improving, preserving and conducting a cemetery.

(d) The provisions of this chapter and rules made under this chapter relating to the organization and regulation of cemeteries and the licensing and regulation of cemetery brokers and cemetery salespersons.

3. A thorough understanding of the obligations between principal and agent, the principles of cemetery practice and the canons of business ethics pertaining to the operation of cemeteries and the sale of cemetery property.

4. An appropriate knowledge of other real estate practices and principles as determined by the commissioner.

G. The commissioner shall ascertain by written, electronic or any other examination method that an applicant for a license as a membership camping broker or a membership camping salesperson has:

1. An appropriate knowledge of the English language, including reading, writing and spelling, and of elementary arithmetic.

2. A general understanding of:

(a) The general purposes and legal effect of contracts and agency contracts.

(b) Establishing, maintaining, managing and operating a membership campground.

(c) The provisions of this chapter and rules adopted under this chapter relating to the organization and regulation of membership campgrounds and the licensing and regulation of membership camping brokers and membership camping salespersons.

3. A general understanding of the obligations between principal and agent and the canons of business ethics pertaining to the operation and promotion of membership campgrounds.

H. No renewal applicant for a real estate, cemetery or membership camping broker's or salesperson's license shall be required to submit to an examination if the application is made within twelve months after the license expires and the license is not cancelled, terminated or suspended at the time of application.

I. The examination for a broker's license shall be more exacting and stringent and of a broader scope than the examination for a salesperson's license.

J. An applicant for a real estate salesperson's or broker's license who currently holds at least an equivalent license in another state may be exempt from taking the national portion of the real estate examination if the applicant can demonstrate having previously passed a national examination within the past five years that is satisfactorily similar to the one administered by the department.

K. Identification of each applicant whose licensing requirement was allowed to be met by an equivalent alternative pursuant to this section shall be included in the annual performance report presented by the board to the governor pursuant to section 32-2104.

L. An applicant for an original real estate salesperson's license, after completion of the requirements of subsection B of this section, shall provide certification to the department at the time of application evidencing completion of six hours of instruction in real estate contract law and contract writing. This instruction shall include participation by the applicant in the drafting of contracts to purchase real property, listing agreements and lease agreements.

M. The commissioner shall not issue a license to a person who has been convicted of a felony offense and who is currently incarcerated for the conviction, paroled or under community supervision and under the supervision of a parole or community supervision officer or who is on probation as a result of the conviction.

32-2125. Licenses for corporations, limited liability companies or partnerships

A. A corporation, limited liability company or partnership applying for a broker's license for the entity shall designate a natural person who is licensed as a broker and who is an officer of the corporation, manager of the limited liability company if management of the limited liability company is vested in one or more managers, member of the limited liability company if management is vested in the members or partner of the partnership who shall act as designated broker. The license shall extend no authority to act as designated broker to any other person. This subsection does not apply to a corporation or limited liability company applying for a license under subsection B of this section. An entity's broker's license issued pursuant to this subsection shall run concurrently with the corporation's, limited liability company's or partnership's designated broker's license.

B. An employing broker may engage the services of salespersons and associate brokers who act through and on behalf of professional corporations or professional limited liability companies that are licensed by the department. A designated broker who acts on behalf of an employing real estate entity is permitted to become a professional corporation or a professional limited liability corporation. Any person so engaged shall be separately licensed. The department shall issue to or renew a license under this subsection only for a professional corporation or a professional limited liability corporation whose shareholders, members or managers hold active real estate licenses. A corporation licensed under this subsection shall meet the requirements of title 10, chapter 20. A limited liability company licensed under this subsection shall meet the requirements of title 29, chapter 4, article 11. A professional corporation or professional limited liability company shall not be licensed as an employing broker.

C. The license of a corporation or limited liability company licensed under subsection B of this section terminates only upon the death of a shareholder, member or manager or any other change of shareholders, members or managers, except that any remaining shareholder, member or manager who was an authorized officer and shareholder prior to the change remains authorized to continue business under the corporation's or limited liability company's license for up to an additional ninety days pending the issuance of a new license.

D. The commissioner may suspend, revoke or deny renewal or the right of renewal of the license of a corporation, limited liability company or partnership licensed under this section if the corporation, limited liability company or partnership or any shareholder, officer, agent, partner or member of a corporation, limited liability company or partnership violates any of 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.
4. The dissolution of the corporation, limited liability company or partnership.

32-2125.01. Issuance of license; multiple licenses; use
A. When the requirements for application, examination and payment of fees are completed to the satisfaction of the commissioner, the commissioner shall issue the license applied for to the applicant. Any person who has passed the state examination for broker or salesperson must become licensed within one year from the date of the examination. Failure to comply with this section will necessitate the submission to and passing of another examination.
B. Not more than one license shall be issued and outstanding to or in favor of a licensee at any one time, except that a person licensed as a real estate broker or real estate salesperson may engage in cemetery or membership camping sales activities without being separately licensed to engage in these activities. A real estate licensee may have only one employing broker in each of the following categories:

1. Cemetery.
2. Membership camping.
3. Real estate.

C. A designated or employing real estate broker may engage in cemetery or membership camping sales activities and may employ cemetery and membership camping salespersons and associate brokers without being separately licensed as a cemetery or membership camping broker or salesperson.

32-2125.02. Nonresident licensees; service of process; employment
A. An application for and acceptance of a license as a nonresident salesperson or broker shall be deemed to constitute irrevocable appointment of the commissioner as the agent or attorney in fact of the licensee for the acceptance of service of process issued in this state in any action or proceeding against the licensee arising out of the licensing, out of transactions under the license or in any action which may result in payment from the real estate recovery fund.
B. Duplicate copies of any process shall be served on the commissioner. The plaintiff at the time of service shall pay the commissioner fifteen dollars, taxable as costs in the action. On receiving this service the commissioner shall promptly forward a copy of the service by certified mail to the licensee at the licensee's last address of record with the commissioner. Process served on the commissioner pursuant to this subsection constitutes service of process on the licensee as though the licensee were personally served with the process in this state.
C. A nonresident licensee shall accept employment or compensation as a nonresident licensee only under section 32-2155 and only from a broker who is actively licensed in this state.
D. A nonresident broker shall maintain in this state the records required by section 32-2151.01 and shall notify the commissioner of the address where the records are kept.
E. Broker or salesperson license applicants who do not reside in this state are required to complete a minimum of a twenty-seven hour course that is specific to this state's real estate statutes, rules, practices and procedures and that is prescribed and approved by the commissioner and are required to pass the real estate school examination before taking this state's examination. The subject matter and course outline shall cover areas specific to this state's real estate practice and law. The requirements of this

subsection also apply, to the extent applicable, to broker or salesperson applicants who wish to use college credit in fulfillment of the required ninety prelicensure hours.
F. The commissioner may adopt rules necessary for the regulation of nonresident licensees.

32-2125.03. Confidentiality of licensee's residential address, electronic mail address, residential telephone number and social security number
A. Notwithstanding any other law, a licensee's or applicant's residential address or residential telephone number maintained by the department shall not be available to the public unless the commissioner determines that disclosure of the residential address or residential telephone number, or both, serves the interests of justice and is in the public interest.
B. A licensee's or applicant's electronic mail address shall not be released or made available for inspection to any person other than a court or a governmental agency that will use the electronic mail address for a legitimate court or governmental purpose.
C. The residential address, electronic mail address and residential telephone number of a licensee whose license is placed on inactive status are confidential unless the commissioner determines that disclosure of the addresses and telephone number serves the interests of justice and is in the public interest.
D. The department may not release a licensee's social security number or make a licensee's social security number available for inspection by any person other than a court or a governmental agency that will use the information for a legitimate governmental purpose.

32-2126. Place of business required; notice of change in location; failure to give notice as cancellation of license; signs
A. Each employing broker shall have and maintain a definite place of business. Notice of change of business location shall be given to the commissioner in writing and the commissioner shall issue a new license for the unexpired period. Change or abandonment of a business location without notice shall automatically cancel the broker's license and shall sever the license of any salesperson or associate broker employed by the employing broker. If an employing broker's license is cancelled pursuant to this subsection and the broker's license is later reinstated, any salesperson or associate broker employed by the employing broker whose license was severed pursuant to this subsection may be rehired.
B. Each designated broker and, if applicable, each employing broker shall cause a sign to be affixed at the entrance to the broker's place of business, in a place and position clearly visible to all entering the place of business, with the name of the broker, the name under which the broker is doing business if other than the broker's given name, and sufficient wording to establish that the person is a real estate broker, cemetery broker or membership camping broker. In addition to any other applicable law, the sign shall conform to rules adopted by the commissioner.
C. Upon removal from any location the broker shall remove the sign from the location. A broker shall not display any name at designated places of business named in the broker's license other than the name under which the broker is licensed.

32-2127. Licenses for additional places of business; branch office manager; broker's temporary absence
A. When a broker maintains more than one place of business within the state he shall be required to procure an additional license for each branch office maintained.
B. Branch office licenses shall be issued in the same name as the principal office license is issued, and the license must be posted in the branch office. Branch office signs shall conform to the provisions for the principal office and shall include the designation "branch office".
C. Each branch office shall be under the management of a broker or a licensed salesman.
D. If a designated broker is unable to act within twenty-four hours, he may designate a licensee whom he employs or another designated broker to act in his behalf. The designated broker shall make this designation in writing and shall keep the original designation at his office for one year from its effective date. A copy of this designation must be attached to any hire, sever or renewal form submitted to the department which is signed by the designated broker's designee. This designation shall not exceed thirty days' duration and may authorize the designee to perform any and all duties the designated broker may legally perform, except that a salesperson shall not be authorized to hire or sever licensees. A written designation is required for each temporary absence.

32-2128. Display and possession of license certificate

A. The designated broker's and, if applicable, the employing broker's license certificate shall be prominently displayed in the office of the broker, and all other license certificates shall be readily available. A salesperson's or associate broker's license certificate shall remain in the possession of the employer until it is cancelled, terminated, suspended or revoked by the department or until the licensee is severed from employment, when the designated broker shall dispose of the license certificate.

B. A designated broker may comply with the possession requirements for a salesperson's or associate broker's license certificate prescribed by subsection A of this section by doing both of the following:

1. Accessing the licensee's record in the department's public database that the department posts on its website.
2. Printing a copy of the record that shows current and active licensure or having the record available electronically.

32-2129. Advance payment of license fees

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

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

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

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

32-2130. Renewal of licenses; education requirements; broker licensee renewal as salesperson licensee

A. A license may be renewed in a timely manner by filing an application for renewal in the manner prescribed by the commissioner, by paying the renewal fee specified in this chapter and by presenting evidence of attendance at a school certified by the commissioner during the preceding license period of twenty-four credit hours for salespersons and associate brokers and thirty credit hours for designated brokers or for associate brokers employed by a designated broker pursuant to Section 32-2151.01, Subsection G, or a lesser number of credit hours prescribed by the commissioner, of real estate oriented continuing education courses prescribed and approved by the commissioner. The total number of credit hours shall be accrued at a rate of twenty-four credit hours for salespersons and associate brokers and thirty credit hours for designated brokers or for associate brokers employed by a designated broker pursuant to Section 32-2151.01, Subsection G during each twenty-four month period of licensure. The department shall maintain a current list of approved courses. The commissioner may waive all or a portion of the continuing education requirement for good cause shown. The commissioner shall determine by rule the content of the renewal credit hours. The renewal credit hours may include the commissioner's current topics, including short sales. For the purposes of this subsection, "short sales" means real estate transactions in which the sales price is insufficient to pay the loan encumbering the property in addition to the costs of sale and the seller is unable to pay the difference.

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

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

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

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

F. Between the expiration date of the license and the date of renewal of the license, the rights of the licensee under the license expire. While the license is expired it is unlawful for a person to act or attempt or offer to act in a manner included in the definition of a real estate, cemetery or membership camping broker or salesperson. If the license of an employing broker expires under this subsection, the licenses of persons who are employed by the employing broker shall be severed from the employing broker on the

license expiration date of the employing broker. These persons may be rehired on renewal of the employing broker's license. The department shall terminate a license that has been expired for more than one year.

G. Except as provided in section 32-4301, no more than one year after the license expiration date, the department shall renew a license without requiring the applicant to submit to an examination if the applicant held a license that was not canceled or suspended at the time of expiration. Except as provided in section 32-4301, the license period for a license renewed pursuant to this subsection commences the day after the expiration date of the expired license. Except as provided in section 32-2131, subsection A, paragraph 4 or 6, an applicant whose license has been terminated or revoked does not qualify for license renewal.

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

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

J. A real estate broker licensee may renew as a real estate salesperson licensee without having to meet the requirements prescribed by Section 32-2124, Subsection B. If a person renews as a real estate salesperson pursuant to this subsection, the person shall pay the salesperson's renewal fee as prescribed in Section 32-2132. If the person subsequently wants to obtain a real estate broker license, the person must meet the requirements of this chapter, including the requirements prescribed by Section 32-2124, Subsection C.

32-2131. Reinstatement of license

A. The commissioner may reinstate a license that was issued under this article and that expired or was canceled, terminated, suspended or revoked as follows:

1. For a license that expired pursuant to section 32-2130, subsection F, by renewal application pursuant to this article.
2. For a license canceled pursuant to section 32-2126, subsection A or section 32-2129, subsection B or any other lawful authority:
    (a) If within the license period, by reapplication and payment of applicable fees.
    (b) If after expiration of the license, by original or renewal application, as appropriate, pursuant to this article.
3. For a license terminated pursuant to section 32-2188, subsection I, by:
    (a) Repayment in full to the real estate recovery fund.
    (b) Original application pursuant to this article.
    (c) Providing evidence that the judgment that caused the recovery fund payment has been fully satisfied.
4. For a license terminated pursuant to section 32-2130, subsection F, by original application pursuant to this article.
5. For a license suspended pursuant to section 32-2153, 32-2154 or 32-2157 or any other lawful authority:
    (a) If suspended for failure on the part of the licensee to meet procedural or educational requirements for maintaining the license, and the requirements have subsequently been fully met, and the suspension has been vacated:
        (i) If within the license period, by reapplication and payment of applicable fees.
        (ii) If after expiration of the license, by original or renewal application, as appropriate, pursuant to this article.
    (b) If suspended by order of the commissioner for a specified length of time, and the suspension period has ended:
        (i) If within the license period, by reapplication and payment of applicable fees.

(ii) If after expiration of the license, by original or renewal application, as appropriate, pursuant to this article.

6. For a license revoked pursuant to section 32-2153 or any other lawful authority, by original application pursuant to this article.

7. For a license suspended or revoked by order of the commissioner and this order is subsequently vacated as to the licensee, by reapplication only. No fees may be assessed. The reapplication may be initiated by the department on behalf of the licensee.

B. Except for canceled licenses, reinstatement of a license pursuant to subsection A of this section shall not be made for any licensee who is the subject of a department investigation into alleged violations of this chapter or of a pending administrative proceeding pursuant to article 3 of this chapter.

C. This section shall not be interpreted to lessen or reduce the qualifications otherwise required of license applicants under this article or the department's authority to deny a person's application for license reinstatement who does not otherwise meet all of the requirements.

32-2132. Fees

A. Except as provided in subsection D of this section, the following fees shall be charged and shall not be refunded by the commissioner after issuance of a receipt for payment:

1. A broker's examination application fee of not less than thirty-five dollars and not more than one hundred twenty-five dollars.

2. A broker's examination fee of not less than thirty-five dollars and not more than one hundred dollars.

3. A broker's license fee of not less than seventy-five dollars and not more than two hundred fifty dollars.

4. A broker's renewal fee of not less than one hundred dollars and not more than four hundred dollars.

5. A salesperson's examination application fee of not less than fifteen dollars and not more than seventy-five dollars.

6. A salesperson's examination fee of not less than fifteen dollars and not more than fifty dollars.

7. A salesperson's license fee of not less than thirty-five dollars and not more than one hundred twenty-five dollars.

8. A salesperson's renewal fee of not less than sixty dollars and not more than two hundred dollars.

9. A branch office broker's license fee or renewal fee of not less than sixty dollars and not more than two hundred dollars.

10. A fee for a change of name and address of licensee on records of the department of not more than twenty dollars.

11. A duplicate license fee of five dollars.

12. A fee for reinstatement of license within license period of five dollars.

13. A fee for each certificate of correctness of copy of records or documents on file with the department of one dollar, plus the cost to the department for reproducing the records or documents.

14. A temporary broker's license fee of not less than fifteen dollars and not more than fifty dollars.

15. A temporary cemetery salesperson's license fee of not less than fifteen dollars and not more than fifty dollars.

16. A membership camping salesperson certificate of convenience fee of not less than fifteen dollars and not more than fifty dollars.

17. Fees in an amount to be determined by the commissioner by rule for the following:

(a) A certificate of approval or renewal to operate a school.

(b) An instructor or other school official approval or renewal fee.

(c) A live classroom continuing education course approval or renewal fee.

(d) A live classroom prelicensure education course approval or renewal fee.

(e) A continuing education distance learning course approval or renewal fee.

B. A corporation, partnership or limited liability company shall not be assessed a fee for the issuance of a broker's license.

C. The commissioner may contract for the processing of applications and the examination of applicants for licensure. The contract may provide for specific fees or a reasonable range for fees as determined by

the commissioner for examination applications and examinations to be paid directly to the contractor by the applicant. These fees may not exceed the amounts prescribed in subsection A, paragraphs 1, 2, 5 and 6.
D. For good cause shown the commissioner may refund fees previously collected.

32-2133. Temporary broker's license
A Notwithstanding any other law, the commissioner may issue a temporary license as a broker to a licensed or unlicensed person for the purpose of winding up the existing or pending business of a licensed broker in the following cases:

1. To the surviving spouse or next of kin or to the administrator or personal representative or the employee of the administrator or personal representative of a deceased licensed broker.
2. To the spouse, next of kin, employee, legal guardian or conservator of a licensed broker disabled by sickness, injury or insanity.

B. Each temporary license is for a period of not over ninety days and shall not be extended for a longer period, except that a license issued to a personal representative or administrator or the employee of the personal representative or administrator pursuant to subsection A, paragraph 1 continues until the personal representative or administrator disposes of the deceased broker's business, but not to exceed a period of fifteen months.
C. No more than one temporary license may be issued to or with respect to the same individual within any one year period.
D. A temporary licensee has the same license powers and obligations as under a permanent license.

32-2134. Temporary cemetery salesperson's license
Notwithstanding any other provision of law to the contrary, the commissioner may issue without examination to any person who has applied and otherwise qualifies for a cemetery salesperson's license, a temporary cemetery salesperson's license good for a period not to exceed ninety days from the date of issuance. An applicant shall not be entitled to more than one temporary license without examination. An employing cemetery broker shall certify by affidavit to the commissioner that the temporary license applicant has been trained in applicable Arizona cemetery and contract law.

32-2134.01. Membership camping salesperson certificate of convenience
Notwithstanding any other licensing requirement under this chapter, the commissioner may issue a one time thirty day certificate of convenience without examination to any person who has applied and otherwise qualifies for a membership camping salesperson's license. An employing membership camping broker shall certify by affidavit to the commissioner that the salesperson applicant will be trained in applicable membership camping and contract laws before participation in any offer or sale.

32-2135. Real estate schools; courses of study; instructors; certification
A. Except as provided in section 32-4301, before offering a course of study towards completion of the education requirement for real estate licensure or renewal of licensure, a school shall obtain from the commissioner a certificate of approval or renewal to operate a school for a period of at least four years. A school shall also obtain a certificate of course approval for each course offered for credit that is not currently approved for another school. Each school is responsible for the content of any course it offers and for the professional administration and teaching of the course. Live classroom prelicensure education, live classroom continuing education and distance learning continuing education courses are subject to approval pursuant to this section.
B. Each approved school shall issue a certificate of real estate course attendance to each person who completes an approved prelicensure or continuing education course. An applicant for renewal of licensure as provided by section 32-2130 shall file evidence of the certificates issued by the school with the commissioner showing the number of credit hours and course of study required for renewal.
C. The commissioner may withdraw or deny certification or approval of real estate schools, educational courses or real estate instructors for any acts inconsistent with the requirements of this chapter, including:

1. The commission of or the failure to report a violation by an approved school or instructor of any provision of this chapter or rules adopted pursuant to this chapter.
2. Improper certification of student attendance or performance.
3. Any act that is grounds for discipline under section 32-2153.

4. Teaching information or using course materials that have not been approved by the commissioner.

5. Failing to attend any continuing education course required by the commissioner.

6. Filing any false or misleading application, report or documentation with the department.

7. Teaching course content that is not current or that has substantially changed from the course as approved.

D. A real estate school, through any owner, director, administrator, instructor or other agent, shall not:

1. Offer a course of study for credit that is not approved by the department, except that the school may advertise a course as pending approval before its approval.

2. Promote or advertise the school using false or misleading statistics or testimonials or any other form of deceptive advertisement.

E. The commissioner may determine minimal content requirements for approving educational courses and appropriate professional qualifications for approving instructors to teach individual educational courses.

F. At least thirty days before holding a course of study for completion of the education requirements leading to licensure of real estate applicants or for license renewal requirements, an application for a certificate of course approval or renewal must be filed with the department. For a live classroom course, the application shall include a course outline with sufficient detail to clearly identify the scope and content of the course. The outline shall state a desired instructional outcome for the course. A prelicensure education course outline that is submitted for approval shall be divided into estimated fifty minute instructional segments. Course approval shall not be unreasonably withheld and shall not be issued later than thirty days after filing with the department for a live classroom course. A continuing education distance learning course approval shall not be issued later than ninety days after filing with the department. If the approvals under this subsection are not granted within the time frames prescribed by this subsection, the course shall be automatically approved on a provisional basis for one hundred eighty days, unless the department has otherwise notified the applicant of specific deficiencies or unfulfilled requirements for the course submission. A provisional approval may be withdrawn by the department upon fifteen days' advance notice if the department's review of the course subsequently reveals course deficiencies or unfulfilled course requirements. If not withdrawn, the course approval shall remain approved for the entire course approval period. Course approval shall be for a period of at least four years if the contents of the course remain current and substantially unchanged. The course may not be taught if the content ceases to be current or is substantially changed. The department may establish by rule additional appropriate requirements for approval of a distance learning course.

G. For a currently approved course:

1. The school shall submit notice to the department at least fourteen days before holding the course to permit department employees to monitor the course. The notice is not otherwise subject to review and approval by the department.

2. With the permission of the school that received original approval for the course, another school that desires to offer the course is subject only to the fourteen day notice requirement before holding the same course. No additional review and approval by the department is required.

H. The department shall approve for continuing education credit any course of study proposed by a real estate school if the course satisfies the commissioner's requirements and is held in this state.

I. The department may approve for continuing education credit any course of study proposed by a real estate school if the course satisfies the commissioner's requirements and is held outside this state. Upon the commissioner's request, the school shall either:

1. Provide the department with a videotape or videotapes of the course.

2. Make arrangements that are approved by the department for monitoring the course.

J. An instructor shall file with the department an application for instructor approval or renewal. Instructor approval shall be for at least four years from the date of approval and is subject to amendment during the license period only if information material to the instructor's qualifications has changed. A person holding instructor approval to teach specific subject matter is not subject to additional or duplicate approval requirements during the original approval period, except that an additional instructor competency area may be added during the license period on submission by the instructor of evidence of competency in such additional competency area.

K. Beginning January 1, 2012, in the twenty-four months before application, each instructor original or renewal applicant, other than a panelist, guest speaker, an attorney or out-of-state instructor, shall attend

at least a three hour professional seminar or workshop, approved by the department, emphasizing instruction methods, techniques and skills. At the discretion of the commissioner this requirement may be waived based on individual request review.
L. The thirty day and fourteen day course filing time frames prescribed in this section may be waived by the department for good cause shown.
M. Unless subject to a violation or suspected violation listed in subsection C of this section, the department's approval of a school, school official, instructor or course shall be processed in a time frame consistent with the time frames set forth in this section.
N. This section does not affect the department's ability to withdraw or deny certification or approval of real estate schools, education courses or real estate instructors for a violation of this chapter.

32-2136. Broker management clinics
A. The department shall determine the instructor qualifications for teaching broker management clinics and the course content of broker management clinics for persons required to attend these clinics pursuant to subsection C of this section.
B. A broker management clinic shall consist of three courses of three hours each. The course topics shall be broker statute and rule requirements, including instruction on department audits and the legal obligations of designated brokers, broker policy development and employee supervision and broker responsibilities and related topics. A broker management clinic shall address record keeping requirements, trust fund accounts, advertising and promotions, employment agreements, contracts, fiduciary duties, material disclosures, department investigations and risk management. A broker management clinic may be designed to address property management activities, a specialty field of real estate or sales activities, or any combination described in this subsection.
C. An applicant for an original real estate broker's license shall attend a broker management clinic before activating the license. A broker shall attend a broker management clinic before becoming a designated broker, unless the broker has attended a broker management clinic during the preceding twenty-three months. All designated brokers and associate brokers employed by a designated broker pursuant to Section 32-2151.01, Subsection G shall attend a broker management clinic once during each twenty-four months of licensure after their initial attendance.
D. Attendance at a broker management clinic constitutes three courses of three hours each for a total of nine credit hours of real estate oriented education pursuant to section 32-2130, subsection A.

32-2137. Cancellation of license
On request of a licensee, the department may cancel that person's license if both of the following are true:
1. The licensee is not presently under investigation by the department.
2. The department has not commenced any disciplinary proceeding against the licensee.

Article 3 Regulation

32-2151. Disposition of funds; trust money deposit requirements
A. Unless otherwise provided in writing by all parties to a transaction, any licensed real estate broker who does not immediately place all funds entrusted to the broker, in the broker's capacity as a real estate broker, in a neutral escrow depository in this state shall upon receipt place all such funds in a trust fund account in a federally insured or guaranteed account in a depository located in this state. The commissioner may adopt such rules as are necessary to provide for records to be maintained and the manner in which such trust fund account deposits may be made.
B. The following minimum requirements apply to each broker's trust fund account:

1. The broker shall make deposits to trust fund accounts by deposit slips. Receipts or other documentation shall identify each transaction, the date and the amount of each deposit and the names of parties involved in the transaction represented by the deposit and monies shall be used only for the purpose for which the monies were deposited.
2. The broker shall retain a complete record of all monies received in connection with a real estate transaction in the main or branch office of the designated broker in this state or at an off-site storage location in this state if the broker provides prior written notification of the street address of the off-site storage location to the department. A broker's records shall be kept according to generally accepted accounting principles and shall include a properly descriptive

receipts and disbursement journal and client ledger. The broker shall keep any computerized records in a manner allowing reconstruction in the event of destruction of electronic data. The broker shall maintain a trust fund account bank reconciliation and client ledger balance on a monthly basis and shall remove any interest earned on a trust fund account at least once every twelve months. A broker shall not permit advance payment of monies belonging to others to be deposited in the broker's personal account or to be commingled with personal monies. It is not considered commingling if, when establishing a trust fund account, a broker deposits monies not exceeding three thousand dollars to keep the account open or to avoid charges for an insufficient minimum balance.

C. An agreement to place monies entrusted to the broker in a depository that is located outside of this state is valid if all parties to the transaction agree in writing and either:

1. The monies are placed in a property management trust account established pursuant to section 32-2174 and:

(a) The account is federally insured or guaranteed.

(b) The property management agreement contains:

(i) Disclosure that the department's regulatory protections of the owner's monies may be significantly hampered.

(ii) Disclosure that the owner may not have access to or any control over the trust account, except to audit and review the status of the account.

(iii) An addendum that has the signed authorization by an appropriately empowered official of the depository in which the trust account is placed that the trust account and all related documentation will be open to examination by the department and the owner.

2. If the monies are not deposited in a property management trust account, the broker discloses to the parties to the transaction that potential risks may accrue as the result of depositing the monies in a depository outside this state.

D. This section shall not be construed to allow a broker to commingle monies entrusted to the broker with the broker's own monies, unless the commissioner adopts rules that allow commingling.

32-2151.01. Broker requirements; record keeping requirements; definition

A. Each licensed employing broker shall keep records of all real estate, cemetery, time-share or membership camping transactions handled by or through the broker and shall keep employment records, including copies of employment status, for all current and former employees. The records required by this section shall include copies of earnest money receipts, confirming that the earnest money has been handled in accordance with the transaction, closing statements showing all receipts, disbursements and adjustments, sales contracts and, if applicable, copies of employment agreements. The records shall be open at all reasonable times for inspection by the commissioner or the commissioner's representatives. The records of each transaction and employment records shall be kept by the broker for a period of at least five years from the date of the termination of the transaction or employment. The records shall be kept in the employing broker's principal office or licensed branch office in this state or at an off-site storage location in this state if the broker provides prior written notification of the street address of the off-site storage location to the department.

B. Except as provided by section 32-2174, subsection C, a broker shall not grant any person authority to withdraw monies from the broker's trust fund account unless that person is a licensee under that broker's license.

C. A broker shall specifically state in the real estate purchase contract, lease agreement or receipt for earnest money the type of earnest money received in any real estate transaction, whether it is cash, a check, a promissory note or any other item of value.

D. All licensees shall promptly place all cash, checks or other items of value received as payment in connection with a real estate transaction in the care of the designated broker.

E. The broker shall maintain each real estate purchase contract or lease agreement and the transaction folder in which it is kept in a chronological log or other systematic manner that is easily accessible by the commissioner or the commissioner's representatives.

F. Sales transaction folders shall include:

1. Confirmation that the earnest monies or other monies handled by or through the broker were handled according to instructions given by or agreed to by the parties to the transaction.

2. A complete copy of the sales contract, any escrow account receipt, any closing or settlement statement and, if applicable, a copy of the escrow instructions, listing agreement, employment agreement and release of escrow monies.

G. The designated broker shall review each listing agreement, purchase or nonresidential lease agreement or similar instrument within ten business days of the date of execution by placing the broker's initials and the date of review on the instrument on the same page as the signatures of the parties. A designated broker may authorize in writing an associate broker who the designated broker employs to review and initial these instruments on the designated broker's behalf.

H. The broker shall retain all real estate purchase and nonresidential lease contracts and employment agreements, or copies of these documents, in the employing broker's principal office or licensed branch office or at an off-site storage location in this state if the broker provides prior written notification of the street address of the off-site storage location to the department.

I. The broker shall retain an original, a copy or a microfilm copy of any document evidencing a rejected offer to purchase real property as a matter of record for at least one year. In instances that result in binding contracts, the broker shall retain prior rejected offers for at least five years.

J. If real property in a development is sold or leased by a developer without the services of a listing or selling broker, the developer shall keep all records required by subsections A and C of this section.

K. For the purposes of this section, "business day" means a day that is not a Saturday, a Sunday or any other legal holiday in this state.

32-2151.02. Real estate employment agreements; definition

A. All real estate employment agreements shall:

1. Be written in clear and unambiguous language.
2. Fully set forth all material terms, including the terms of broker compensation.
3. Have a definite duration or expiration date, showing dates of inception and expiration.
4. Be signed by all parties to the agreement.

B. An employing broker shall not assign a real estate employment agreement to another broker without the express written consent of all parties to the agreement at the time of the assignment.

C. A licensee shall not procure, or attempt to procure, a real estate employment agreement from a party who is already subject to an existing exclusive real estate employment agreement unless the licensee has received written acknowledgment from the party that the execution of additional real estate employment agreements could expose the party to liability for substantial additional commissions. Nothing in this subsection shall be construed to abrogate any civil liability of a licensee arising out of this conduct.

D. A real estate employment agreement is not required for a licensee to represent a party in a transaction.

E. For the purposes of this section, "real estate employment agreement" means a written agreement by which a real estate broker is entitled to compensation for services rendered pursuant to section 44-101, paragraph 7.

32-2152. Action by broker or salesperson to collect compensation

A. An action for the collection of compensation earned may be maintained in the courts of the state by any broker or salesperson. To commence the action the complaint shall allege that the plaintiff was a qualified licensed broker or salesperson at the time the claim arose. Prior to hearing the action the court shall require the plaintiff to prove the alleged qualifications.

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

C. Nothing in this section shall be construed to permit the payment or receipt of compensation in violation of sections 32-2155 or 32-2163.

32-2153. Grounds for denial, suspension or revocation of licenses; letters of concern; provisional license; retention of jurisdiction by commissioner; definitions

A. The commissioner may suspend or revoke a license, deny the issuance of a license, issue a letter of concern to a licensee, issue a provisional license or deny the renewal or the right of renewal of a license issued under this chapter if it appears that the holder or applicant, within five years immediately

preceding, in the performance of or attempt to perform any acts authorized by the license or by this chapter, has:

1. Pursued a course of misrepresentation or made false promises, either directly or through others, whether acting in the role of a licensee or a principal in a transaction.
2. Acted for more than one party in a transaction without the knowledge or consent of all parties to the transaction.
3. Disregarded or violated any of the provisions of this chapter or any rules adopted by the commissioner.
4. Knowingly authorized, directed, connived at or aided in the publication, advertisement, distribution or circulation of any material false or misleading statement or representation concerning the licensee's business or any land, cemetery property, subdivision or membership campground or camping contract offered for sale in this or any other state.
5. Knowingly used the term "real estate broker", "cemetery broker" or "membership camping broker" without legal right to do so.
6. Employed any unlicensed salesperson or unlicensed associate broker.
7. Accepted compensation as a licensee for the performance of any of the acts specified in this chapter from any person other than the licensed broker to whom the licensee is licensed, the licensed professional corporation of which the licensee is an officer and shareholder or the licensed professional limited liability company of which the licensee is a member or manager.
8. Represented or attempted to represent a broker other than the broker to whom the salesperson or associate broker is licensed.
9. Failed, within a reasonable time, to account for or to remit any monies, to surrender to the rightful owner any documents or other valuable property coming into the licensee's possession and that belongs to others, or to issue an appraisal report on real property or cemetery property in which the licensee has an interest, unless the nature and extent of the interest are fully disclosed in the report.
10. Paid or received any rebate, profit, compensation or commission in violation of this chapter.
11. Induced any party to a contract to break the contract for the purpose of substituting a new contract with the same or a different principal, if the substitution is motivated by the personal gain of the licensee.
12. Placed a sign on any property offering it for sale or for rent without the written authority of the owner or the owner's authorized agent.
13. Solicited, either directly or indirectly, prospects for the sale, lease or use of real property, cemetery property or membership camping contracts through a promotion of a speculative nature involving a game of chance or risk or through conducting lotteries or contests that are not specifically authorized under this chapter.
14. Failed to pay to the commissioner the renewal fee as specified in this chapter promptly and before the time specified.
15. Failed to keep an escrow or trust account or other record of funds deposited with the licensee relating to a real estate transaction.
16. Commingled the money or other property of the licensee's principal or client with the licensee's own or converted that money or property to the licensee or another.
17. Failed or refused upon demand to produce any document, contract, book, record, information, compilation or report that is in the licensee's possession or that the licensee is required by law to maintain concerning any real estate, cemetery or membership camping business, services, activities or transactions involving or conducted by the licensee for inspection by the commissioner or the commissioner's representative.
18. Failed to maintain a complete record of each transaction which comes within this chapter.
19. Violated the federal fair housing law, the Arizona civil rights law or any local ordinance of a similar nature.
20. Tendered to a buyer a wood infestation report in connection with the transfer of residential real property or an interest in residential real property knowing that wood infestation exists or that the wood infestation report was inaccurate or false as of the date of the tender or that an inspection was not done in conjunction with the preparation of the wood infestation report.
21. As a licensed broker, failed to exercise reasonable supervision over the activities of salespersons, associate brokers or others under the broker's employ or failed to exercise

reasonable supervision and control over the activities for which a license is required of a corporation, limited liability company or partnership on behalf of which the broker acts as designated broker under section 32-2125.

22. Demonstrated negligence in performing any act for which a license is required.

23. Sold or leased a property to a buyer or lessee that was not the property represented to the buyer or lessee.

24. Violated any condition or term of a commissioner's order.

25. Signed the name of another person on any document or form without the express written consent of the person.

26. As a licensed school, failed to exercise reasonable supervision over the activities for which a license is required for an owner, director, administrator or instructor in the school's employ.

B. The commissioner may suspend or revoke a license, deny the issuance of a license, issue a letter of concern to a licensee, issue a provisional license or deny the renewal or the right of renewal of a license issued under this chapter when it appears that the holder or applicant has:

1. Procured or attempted to procure a license under this chapter for the holder or applicant or another by fraud, misrepresentation or deceit, or by filing an original or renewal application which is false or misleading.

2. Been convicted in a court of competent jurisdiction in this or any other state of a felony or of any crime of forgery, theft, extortion, conspiracy to defraud, a crime of moral turpitude or any other like offense.

3. Made any substantial misrepresentation.

4. Made any false promises of a character likely to influence, persuade or induce.

5. Been guilty of any conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealings.

6. Engaged in the business of a real estate, cemetery or membership camping broker or real estate, cemetery or membership camping salesperson without holding a license as prescribed in this chapter.

7. Not shown that the holder or applicant is a person of honesty, truthfulness and good character.

8. Demonstrated incompetence to perform any duty or requirement of a licensee under or arising from this chapter. For the purposes of this paragraph, "incompetence" means a lack of basic knowledge or skill appropriate to the type of license the person holds or a failure to appreciate the probable consequences of the licensee's action or inaction.

9. Violated the terms of any criminal or administrative order, decree or sentence.

10. Violated any federal or state law, regulation or rule that relates to real estate or securities or that involves forgery, theft, extortion, fraud, substantial misrepresentation, dishonest dealings or violence against another person or failure to deal fairly with any party to a transaction that materially and adversely affected the transaction. This paragraph applies equally to violations of which the licensee was convicted in any lawful federal or state tribunal and to any admissions made in any settlement agreement by the licensee to violations.

11. Failed to respond in the course of an investigation or audit by providing documents or written statements.

C. A judgment based on a court's finding or stipulation of fraud by a licensee following a trial on the merits or a criminal conviction of a licensee that results in a payment from the real estate recovery fund is prima facie evidence of a violation and grounds for discipline under this section.

D. The commissioner may deny, suspend or revoke the issuance of a license upon application by a corporation, a limited liability company or a partnership if it appears that an owner, officer, director, member, manager, partner, stockholder owning ten per cent or more of the stock in the corporation or limited liability company or person exercising control of the entity is a current or former licensee whose license as a broker or a salesperson has been denied, suspended or revoked.

E. The lapsing or suspension of a license by operation of law or by order or decision of the commissioner or a court of law or the voluntary surrender of a license by a licensee shall not deprive the commissioner of jurisdiction to do any of the following:

1. Proceed with any investigation of or action or disciplinary proceeding against the licensee.

2. Render a decision suspending or revoking the license, or denying the renewal or right of renewal of the license.

3. Assess a civil penalty pursuant to section 32-2160.01.

F. For the purposes of this section:

1. "Letter of concern" means an advisory letter to notify a licensee that, while the conduct or evidence does not warrant other disciplinary action, the commissioner believes that the licensee should modify or eliminate certain practices and that continuation of the activities may result in further disciplinary action against the licensee.

2. "Provisional license" means a license that the department issues and that allows a licensee to practice subject to either a consent order as prescribed in section 32-2153.01 or the commissioner's terms, conditions and restrictions.

32-2153.01. Consent order; terms

In addition to any other authority granted to the commissioner in this chapter to issue orders, the commissioner may issue a consent order on the agreement of both parties to an appealable agency action or a contested case. The order shall include terms that the parties agree on and that the commissioner, in the commissioner's discretion, believes are appropriate.

32-2154. Cease and desist orders; hearing

A. If it appears to the commissioner that any person has engaged, is engaging or is preparing to engage in any act, practice or transaction that constitutes a violation of this chapter or any rule adopted or order issued by the commissioner, the commissioner may issue an order directing any person to cease and desist from engaging in the act, practice or transaction or doing any act in furtherance of the act, practice or transaction, to make restitution or to take appropriate affirmative action, within a reasonable period of time as prescribed by the commissioner, to correct the conditions resulting from the act, practice or transaction.

B. A person aggrieved by a cease and desist order issued by the commissioner pursuant to this section may request a hearing pursuant to title 41, chapter 6, article 10 and the commissioner may issue the order or orders as the commissioner deems necessary to protect the public interest. The commissioner may also bring an action in any court of competent jurisdiction against the person to enjoin the person from continuing in violation of this chapter. These proceedings shall be promptly instituted and determined.

32-2155. Restriction on employment or compensation of person as broker or salesperson

A. A broker shall employ and pay only active licensees, and a licensee shall accept employment and compensation as a licensee only from the legally licensed broker to whom the licensee is licensed. If the licensee is licensed through a professional corporation or a professional limited liability company, the employing broker may pay and the licensee may receive compensation only through the licensed professional corporation of which the licensee is an officer and shareholder or the licensed professional limited liability company of which the licensee is a member or manager.

B. It is unlawful for a person, firm or corporation, whether obligor, escrow holder or otherwise, to pay or deliver to anyone compensation for performing any of the acts specified by this chapter, as a broker, who is not licensed at the time the service is rendered. An identification card or certificate of license issued by the state real estate department showing that the person, firm or corporation holds a license for the year in which the payment is made or earned shall be sufficient proof to relieve from any penalty for a violation of this section the obligor, escrow holder or other person who relied in good faith on the card or certificate.

C. A real estate broker or real estate salesperson shall not collect compensation for rendering services in negotiating loans secured by real property unless all of the following apply:

1. The broker or salesperson is licensed pursuant to title 6, chapter 9 or is an employee, officer or partner of a corporation or partnership licensed pursuant to title 6, chapter 9.

2. The broker or salesperson has disclosed to the person from whom the compensation is collected that the broker or salesperson is receiving compensation both for real estate brokerage, when applicable, and for mortgage broker services.

3. The compensation does not violate any other state or federal law.

D. Notwithstanding subsection A of this section, brokers licensed under this chapter may employ residential leasing agents or managers of residential rental properties, as prescribed by section 32-2121, subsection A, paragraph 6. The exemption of residential leasing agents or managers of residential rental property under article 2 of this chapter shall not be construed to exempt the designated broker from the responsibility to exercise reasonable supervision over these leasing agents or managers.

32-2156. Real estate sales and leases; disclosure

A. No criminal, civil or administrative action may be brought against a transferor or lessor of real property or a licensee for failing to disclose that the property being transferred or leased is or has been:

1. The site of a natural death, suicide or homicide or any other crime classified as a felony.
2. Owned or occupied by a person exposed to the human immunodeficiency virus or diagnosed as having the acquired immune deficiency syndrome or any other disease that is not known to be transmitted through common occupancy of real estate.
3. Located in the vicinity of a sex offender.

B. Failing to disclose any fact or suspicion as set forth in subsection A shall not be grounds for termination or rescission of any transaction in which real property has been or will be transferred or leased.

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

A. Except as provided in subsections B and C of this section, before suspending, revoking or denying the renewal or the right of renewal of any license, or issuing any order prohibiting the sale or lease of property or the sale of cemetery lots or membership camping contracts as provided by this chapter, the commissioner shall present the licensee, owner, including the current owner of the property, operator, agent or developer with written notice of the charges filed against the person, or reasons for prohibiting the sale or lease, and shall afford the person an opportunity for a hearing pursuant to title 41, chapter 6, article 10. Within twenty days after service of a notice of hearing, the respondent shall appear by filing a written answer to the complaint. A licensee against whom the department has commenced a disciplinary proceeding under this chapter may voluntarily surrender to the department the license if the surrender of the license occurs not less than ten days prior to a hearing under this section. After the acceptance of a voluntary surrender of a license under this section the department shall not thereafter issue a license under this chapter to the licensee.

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

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

32-2158. Hearing; witnesses; deposition; service of process

A. Any party to a hearing shall have the right to the attendance of witnesses in the party's behalf, in person or by deposition, upon making a request therefor to the commissioner and designating the person or persons requested to be subpoenaed. For the purpose of investigation or hearing the commissioner shall have the powers vested in public officers by section 12-2212.

B. Process issued by the commissioner may be served by any person authorized to serve process of courts of record or by any person designated for that purpose by the commissioner. The person serving process shall receive compensation allowed by the commissioner, not to exceed the fees prescribed by law for similar service. Any witness who appears by order of the commissioner shall receive the same fees and mileage allowed by law to a witness in civil cases, which shall be paid by the party at whose request the witness is subpoenaed. Fees for serving process and of witnesses subpoenaed by the commissioner not upon the request of any other person shall be paid as other expenses of the department are paid.

32-2159. Judicial review; costs; transcript
A. Except as provided in section 41-1092.08, subsection H, a final decision of the commissioner may be appealed to the superior court in Maricopa county pursuant to title 12, chapter 7, article 6.
B. If the superior court declares an appealing party indigent, on appeal the department shall pay the costs of the reporter's transcript of proceedings and shall produce a certified copy of all documents and evidence in the administrative record at no charge.

32-2160. Filing of complaint by commissioner; prosecution
A. The commissioner may file a complaint for a violation of this chapter before a court of competent jurisdiction and may in person or by his deputies, assistants or counsel assist in the prosecution of the complaint. The county attorney of any county in which a violation occurs shall, upon the written request of the commissioner or the attorney general, prosecute the violation.
B. In addition to all other remedies, when it appears to the commissioner either upon complaint or otherwise that any person, firm, partnership, corporation, association or other organization, or a combination of any of them, has engaged or is engaging in any act, practice or transaction which constitutes a violation of this chapter or of any rule or order of the commissioner, the commissioner may, either through the attorney general or through the county attorney of any county in which the act, practice or transaction is alleged to have been committed, apply to the superior court of that county for an injunction restraining such person, firm, partnership, corporation, association or other organization from engaging in such act, practice or transaction, or doing any act in furtherance thereof, and, upon a proper showing, a temporary restraining order, a preliminary injunction or a permanent injunction shall be granted without bond. Process in such action may be served upon the defendant in any county of this state where such defendant transacts business or is found or on the statutory agent in the case of a corporation.
C. Nothing in subsection B shall give the department jurisdiction over any landlord and tenant disputes or federal or state fair housing violations or authorize the commissioner to seek sanctions under this chapter or any rule or order of the commissioner relating to these matters.

32-2160.01. Civil penalties
A. Any licensee who is subject to the jurisdiction of the department and who has violated any provision of this chapter or any rule or order adopted or issued 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 either subdivided lands or unsubdivided lands may be assessed a civil penalty by the commissioner, after a hearing, in an amount not to exceed one thousand dollars for each infraction.
B. Actions to recover penalties assessed pursuant to this chapter shall be brought by the attorney general in the name of the state in the superior court in the county in which the violation occurred or in a county in which the commissioner maintains an office. When the commissioner has revoked a license or withdrawn certification or approval of a school, educational course or real estate instructor and assessed civil penalties that remain unpaid, if judicial review has not been sought under title 12, chapter 7, article 6, a certified copy of any such commissioner's order requiring the payment of civil penalties may be filed in the office of the clerk of the superior court. The clerk shall treat the commissioner's order in the same manner as a judgment of the superior court. A commissioner's order so filed has the same effect as a judgment of the superior court and may be recorded, enforced or satisfied in like manner. No filing fee is required under this section.

32-2161. False statements or publications concerning land, subdivision or membership camping contract for sale or lease; classification; definition
A. Every person who knowingly authorizes or directs any publication or any false statement or representation concerning any land, subdivision or membership camping contract offered for sale or lease, and every person who, with knowledge that any advertisement, pamphlet, prospectus, or letter concerning the land, subdivision or membership camping contract contains any written statement that is false or fraudulent, issues, circulates, publishes or distributes it or causes it to be issued, circulated, published or distributed, or who in any respect knowingly violates or fails to comply with any order, permit, decision, demand or requirement of the commissioner under the provisions of this chapter, is guilty of a

class 6 felony and, if a licensee, shall be tried before the commissioner for suspension or revocation of his license.
B. For purposes of this section, "knowingly" or "with knowledge" includes, but is not limited to, engaging in any conduct prohibited in subsection A if such person knew or should have known of the falsity of any statement or representation.

32-2162. Sale of cemetery property for speculation unlawful
It is unlawful for any person to sell or offer for sale cemetery property under any promise that the cemetery property sold or offered for sale may be resold at a profit. The conveyance of cemetery property pursuant to a sale in violation of this section is void.

32-2163. Unlawful acts; out-of-state broker; cooperation agreement
A. It is unlawful for any licensed broker in this state to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter if the person is not also a licensed broker in this state, or a salesperson licensed under the broker employing or compensating him, except that a licensed broker in this state may pay compensation to and receive compensation from a broker lawfully operating in another state.
B. Notwithstanding that pursuant to subsection A of this section a licensed broker in this state may pay to and receive compensation from an out-of-state broker, this authority shall not be construed to permit an out-of-state broker to conduct activity in this state that would otherwise require a broker's license issued by the department.
C. A licensed broker in this state may cooperate with an out-of-state broker who would otherwise require licensure in this state if:

1. The licensed broker and the out-of-state broker enter into a written cooperation agreement before the out-of-state broker conducts any activity otherwise requiring a broker's license pursuant to this chapter. The cooperation agreement shall include the following:
    (a) A list of the real estate activities to be conducted by the out-of-state broker.
    (b) A statement that the out-of-state broker agrees to fully comply with the laws of this state and submit to the regulatory jurisdiction of the department for activities subject to real estate broker licensure pursuant to this chapter.
    (c) A statement that the licensed broker in this state understands and accepts responsibility for the acts of the out-of-state broker.
2. All negotiations in this state or with people who own property in this state are conducted through the licensed broker in this state.
3. The licensed broker in this state assumes all responsibility for the acts of the out-of-state broker.
4. All principal funds handled by either the licensed broker in this state or the out-of-state broker are subject to the deposit and handling requirements of section 32-2151.

D. The offering of real estate brokerage services specified by section 32-2101, paragraph 48 for compensation or any other thing of value pertaining to real property located in this state through an internet web site constitutes activity that requires a broker's license issued by the department.
E. This section does not allow an out-of-state broker who is not licensed in this state to list, market or advertise in this state real property located in this state for sale, lease or exchange.
F. Signs shall not be placed on real property in this state by an out-of-state broker. An out-of-state broker shall not use a cooperation agreement as authority to sell, lease, rent, exchange or attempt to sell, lease, rent or exchange real property to a resident of this state.

32-2164. Unlawful subdivision lot sales
It is unlawful for a licensed real estate broker or salesperson to assist a subdivider or agent of such subdivider in the offer, sale or lease of a subdivision lot or parcel in violation of any provision of this chapter or any rule adopted or order issued by the commissioner if the licensee knew or should have known of the violation.

32-2165. Unlicensed activities; violation; classification

A. A person who acts as a broker or salesperson within the meaning of this chapter, or who advertises in a manner that indicates that the person is licensed as a broker or salesperson, without being licensed as prescribed by this chapter is guilty of a class 6 felony.

B. A person who performs acts that require a license under this chapter, other than a broker's or salesperson's license, without being licensed as prescribed by this chapter is guilty of a class 5 felony.

C. The penalties prescribed by this section do not apply to:

1. A broker or salesperson within a year of the expiration of the broker's or salesperson's license, if the failure to timely renew the license was due to unintentional neglect by the licensee or administrative untimeliness by the department.

2. The activities of a licensee, while acting in a capacity for which the person's license was issued, that otherwise violate any provision of this chapter.

3. Any person who, on discovering that a license is required to carry on the person's present or planned activities, and before the issuance of a cease and desist order pursuant to section 32-2154, notifies the department of the person's intent to immediately comply with this chapter, applies for the required license and ceases the prohibited activities pending issuance of a license. Nothing in this paragraph shall be construed to lessen or reduce the qualifications otherwise required of license applicants under this chapter or to diminish the authority of the department to deny a license to a person who does not meet all of the requirements for licensure.

32-2166. Activities while incarcerated; violation; classification

A. While incarcerated a person who is licensed pursuant to this chapter shall not perform acts that require a license under this chapter.

B. A person who violates this section is guilty of a class 6 felony.

Article 3.1 Property Management

32-2171. Definitions

In this article, unless the context otherwise requires:

1. "Property management firm" means any corporation, partnership or limited liability company licensed pursuant to section 32-2125, subsection A or a designated broker that by written agreement, manages rental property or properties for compensation.

2. "Rental agreement" means a lease or leasing agreement.

32-2172. Scope of article

This article supersedes all provisions of law and rules that relate to property management.

32-2173. Property management agreements; contents, termination

A. 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.

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 transfer monies or to be a signatory on trust accounts does not lessen the broker's responsibility or liability for any monies handled.
D. Within three banking days after receiving monies that are not subject to dispute or contingency, the property management firm shall deposit the monies in either the owner's direct account or the property management firm's trust account for the benefit of the owner. A property management firm may remit an owner's monies under its control to or for the owner by any lawful means available.
E. Each rental agreement executed by a property manager shall include a provision that clearly states the disposition of any tenant deposits.

32-2175. Property management records; requirements; audits
A. Property management firms shall keep a residential rental agreement and related residential rental agreement documents for one year from the expiration of the rental agreement or until the rental agreement and related documents are given to the owner at the termination of any property management agreement. The records shall be kept at the broker's main office or at an off-site storage location in this state if the broker provides prior written notification of the street address of the off-site storage location to the department.
B. Property management firms shall keep records of all finder fees that are paid to tenants for three years after the payment is made or until the records are given to the owner at the termination of the property management agreement. Records shall be kept at the broker's main office or at an off-site storage location in this state if the broker provides prior written notification of the street address of the off-site storage location to the department.
C. Property management firms shall keep all financial records pertaining to clients for at least three years from the date each document was executed, including bank statements, canceled checks or bank generated check images, deposit slips, bank receipts, receipts and disbursement journals, owner statements, client ledgers and applicable bills, invoices and statements.
D. Only the designated broker or the broker's authorized real estate licensee, on behalf of the broker, may sign nonresidential rental agreements. The broker shall execute in writing and shall file any delegation of authority in the broker's employee file. Fully executed residential lease agreements are not required to be reviewed and initialed.
E. The property management firms shall consecutively number or file all signed property management agreements in compliance with a system that is orderly, easily accessible by the commissioner or the commissioner's representative and consistent with generally accepted professional standards of the industry for that type of real estate.
F. Property management firms shall maintain each nonresidential real estate lease agreement and the transaction folder in which it is kept in a chronological log or other systematic manner that is easily accessible by the commissioner or the commissioner's representatives. For nonresidential lease transactions, transaction folders shall contain:

1. Confirmation that the deposits or other monies that were handled by or through the broker were handled according to instructions given by or agreed on by the parties to the transaction.
2. A complete copy of the nonresidential lease or rental agreement.
3. If applicable, a copy of the listing agreement.

G. Property management firms shall number on-site residential rental transaction folders according to dwelling unit number or other systematic manner that is easily accessible by the commissioner or the commissioner's representative. A broker is not required to maintain duplicate residential rental transaction folders.
H. On request by the commissioner or the commissioner's representatives for routine audit purposes the broker shall make available within a reasonable amount of time all records relative to property management accounts, including lease agreements, lease related documents and trust account records. The department is limited to auditing those areas that are related to the business activities of a broker and that have a material bearing on the accuracy of the audit. This subsection shall not limit the immediacy or scope of an audit if a violation of real estate statutes or rules is suspected.

32-2176. Payment of finder fees to apartment tenants; limits; prohibited activities; civil penalty; definitions

A. Notwithstanding sections 32-2155, 32-2163 and 32-2165 or any other provision of this chapter, a property management firm or a property owner may:

1. Pay a finder fee to an unlicensed person who is a tenant in an apartment complex managed by the firm or owned by the owner.
2. Authorize a residential leasing agent or manager to deliver a finder fee to an unlicensed person who is a tenant in an apartment complex managed by the residential leasing agent or manager. A residential leasing agent or manager may not receive a finder fee. This prohibition does not affect the ability of a residential leasing agent or manager to receive a bonus pursuant to section 32-2121, subsection A, paragraph 6.

B. A finder fee paid pursuant to this section shall not exceed a two hundred dollar credit toward or reduction in the tenant's monthly rent. A tenant may receive multiple finder fees pursuant to this section up to five times in any twelve month period.

C. A tenant shall limit the tenant's activities pursuant to this section to referring prospective lessees to the owner or the owner's agent and shall not do any of the following:

1. Show a residential dwelling unit to a prospective lessee.
2. Discuss terms or conditions of leasing a dwelling unit with a prospective lessee.
3. Participate in the negotiation of the leasing of a dwelling unit.

D. Nothing in this section permits an unlicensed person to advertise or otherwise promote the person's services in procuring or assisting to procure prospective lessors or tenants of apartment units.

E. For a licensee who pays a finder fee in violation of this section, for each violation the department may suspend or revoke the licensee's license or impose a civil penalty pursuant to section 32-2153.

F. For the purposes of this section:

1. "Finder fee" means a fee paid to a person for introducing or arranging an introduction between the parties to a transaction involving the rental of an apartment unit.
2. "Property owner" means a person who is exempt from the licensing requirements of this chapter pursuant to section 32-2121, subsection A, paragraph 1.
3. "Residential leasing agent or manager" has the same meaning prescribed in section 32-2121, subsection A, paragraph 6.

Article 4 Sale of Subdivided Lands

32-2181; Notice to commissioner of intention to subdivide lands; unlawful acting in concert; exceptions; deed restrictions; definition

A. Before offering subdivided lands for sale or lease, the subdivider shall notify the commissioner in writing of the subdivider's intention. The notice shall contain:

1. The name and address of the owner. If the holder of any ownership interest in the land is other than an individual, such as a corporation, partnership or trust, a statement naming the type of legal entity and listing the interest and the extent of any interest of each principal in the entity. For the purposes of this section, "principal" means any person or entity having a ten per cent or more financial interest or, if the legal entity is a trust, each beneficiary of the trust holding a ten per cent or more beneficial interest.
2. The name and address of the subdivider.
3. The legal description and area of the land.
4. A true statement of the condition of the title to the land, including all encumbrances on the land, and a statement of the provisions agreed to by the holder of any blanket encumbrance enabling a purchaser to acquire title to a lot or parcel free of the lien of the blanket encumbrance on completion of all payments and performance of all of the terms and provisions required to be made or performed by the purchaser under the real estate sales contract by which the purchaser has acquired the lot or parcel. The subdivider shall file copies of documents acceptable to the department containing these provisions with the commissioner before the sale of any subdivision lot or parcel subject to a blanket encumbrance.
5. The terms and conditions on which it is intended to dispose of the land, together with copies of any real estate sales contract, conveyance, lease, assignment or other instrument intended to be used, and any other information the owner or the owner's agent or subdivider desires to present.

6. A map of the subdivision that has been filed in the office of the county recorder in the county in which the subdivision is located.
7. A brief but comprehensive statement describing the land on and the locality in which the subdivision is located.
8. A statement of the provisions that have been made for permanent access and provisions, if any, for health department approved sewage and solid waste collection and disposal and public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities.
9. A statement as to the location of the nearest public common and high schools available for the attendance of school age pupils residing on the subdivision property.
10. A statement of the use or uses for which the proposed subdivision will be offered.
11. A statement of the provisions, if any, limiting the use or occupancy of the parcels in the subdivision, together with copies of any restrictive covenants affecting all or part of the subdivision.
12. The name and business address of the principal broker selling or leasing, within this state, lots or parcels in the subdivision.
13. A true statement of the approximate amount of indebtedness that is a lien on the subdivision or any part of the subdivision and that was incurred to pay for the construction of any on-site or off-site improvement, or any community or recreational facility.
14. A true statement or reasonable estimate, if applicable, of the amount of any indebtedness that has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area or assessment district, within the boundaries of which the subdivision, or any part of the subdivision, is located, and that is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to the subdivision, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax upon the subdivision or any part of the subdivision.
15. A true statement as to the approximate amount of annual taxes, special assessments or fees to be paid by the buyer for the proposed annual maintenance of common facilities in the subdivision.
16. A statement of the provisions for easements for permanent access for irrigation water where applicable.
17. A true statement of assurances for the completion of off-site improvements, such as roads, utilities, community or recreational facilities and other improvements to be included in the offering or represented as being in the offering, and approval of the offering by the political subdivision with authority. This statement shall include a trust agreement or any other evidence of assurances for delivery of the improvements and a statement of the provisions, if any, for the continued maintenance of the improvements.
18. A true statement of the nature of any improvements to be installed by the subdivider, the estimated schedule for completion and the estimated costs related to the improvements that will be borne by purchasers of lots in the subdivision.
19. A true statement of the availability of sewage disposal facilities and other public utilities, including water, electricity, gas and telephone facilities in the subdivision, the estimated schedule for their installation, and the estimated costs related to the facilities and utilities that will be borne by purchasers of lots in the subdivision.
20. A true statement as to whether all or any portion of the subdivision is located in an open range or area in which livestock may roam at large under the laws of this state and what provisions, if any, have been made for the fencing of the subdivision to preclude livestock from roaming within the subdivided lands.
21. If the subdivider is a subsidiary corporation, a true statement identifying the parent corporation and any of the following in which the parent or any of its subsidiaries is or has been involved within the past five years:

(a) Any subdivision in this state.

(b) Any subdivision, wherever located, for which registration is required pursuant to the federal interstate land sales full disclosure act.

(c) Any subdivision, wherever located, for which registration would have been required pursuant to the federal interstate land sales full disclosure act but for the exemption for subdivisions whose lots are all twenty acres or more in size.

22. A true statement identifying all other subdivisions, designated in paragraph 21 of this subsection, in which any of the following is or, within the last five years, has been directly or indirectly involved:

(a) The holder of any ownership interest in the land.

(b) The subdivider.

(c) Any principal or officer in the holder or subdivider.

23. A true statement as to whether all or any portion of the subdivision is located in territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, in territory in the vicinity of a public airport as defined in section 28-8486, on or after July 1, 2001, in a high noise or accident potential zone as defined in section 28-8461 or on or after July 1 of the year in which the subdivision becomes located in a high noise or accident potential zone. The statement required pursuant to this paragraph does not require the amendment or refiling of any notice filed before July 1, 2001 or before July 1 of the year in which the subdivision becomes located in a high noise or accident potential zone.

24. If the subdivision is a conversion from multifamily rental to condominiums as defined in section 33-1202, a true statement as to the following:

(a) That the property is a conversion from multifamily rental to condominiums.

(b) The date original construction was completed.

25. Other information and documents and certifications as the commissioner may reasonably require provided that the subdivider shall not be required to disclose any critical infrastructure information as defined in section 41-1801 or any information contained in a report issued pursuant to section 41-4273.

B. The commissioner, on application, may grant a subdivider of lots or parcels within a subdivision for which a public report was previously issued by the commissioner an exemption from all or part of the notification requirements of subsection A of this section. The subdivider shall file a statement with the commissioner indicating the change of ownership in the lots or parcels together with any material changes occurring subsequent to the original approval of the subdivision within which the lots or parcels are located. The statement shall further refer to the original approval by the commissioner.

C. If the subdivision is within an active management area, as defined in section 45-402, the subdivider shall accompany the notice with a certificate of assured water supply issued by the director of water resources along with proof that all applicable fees have been paid pursuant to sections 48-3772 and 48-3774.01, unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576. If the subdivider has submitted a certificate of assured water supply to a city, town or county prior to approval of the plat by the city, town or county and this has been noted on the face of the plat, the submission constitutes compliance with this subsection if the subdivider provides proof to the commissioner that all applicable fees have been paid pursuant to sections 48-3772 and 48-3774.01.

D. It is unlawful for a person or group of persons acting in concert to attempt to avoid this article by acting in concert to divide a parcel of land or sell subdivision lots by using a series of owners or conveyances or by any other method that ultimately results in the division of the lands into a subdivision or the sale of subdivided land. The plan or offering is subject to this article. Unlawful acting in concert pursuant to this subsection with respect to the sale or lease of subdivision lots requires proof that the real estate licensee or other licensed professional knew or with the exercise of reasonable diligence should have known that property which the licensee listed or for which the licensee acted in any capacity as agent was subdivided land subject to this article. A familial relationship alone is not sufficient to constitute unlawful acting in concert.

E. A creation of six or more lots, parcels or fractional interests in improved or unimproved land, lots or parcels of any size is subject to this article except when:

1. Each of the lots, parcels or fractional interests represents, on a partition basis, thirty-six acres or more in area of land located in this state, including to the centerline of dedicated roads or easements, if any, contiguous to the land in which the interests are held.

2. The lots, parcels or fractional interests are the result of a foreclosure sale, the exercise by a trustee under a deed of trust of a power of sale or the grant of a deed in lieu of foreclosure. This paragraph does not allow circumvention of the requirements of this article.

3. The lots, parcels or fractional interests are created by a valid order or decree of a court pursuant to and through compliance with title 12, chapter 8, article 7 or by operation of law. This paragraph does not allow circumvention of the requirements of this article.

4. The lots, parcels or fractional interests consist of interests in any oil, gas or mineral lease, permit, claim or right therein and such interests are regulated as securities by the United States or by this state.

5. The lots, parcels or fractional interests are registered as securities under the laws of the United States or the laws of this state or are exempt transactions under section 44-1844, 44-1845 or 44-1846.

6. The commissioner by special order exempts offerings or dispositions of any lots, parcels or fractional interests from compliance with this article on written petition and on a showing satisfactory to the commissioner that compliance is not essential to the public interest or for the protection of buyers.

7. A sale or lease of a lot, parcel or fractional interest occurs ten or more years after the sale or lease of another lot, parcel or fractional interest and the other lot, parcel or fractional interest is not subject to this article and is treated as an independent parcel unless, upon investigation by the commissioner, there is evidence of intent to subdivide.

F. In areas outside of active management areas established pursuant to title 45, chapter 2, article 2:

1. If the subdivision is located in a county that has adopted the provision authorized by section 11-823, subsection A, or in a city or town that has enacted an ordinance pursuant to section 9-463.01, subsection O, the subdivider shall accompany the notice with a report issued by the director of water resources pursuant to section 45-108 stating that the subdivision has an adequate water supply, unless one of the following applies:

(a) The subdivider submitted the report to a city, town or county before approval of the plat by the city, town or county and this has been noted on the face of the plat.

(b) The subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108.

(c) The plat was approved pursuant to an exemption authorized by section 9-463.01, subsection K, pursuant to an exemption authorized by section 11-823, subsection B, paragraph 1, pursuant to an exemption granted by the director of water resources under section 45-108.02 and the exemption has not expired or pursuant to an exemption granted by the director under section 45-108.03. If the plat was approved pursuant to an authorized exemption, the state real estate commissioner shall require that all promotional material and contracts for the sale of lots in the subdivision adequately display the following:

(i) The director of water resources' report or the developer's brief summary of the report as approved by the commissioner on the proposed water supply for the subdivision.

(ii) A statement describing the exemption under which the subdivision was approved, including the specific conditions of the exemption that were met. If the plat was approved by the legislative body of a city or town pursuant to an exemption authorized by section 9-463.01, subsection K or by the board of supervisors of a county pursuant to an exemption authorized by section 11-823, subsection B, paragraph 1, the subdivider shall record the document required by section 33-406.

(d) The subdivision received final plat approval from the city, town or county before the requirement for an adequate water supply became effective in the city, town or county, and there have been no material changes to the plat since the final plat approval. If changes were made to the plat after the final plat approval, the director of water resources shall determine whether the changes are material pursuant to the rules adopted by the director to implement section 45-108. If this subdivision applies, the state real estate commissioner shall require that all promotional materials and contracts for the sale of lots in the subdivision adequately display the director of water resources' report or the developer's brief summary of the report as approved by the commissioner on the proposed water supply for the subdivision.

2. If the subdivision is not located in a county that has adopted the provision authorized by section 11-823, subsection A or in a city or town that has enacted an ordinance pursuant to section 9-463.01, subsection O, and if the director of water resources, pursuant to section 45-108, reports an inadequate on-site supply of water to meet the needs projected by the developer or if no water is available, the state real estate commissioner shall require that all promotional material and contracts for the sale of lots in subdivisions approved by the commissioner adequately display the director of water resources' report or the developer's brief summary of the report as approved by the commissioner on the proposed water supply for the subdivision.

G. The commissioner may require the subdivider to supplement the notice of intention to subdivide lands and may require the filing of periodic reports to update the information contained in the original notice of intention to subdivide lands.

H. The commissioner may authorize the subdivider to file as the notice of intention to subdivide lands, in lieu of some or all of the requirements of subsection A of this section, a copy of the statement of record filed with respect to the subdivision pursuant to the federal interstate land sales full disclosure act if the statement complies with the requirements of the act and the regulations pertinent to the act.

I. Neither a real estate sales contract, conveyance, lease, assignment or other instrument to transfer any interest in subdivided land nor any covenant or restriction affecting real property shall contain any provision limiting the right of any party to appear or testify in support of or opposition to zoning changes, building permits or any other official acts affecting real property before a governmental body or official considering zoning changes, building permits or any other official acts affecting real property, whether the property is located within or outside of the boundaries of the subdivision. All contractual provisions that conflict with this subsection are declared to be contrary to public policy. Nothing contained in this subsection shall prohibit private restrictions on the use of any real property.

J. Before offering subdivided lands for lease or sale, the subdivider who makes any promises through any form of advertising media that the subdivided lands will be exclusively a retirement community or one that is limited to the residency of adults or senior citizens shall include the promises in the deed restrictions affecting any interest in real property within the subdivided lands.

K. Except as otherwise provided in this section, a subdivider shall not be required to disclose items that are over one mile from the subdivision boundaries. The existence of foreign nations or tribal lands shall also be disclosed if located within the one mile radius of the subdivision boundaries.

32-2181.01. Power of commissioner to exempt certain subdivisions or fractional interests by special order

A. The commissioner may in his discretion by special order exempt from any one or all of the provisions of this article certain subdivided lands or fractional interests therein upon written petition and upon a showing by the petitioner, satisfactory to the commissioner, that compliance with the provisions of this article is not essential to the public interest or for the protection of buyers by reason of the special characteristics of the subdivided lands or fractional interests therein or the limited character and duration of the offer for sale, lease or financing or the special characteristics or limited number of fractional interests.

B. Special orders issued pursuant to this section shall relate to specific lands or specific fractional interests.

C. A petition filed under this section shall be accompanied by an initial fee of one hundred dollars. No fees shall be returnable irrespective of the nature of the action upon the petition.

32-2181.02. Exempt sales and leases

A. The following are exempt under this article:

1. The sale or lease in bulk of six or more lots, parcels or fractional interests to one buyer in one transaction.
2. The sale or lease of lots or parcels of one hundred sixty acres or more.

B. The following are exempt from section 32-2181, subsection A and section 32-2183, subsection A:

1. The sale or lease of parcels, lots, units or spaces that are zoned and restricted to commercial or industrial uses.
2. The sale or lease of lots or parcels located in a single platted subdivision by a subdivider if:
    (a) A public report has been issued within the past five years pursuant to this article on the subdivision lots or parcels.

(b) The subdivision meets all current requirements otherwise required of a subdivision under this article.

(c) The method of sale or lease of lots or parcels meets all current requirements under this article.

(d) The lots or parcels are included on a recorded subdivision plat that is approved by a municipal or county government.

(e) All roads within the subdivision, all utilities to the lots or parcels being offered for sale or lease and all other required improvements within the subdivision, other than a residence to be built, are complete, paid for and free of any blanket encumbrances.

(f) The roads, utilities or other improvements are not complete, but the completion of all improvements is assured pursuant to section 32-2183, subsection F.

(g) Except for matters relating to ownership and financing, there have been no material changes to the information set forth in the most recent public report issued for the subdivision lots that would require an amendment to the public report.

(h) No owner of a ten per cent or greater interest, subdivider, director, partner, agent, officer or developer of the subdivision has:

(i) Been convicted of a felony or any crime involving theft, dishonesty, violence against another person, fraud or real estate, regardless of whether the convictions were subsequently expunged.

(ii) Had a civil judgment entered against the person in a case involving allegations of misrepresentation, fraud, breach of fiduciary duty, misappropriation, dishonesty or, if the subject matter involved real property, securities or investments.

(iii) Had a business or professional license, including a real estate license, denied, suspended or revoked or voluntarily surrendered a business or professional license during the course of an investigative or disciplinary proceeding or other disciplinary action taken in this state or any other state.

(i) The sale of the subdivided lands violates no laws or ordinances of any governmental authority.

(j) Before the buyer's or lessee's execution of a purchase contract or lease, the subdivider has provided the buyer or lessee with a copy of the most recent public report on the lot and has taken a receipt from the buyer for the copy.

(k) The subdivider has provided to the buyer or lessee, along with the public report, a signed statement that the subdivider has reviewed and is in compliance with the terms of the exemption provided in this paragraph.

(l) Before sale or lease, the subdivider has notified the commissioner, on a form provided by the department, of the subdivider's intent to sell or lease lots or parcels pursuant to this paragraph. The notice shall include:

(i) The name, address and telephone number of the subdivider.

(ii) The name, address and telephone number of any real estate broker retained by the subdivider to make sales or leases of the lots.

(iii) The name and location of the subdivision.

(iv) The most recent subdivision public report reference number on the lots.

(v) The completion status of subdivision improvements.

3. The conveyance to a person who previously conveyed the lot to a home builder for the purpose of constructing a dwelling for the person.

4. The sale or lease by a person of individual lots or parcels that were separately acquired by the person from different persons and that were not acquired for the purpose of development if:

(a) The lots or parcels are not located in a platted subdivision.

(b) Each lot or parcel bears the same legal description that it bore when the lot or parcel was acquired by the person.

(c) The seller or lessor is in compliance with all other applicable state and local government requirements.

5. The sale of an improved lot in a subdivision that is located outside of this state if:

(a) The subdivision is located within the United States and the sale is exempt from the interstate land sales full disclosure act (P.L. 90-448; 82 Stat. 590; 15 United States Code sections 1701 through 1720).

(b) The subdivider is required by the state where the subdivision is located to deliver a public report or equivalent disclosure document to prospective purchasers and the subdivider delivers the report or equivalent disclosure document.

6. The sale of an improved lot in a subdivision located in this state where five or more sales were previously made by the seller if:

(a) The sale is the seller's first or second sale in the subdivision within the previous twelve month period.

(b) The subdivision is located within the corporate limits of a town or city.

(c) Electricity and telephone service are complete and available to the improved lot.

(d) Water and sewage service is complete and available to the improved lot.

(e) Streets and roads located outside of the subdivision provide permanent access to the subdivision and are complete and maintained by the county, town or city, or by a legally created and operational property owners' association.

(f) Streets within the subdivision are dedicated, provide permanent access to the lot, are complete to town or city standards and are maintained by the town or city or, in the case of private streets, a legally created and operational property owners' association accepts the responsibility of perpetual maintenance.

(g) All subdivision common area improvements, including landscaping, recreational facilities and other jointly used and maintained improvements, are complete and maintained by a legally created and operational property owners' association.

(h) The purchaser's down payment, earnest money, deposit or other advanced money is placed and held in a neutral escrow depository in this state until escrow closes and the deed is delivered to the purchaser.

(i) Within the previous twelve months the seller has not had an ownership interest in more than two lots in the subdivision, including an interest by option, an agreement for sale, a beneficial interest under a trust or a purchase contract.

C. Nothing in this section shall be construed to increase, decrease or otherwise affect any rights or powers granted the commissioner under this chapter.

D. This section does not apply to lands on which the commissioner has issued orders pursuant to sections 32-2154 and 32-2157 and section 32-2183, subsection M unless the commissioner has issued a public report on those lands subsequent to the date of the orders.

E. Nothing in this section shall be construed to increase, to decrease or to otherwise affect any rights or powers granted to political subdivisions of this state with respect to their jurisdictions.

32-2181.03. Lot reservations; expiration

A. The notice of intent required by section 32-2181, subsection A or section 32-2195, subsection B and the issuance of a public report required by section 32-2183, subsection A or section 32-2195.03, subsection A are not required for any party to enter into a lot reservation on property located in this state.

B. Before the issuance of a public report, a deposit may be accepted from a prospective buyer as a lot reservation if all of the following requirements are met:

1. Before accepting any lot reservation, the prospective seller shall mail or deliver written notice of the seller's intention to accept lot reservations to the department. The notice shall include:

(a) The name, address and telephone number of the prospective seller.

(b) The name, address and telephone number of any real estate broker retained by the prospective seller to promote the lot reservation program.

(c) The name and location of the project for which lot reservations are to be offered.

(d) The form to be used for accepting lot reservations, subject to approval by the commissioner.

2. The reservation deposit for a single lot or parcel shall not exceed five thousand dollars.

3. Within one business day after a reservation is accepted by the prospective seller, the reservation deposit shall be delivered to an escrow agent licensed pursuant to title 6, chapter 7 and deposited by the escrow agent in a depository insured by an agency of the United States. The escrow account may be interest bearing at the direction of either the prospective seller or prospective buyer. Payment of any account fees and payment of interest monies shall be as

agreed to between the prospective buyer and prospective seller. All reservation deposits shall remain in an escrow account until cancellation or termination of the lot reservation or execution of a purchase contract.

4. Within fifteen calendar days of receipt by the prospective seller of the public report issued by the commissioner relative to the reserved lot or parcel, the prospective seller shall provide the prospective buyer with a copy of the public report and a copy of the proposed purchase contract for the sale of the lot or parcel. The prospective buyer and prospective seller have seven business days after the prospective buyer's receipt of the public report and the proposed purchase contract within which to enter into a contract for the purchase of the lot or parcel. If the prospective buyer and prospective seller do not enter into a contract for the purchase of the lot or parcel within the seven business day period, the reservation automatically terminates. The prospective seller has no cancellation rights other than as provided in this paragraph.

5. A prospective buyer may cancel a lot reservation at any time before the execution of a purchase contract by delivering written notice of termination to the prospective seller.

6. Within five business days after a lot reservation has been terminated for any reason, the prospective seller shall refund to the prospective buyer all reservation deposits made by the prospective buyer including any interest monies earned less any account fees agreed upon, if applicable. The escrow agent shall refund to the prospective buyer all reservation deposits made by the prospective buyer including any interest monies earned less any account fees agreed upon if the prospective seller is not available. After this refund neither the prospective buyer nor the prospective seller has any obligation to the other arising out of the lot reservation.

7. A prospective buyer may not transfer rights under a reservation without the prior written consent of the prospective seller, and any purported transfer without the consent of the prospective seller is voidable at the sole discretion of the prospective seller.

8. If the department denies an application for a public report on the development on which lot reservations were taken, within five business days of notification by the department, the prospective seller shall notify in writing each prospective buyer who entered into a lot reservation agreement. The prospective seller shall return any reservation deposits previously taken.

9. All notices required by this section to be given to the department, the prospective buyer or the prospective seller shall be in writing and either hand delivered or sent by certified mail, return receipt requested, with postage fully prepaid. Notices sent by mail are deemed delivered on the earlier of actual receipt, as evidenced by the delivery receipt, or seven calendar days after being deposited in the United States mail.

10. Each lot reservation form shall contain the following statement: "*The state real estate department has not inspected or approved this project and no public report has yet been issued for the project. No offer to sell may be made and no offer to purchase may be accepted before issuance of a public report for the project.*"

C. The commissioner may deny authorization to accept lot reservations under this section to any person who has violated or is in violation of any provision of this chapter.

D. The authority to take lot reservations under this section expires two years after the date the commissioner receives notice of the intent to take lot reservations from a developer.

32-2182. Examination of subdivision by commissioner; fee; time limit to determine violation

A. The commissioner shall examine any subdivision offered for sale or lease, and shall make public his findings. The total cost of travel and subsistence expenses incurred by the department in the examination, in addition to the initial filing fee provided for in this section, shall be borne by the subdivider on the basis of actual cost to the department. A filing fee of five hundred dollars or such lesser fee as determined by the commissioner shall accompany the written notification required in section 32-2181. The commissioner may allow the developer to outsource and pay for the cost of physical inspections so long as the department approves the inspector and the inspection for content.

B. The commissioner may, but is not required to, inspect a subdivision site if all of the following apply:

1. The commissioner has previously inspected the subdivision within the past two years.
2. All proposed improvements were complete at the time of the previous inspection.
3. The sales offering does not include any changes to the physical aspects of the subdivision, including the plat, site and locations of improvements.

C. The commissioner is not required to complete the inspection of the subdivision site before issuing a public report. Nevertheless, if the commissioner discovers anything during any subsequent inspection that would have been grounds to deny issuance of the public report or anything that would have warranted additional disclosure in the public report, the commissioner may issue a summary order as provided in section 32-2157.
D. Notwithstanding any other law, the commissioner has no more than five years after the date of an initial complaint or initiation of an investigation by the commissioner to determine if the sale or lease violated this article.

32-2183. Subdivision public reports; denial of issuance; unlawful sales; voidable sale or lease; order prohibiting sale or lease; investigations; hearings; summary orders
A. Upon examination of a subdivision, the commissioner, unless there are grounds for denial, shall issue to the subdivider a public report authorizing the sale or lease in this state of the lots, parcels or fractional interests within the subdivision. The report shall contain the data obtained in accordance with section 32-2181 and any other information which the commissioner determines is necessary to implement the purposes of this article. If any of the lots, parcels or fractional interests within the subdivision are located within territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, under a military training route as delineated in the military training route map prepared pursuant to section 37-102, under restricted air space as delineated in the restricted air space map prepared pursuant to section 37-102 or contained in the military electronics range as delineated in the military electronics range map prepared pursuant to section 37-102, the report shall include, in bold twelve point font block letters on the first page of the report, the statements required pursuant to section 28-8484, subsection A, section 32-2183.05 or section 32-2183.06 and, if the department has been provided a map prepared pursuant to section 28-8484, subsection B or section 37-102, the report shall include a copy of the map. The military airport report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2001 or on or before December 31 of the year in which the lots, parcels or fractional interests within a subdivision become territory in the vicinity of a military airport or ancillary military facility. The military training route report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2004. The restricted air space report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2006. The military electronics range report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2008. The commissioner shall require the subdivider to reproduce the report, make the report available to each initial prospective customer and furnish each initial buyer or lessee with a copy before the buyer or lessee signs any offer to purchase or lease, taking a receipt therefor.
B. This section shall not be construed to require a public report issued sixty or fewer days prior to the filing of the military electronics range map prepared pursuant to section 37-102 to meet the military electronics range notification requirements of this section.
C. A public report issued sixty-one or more days after the filing of the military electronics range map prepared pursuant to section 37-102 shall meet all of the requirements of subsection A of this section.
D. Notwithstanding subsection A of this section, a subdivider may elect to prepare a final public report for use in the sale of improved lots as defined in section 32-2101, as follows:

1. The subdivider shall prepare the public report and provide a copy of the report to the commissioner with the submission of the notification required by sections 32-2181 and 32-2184 and shall comply with all other requirements of this article.
2. An initial filing fee of five hundred dollars or an amended filing fee of two hundred fifty dollars shall accompany the notification required by paragraph 1 of this subsection.
3. The department shall assign a registration number to each notification and public report submitted pursuant to this subsection and shall maintain a database of all of these submissions. The subdivider shall place the number on each public report.
4. On receipt of the notification and public report, the department shall review and issue within ten business days either a certification that the notification and public report are administratively complete or a denial letter if it appears that the application or project is not in compliance with all legal requirements, that the applicant has a background of violations of state or federal law or that the applicant or project presents an unnecessary risk of harm to the public. If the commissioner has received the notification and public report but has not issued a certification or a denial letter

within ten business days pursuant to this paragraph, the notification and public report are administratively complete.

5. A subdivider may commence sales or leasing activities as permitted under this article after obtaining a certificate of administrative completeness from the commissioner.

6. Before or after the commissioner issues a certificate of administrative completeness or, if applicable, after the notification and public report are deemed to be administratively complete pursuant to paragraph 4 of this subsection, the department may examine any public report, subdivision or applicant that has applied for or received the certificate. If the commissioner determines that the subdivider or subdivision is not in compliance with any requirement of state law or that grounds exist under this chapter to suspend, deny or revoke a public report, the commissioner may commence an administrative action under section 32-2154 or 32-2157. If the subdivider immediately corrects the deficiency and comes into full compliance with state law, the commissioner shall vacate any action that the commissioner may have commenced pursuant to section 32-2154 or 32-2157.

7. The department shall provide forms and guidelines for the submission of the notification and public report pursuant to this section.

E. The commissioner may suspend, revoke or deny issuance of a public report on any of the following grounds:

1. Failure to comply with this article or the rules of the commissioner pertaining to this article.

2. The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.

3. Inability to deliver title or other interest contracted for.

4. Inability to demonstrate that adequate financial or other arrangements acceptable to the commissioner have been made for completion of all streets, sewers, electric, gas and water utilities, drainage and flood control facilities, community and recreational facilities and other improvements included in the offering.

5. Failure to make a showing that the lots, parcels or fractional interests can be used for the purpose for which they are offered.

6. The owner, agent, subdivider, officer, director or partner, subdivider trust beneficiary holding ten per cent or more direct or indirect beneficial interest or, if a corporation, any stockholder owning ten per cent or more of the stock in the corporation has:

(a) Been convicted of a felony or misdemeanor involving fraud or dishonesty or involving conduct of any business or a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

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

(c) Had an administrative order entered against him by a real estate regulatory agency or security regulatory agency.

(d) Had an adverse decision or judgment entered against him involving fraud or dishonesty or involving the conduct of any business or transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(e) Disregarded or violated this chapter or the rules of the commissioner pertaining to this chapter.

(f) Controlled an entity to which subdivision (b), (c), (d) or (e) applies.

7. Procurement or an attempt to procure a public report by fraud, misrepresentation or deceit or by filing an application for a public report that is materially false or misleading.

8. Failure of the declaration for a condominium created pursuant to title 33, chapter 9, article 2 to comply with the requirements of section 33-1215 or failure of the plat for the condominium to comply with the requirements of section 33-1219. The commissioner may require an applicant for a public report to submit a notarized statement signed by the subdivider or an engineer or attorney licensed to practice in this state certifying that the condominium plat and declaration of

condominium are in compliance with the requirements of sections 33-1215 and 33-1219. If the notarized statement is provided, the commissioner is entitled to rely on this statement.

9. Failure of any blanket encumbrance or valid supplementary agreement executed by the holder of the blanket encumbrance to contain provisions that enable the purchaser to acquire title to a lot or parcel free of the lien of the blanket encumbrance, on completion of all payments and performance of all of the terms and provisions required to be made or performed by the purchaser under the real estate sales contract by which the purchaser has acquired the lot or parcel. The subdivider shall file copies of documents acceptable to the commissioner containing these provisions with the commissioner before the sale of any subdivision lot or parcel subject to a blanket encumbrance.

10. Failure to demonstrate permanent access to the subdivision lots or parcels.

11. The use of the lots presents an unreasonable health risk.

F. It is unlawful for a subdivider to sell any lot in a subdivision unless one of the following occurs:

1. All proposed or promised subdivision improvements are completed.

2. The completion of all proposed or promised subdivision improvements is assured by financial arrangements acceptable to the commissioner. The financial arrangements may be made in phases for common community and recreation facilities required by a municipality or county as a stipulation for approval of a plan for a master planned community.

3. The municipal or county government agrees to prohibit occupancy and the subdivider agrees not to close escrow for lots in the subdivision until all proposed or promised subdivision improvements are completed.

4. The municipal or county government enters into an assurance agreement with any trustee not to convey lots until improvements are completed within the portion of the subdivision containing these lots, if the improvements can be used and maintained separately from the improvements required for the entire subdivision plat. The agreement shall be recorded in the county in which the subdivision is located.

G. If the subdivision is within an active management area, as defined in section 45-402, the commissioner shall deny issuance of a public report or the use of any exemption pursuant to section 32-2181.02, subsection B unless the subdivider has been issued a certificate of assured water supply by the director of water resources and has paid all applicable fees pursuant to sections 48-3772 and 48-3774.01, or unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576.

H. In areas outside of active management areas, if the subdivision is located in a county that has adopted the provision authorized by section *11-823, subsection A* or in a city or town that has enacted an ordinance pursuant to section 9-463.01, subsection O, the commissioner shall deny issuance of a public report or the use of any exemption pursuant to section 32-2181.02, subsection B unless one of the following applies:

1. The director of water resources has reported pursuant to section 45-108 that the subdivision has an adequate water supply.

2. The subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108.

3. The plat was approved pursuant to an exemption authorized by section 9-463.01, subsection K, pursuant to an exemption authorized by *section 11-823, subsection B, paragraph 1*, pursuant to an exemption granted by the director of water resources under section 45-108.02 and the exemption has not expired or pursuant to an exemption granted by the director of water resources under section 45-108.03.

4. The subdivision received final plat approval from the city, town or county before the requirement for an adequate water supply became effective in the city, town or county, and there have been no material changes to the plat since the final plat approval. If changes were made to the plat after the final plat approval, the director of water resources shall determine whether the changes are material pursuant to the rules adopted by the director to implement section 45-108.

I. A subdivider shall not sell or lease or offer for sale or lease in this state any lots, parcels or fractional interests in a subdivision without first obtaining a public report from the commissioner except as provided in section 32-2181.01 or 32-2181.02 *and a certificate of administrative completeness issued pursuant to*

this section. Unless exempt, the sale or lease of subdivided lands prior to issuance of the public report or failure to deliver the public report to the purchaser or lessee shall render the sale or lease rescindable by the purchaser or lessee. An action by the purchaser or lessee to rescind the transaction shall be brought within three years of the date of execution of the purchase or lease agreement by the purchaser or lessee. In any rescission action, the prevailing party is entitled to reasonable attorney fees as determined by the court.

J. On a print advertisement in a magazine or newspaper or on an internet advertisement that advertises a specific lot or parcel of a subdivider, the subdivider shall include a disclosure stating that “a public report is available on the state real estate department’s website”.

K. Any applicant objecting to the denial of a public report, within thirty days after receipt of the order of denial, may file a written request for a hearing. The commissioner shall hold the hearing within twenty days after receipt of the request for a hearing unless the party requesting the hearing has requested a postponement. If the hearing is not held within twenty days after a request for a hearing is received, plus the period of any postponement, or if a proposed decision is not rendered within forty-five days after submission, the order of denial shall be rescinded and a public report issued.

L. On the commissioner's own motion, or when the commissioner has received a complaint and has satisfactory evidence that the subdivider or the subdivider's agent is violating this article or the rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of subdivided lands or deviated from the provisions of the public report, the commissioner may investigate the subdivision project and examine the books and records of the subdivider. For the purpose of examination, the subdivider shall keep and maintain records of all sales transactions and funds received by the subdivider pursuant to the sales transactions and shall make them accessible to the commissioner upon reasonable notice and demand.

M. On the commissioner's own motion, or when the commissioner has received a complaint and has satisfactory evidence that any person has violated this article or the rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of subdivided lands or deviated from the provisions of the public report or special order of exemption, or has been indicted for fraud or against whom an information for fraud has been filed or has been convicted of a felony, before or after the commissioner issues the public report as provided in subsection A of this section, the commissioner may conduct an investigation of the matter, issue a summary order as provided in section 32-2157, or *provide notice and* hold a public hearing and, after the hearing, may issue the order or orders the commissioner deems necessary to protect the public interest and ensure compliance with the law, rules or public report or the commissioner may bring action in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging in or doing any act or acts in furtherance of the violation. The court may make orders or judgments, including the appointment of a receiver, necessary to prevent the use or employment by a person of any unlawful practices, or which may be necessary to restore to any person in interest any monies or property, real or personal, that may have been acquired by means of any practice in this article declared to be unlawful.

N. When it appears to the commissioner that a person has engaged in or is engaging in a practice declared to be unlawful by this article and that the person is concealing assets or self or has made arrangements to conceal assets or is about to leave the state, the commissioner may apply to the superior court, ex parte, for an order appointing a receiver of the assets of the person or for a writ of ne exeat, or both.

O. The court, on receipt of an application for the appointment of a receiver or for a writ of ne exeat, or both, shall examine the verified application of the commissioner and other evidence that the commissioner may present the court. If satisfied that the interests of the public require the appointment of a receiver or the issuance of a writ of ne exeat without notice, the court shall issue an order appointing the receiver or issue the writ, or both. If the court determines that the interests of the public will not be harmed by the giving of notice, the court shall set a time for a hearing and require notice be given as the court deems satisfactory.

P. If the court appoints a receiver without notice, the court shall further direct that a copy of the order appointing a receiver be served on the person engaged in or engaging in a practice declared to be unlawful under this article by delivering the order to the last address of the person that is on file with the state real estate department. The order shall inform the person that the person has the right to request a hearing within ten days of the date of the order and, if requested, the hearing shall be held within thirty days from the date of the order.

32-2183.01. Advertising material; contents; order prohibiting use; costs of investigation; drawings or contests

A. Within ten days after request by the commissioner, the subdivider shall file with the commissioner a copy of any advertising material used in connection with sales of the subdivided lands.

B. No advertising, communication or sales literature of any kind, including oral statements by salespersons or other persons, shall contain:

1. Any untrue statement of material fact or any omission of material fact which would make such statement misleading in light of the circumstances under which such statement was made.
2. Any statement or representation that the lot or parcels are offered without risk or that loss is impossible.
3. Any statement or representation or pictorial representation of proposed improvements or nonexistent scenes without clearly indicating the improvements are proposed and the scenes do not exist.
4. Any statement or representation that the lot or parcels are suitable as homesites or building lots unless either of the following is true:
   (a) Potable water is available from a certificated public utility or a municipal corporation and either an individual sewage disposal system will operate or a sewer system is available from a certified public utility or a municipal corporation.
   (b) Facts to the contrary are clearly and conspicuously included in each advertisement pertaining to the property.

C. All advertising and sales literature shall be consistent with the information contained in the notice of intention pursuant to section 32-2181 and the public report pursuant to section 32-2183. The subdivider shall retain and have available for department review copies of all advertising materials used in marketing lots in the subdivision for three years after the last use of the advertising materials.

D. If it appears to the commissioner that any person is or has engaged in advertising or promotional practices in violation of this article, the commissioner may hold a hearing as a contested case under title 41, chapter 6, article 10 and issue such order or orders as he deems necessary to protect the public interest, or the commissioner may bring an action in any court of competent jurisdiction against such person to enjoin such person from continuing such violation.

E. The commissioner may adopt such rules and guidelines as the commissioner deems necessary to 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, subdivider, agent or employee of any subdivision or other person with intent directly or indirectly to sell or lease lots or parcels 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 shall apply to the owner or publisher of a newspaper or magazine or to any other publication of printed matter wherein such advertisement appears or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser.

H. For any subdivision investigation made under section 32-2183 of an out-of-state subdivision or any in-state subdivision to which the commissioner issues any order necessary to protect the public interest and insure compliance with the law, rules or public report, the subdivider shall reimburse travel and subsistence expenses incurred by the department.

I. A subdivider may hold a drawing or contest to induce prospective buyers to visit a subdivision if all of the following requirements are met:

1. The subdivision has in effect a current public report.
2. The subdivider is not the subject of an ongoing investigation by the department. The department may give permission to hold a drawing or contest to a subdivider who is the subject of an ongoing investigation.
3. The details of the contest or drawing, including the method of awarding any prize, are submitted to the department for review and approval prior to holding the contest or drawing.
4. Any drawing or contest is limited in time, scope and geographic location.
5. The material terms of the drawing or contest are fully disclosed in writing to participants.
6. No fee is charged to any person who participates in a drawing or contest.

7. No participant in a drawing or contest, as a condition of participation, must attend a sales presentation or take a tour.
8. The subdivider is in compliance with all other applicable federal, state and local laws involving drawings or contests.
9. The subdivider is responsible at all times for the lawful and proper conduct of any drawing or contest.

32-2183.02. Recording of actions

A. Whenever the commissioner issues a cease and desist order, obtains a court order enjoining further sales, issues an order of prohibition or suspends approval of a subdivision, the action shall be recorded in the book of deeds in the office of the county recorder in any county in which the subdivision property is located and include the legal description of the affected land. The commissioner shall also provide notice of the order or suspension to all affected parties with an ownership interest of record in any lot, parcel or fractional interest in the subdivision property within ten business days of issuing the order of suspension.
B. In the event of revocation of any of the orders which require recording in subsection A, an order of release shall be recorded in the same manner within ten business days after the revocation.
C. The department shall record a public notice for each plat, parcel or lot in the county in which the subdivided land is located when the land has been subdivided in violation of this article. The notice shall include the legal description of the affected land and provide that a city or town pursuant to authority granted by the state under title 9 or to a county pursuant to authority granted under title 11 may decline to issue building permits for the land until the requisite state and local approval is acquired. The department shall record a release in the same manner within ten business days after the subdivision is in compliance with this article.

32-2183.03. Civil liabilities

A. When any part of the notice of intention filed pursuant to section 32-2181 contains an untrue statement of a material fact or omits a material fact required to be stated in such notice, the subdivider or agent shall be liable as provided in this section to any person who acquires a lot or parcel in the subdivision covered by such notice of intention during such period the notice of intention remained uncorrected unless at the time of such acquisition the person acquiring the lot knew of such untruth or omission.
B. Any subdivider or agent who sells or leases a lot or parcel in a subdivision in violation of section 32-2183 or by means of a public report *that* contains an untrue statement of a material fact or omits a material fact required to be stated in such report shall be liable to the purchaser of such lot or parcel as provided in this section unless at the time of purchase the purchaser knew of the untruth or omission.
C. It is unlawful for a subdivider or agent in selling or leasing, or offering to sell or lease, any lot or parcel in a subdivision to:
1. Employ any device, scheme or artifice to defraud.
2. Obtain money or property by means of a material misrepresentation with respect to any information included in the notice of intention or the public report or with respect to any other information pertinent to the lot, parcel or subdivision and on which the purchaser relies.
3. Engage in any transaction, practice or course of business that operates or would operate as a fraud or deceit on a purchaser.
D. *Except as provided in subsection E of this section, d*amages in any suit brought pursuant to this section shall be the difference between the purchase price of the lot or parcel plus the cost of any improvements made to such lot or parcel and the following applicable amount:
1. The price at which such lot or parcel was sold in a bona fide market transaction prior to suit or judgment.
2. If the lot or parcel has not been sold before judgment, the current market value of the lot or parcel and any improvements as of the date the suit was filed.
E. The damages described in subsection D of this section shall not exceed the dollar amount that is the difference in price or market value that results from the untrue statement of material fact or omission of material fact that is required to be stated in the public report.
F. In any action in which a violation of this section is established the purchaser shall also be entitled to recover reasonable attorney fees as determined by the court. If a violation is not established, the court, in its discretion, may award reasonable attorney fees to the defendant.

G. Every person who becomes liable to make any payment pursuant to this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment.
H. In no case shall the amount recoverable pursuant to this section exceed the sum of the purchase price of the lot or parcel, the reasonable cost of improvements installed by the purchaser and reasonable court costs and attorneys' fees.
I. Nothing contained in this section shall be construed to preclude any other remedies that may exist at law or in equity.
J. No action shall be maintained to enforce any liability created pursuant to subsection A or B of this section unless brought within one year after the discovery of the untrue statement or the omission or after such discovery should have been made by the exercise of reasonable diligence. No action shall be maintained to enforce any liability created pursuant to subsection C of this section unless brought within two years after the violation *on* which it is based. In no event shall any such action be brought by a purchaser more than three years after the sale or lease to such purchaser.

32-2183.04. Surety bond requirement; form; cancellation; effective date; certificate of deposit
A. In addition to any other fees assessed under this chapter, any subdivider prior to the sale or lease of any existing unimproved lots or parcels and any subdivider who is subsequently required to give notice under section 32-2181 or 32-2195 or who petitions for exemption under section 32-2181.01 may be required to post a surety bond with the commissioner if any of the following applies:

1. The subdivider has been found in violation of any subdivision laws of this state or of any other state or any of the rules of the state real estate department.
2. The subdivider has been found in violation of the interstate land sales full disclosure act or any of the rules and regulations of the office of interstate land sales registration.
3. The subdivider has been found by a court of competent jurisdiction to be guilty of fraud or misrepresentation in the sale of subdivided lands and the finding or determination has become a final adjudication.
4. The subdivider has been found by an administrative agency to be guilty of fraud or misrepresentation in the sale of subdivided lands and from the decision there is no appeal.

B. The bond required by subsection A of this section shall be in a form acceptable to the commissioner and shall be executed by the subdivider as principal with a corporation duly authorized to transact surety business in this state. Evidence of a surety bond shall be submitted to the commissioner in accordance with rules adopted by the commissioner. The bond shall be in favor of the state and shall be subject to claims by any person who is injured by the fraud or misrepresentation of a subdivider in the purchase or lease of a lot or parcel. One bond shall be required for each subdivision or each common plan of subdivided lands subject to the requirements of article 7 of this chapter. The principal sum of the bond shall be in an amount the commissioner deems necessary to protect purchasers when the volume of business of the subdivider and other relevant factors are taken into consideration.
C. The surety bond shall continue in effect until two years after all sales within the subdivision or common plan have been completed. No suit may be maintained on the bond after the expiration of two years following the subdivider's sale or lease of a lot or parcel to the person maintaining the action.
D. Upon receipt by the commissioner of notice to cancel a bond by any surety, the commissioner shall immediately notify the subdivider on the bond of the effective date of cancellation of the bond and the subdivider shall furnish a like bond within thirty days after mailing of notice by the commissioner or the subdivider's right to sell or lease lots or parcels in any subdivision shall be suspended. Notice to the subdivider shall be by certified mail in a sealed envelope with postage fully prepaid, addressed to the subdivider's latest address of record in the commissioner's office. The subdivider's right to sell or lease lots or parcels shall be suspended by operation of law on the date the bond is canceled, unless a replacement bond is filed with the commissioner.
E. In lieu of posting a bond as set forth in this section, the subdivider may post a certificate of deposit with the commissioner in accordance with the provisions of subsections A, B and C of this section.

32-2183.05. Military training route disclosure; military electronics range disclosure; residential property
A. Any public report that is issued after December 31, 2004 pursuant to section 32-2183 or 32-2195.03 and that is applicable to property located under a military training route, as delineated in the military

training route map prepared by the state land department pursuant to section 37-102, and any public report that is issued after December 31, 2008 and that is applicable to property located in a military electronics range as delineated in the military electronics range map prepared by the state land department pursuant to section 37-102, shall include the following statements:

1. The property is located under a military training route or in a military electronics range.
2. The state land department and the state real estate department maintain military training route maps and military electronics range maps available to the public.
3. The military training route map and military electronics range map are posted on the state real estate department's website.

B. The public report prescribed by subsection A of this section may contain a disclaimer that the subdivider has no control over the military training routes as delineated in the military training route map or the timing or frequency of flights and associated levels of noise and has no control over the military electronics range and its testing and training operations.

C. For any lot reservation or conditional sale that occurs before the issuance of a public report, the disclosure statements listed in subsection A of this section shall be included within the reservation document or conditional sales contract.

D. This section does not require the amendment or reissuance of any public report issued on or before December 31, 2004 that is applicable to property located under a military training route, as delineated in the military training route map prepared by the state land department pursuant to section 37-102 or on or before December 31, 2008 that is applicable to property located in a military electronics range, as delineated in the military electronics range map prepared by the state land department pursuant to section 37-102 or the amendment or reissuance of any reservation document or conditional sales contract accepted on or before December 31, 2004 or on or before December 31, 2008.

E. Notwithstanding any other law, if the public report complies with subsection A of this section, a subdivider is not liable to any person or governmental entity for any act or failure to act in connection with the disclosure of a military training route as delineated in the military training route map or a military electronics range as delineated in the military electronics range map.

F. This section shall not be construed to require a public report issued sixty or fewer days prior to the filing of the military electronics range map prepared pursuant to section 37-102 to meet the military electronics range notification requirements of this section.

G. A public report issued sixty-one or more days after the filing of the military electronics range map prepared pursuant to section 37-102 shall meet all of the requirements of subsection A of this section.

32-2183.06. Restricted air space disclosure; residential property

A. Any public report that is issued after December 31, 2006 pursuant to section 32-2183 or 32-2195.03 and that is applicable to property located under restricted air space, as delineated in the restricted air space map prepared by the state land department pursuant to section 37-102, shall include the following statements:

1. The property is located under restricted air space.
2. The state land department and the state real estate department maintain restricted air space maps available to the public.
3. The restricted air space map is posted on the state real estate department's web site.

B. The public report prescribed by subsection A of this section may contain a disclaimer that the subdivider has no control over the restricted air space as delineated in the restricted air space map or the timing or frequency of flights and associated levels of noise.

C. For any lot reservation or conditional sale that occurs before the issuance of a public report, the disclosure statements listed in subsection A of this section shall be included within the reservation document or conditional sales contract.

D. This section does not require the amendment or reissuance of any public report issued on or before December 31, 2006 or the amendment or reissuance of any reservation document or conditional sales contract accepted on or before December 31, 2006.

E. Notwithstanding any other law, if the public report complies with subsection A of this section, a subdivider is not liable to any person or governmental entity for any act or failure to act in the disclosure of restricted air space as delineated in the restricted air space map.

32-2184. Change of subdivision plan after approval by commissioner; notice

A. It is unlawful for any subdivider, after submitting to the commissioner the plan under which a subdivision is to be offered for sale or lease, and securing his approval, to change the plan materially or to continue to offer lots or parcels within the subdivision for sale or lease after a change has occurred that materially affects the plan 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. Upon receipt of any notice of a material change, the commissioner may require the amendment of the public report and, if he determines such action to be necessary for the protection of purchasers, suspend his approval of sale or lease pending amendment of the public report in accordance with section 32-2157.

B. If there has been a material change to the plan under which a subdivision is offered for sale or lease and an amendment to the public report is required, a purchaser or lessee who has executed a real estate sales contract or lease before the occurrence of the material change but has not yet completed performance under the real estate sales contract or has not taken possession under the lease may cancel the real estate sales contract or lease within ten days after receiving written notice from the subdivider of the material change if the material change adversely impacts the purchaser or lessee and was caused by the subdivider or an entity controlled by the subdivider or if the subdivider had actual knowledge of the material change at the time the real estate sales contract or lease was executed by the purchaser or lessee. Notwithstanding that the subdivider was not aware of the material change and did not cause the change to come about, the purchaser or lessee may cancel the sales contract or lease as provided by this subsection if the material change would involve an occupant's health, safety or ability to make designated use of the lot. This subsection does not create any cause of action, for rescission or otherwise, in favor of a purchaser who has not been impacted adversely by the material change.

C. A filing fee of one-half of the amount that was charged for the initial public report pursuant to section 32-2182, but no less than two hundred fifty dollars, shall accompany an application for an amended public report. If inspection of a subdivision site is necessary, the department shall assess an inspection fee pursuant to section 32-2182, subsection A.

32-2185. Delivery of clear title by vendor on performance of contract by vendee

It is unlawful to sell to any purchaser any subdivision lot or parcel that is subject to a blanket encumbrance, unless there is a provision in the blanket encumbrance, or in a valid supplementary agreement executed by the holder of the blanket encumbrance, enabling the purchaser to acquire title to the lot or parcel free of the blanket encumbrance upon completion of all payments and performances of all the terms and provisions required to be made or performed by the purchaser under the real estate sales contract. Certified or verified copies of documents acceptable to the commissioner containing such provisions shall be filed with the commissioner prior to the sale of any subdivision lot or parcel subject to a blanket encumbrance.

32-2185.01. Sale of unimproved lots or parcels; conditions precedent; methods

A. It is unlawful for the owner, agent or subdivider of subdivided lands to sell or offer to sell unimproved lots or parcels within a subdivision unless the sale complies with one of the following:

1. Execution, delivery and recording of a deed in good and sufficient form conveying to the purchaser merchantable and marketable title to the property subject only to such exceptions as may be agreed to in writing by the purchaser. Any balance remaining unpaid by the purchaser may be evidenced by a note and mortgage or deed of trust. The deed and mortgage or deed of trust shall be recorded by the owner, agent or subdivider within sixty days of execution thereof by the purchaser.

2. Execution, delivery, recording and depositing in escrow, not later than sixty days after execution by the purchaser, with a person or firm authorized to receive escrows under the laws of this state or the state in which the subdivision is located, of a real estate sales contract pertaining to the property, which contract sets forth the full and correct legal description of the property being sold and the precise terms and conditions under which the property is being sold together with:

(a) A copy of a preliminary title report showing the conditions of title to the property on the date of the real estate sales contract or a preliminary title report showing the condition of title on an earlier date together with a copy of any document, recorded subsequent to the date of the preliminary title report, which affects the title to the property.

(b) An executed deed in good and sufficient form conveying to the purchaser merchantable and marketable title, subject only to such exceptions as may be agreed to in writing by the purchaser which deed, under the terms of the real estate sales contract, is to be delivered to the escrow agent provided for under the contract within sixty days of the purchaser's execution of the contract and is to be recorded within sixty days after purchaser's compliance with the obligations imposed on him under the contract together with any release or partial release of any blanket encumbrance pertaining to said lot.

(c) Any and all documents necessary to release or extinguish any blanket encumbrance to the extent it applies to the real property being sold, or a partial release of the lot or parcel being sold from the terms and provisions of such blanket encumbrance.

3. Execution, delivery and recording of a deed to the real property to a trustee together with a trust agreement and any and all documents necessary to release or extinguish any blanket encumbrance to the extent it applies to property being sold, or a partial release of the lot or parcel being sold from the terms and provisions of such blanket encumbrance. The trust agreement shall provide for conveyance by the trustee to a purchaser, upon purchaser's compliance with the obligations imposed on him under his real estate sales contract, by a deed in good and sufficient form conveying to the purchaser merchantable and marketable title, subject only to such exceptions as may be agreed to in writing by the purchaser. The real estate sales contract of the lot being sold shall be recorded by the owner, agent or subdivider within sixty days of execution of the real estate sales contract by the purchaser. The trustee shall execute, record and deliver the deed and record the release or partial release required by this subsection within sixty days of the purchaser's fulfillment of the terms of his real estate sales contract.

B. All documents required to be recorded under the provisions of this section shall be recorded in the county and state wherein the subdivision is located.

C. Any sale or assignment of a mortgage, deed of trust or real estate sales contract by an owner, agent, subdivider or trustee shall be recorded in the county and state where the subdivision is located and a notice of such sale or assignment provided to the commissioner, the recording and notice thereof to be effected not later than sixty days after the execution of such assignment.

D. Any contract or agreement entered into after January 1, 1977, to purchase or lease an unimproved lot or parcel may be rescinded by the purchaser without cause of any kind by sending or delivering written notice of rescission by midnight of the seventh calendar day following the day on which the purchaser or prospective purchaser has executed such contract or agreement. The subdivider shall clearly and conspicuously disclose, in accordance with regulations adopted by the commissioner, the right to rescind provided for in this subsection and shall provide, in accordance with regulations adopted by the commissioner, an adequate opportunity to exercise the right to rescission within the time limit set forth in this subsection. The commissioner may adopt regulations to exempt commercial and industrial subdivisions from such requirements.

E. If a buyer of an unimproved lot or parcel has not inspected the lot or parcel prior to the execution of the purchase agreement, the buyer shall have a six-month period after the execution of the purchase agreement to inspect the lot or parcel and at the time of the inspection have the right to unilaterally rescind the purchase agreement. At the time of inspection the buyer must sign an affidavit stating that he has inspected the lot, and at the request of the commissioner, such affidavit may be required to be filed with the department.

F. Only a bank, savings and loan association, or title insurance company doing business under the laws of this state or the United States or the state in which the subdivision is located, or a title insurance company wholly owned subsidiary or underwriting agent qualified under section 20-1580, or persons or firms authorized to receive escrows under the laws of this state or the state in which the subdivision is located may act as trustee under paragraph 3 of subsection A of this section. Nothing in this subsection extends to a firm or individual authority to act as a trustee unless such authority is otherwise provided by law.

G. The provisions of this section shall not apply to the sale of improved lots as defined by section 32-2101.

H. The provisions of this section shall not apply to the sale of cemetery lots or parcels within a cemetery which has been formed and approved pursuant to the provisions of this chapter.

32-2185.02. Permanent access to subdivided land; rescindable sales
A. No subdivided land may be sold without provision for permanent access to the land over terrain which may be traversed by conventional motor vehicle unless such provision is waived by the commissioner.
B. Any sale of subdivided land which is without permanent access is rescindable by the purchaser. An action by the purchaser to rescind such transaction shall be brought within three years of the date of execution of the real estate sales contract by the purchaser.

32-2185.03. Deposit of fees
All fees and earned expense collected under this chapter shall be deposited in the state general fund unless otherwise prescribed by law.

32-2185.06. Contract disclosures; contract disclaimers
All agreements and contracts for the purchase or lease of subdivided land from a subdivider, owner or agent shall clearly and conspicuously disclose, in accordance with regulations adopted by the commissioner, the nature of the document, the purchaser's right to receive a copy of the public report and, in the case of unimproved lots or parcels not exempted by regulation pursuant to section 32-2185.01, the purchaser's right to rescind the agreement as provided in section 32-2185.01. Any contract, agreement or lease which fails to make disclosures pursuant to this section shall not be enforceable against the purchaser. If the transaction involves a lot or parcel offered for present or future residential use, the contract, agreement or lease shall not waive or disclaim liability for prior material representations relied upon by the purchaser made by the seller and such seller's agents concerning the subdivision and lot or parcel involved, and any provision attempting to waive or disclaim liability is void.

32-2185.07. Jurisdiction
The commissioner shall not be denied jurisdiction over any person subject to the provisions of this article because of similar jurisdiction over such person by any other agency or the applicability to such person of any regulation prescribed pursuant to any other provision of law.

32-2185.08. Recordable forms of contracts
Each purchaser of subdivided land under a contract as defined in section 33-741 shall be provided with a copy in recordable form of the contract on its execution by the purchaser and seller.

32-2185.09. Civil penalties; limitation
A. A subdivider or agent who is subject to the jurisdiction of the department, who violates this chapter or any rule adopted or order issued by the commissioner or who engages in any unlawful practices defined in section 44-1522 with respect to the sale or lease of subdivided lands may be assessed a civil penalty by the commissioner, after a hearing, in an amount not to exceed one thousand dollars for each infraction. An infraction which concerns more than one lot in a subdivision is a single infraction for the purposes of this section.
B. A proceeding for imposition of a civil penalty or for suspension or revocation of a license for a violation of this article or any rule adopted or order issued by the commissioner must be commenced within five years of actual discovery by the department or discovery which should have occurred with the exercise of reasonable diligence by the department.
C. A subdivider who sells or leases in this state any lots, parcels or fractional interest in a subdivision without first obtaining a public report from the commissioner except as provided in section 32-2181.01 or 32-2182.02 for a lot or lots created from and after December 31, 2008 and on an order issued by the commissioner, may be assessed a civil penalty by the commissioner, after a hearing, in an amount not to exceed five thousand dollars for each infraction. A proceeding for the imposition of a civil penalty or suspension or revocation of a license for a violation of this subsection or any rule adopted or order issued by the commissioner must be commenced within five years of actual discovery by the department or discovery that should have occurred with the exercise of reasonable diligence by the department.

Article 5 Real Estate Recovery Fund

32-2186. Real estate recovery fund; liability limits; definitions

A. The commissioner shall establish and maintain a real estate recovery fund for the benefit of any person aggrieved by any act, representation, transaction or conduct of a licensed real estate or cemetery broker or real estate or cemetery salesperson that violates this chapter or the rules adopted pursuant to this chapter. The fund shall only pay for a loss that is an actual and direct out-of-pocket loss to the aggrieved person directly arising out of the real estate or cemetery transaction, including reasonable attorney fees and court costs, in which the licensee either:

1. Performed acts that required a real estate or cemetery license pursuant to this chapter.
2. Engaged in fraud or misrepresentation while acting as a principal in the purchase or sale of real property and the aggrieved person relied on the broker's or salesperson's licensed status.

B. The fund's liability shall not exceed:

1. Thirty thousand dollars for each transaction, regardless of the number of persons aggrieved or the number of licensees or parcels of real estate involved.
2. Ninety thousand dollars for each licensee.

C. The liability of the fund for the acts of a licensed real estate or cemetery broker or real estate or cemetery salesperson is terminated upon the issuance of orders authorizing payments from the fund in an aggregate amount as prescribed by subsection B of this section.

D. A licensee acting as a principal or agent in a real estate transaction has no claim against the fund, including marital communities, corporations, limited liability companies and partnerships in which the licensee is a principal, member, general partner, officer or director, or those entities in which the licensee holds a direct or indirect interest of at least ten per cent.

E. The fund is liable to pay only against the license of a natural person, not on that of a corporation, a partnership or any other fictitious entity.

F. The fund is liable to pay only for damages arising out of a transaction in which the defendant licensee performed acts for which a real estate or cemetery license was required or when the defendant licensee, while acting as principal in the purchase or sale of real property, engaged in fraud or misrepresentation and the aggrieved person was harmed due to reliance on the defendant's licensed status.

G. The fund is not liable for damages or losses resulting from or caused by:

1. Speculation, including lost profits and other unrealized losses.
2. Transactions for property that is located outside of this state.
3. Loans, notes, limited partnerships or other securities, regardless of whether the loss was caused by an investment in or was secured by real property.
4. A judgment entered against a bonding company if the bonding company is not a principal in the underlying real estate transaction.
5. A tenant's conduct or neglect.
6. Vandalism.
7. Natural causes.
8. Punitive damages.
9. Postjudgment interest.
10. Undocumented transactions or losses.

H. In this article, unless the context otherwise requires:

1. "Judgment" means either:
   (a) A final judgment in a court of competent jurisdiction.
   (b) A criminal restitution order issued pursuant to section 13-603 or 18 United States Code section 3663.
   (c) An arbitration award that includes findings of fact and conclusions of law, that has been confirmed and reduced to judgment pursuant to section 12-133 and that was rendered according to title 12 and the rules of the American arbitration association or another recognized arbitration body.
2. "Judgment debtor" means any defendant under this article who is the subject of a judgment.

32-2187. Payments to real estate recovery fund

A. In addition to any other fees, payments shall be made to the real estate recovery fund on application by any person, as follows:

1. For an original real estate or cemetery broker's license, twenty dollars.
2. For an original real estate or cemetery salesperson's license, ten dollars.

B. If, on June 30 of any year, the balance remaining in the real estate recovery fund is less than six hundred thousand dollars, every broker when renewing a real estate or cemetery license during the following license year shall pay, in addition to the license renewal fee, a fee of twenty dollars for deposit in the real estate recovery fund, and every salesperson when renewing a real estate or cemetery license during such year shall pay, in addition to the license renewal fee, a fee of ten dollars for deposit in the real estate recovery fund.

32-2188. Statute of limitations; service of summons; application for payment; insufficient monies; definition

A. An action for a judgment that subsequently results in an order for payment from the real estate recovery fund shall not be started later than five years from the accrual of the cause of action.

B. If an aggrieved person commences an action for a judgment that may result in an order for payment from the real estate recovery fund, and the defendant licensee cannot be served process personally in this state, the summons may be served by the alternative methods of service provided for by the Arizona rules of civil procedure, including service by publication. A judgment that complies with the provisions of this section and that was obtained after service by publication only applies to and is enforceable against the real estate recovery fund. The department may intervene in and defend any such action.

C. An aggrieved person may apply to the department for payment from the real estate recovery fund after the aggrieved person obtains a judgment against a real estate or cemetery broker or salesperson based on the licensee's act, representation, transaction or conduct in violation of this chapter or the rules adopted pursuant to this chapter. The claimant must file the original application, including appendices, within two years after the termination of all proceedings, reviews and appeals connected with the judgment. The commissioner, in the commissioner's sole discretion, may waive the two-year application deadline if the commissioner determines that the waiver best serves the public interest. Delivery of the application must be by personal service or by certified mail, return receipt requested.

D. The application must be within the limitations prescribed in section 32-2186 for the amount unpaid on the judgment that represents the claimant's actual and direct loss on the transaction.

E. The department shall prescribe and supply an application form that includes detailed instructions with respect to documentary evidence, pleadings, court rulings, the products of discovery in the underlying litigation and notice requirements to the judgment debtor under section 32-2188.01. The claimant must submit the claim on an application form supplied by the department. The application must include:

1. The claimant's name and address.
2. If the claimant is represented by an attorney, the attorney's name, business address and telephone number.
3. The judgment debtor's name and address or, if unknown, the names and addresses of persons who may know the judgment debtor's present location.
4. A detailed narrative statement of the facts explaining the allegations of the complaint on which the underlying judgment is based, with a copy of the contracts, receipts and other documents from the transaction, the last amended complaint, all existing recorded judgments, documentation of actual and direct out-of-pocket losses and any offsetting payment received and all collection efforts attempted.
5. The identification of the judgment, the amount of the claim and an explanation of its computation, including an itemized list of actual and compensatory damages awarded and claimed.
6. For the purpose of an application that is not based on a criminal restitution order, a statement by the claimant, signed under penalty of perjury, that the complaint on which the underlying judgment is based was prosecuted conscientiously and in good faith. For the purposes of this paragraph, "conscientiously and in good faith" means that all of the following apply:
    (a) No party that was potentially liable to the claimant in the underlying transaction was intentionally and without good cause omitted from the complaint.
    (b) No party named in the complaint who otherwise reasonably appeared capable of responding in damages was intentionally and without good cause dismissed from the complaint.
    (c) The claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the recovery fund.

7. For the purpose of an application that is based on a criminal restitution order, all of the following statements by the claimant, signed under penalty of perjury:

(a) The claimant has not intentionally and without good cause failed to pursue any person potentially liable to the claimant in the underlying transaction other than a defendant who is the subject of a criminal restitution order.

(b) The claimant has not intentionally and without good cause failed to pursue in a civil action for damages all persons potentially liable to the claimant in the underlying transaction who otherwise reasonably appeared capable of responding in damages other than a defendant who is the subject of a criminal restitution order.

(c) The claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the recovery fund.

8. The following statements, signed under penalty of perjury, and information from the claimant:

(a) The claimant is not a spouse of the judgment debtor or a personal representative of the spouse.

(b) The claimant has complied with all of the requirements of this article.

(c) The judgment underlying the claim meets the requirements of this article.

(d) The claimant has recorded a certified copy of the superior court judgment or transcript of judgment pursuant to sections 33-961 and 33-962 in the counties where the judgment was obtained and in the county where all judgment debtors reside and has provided a copy of the recorded judgment to the commissioner.

(e) The claimant has caused the judgment debtor to make discovery under oath, pursuant to section 12-1631, concerning the debtor's property.

(f) The claimant has caused a writ of execution to be issued on the judgment and the officer executing the writ has made a return showing either:

(i) That no personal or real property of the judgment debtor liable to be levied on in satisfaction of the judgment could be found, sold or applied.

(ii) That the amount realized on the sale of the property, or as much of the property that was found, under the execution was insufficient to satisfy the judgment.

(g) The claimant has caused a writ of garnishment to be issued to each known employer of the judgment debtor ascertained by the claimant, that each garnishee-defendant has complied with the respective writ and any judgment or order resulting from the writ and that the amount realized from all judgments against the garnishee-defendants was insufficient to satisfy the balance due on the judgment.

(h) The claimant has deducted the following amounts from the actual or compensatory damages awarded by the court:

(i) Any amount recovered or anticipated from the judgment debtor or debtors.

(ii) Any amount recovered through collection efforts undertaken pursuant to subdivisions (d) through (g) of this paragraph and including an itemized valuation of the assets discovered and amounts applied.

(iii) Any amount recovered or anticipated from bonding, insurance or title companies, including recovery of punitive damages.

(iv) Any amount recovered or anticipated from in-court or out-of-court settlements.

(v) Any amount of tax benefits accrued or taken as deductions on federal, state or local income tax returns.

F. If the claim is based on a judgment against a salesperson or broker and the claimant has not obtained a judgment against the salesperson's or broker's employing broker, if any, or has not diligently pursued the assets of the employing broker, the department shall deny the claim for failure to diligently pursue the assets of all other persons liable to the claimant in the transaction unless the claimant demonstrates, by clear and convincing evidence, that either:

1. The salesperson or broker was not employed by a broker at the time of the transaction.

2. The salesperson's or broker's employing broker would not have been liable to the claimant because the salesperson or broker acted outside the scope of employment in the transaction.

G. The commissioner, at the commissioner's sole discretion, may waive compliance with one or more of the requirements enumerated in subsection E, paragraph 8 or subsection F of this section if the claim is

based on an award pursuant to a criminal restitution order or if the commissioner is satisfied that the claimant has taken all reasonable steps to collect the amount of the judgment or the unsatisfied part of the judgment from all judgment debtors but has been unable to collect.

H. If the commissioner finds it is likely that the total remaining liability of the recovery fund is insufficient to pay in full the valid claims of all aggrieved persons who may have claims against any one licensee, the commissioner may petition the court to initiate a proration proceeding. The court shall grant the petition and order a hearing to distribute the total remaining liability of the fund among the applicants in the ratio that their respective claims bear to the aggregate of the valid claims or in such other manner as the court deems equitable. The commissioner or any party may file a proposed plan for equitable distribution of the available monies. The distribution of monies shall be among the persons entitled to share them, without regard to the order of priority in which their respective judgments may have been obtained or their respective applications may have been filed. The court may require all applicants and prospective applicants against one licensee to be joined in one action, to the end that the respective rights of all the applicants to the recovery fund may be equitably adjudicated and settled. The court shall not include in the claims for proration the claim of any person who has not, within ninety days after the court has entered the order for proration, filed a complaint with the court, served the licensee and provided written notice of the claim to the commissioner. The liability of the fund on any application affected by a proration proceeding is based on the limits in effect on the date when the last application for payment is filed. The court may refuse to consider or award prorated recovery to any person who fails to expeditiously prosecute a claim against the licensee or promptly file an application for payment and submit supporting documentation as required by this article.

I. If the commissioner pays from the real estate recovery fund any amount in settlement of an applicant's claim or toward satisfaction of a judgment against a licensed broker, designated broker for a corporation or salesperson, the license of the broker, designated broker for a corporation or salesperson shall be automatically terminated upon the issuance of an order authorizing payment from the real estate recovery fund. A broker, designated broker for a corporation or salesperson is not eligible to receive a new license until the licensee has repaid in full, plus interest at the rate provided by section 44-1201, the amount paid from the real estate recovery fund on the licensee's account and has provided evidence to the commissioner that the judgment has been fully satisfied.

J. If, at any time, the money deposited in the real estate recovery fund is insufficient to satisfy any duly authorized claim or portion of a claim, the commissioner shall, when sufficient money has been deposited in the real estate recovery fund, satisfy the unpaid claims or portions of claims, in the order that the claims or portions of claims were originally filed, plus accumulated interest at the rate of four per cent a year.

K. For the purposes of this section, "complaint" means the facts of the transaction on which the judgment is based.

32-2188.01. Notice of claim to judgment debtor; response

A. Within the same time prescribed by section 32-2188, subsection C for applying for payment from the real estate recovery fund, an aggrieved party who applies for payment shall serve notice of the claim on the judgment debtor, together with a copy of the application. The notice shall be in the following form:

Notice

"Based on a judgment against you in favor of (enter name of claimant), application is being made to the Arizona state real estate department for payment from the real estate recovery fund.

If payment is made from the real estate recovery fund, all licenses and license rights that you have under the Arizona real estate law will be automatically terminated on the date of payment and may only be reinstated pursuant to section 32-2131, subsection A, paragraph 3, Arizona Revised Statutes, on a showing that 1) the real estate recovery fund has been reimbursed for the amount paid plus interest at the current legal rate, 2) the underlying judgment has been fully satisfied and 3) you have filed an original application for a license.

If you wish to contest payment from the real estate recovery fund, you must file a written response to the application. The Arizona state real estate commissioner must receive your response at (address) within 35 calendar days after the date this notice is [mailed, delivered, first published]. You must also send a copy of the response to the claimant. If you fail to respond as required, you waive your right to present your objections to payment."

B. If the judgment debtor holds a current license issued by the department, the notice and copy of the application may be served by certified mail, return receipt requested, addressed to the judgment debtor's

latest business or residence address on file with the department. If the judgment debtor does not hold a current license and if personal delivery cannot be effected by exercising reasonable diligence, the claimant must publish the notice once a week for two consecutive weeks in a newspaper of general circulation in the county in which the judgment debtor was last known to reside.
C. If the judgment debtor fails to file a written response to the application with the department within thirty-five calendar days after service under subsection B of this section or after the first publication of the notice, the judgment debtor is not thereafter entitled to notice of any action taken or proposed to be taken by the commissioner with respect to the claim.

32-2188.02. Correction of deficiencies in the application
A. If the commissioner determines that a claimant's application fails to comply substantially with the requirements of section 32-2188 or rules adopted pursuant to this chapter, the commissioner, within thirty calendar days after receiving the application, shall mail an itemized list of deficiencies to the claimant. For the purposes of this subsection, "comply substantially" means filing with the department the documents that are minimally necessary to process a claim, including at least a certified copy of the judgment, legible copies of documents establishing the underlying transaction and amounts of losses suffered and a statement concerning amounts recovered from or on behalf of the judgment debtor.
B. The claimant must respond within sixty calendar days after receiving the list of deficiencies by providing the information identified by the commissioner. If the claimant fails to correct the deficiencies within sixty calendar days, the department shall close the file unless the claimant requests an extension in writing. A claimant whose file has been closed may submit a new application as provided by section 32-2188.
C. The deadline prescribed by section 32-2188.04 for the commissioner to make a decision on the application is suspended from the date the commissioner mails the list of deficiencies to the applicant until the date the department receives the requested information.

32-2188.03. Investigation and discovery
In considering and investigating an application, the department may use all appropriate means of investigation and discovery that are available pursuant to this chapter.

32-2188.04. Final decision and order on claim; notice
A. The commissioner shall make a final written decision and order on a claim within ninety calendar days after receiving a completed application except in the following cases:

1. A proration hearing is pending under section 32-2188, subsection H.
2. An application is deficient or fails to comply substantially with the requirements of section 32-2188 or rules adopted pursuant to this chapter as determined pursuant to section 32-2188.02. The ninety day time period begins under this subsection when the department receives an application that is substantially complete.
3. The claimant agrees in writing to extend the time for making a decision.

B. If the commissioner fails to render a written decision and order on a claim within ninety calendar days, or within an extended period of time provided under subsection A of this section, the claim is considered to be approved on the day following the final day for rendering the decision.
C. The commissioner may approve or deny an application or may enter into a compromise with the claimant to pay less in settlement than the full amount of the claim. If the claimant refuses to accept a settlement offered by the commissioner, the commissioner shall deny the claim.
D. The commissioner shall give notice of a decision and order with respect to the claim to the claimant and to any judgment debtor who has filed a timely response to the claim pursuant to section 32-2188.01 as follows:

1. If the commissioner denies the application, the notice shall include the following: *"The claimant's application has been denied. If the claimant wishes to pursue the application in court, the claimant must file the application in the court in which the underlying judgment was entered within six months after receiving this notice, pursuant to section 32-2188.05, Arizona Revised Statutes."*
2. If the commissioner's decision is to make a payment to the claimant out of the real estate recovery fund, the following notice shall be given to the judgment debtor with a copy of the decision and order of the commissioner: *"The decision of the Arizona state real estate*

commissioner on the claim of (name of claimant) is to pay $_____ from the real estate recovery fund. A copy of that decision and order is enclosed. Pursuant to section 32-2188, subsection I, Arizona Revised Statutes, all of your licenses and license rights under title 32, chapter 20, Arizona Revised Statutes, will be terminated effective on the date of the payment, and you will not be eligible to apply for reinstatement of any of those licenses until you have satisfied the underlying judgment and reimbursed the real estate recovery fund for this payment, including interest at the prevailing legal rate. If you desire a judicial review of the commissioner's decision and order or the termination of your licenses and license rights, you may petition the superior court, in the county in which the judgment that is the basis of this claim was rendered, for a judicial review. To be timely, you must file the petition with the court within 30 calendar days after receiving this notice."

32-2188.05. Claimant's right to appeal denial of claim; service of notice of appeal; response; failure to file response

A. A claimant whose application is denied pursuant to section 32-2188.04 may file within six months after receiving notice of a denial of the claim a verified application in the court in which judgment was entered in the claimant's favor for an order directing payment out of the real estate recovery fund based on the grounds set forth in the claimant's application to the commissioner.

B. The claimant must serve a copy of the verified application on the commissioner and on the judgment debtor and file a certificate or affidavit of service with the court. Service on the commissioner shall be made by certified mail addressed to the commissioner. Service on a judgment debtor shall be made according to section 32-2188.01 and shall include the following notice:

Notice

"An application has been filed with the court for a payment from the real estate recovery fund that was previously denied by the Arizona state real estate commissioner.

If the court orders a payment from the real estate recovery fund, all of your licenses and license rights under title 32, chapter 20, Arizona Revised Statutes, will be automatically terminated.

If you wish to defend in court against this claim, you must file a written response with the court within 30 calendar days after you are served with a copy of the application. If you fail to file a written response, you waive your right to defend against the claim."

C. The commissioner and the judgment debtor each must file a written response within thirty calendar days after being served with the application under subsection B of this section. The court shall thereafter set the matter for hearing on the petition of the claimant. The court shall grant a request of the commissioner for a continuance of as much as thirty calendar days and, on a showing of good cause by any party, may continue the hearing for such time as the court considers to be appropriate.

D. At the hearing, the claimant must establish compliance with the requirements of section 32-2188.

E. If the judgment debtor fails to file a written response to the application, the commissioner may compromise or settle the claim at any time during the court proceedings and, on joint petition of the applicant and the commissioner, the court shall issue an order directing payment out of the real estate recovery fund.

32-2189. Management of fund

A. The sums received by the commissioner pursuant to any provisions of this article shall be deposited, pursuant to sections 35-146 and 35-147, in the real estate recovery fund and shall be held by the commissioner in trust for carrying out the purposes of this article.

B. On notice from the commissioner, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

C. Notwithstanding any other law, the commissioner may expend interest monies from the fund necessary to increase public awareness of the fund, not to exceed fifty thousand dollars in any fiscal year.

32-2191. Commissioner's standing in court

The commissioner may enter an appearance, file an answer, appear at the court hearing, defend the action or take whatever other action the commissioner considers appropriate on the behalf and in the name of the real estate recovery fund and take recourse through any appropriate method of review on behalf of, and in the name of, the real estate recovery fund.

32-2192. Subrogation of rights; collection

A. Before receiving payment from the fund, a claimant must complete and execute, as judgment creditor, an assignment of judgment lien and notice of subrogation and assignment of rights to the claimant's judgment on a form provided by the department.

B. If the commissioner has paid from the real estate recovery fund any sum to the judgment creditor, the commissioner shall be subrogated to all of the rights of the judgment creditor and the judgment creditor shall assign all the right, title and interest in the judgment to the commissioner. The commissioner may record the assignment of judgment lien and notice of subrogation and assignment of rights. Any amount and interest so recovered by the commissioner on the judgment shall be deposited to the fund.

C. If the commissioner is subrogated to a claimant's rights as judgment creditor, the claimant shall not file a full or partial satisfaction of judgment without the commissioner's prior written consent.

D. The attorney general shall bring any actions to recover amounts paid from the fund including interest, attorney fees and costs of collection pursuant to this chapter 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. A certified copy of a commissioner's order requiring payment from the fund may be filed in the office of the clerk of the superior court. The clerk shall treat the commissioner's order in the same manner as a judgment of the superior court. A commissioner's order so filed has the same effect, and may be recorded, enforced or satisfied in a similar manner, as a judgment of the superior court. No filing fee is required under this subsection.

32-2193. Waiver of rights

The failure of an aggrieved person to comply with all of the provisions of this article shall constitute a waiver of any rights hereunder.

32-2193.01. Effect of article on disciplinary action

This article does not limit the authority of the commissioner to take disciplinary action against any licensee for a violation of this chapter or of the rules adopted pursuant to this chapter. The repayment in full of all obligations to the fund by any licensee does not nullify or modify the effect of any other disciplinary proceeding brought pursuant to this chapter or the rules adopted pursuant to this chapter.

32-2193.02. Surety bond requirement; form; cancellation; effective date; certificate of deposit

A. In addition to any other fees assessed under this chapter, the commissioner may require that a real estate or cemetery licensee or person applying for a license or renewal of a license issued to real estate or cemetery brokers or salespersons under this chapter post a surety bond if any of the following apply:

1. The licensee or applicant has been found in violation of any of the provisions of this chapter or the rules of the commissioner pertaining to this chapter.
2. The licensee or applicant has been convicted in a court of competent jurisdiction of a felony or misdemeanor involving a transaction in real estate, or of which fraud is an essential element, or arising out of the conduct of any business in real estate, securities or mail fraud, or securities registration violations.
3. The licensee or applicant has had an administrative order entered against him or it by a real estate regulatory agency or security regulatory agency.

B. The bond required by subsection A of this section shall be in a form acceptable to the commissioner and shall be executed by the applicant or licensee as principal with a corporation duly authorized to transact surety business in this state. Evidence of a surety bond shall be submitted to the commissioner in accordance with rules adopted by the commissioner. The bond shall be in favor of this state and is subject to claims solely for actual damages including reasonable attorney's fees suffered by persons injured as described in section 32-2186. The amount and duration of the bond shall be as the commissioner deems necessary for the protection of the public, but the principal amount of the bond shall be not more than one hundred thousand dollars and its duration shall not exceed five years.

C. On receipt by the commissioner of notice to cancel a bond by any surety, the commissioner shall immediately notify the licensee on the bond of the effective date of cancellation of the bond and the licensee shall furnish a like bond within thirty days after mailing of the notice by the commissioner or his license shall be suspended. Notice to the licensee shall be by certified mail addressed to the licensee's last address on file with the commissioner.

D. In lieu of posting a bond as set forth in this section, the applicant or licensee may post a certificate of deposit with the commissioner in accordance with the provisions of subsections A and B of this section

Article 6 Organization and Regulation of Cemeteries

32-2194. Exceptions

This chapter does not apply to any of the following:

1. Any religious corporation, church, religious society or denomination, a corporation sole administering temporalities of any church or religious society or denomination, or any cemetery organized, controlled and operated by any of them.
2. A private or municipal cemetery.
3. Any fraternal burial park not exceeding ten acres in area, established before July 2, 1963, in which the sale of burial spaces is restricted exclusively to its members.
4. The superintendent of the Arizona pioneers' home and the Arizona pioneers' home cemetery.

32-2194.01. Notice to commissioner of intention to sell cemetery property; exceptions; restrictions

A. Before offering cemetery plots for sale, the owner or agent shall notify the commissioner in writing and the notice shall contain:

1. The name and address of the owner. If the holder of any ownership interest in the cemetery is other than an individual, such as a corporation, partnership or trust, a statement naming the type of legal entity and listing the interest and the extent of such interest of each principal in the entity. For the purposes of this paragraph, "principal" means any person or entity having a ten per cent or more financial interest or, if the legal entity is a trust, each beneficiary of the trust holding a ten per cent or more beneficial interest.
2. The legal description and area of the lands.
3. A true statement of the condition of the title to the land, including all encumbrances on the land.
4. The terms and conditions on which it is intended to dispose of the land, together with copies of any real estate sales contract, conveyance, lease, assignment or other instrument intended to be used, and other information the owner or agent desires to present.
5. A map of the cemetery which has been filed in the office of the county recorder in the county in which the cemetery is located.
6. A comprehensive statement describing the land on and the locality in which the cemetery is located.
7. A true statement of the use or uses for which the proposed cemetery will be offered.
8. A true statement of the provisions, if any, limiting the use of the plots in the cemetery, together with copies of any restrictive covenants affecting all or part of the cemetery.
9. The name and business address of the designated broker selling within this state plots in the cemetery. If the designated broker is changed the cemetery shall advise the department in writing without the requirement of an amended filing.
10. A true statement of the approximate amount of indebtedness which is a lien on the cemetery or any part of the cemetery and which was or will be incurred to pay for the construction of any on-site or off-site improvement or other facilities.
11. A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area or assessment district within the boundaries of which the cemetery or any part of the cemetery is located and any amounts which are to be obtained by ad valorem tax or assessment, or by a special assessment or tax on the cemetery or any part of the cemetery.
12. Proof of financial responsibility for completing the cemetery and its related facilities for its initial development.
13. A true statement of provisions made for financing any related facilities to be included. The statement shall include evidence of assurances for delivery of such facilities and a statement of the provisions, if any, for the continued maintenance of such facilities.
14. A true statement that the cemetery is not subject to any known flooding or drainage hazards.
15. A true statement of the nature of any improvements to be installed in the developed portion of the cemetery, the estimated schedule for completion and the estimated costs related to such improvements which shall be borne by the developed portion of the cemetery.

16. A true statement of the availability of department of health services approved water and sewage disposal facilities and other public utilities including electricity, gas and telephone facilities in the cemetery, the estimated schedule for their installation and the estimated costs related to such facilities and utilities which shall be borne by the cemetery.

17. If the subdivider is a subsidiary corporation, a true statement identifying the parent corporation and any cemeteries in this state in which the parent or any of its subsidiaries are or have been involved in the last five years.

18. Such other information and such other documents as the commissioner may reasonably require.

19. If the cemetery has been previously licensed in this state and the ownership or control of the cemetery has transferred, a statement from a certified public accountant certified pursuant to chapter 6 of this title, showing that all required funds have been deposited in the irrevocable trust fund and that only lawful withdrawals were made. An audit that meets generally accepted accounting standards shall be used by the certified public accountant to prepare the statement required by this paragraph.

B. The commissioner may require the owner or agent to supplement the notice of intention to develop a cemetery and may require the filing of periodic reports to update the information contained in the original notice of intention to develop a cemetery.

C. The conveyance of a plot in a cemetery does not limit the right of the purchaser or the purchaser's representative to appear and testify before any public body regarding changes or other official acts affecting the cemetery property. All contractual provisions which conflict with this subsection are deemed to be against public policy.

D. The commissioner by special order may exempt from any one or all of the provisions of this article certain cemeteries otherwise required to comply with this article on written petition and on a showing by the petitioner, satisfactory to the commissioner, that compliance with this article is not essential to the public interest or for the protection of buyers by reason of the special characteristics of the cemetery.

32-2194.02. Examination by commissioner; fee

Before cemetery plots are offered for sale the commissioner shall examine the cemetery and shall make public his findings. The total cost of travel and subsistence expenses incurred by the department in the examination, in addition to the initial filing fee provided for in this section, shall be borne by the owner of the cemetery or his agent, on the basis of actual cost to the department. An initial filing fee of five hundred dollars or such lesser fee as determined by the commissioner shall accompany the written notification required in section 32-2194.01.

32-2194.03. Issuance or denial of certificate of authority; voidable sale; order prohibiting sale; investigations by commissioner; public hearings; summary orders

A. After examination of a cemetery application, the commissioner, unless there are grounds for denial, shall issue a certificate of authority authorizing the sale in this state of cemetery plots within the cemetery. The commissioner shall notify the state board of funeral directors and embalmers when the commissioner issues a certificate of authority pursuant to this section.

B. The commissioner may deny issuance of a certificate of authority on any of the following grounds:

1. Failure to comply with any of the provisions of this article or the rules of the commissioner pertaining to this article.

2. The sale of plots within the cemetery would constitute misrepresentation to or deceit or fraud of the purchasers.

3. The applicant has procured or attempted to procure a certificate of authority under the provisions of this chapter for itself or another by fraud, misrepresentation or deceit or by filing an original or renewal application which is false or misleading.

4. Inability to deliver title or other interest contracted for.

5. Inability to demonstrate that adequate financial or other arrangements acceptable to the commissioner have been made for installation of all off-site and other cemetery facilities.

6. Failure to make a showing that the plots can be used for the purpose for which they are offered.

7. Failure to provide in the contract or other writing the use or uses for which the plots are offered, together with any covenants or conditions relative to such plots.

8. Failure to include in the contract the disclosure provisions required as provided by section 32-2194.04.

9. The owner, agent, officer, director or partner, trust beneficiary holding ten per cent or more beneficial interest or, if a corporation, any stockholder owning ten per cent or more of the stock in such corporation has:

(a) Been convicted of a felony or misdemeanor involving fraud or dishonesty or involving conduct of any business or a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

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

(c) Had an administrative order entered against the applicant by a real estate regulatory agency or security regulatory agency.

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

(e) Disregarded or violated any of the provisions of this chapter or the rules of the commissioner pertaining to this chapter.

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

10. Failure to satisfy the commissioner that sufficient land has been dedicated for the operation of the cemetery to make it financially secure with respect to the trust fund requirements of this article.

C. A cemetery owner or operator shall not sell or offer for sale any plots without first obtaining a certificate of authority as provided in this section. Any sale of plots before the issuance of the certificate of authority is voidable by the purchaser. An action by the purchaser to void such transaction shall be brought within three years of the date of execution of the purchase agreement by the purchaser. In any such action, the prevailing party is entitled to reasonable attorney fees as determined by the court.

D. An applicant objecting to the denial of a certificate of authority by the commissioner, within thirty days after receipt of the order of denial, may file a written request for a hearing. The commissioner shall hold the hearing within twenty-five days after the request unless the party requesting the hearing requests a postponement. If the hearing is not held within twenty-five days after the request for a hearing is received, plus the period of any such postponement, or if a proposed decision is not rendered within forty-five days after submission, the order of denial shall be rescinded and a certificate of authority shall be issued.

E. On the commissioner's own motion or if the commissioner has received a complaint and has satisfactory evidence that the cemetery owner or agent is violating any provision of this article or the rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of cemetery plots or deviated from the conditions under which the certificate of authority was issued, the commissioner may investigate the cemetery project and examine the books and records of the cemetery owner or agent. For the purpose of examination, the cemetery owner or agent shall keep and maintain records of all sales transactions and monies the cemetery owner or agent received at the broker's main office or at an off-site storage location in this state if the owner or agent provides prior written notification of the street address of the off-site storage location to the department. The cemetery owner or agent shall make the records accessible to the commissioner on reasonable notice and demand.

F. The commissioner on the commissioner's own motion or if the commissioner has received a complaint and has satisfactory evidence that any of the grounds exist as provided in subsection B of this section or that any person has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of cemetery plots or has deviated from the conditions under which the certificate of authority was issued, before or after the commissioner issues the certificate of authority as provided in this section, may conduct an investigation of such matter, issue a summary order as provided in section 32-2157, or hold a public hearing and, after the hearing, may issue such order or orders as the commissioner deems necessary to protect the public interest and ensure compliance with the law, rules or certificate of

authority, or the commissioner may bring an action in any court of competent jurisdiction against the person to enjoin the person from continuing such violation or engaging in a violation or doing any act or acts in furtherance of a violation. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by a person of any unlawful practices or which may be necessary to restore to any person in interest any monies or property, real or personal, which may have been acquired by means of any practice declared to be unlawful in this article.

G. If it appears to the commissioner that a person has engaged in or is engaging in a practice declared to be unlawful by this article and that such person is concealing assets or has made arrangements to conceal assets or is about to leave this state, the commissioner may apply to the superior court, without notice, for an order appointing a receiver of the assets of such person or for a writ of ne exeat, or both.

H. The court on receipt of an application for the appointment of a receiver or for a writ of ne exeat, or both, shall examine the verified application of the commissioner and such other evidence that the commissioner may present to the court. If satisfied that the interests of the public require the appointment of a receiver or the issuance of a writ of ne exeat without notice, the court shall issue an order appointing the receiver or issue the writ, or both. If the court determines that the interests of the public will not be harmed by the giving of notice, the court shall set a time for a hearing and require that such notice be given as the court deems satisfactory.

I. If the court appoints a receiver without notice, the court shall further direct that a copy of the order appointing a receiver be served on the person engaged in or engaging in a practice declared to be unlawful under this article by delivering such order to the last address of the person which is on file with the real estate department. The order shall inform the person that he has the right to request a hearing within ten days after the date of the order, and if requested, the hearing shall be held within thirty days after the date of the order.

32-2194.04. Contract disclosures; contract disclaimers

A. In all agreements and contracts for the sale of cemetery plots from a cemetery, a broker or agent shall clearly and conspicuously disclose the following information:

1. The nature of the document, including grave site designation.
2. The nature of the cemetery, whether endowed or not under the provisions of this article.
3. That the cemetery operator has received a certificate of authority from the department pursuant to section 32-2194.03 and that these records are available for examination at the department at the request of the purchaser.
4. A provision that all cemetery improvements for the area developed as defined in the application shall be completed by the date indicated in the application.
5. Whether the purchaser is subject to a fee for the following known services or goods associated with future plot use:
    (a) Opening or closing interment.
    (b) A marker, with or without a setting.
    (c) A vault liner purchased with the grave site.
6. Whether a marker or vault may be purchased separately from another vendor.
7. The policy of the cemetery regarding cancellations of contracts, including whether the cemetery issues refunds under canceled contracts.

B. An agreement or contract which fails to make the disclosures required in subsection A of this section is unenforceable against the purchaser.

32-2194.05. Advertising material; contents; order prohibiting use

A. Within ten days after request by the commissioner, the cemetery owner or agent shall file with the commissioner a copy of any promotional and advertising material of any kind used directly or indirectly in connection with the sale of cemetery plots or any material changes in the material.

B. No advertising, communication or sales literature of any kind, including oral statements by salespersons or other persons, may contain:

1. Any untrue statement of material fact or any omission of material fact which would make the statement misleading in light of the circumstances under which the statement was made.

2. Any statement, representation or pictorial presentation of proposed improvements or nonexistent scenes without clearly indicating that the improvements are proposed and the scenes do not exist.

C. All advertising and sales literature shall be consistent with the information contained in the notice of intention pursuant to section 32-2194.01 and shall otherwise comply with the rules of the commissioner.

D. If it appears to the commissioner that any person is or has engaged in advertising or promotional practices in violation of this article, the commissioner may hold a hearing as a contested case under the provisions of title 41, chapter 6, article 10 and issue such order or orders as he deems necessary to protect the public interest or the commissioner may bring an action in any court of competent jurisdiction against the person to enjoin the person from continuing the violation.

E. The commissioner may adopt rules and guidelines necessary to 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 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.

32-2194.06. Records of transactions

A. Cemeteries shall keep on file records of all documents in connection with all cemetery plot transactions handled by or through them. The records shall include but are not limited to:

1. All sales contracts.
2. Sales contract payment ledgers.
3. Certificates of burial rights.
4. All ledgers or books showing all receipts, disbursements or adjustments.
5. Records of plats and maps.
6. Such other information as the commissioner may reasonably require.

B. Each cemetery broker is responsible for maintenance of all documents used in connection with all cemetery plot transactions while in the employment of a cemetery. The records shall be open at all reasonable times for inspection by the commissioner or the commissioner's representatives. The records of each transaction shall be kept by the cemetery for a period of five years after payment in full of the transaction at the broker's main office or at an off-site storage location in this state if the owner or agent provides prior written notification of the street address of the off-site storage location to the department

32-2194.07. Recording of actions

A. If the commissioner issues a cease and desist order, obtains a court order enjoining further sales, issues an order of prohibition or suspends approval of a cemetery, the action shall be recorded in the office of the county recorder in any county in which the cemetery property is located.

B. If any of the orders which require recording in subsection A are revoked, an order of release shall be recorded in the same manner.

32-2194.08. Administrative penalties

A. Any cemetery owner, operator, broker or salesman subject to the jurisdiction of the department who violates any provision of this chapter or any rule or order promulgated by the commissioner, who deviates substantially from the provisions under which a certificate of authority was issued or who engages in any unlawful practices defined in section 44-1522 with respect to the sale of cemetery plots may be assessed a civil penalty by the commissioner, after a hearing, in an amount of not to exceed one thousand dollars for each 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.

32-2194.09. Civil liabilities

A. If any part of the notice of intention filed pursuant to section 32-2194.01 contains an untrue statement of a material fact or omits a material fact required to be stated in such notice, the owner or agent is liable as provided in this article to any person who acquires a plot in the cemetery.

B. A cemetery owner, operator, broker or salesman who sells a cemetery plot in violation of this article is liable to the purchaser of such plot as provided in this article.

C. It is unlawful for any cemetery owner, operator, broker or salesman in selling or offering to sell any cemetery plot to:

1. Employ any device, scheme or artifice to defraud.
2. Obtain money or property by means of a material misrepresentation with respect to any information included in the notice of intention or the certificate of authority with respect to any other information pertinent to the plot on which the purchaser relies.
3. Engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit on a purchaser.

D. Damages in any suit brought pursuant to this section shall be the difference between the amount paid for the plot together with the reasonable cost of improvements to such plot and whichever of the following is the smallest:

1. The value of the plot and improvements as of the time the suit was brought.
2. The price at which the plot was disposed of in a bona fide market transaction before suit.
3. The price at which the plot was disposed of in a bona fide market transaction after suit was brought but before judgment.

E. In an action in which a violation of this section is established the purchaser is also entitled to recover reasonable attorney fees as determined by the court. If a violation is not established, the court, in its discretion, may award reasonable attorney fees to the defendant.

F. Every person who becomes liable to make any payment pursuant to this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment.

G. In no case shall the amount recoverable pursuant to this section exceed the sum of the purchase price of the plot, the reasonable cost of improvements installed by the purchaser and reasonable court costs and attorney fees.

H. Nothing contained in this section precludes any other remedies that may exist at law or in equity.

I. No action may be maintained to enforce any liability created pursuant to subsection A or B of this section unless brought within one year after the discovery of the untrue statement or the omission or after such discovery should have been made by the exercise of reasonable diligence. No action may be maintained to enforce any liability created pursuant to subsection C of this section unless brought within two years after the violation on which it is based. In no event shall any such action be brought by a purchaser more than three years after the sale to the purchaser.

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

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 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.

32-2194.11. Delivery of clear title by cemetery of cemetery plots

Cemetery plots shall not be sold which are subject to liens.

32-2194.12. Permanent access to cemetery land

No cemetery may be sold without provision for permanent access.

32-2194.13. Deposit of fees
All fees and earned expense collected under this chapter shall be deposited in the state general fund unless otherwise prescribed by law.

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.

32-2194.15. Jurisdiction
The commissioner shall not be denied jurisdiction over any person subject to the provisions of this article because of similar jurisdiction over such person by any other agency or the applicability to such person of any rule prescribed pursuant to any other provision of law.

32-2194.16. Sale of undeveloped cemetery property
With regard to cemetery property which is undeveloped, development must commence for that particular section or building within five years after the date of the first sale of a plot.

32-2194.17. Transaction of cemetery business
Only a corporation or a limited liability company duly organized to conduct cemetery business may transact cemetery business pursuant to this article.

32-2194.18. Application for authority to open and operate cemeteries
Before a corporation may engage in or transact any business of a cemetery it must file an application for a certificate of authority with the commissioner. Such application must show that the corporation owns or is actively operating a cemetery in this state which is subject to the provisions of this chapter or that the applicant is in a position to commence operating a cemetery.

32-2194.19. Investigation of applicant before granting of certificate of authority where needed
Upon receipt of an application for a certificate of authority to operate a cemetery, the commissioner shall cause an investigation to be made of the physical status, plans, specifications and financing of the proposed cemetery, the character of the applicant, including its officers, directors, shareholders or members, and any other qualifications required of the applicant under this article. If the commissioner finds that the applicant has complied with all the provisions of this article and further finds that the area in which the proposed cemetery is to be located is not already adequately served, then he shall grant the certificate of authority.

32-2194.20. Right of cemetery to make rules and regulations
Any cemetery subject to the provisions of this article may make, adopt, amend, add to, revise, or modify and enforce rules and regulations for the use, care, control, restriction and protection of all or any part of its cemetery, provided these rules and regulations are not contrary to law. These rules and regulations shall be on file with the real estate commissioner and shall at all times be posted in a conspicuous place in the offices of the cemetery or at some other place within the cemetery as may be convenient for inspection.

32-2194.21. Survey of property; maps and plats
Every cemetery, from time to time as its property may be required for interment purposes, in addition to the other requirements of the article, shall:

1. In case of land, survey and subdivide it into sections, blocks, plots, avenues, walks or other subdivisions, and make a good and substantial map or plat showing the sections, plots, avenues, walks or other subdivisions, with descriptive names or numbers.
2. In case of a mausoleum, or crematory and columbarium, it shall make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevations, and other divisions, with descriptive names or numbers.

32-2194.22. Filing maps and declaration of dedication
The cemetery, in addition to filing the map or plat in the office of the county recorder as required by subdivisions, shall also file for record in the county recorder's office, a written declaration of dedication of the property delineated on the map or plat dedicating the property exclusively to cemetery purposes.

32-2194.23. Nonapplication of law against perpetuities
Dedication to cemetery purposes pursuant to this chapter is not invalid as violating any laws against perpetuities, but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the interment of human remains, and a duty to, and for the benefit of, the general public.

32-2194.24. Trust fund to be established before certificate of authority granted
No certificate of authority shall issue to a corporation or limited liability company organized for the purpose of maintaining and operating a cemetery unless the articles of incorporation or organization certify to the establishment of an irrevocable trust fund for maintenance and operation in accordance with the provisions of this article, and there is attached to the articles of incorporation or organization the written instrument establishing the irrevocable trust fund accompanied by the receipt of the trustee designated in the written instrument for the minimum care fund hereinafter provided. Any cemetery that has been operating before January 1, 1998 and that was not previously required to establish an irrevocable trust fund shall not be required to establish an irrevocable trust fund unless a material change is made to the plan under which cemetery plots are offered for sale.

32-2194.25. Trust fund to be established before existing cemetery can advertise as endowed-care cemetery
After the effective date of this article, no owner of a cemetery in existence at the effective date of this article, who previous to such date has not sold or contracted to sell lots in such cemetery with a provision for perpetual or endowed care, shall thereafter advertise or otherwise hold out to the public that such cemetery or any individual lot therein is entitled to perpetual or endowed care unless and until the owner shall have established a trust fund for the care of the cemetery, as provided by this article.

32-2194.26. Initial deposit required in endowment-care fund
No corporation hereafter organized for the operation of a perpetual or endowed-care cemetery nor any owner of a cemetery not previously operating as a perpetual or endowed-care cemetery shall advertise or sell plots in such cemetery under the representation that the cemetery or any individual plot therein is entitled to perpetual or endowed care until there has been established an irrevocable trust fund to provide for such care in accordance with the following schedule:

1. Cemeteries located in an area having a population of less than ten thousand persons within a radius of fifteen miles from the center of such cemetery must deposit with the trustee the sum of ten thousand dollars in cash.
2. Cemeteries located in an area having a population of ten thousand or more persons but less than fifteen thousand persons within a radius of fifteen miles from the center of such cemetery must deposit with the trustee the sum of fifteen thousand dollars in cash.
3. Cemeteries located in an area having a population of fifteen thousand or more persons but less than twenty-five thousand persons within a radius of fifteen miles from the center of such cemetery must deposit with the trustee the sum of twenty thousand dollars in cash.
4. Cemeteries located in an area having a population of twenty-five thousand or more persons, but less than fifty thousand persons within a radius of fifteen miles from the center of such cemetery must deposit with the trustee the sum of thirty thousand dollars in cash.
5. Cemeteries located in an area having a population of fifty thousand or more persons within a radius of fifteen miles from the center of such cemetery must deposit with the trustee the sum of fifty thousand dollars in cash.

32-2194.27. Restrictive use of income from endowed-care fund; obligation
The irrevocable trust fund created under the provisions of section 32-2194.26 shall be evidenced by an instrument in writing and shall contain the following provisions:

1. There shall be designated a trustee for the endowed-care fund which shall be a financial institution authorized to do business in this state and authorized to act as trustee by the laws of

this state for such investments. The trustee must be one in which no officer, director or owner in the cemetery is financially interested in any way.

2. The principal of the trust fund shall remain permanently intact and only the income therefrom shall be expended. It is the intent of this section that the income of the fund shall be used solely for the care of plots or other burial spaces sold to third persons with a provision for perpetual or endowed care and the care of such other portions of the cemetery immediately surrounding such plots as may be necessary to preserve the beauty and dignity of the plots sold. The fund or its income shall never be used for the development, improvement or embellishment of unsold portions of the cemetery so as to relieve the owner of the cemetery of the ordinary cost incurred in preparing such property for sale.

3. A financial institution acting as a trustee does not have a legal obligation to operate a cemetery other than providing trust fund income to the receiver or successor of a cemetery unable to meet its perpetual care obligations.

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 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. This section 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 is subject to the same restrictions to which the trust funds required by sections 32-2194.24 and 32-2194.25 are subject.

32-2194.29. Posting of signs by cemeteries

Each cemetery shall post in a conspicuous place in the office or offices where sales are conducted and in a conspicuous place at or near the entrance of the cemetery or its administration building, and readily accessible to the public, a legible sign in lettering of a size and style to be approved by the real estate commissioner indicating either the cemetery is an endowed or a nonendowed cemetery.

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, 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, that prudent investors acquire for their own account.

32-2194.31. Crematories

Crematories which are licensed as part of a cemetery under this chapter shall comply with the requirements of chapter 12, article 6 of this title and rules adopted pursuant to that article.

32-2194.32. Opening and closing of burial places

If any grave, mausoleum, niche or other place used or intended to be used for the burial of human remains is located in a cemetery, only a person employed or designated by the cemetery may open or

close the grave, mausoleum, niche or other place used or intended to be used for the burial of human remains, subject to the rules established by the cemetery.

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, of the requirement to keep the cemetery informed in writing of their current residence address.

B. There is a presumption that cemetery property in any cemetery licensed under this chapter has been abandoned when an owner of unused cemetery property has failed to provide the cemetery with a current residence address for a period of fifty consecutive years and as a result the cemetery is unable to communicate by certified mail with the owner of the unused cemetery property. There is not a presumption of abandonment if either of the following occurs:

1. Cemetery property held in common ownership is adjoining whether in a grave space, plot, mausoleum, columbarium or other place of interment and is used within common ownership.
2. Any type of memorial marker has been placed on or attached to the cemetery property.

C. On the occurrence of a presumption of abandonment as prescribed by subsection B of this section, a cemetery may file with the department a certified notice attesting to the abandonment of the cemetery property. The notice shall do the following:

1. Describe the cemetery plot certified to have been abandoned.
2. Set forth the name of the last known owner of the cemetery plot or, if the owner is known to the cemetery to be deceased, the names, if known to the cemetery, of claimants that are heirs at law, next of kin or specific devisees under the will of the owner.
3. Describe the failure of the owner or claimants as prescribed by paragraph 2 of this subsection to keep the cemetery informed of the owner's current residence address for a period of fifty consecutive years or more.
4. Certify that cemetery property has not been included that is held in common ownership with any abandoned cemetery property as prescribed by subsection B of this section and that a memorial marker has not been placed on or attached to the cemetery property.

D. Irrespective of diversity of ownership of the cemetery property, a cemetery may include in its certification cemetery properties of various types.

E. The cemetery shall publish a notice of the approved abandoned cemetery property once each week for two consecutive weeks in a newspaper of general circulation in the county in which the cemetery property is located.

F. After one hundred twenty days from the final publication of the notice as provided in subsection E of this section, if there has been no notification of the address of the current owner, the cemetery shall have the right to resell the cemetery property and transfer the ownership of the cemetery property as provided in the cemetery's certificate of authority.

G. On the sale of each lot, grave, niche or crypt reclaimed pursuant to this section, the cemetery shall contribute to the endowed-care trust fund 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.

Article 7 Sale of Unsubdivided Lands

32-2195. Notice to commissioner of intention before offering for sale or lease of unsubdivided land; definition

A. Prior to the offering for sale or lease of unsubdivided land the owner or agent shall notify the commissioner in writing of the owner's or agent's intention to offer such parcels for sale or lease.

B. The notice required by this section shall contain the following information:

1. The name and address of the owner. If the holder of any ownership interest in the land is other than an individual, such as a corporation, partnership or trust, a statement naming the type of legal entity and listing the interest and the extent of such interest of each principal in the entity. For the purposes of this section, "principal" means any person or entity having a ten per cent or more financial interest or, if the legal entity is a trust, each beneficiary of the trust holding a ten per cent or more beneficial interest.
2. The name and address of the agent.
3. The legal description and area of the lands.
4. A true statement of the condition of the title to the land, including all encumbrances thereon.
5. A true statement of the terms and conditions under which such lands are to be offered to the public.
6. A statement of the use or uses for which the land will be offered or a statement that it is offered for no specific use.
7. A true statement of the provisions made for permanent access.
8. A true statement setting out the availability of water or lack thereof.
9. A true statement of the availability to the land of sewage disposal facilities and other public utilities including water, electricity, gas and telephone facilities.
10. A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, taxing area or assessment district within the boundaries of which the unsubdivided lands are located, and which is to pay for the construction or installation of any improvements to that land.
11. A true statement as to whether all or any portion of the unsubdivided land is located in an open range or area in which livestock may roam at large under the laws of this state and what provisions, if any, have been made for the fencing of the unsubdivided land to preclude livestock from roaming within such land.
12. If the owner or agent is a subsidiary corporation, a true statement identifying the parent corporation and any of the following in which the parent or any of its subsidiaries are or have been involved within the past five years:
    (a) Any subdivision in this state.
    (b) Any subdivision, wherever located, for which registration is required pursuant to the federal interstate land sales full disclosure act.
    (c) Any subdivision, wherever located, for which registration would have been required pursuant to the federal interstate land sales full disclosure act but for the exemption for subdivisions whose lots are five acres or more in size.
13. A true statement identifying all other subdivisions, designated in paragraph 12, in which any of the following are or, within the last five years, have been directly or indirectly involved:
    (a) The holder of any ownership interest in the land.
    (b) The agent.
    (c) Any principal or officer in the holder.
14. A true statement as to whether all or any portion of the unsubdivided land is located in territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, in territory in the vicinity of a public airport as defined in section 28-8486, on or after July 1, 2001, in a high noise or accident potential zone as defined in section 28-8461 or on or after July 1 of the year in which the land becomes located in a high noise or accident potential zone. The statement required pursuant to this paragraph does not require the amendment or refiling of any notice filed before July 1, 2001 or before July 1 of the year in which the land becomes located in a high noise or accident potential zone.
15. Such other information and such other documents and certifications as the commissioner may reasonably require for the protection of the public.

C. Copies of original promotional and advertising material to be used with such offering shall be attached to the notice.
D. It shall be unlawful for any owner or agent to make any offerings regulated by this section without the written authorization of the commissioner. The commissioner shall issue a public report thereon and require a copy of the public report to be furnished to each offeree at the time of such offering.
E. It shall be unlawful to offer any lands regulated by this article without provisions having been made for permanent access over terrain on which roads could be established for conventional motor vehicles unless such provision is waived by the commissioner.
F. Satisfactory proof or evidence that access meets the requirements of subsection E of this section shall be furnished to the department in a report by a licensed engineer or land surveyor of this state.
G. The commissioner may terminate any authorization issued upon the grounds and in the manner set out in section 32-2183.
H. If the director of water resources has issued a water availability report, the state real estate commissioner shall require that all promotional material and contracts for the sale of such unsubdivided lands adequately display the director of water resources' report or a brief summary of the results prepared by the developer and approved by the real estate commissioner. If no report has been prepared by the director of water resources and the availability of water is unknown, the real estate commissioner shall require that all promotional material and contracts adequately display that no report has been prepared and that the availability of water is unknown.
I. Neither any real estate sales contract, conveyance, lease, assignment or other instrument to transfer any interest in unsubdivided land nor any covenant or restriction affecting real property shall contain any provision limiting the right of any party to appear or testify in support of or opposition to zoning changes, building permits or any other official acts affecting real property before a governmental body or official considering zoning changes, building permits or any other official acts affecting real property, whether such property is located within or outside of the boundaries of the unsubdivided land. All contractual provisions which conflict with this subsection are declared to be contrary to public policy. Nothing contained in this subsection shall prohibit private restrictions on the use of any real property.

32-2195.01. Power of commissioner to exempt certain unsubdivided land by special order
A. In his discretion the commissioner may exempt by special order from any one or all of the provisions of this article certain unsubdivided land on written petition and on a showing by the petitioner, satisfactory to the commissioner, that compliance with this article is not essential to the public interest or for the protection of buyers by reason of the special characteristics of the unsubdivided land or the limited character and duration of the offer for sale, lease or financing.
B. The special order pursuant to this section shall relate to specific land.
C. A petition filed under this section shall be accompanied by an initial fee of one hundred dollars. The fees are not returnable irrespective of the nature of the action taken on the petition.

32-2195.02. Examination of unsubdivided land by commissioner; fee
The commissioner shall examine any unsubdivided land offered for sale or lease pursuant to this article, and shall make public his findings. The total cost of travel and subsistence expenses incurred by the department in the examination, in addition to the initial filing fee provided for in this section, shall be borne by the owner of the unsubdivided land or his agent, or the subdivider of the project, on the basis of actual cost to the department. An initial filing fee of five hundred dollars shall accompany the written notification required in sections 32-2195 and 32-2195.10.

32-2195.03. Unsubdivided land reports; denial of issuance; order prohibiting sale or lease; investigations; hearings; summary orders
A. Upon examination of unsubdivided land, the commissioner, unless there are grounds for denial, shall prepare and issue to the owner or agent a public report authorizing the sale or lease of the unsubdivided lands in this state. The report shall contain the data obtained in accordance with section 32-2195 and any other information which the commissioner determines is necessary to implement the purposes of this article. If any of the unsubdivided land is located within territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, the report shall include, in bold twelve point font block letters on the first page of the report, the statements required pursuant to section 28-8484, subsection A and, if the department has been provided a map prepared pursuant to section 28-8484,

subsection B, the report shall include a copy of the map. These report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2001 or on or after December 31 of the year in which the unsubdivided land becomes territory in the vicinity of a military airport or ancillary military facility. The commissioner shall require the owner or agent to reproduce the report and furnish each prospective buyer with a copy before the buyer signs an offer to purchase, taking a receipt therefor.

B. Notwithstanding any provision of subsection A of this section, an owner may prepare a final public report for use in the sale of unsubdivided lands as defined in section 32-2101, as follows:

1. The owner shall prepare the public report and provide a copy of the report to the commissioner with the submission of the notification required by sections 32-2195 and 32-2195.10 and shall comply with all other requirements of this article.

2. An initial filing fee of five hundred dollars or an amended filing fee of two hundred fifty dollars shall accompany the notification required by paragraph 1 of this subsection.

3. The department shall assign a registration number to each notification and public report submitted pursuant to this subsection and shall maintain a database of all of these submissions. The owner shall place the number on each public report.

4. The department shall determine within fifteen business days after the receipt of the notification and public report whether the notification and public report are administratively complete. The commissioner may either issue a certification that the notification and public report are administratively complete or may deny issuance of the certification if it appears that the application or project is not in compliance with all legal requirements, that the applicant has a background of violations of state or federal law or that the applicant or project presents an unnecessary risk of harm to the public.

5. An owner may commence sales or leasing activities as permitted under this article after obtaining a certificate of administrative completeness from the commissioner.

6. Before or after the commissioner issues a certificate of administrative completeness, the department may examine any public report, development or applicant that has applied for or received the certificate. If the commissioner determines that the owner or development is not in compliance with any requirement of state law or that grounds exist under this chapter to suspend, deny or revoke a public report, the commissioner may commence an administrative action under section 32-2154 or 32-2157. If the owner immediately corrects the deficiency and comes into full compliance with state law, the commissioner shall vacate any action that he may have commenced pursuant to section 32-2154 or 32-2157.

7. The department shall provide forms and guidelines for the submission of the notification and public report pursuant to this section.

C. The commissioner may deny issuance of a public report on any of the following grounds:

1. Failure to comply with any of the provisions of this article or the rules of the commissioner pertaining to this article.

2. The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.

3. Inability to deliver title or other interest contracted for.

4. Inability to demonstrate that adequate financial or other arrangements acceptable to the commissioner have been made for installation of all streets, sewers, electric, gas and water utilities, drainage, flood control and other similar improvements included in the offering.

5. Failure to make a showing that the parcels can be used for the purpose for which they are offered.

6. Failure to provide in the contract or other writing the use or uses, if any, for which the parcels are offered, together with any covenants or conditions relative to the parcel.

7. Failure to demonstrate that adequate financial arrangements have been made for any guaranty or warranty included in the offering.

8. The owner or agent, officer, director or partner or trust beneficiary holding a ten per cent or more beneficial interest, or, if a corporation, any stockholder owning ten per cent or more of the stock in the corporation has:

(a) Been convicted of a felony or misdemeanor involving fraud or dishonesty or involving conduct of any business or a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

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

(c) Had an administrative order entered against him by a real estate regulatory agency or security regulatory agency.

(d) Had an adverse decision or judgment entered against him involving fraud or dishonesty or involving the conduct of any business in or a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(e) Disregarded or violated any of the provisions of this chapter or the rules of the commissioner pertaining to this chapter.

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

D. No owner or agent may sell or lease or offer for sale or lease unsubdivided lands without first obtaining a public report *and a certificate of administrative completeness* from the commissioner. Any sale or lease of unsubdivided lands prior to issuance of the public report shall be voidable by the purchaser. An action by the purchaser to void the transaction shall be brought within three years of the date of execution of the purchase agreement by the purchaser. In any voidance action the prevailing party is entitled to reasonable attorney fees as determined by the court.

E. Any applicant objecting to the denial of a public report, within thirty days after receipt of the order of denial, may file a written request for a hearing. The commissioner shall hold the hearing within twenty days after receipt of the request for a hearing unless the party requesting the hearing requests a postponement. If the hearing is not held within twenty days after a request for a hearing is received plus the period of any postponement, or if a proposed decision is not rendered within forty-five days after submission, the order of denial shall be rescinded and a public report issued.

F. On the commissioner's own motion, or when the commissioner has received a complaint and has satisfactory evidence that the owner or agent is violating any provision set forth in this article or the rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of unsubdivided lands or deviated from the provisions of the public report, the commissioner may investigate the subdivision project and examine the books and records of the owner or agent. For the purpose of examination, the owner or agent shall keep and maintain records of all sales transactions and funds received by the owner or agent pursuant to the sales transactions and shall make them accessible to the commissioner upon reasonable notice and demand.

G. On the commissioner's own motion, or when the commissioner has received a complaint and has satisfactory evidence that grounds exist as provided in subsection C of this section or that any person has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of unsubdivided lands or deviated from the provisions of the public report, the commissioner may conduct an investigation of the matter, issue a summary order as provided in section 32-2157, or hold a public hearing and, after the hearing, may issue the order or orders the commissioner deems necessary to protect the public interest and ensure compliance with the law, rules or public report. If, after the hearing, the violation of the law, rules or public report continues, the commissioner may bring an action in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging in or doing any act or acts in furtherance of the violation.

32-2195.04. Sale of lots or parcels of unsubdivided lands; conditions precedent; methods

A. It is unlawful for the owner or agent of unsubdivided lands subject to the provisions of this article to sell or offer to sell lots or parcels of such land unless the sale complies with one of the following:

1. Execution, delivery and recording of a deed in good and sufficient form conveying to the purchaser merchantable and marketable title to the property subject only to such exceptions as may be agreed to in writing by the purchaser. Any balance remaining unpaid by the purchaser may be evidenced by a note and mortgage or deed of trust. The deed and mortgage or deed of trust shall be recorded by the owner or agent within sixty days of execution thereof by the purchaser.

2. Execution, delivery, recording and depositing in escrow, not later than sixty days after execution by the purchaser, with a person or firm authorized to receive escrows under the laws of this state or the state in which the unsubdivided lands are located, of a real estate sales contract pertaining to the property, which contract sets forth the full and correct legal description of the property being sold and the precise terms and conditions under which the property is being sold together with:

(a) A copy of a preliminary title report showing the condition of title to the property on the date of the real estate sales contract or a preliminary title report showing the condition of title on an earlier date together with a copy of any document, recorded subsequent to the date of the preliminary title report, which affects the title to the property.

(b) An executed deed in good and sufficient form conveying to the purchaser merchantable and marketable title, subject only to such exceptions as may be agreed to in writing by the purchaser which deed, under the terms of the real estate sales contract, is to be delivered to the escrow agent provided for under the contract within sixty days of the purchaser's execution of the contract and is to be recorded within sixty days after purchaser's compliance with the obligations imposed on him under the contract together with any release or partial release of any blanket encumbrance pertaining to said real property being sold.

(c) Any and all documents necessary to release or extinguish any blanket encumbrance to the extent it applies to the real property being sold, or a partial release of the parcel being sold from the terms and provisions of such blanket encumbrance.

3. Execution, delivery and recording of a deed to the real property to a trustee together with a trust agreement and any and all documents necessary to release or extinguish any blanket encumbrance to the extent it applies to property being sold, or a partial release of the lot or parcel being sold from the terms and provisions of such blanket encumbrance. The trust agreement shall provide for conveyance by the trustee to a purchaser, upon purchaser's compliance with the obligations imposed on him under his real estate sales contract, by a deed in good and sufficient form conveying to the purchaser merchantable and marketable title, subject only to such exceptions as may be agreed to in writing by the purchaser. The real estate sales contract of the real property being sold shall be recorded by the owner or agent of unsubdivided lands within sixty days of execution of the real estate sales contract by the purchaser. The trustee shall execute, record and deliver the deed and record the release or partial release required by this subsection within sixty days of the purchaser's fulfillment of the terms of his real estate sales contract.

B. All documents required to be recorded under the provisions of this section shall be recorded in the county and state wherein the unsubdivided land is located.

C. Any sale or assignment of a mortgage, deed of trust or real estate sales contract by an owner or agent of unsubdivided lands or trustee shall be recorded in the county and state where the unsubdivided land is located and a notice of such sale or assignment provided to the commissioner, the recording and notice thereof to be effected not later than sixty days after the execution of such assignment.

D. Any contract or agreement entered into after January 1, 1977, to purchase or lease a parcel in unsubdivided lands subject to this article may be rescinded by the purchaser without cause of any kind by sending or delivering written notice of rescission by midnight of the seventh calendar day following the day on which the purchaser or prospective purchaser has executed such contract or agreement. The owner or agent shall clearly and conspicuously disclose, in accordance with the regulations adopted by the commissioner, the right to rescind provided for in this section and shall provide, in accordance with regulations adopted by the commissioner, an adequate opportunity to exercise the right to rescission within the time limit set in this section. The commissioner may adopt regulations to exempt commercial and industrial developments from such requirement.

E. If a buyer of a lot or parcel of unsubdivided land has not inspected the lot or parcel prior to the execution of the purchase agreement, the buyer shall have a six-month period after the execution of the purchase agreement to inspect the lot or parcel and at the time of the inspection have the right to unilaterally rescind the purchase agreement. At the time of inspection, the buyer must sign an affidavit stating that he has inspected the real property and at the request of the commissioner such affidavit may be required to be filed with the department.

F. Only a bank, savings and loan association or title insurance company doing business under the laws of this state or the United States or the state in which the unsubdivided land is located, or a title insurance company wholly-owned subsidiary or underwriting agent qualified under section 20-1580, or persons or firms authorized to receive escrows under the laws of this state or the state in which the unsubdivided land is located may act as trustee under paragraph 3 of subsection A of this section. Nothing in this subsection extends to a firm or individual authority to act as a trustee unless such authority is otherwise provided by law.

32-2195.05. Advertising material; contents; order prohibiting use; costs of investigation

A. The owner or agent shall file with the commissioner a copy of any original promotional and advertising material used in connection with sales of unsubdivided lands and copies of any material changes therein. The owner or agent shall file with the commissioner, within twenty-one days of use, a copy of any subsequent advertising of any kind, used directly or indirectly in connection with the purchase, sale or lease of any lot or parcel subject to the provisions of this article. It shall not be necessary to make repetitive filings of material which is the same as or varies only in minor details from material which has previously been filed with the commissioner for the unsubdivided lands.

B. No advertising, communication or sales literature of any kind, including oral statements by salespersons or other persons, shall contain:

1. Any untrue statement of material fact or any omission of material fact which would make such statement misleading in light of the circumstances under which such statement was made.
2. Any statement or representation that the land is offered without risk or that loss is impossible.
3. Any statement or representation or pictorial representation of proposed improvements or nonexistent scenes without clearly indicating the improvements are proposed and the scenes do not exist.
4. Any statement or representation that the lot or parcels are suitable as homesites or building lots unless either of the following is true:
   (a) Potable water is available from a certificated public utility or a municipal corporation and either an individual sewage disposal system will operate or a sewer system is available from a certified public utility or a municipal corporation.
   (b) Facts to the contrary are clearly and conspicuously included in each advertisement pertaining to the property.

C. All advertising and sales literature shall be consistent with the information contained in the notice of intention pursuant to section 32-2195 and the public report pursuant to section 32-2195.03.

D. If it appears to the commissioner that any person is or has engaged in advertising or promotional practices in violation of this article, the commissioner may hold a hearing as a contested case under title 41, chapter 6, article 10 and issue such order or orders as he deems necessary to protect the public interest, or the commission may bring an action in any court of competent jurisdiction against such person to enjoin such person from continuing such violation.

E. The commissioner may adopt such rules and guidelines as he deems necessary to 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, agent or employee of any development or other person with intent directly or indirectly to sell or lease lots or parcels 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 shall apply to the owner or publisher of a newspaper, magazine or other publication of printed matter wherein such advertisement appears or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser.

32-2195.06. Civil liabilities

A. When any part of the notice of intention filed pursuant to section 32-2195 contains an untrue statement of a material fact or omits a material fact required to be stated in such notice, the owner or agent shall be liable as provided in this section to any person who acquires land covered by such notice of intention during such period the notice of intention remained uncorrected unless it is proved that at the time of such acquisition the person acquiring the land knew of such untruth or omission.

B. Any owner or agent who sells or leases unsubdivided lands subject to this article in violation of section 32-2195.03 or by means of a public report which contains an untrue statement of a material fact or omits a material fact required to be stated in such report shall be liable to the purchaser of such land as provided in this section.

C. It is unlawful for an owner or agent in selling or leasing, or offering to sell or lease, any unsubdivided lands subject to this article to:

1. Employ any device, scheme, or artifice to defraud.
2. Obtain money or property by means of a material misrepresentation with respect to any information included in the notice of intention or the public report or with respect to any other information pertinent to the parcel and upon which the purchaser relies.
3. Engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon a purchaser.

D. Damages in any suit brought pursuant to this section shall be the difference between the amount paid for the land together with the reasonable cost of improvements to such land and whichever of the following amount is the smallest:

1. The value of the land and improvements as of the time such suit was brought.
2. The price at which such land was disposed of in a bona fide market transaction prior to suit.
3. The price at which such land was disposed of in a bona fide market transaction after suit was brought but prior to judgment.

E. In any action in which a violation of this section is established the purchaser shall also be entitled to recover reasonable attorney fees as determined by the court. If a violation is not established, the court, in its discretion, may award reasonable attorney fees to the defendant.

F. Every person who becomes liable to make any payment pursuant to this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment.

G. In no case shall the amount recoverable pursuant to this section exceed the sum of the purchase price of the land, the reasonable cost of improvements installed by the purchaser and reasonable court costs and attorneys fees.

H. Nothing contained in this section shall be construed to preclude any other remedies that may exist at law or in equity.

I. No action shall be maintained to enforce any liability created pursuant to subsection A or B of this section unless brought within one year after the discovery of the untrue statement or the omission or after such discovery should have been made by the exercise of reasonable diligence. No action shall be maintained to enforce any liability created pursuant to subsection C of this section unless brought within two years after the violation upon which it is based. In no event shall any such action be brought by a purchaser more than three years after the sale or lease to such purchaser.

32-2195.07. Jurisdiction

The commissioner shall not be denied jurisdiction over any person subject to the provisions of this article because of similar jurisdiction over such person by any other agency or the applicability to such person of any regulation prescribed pursuant to any other provision of law.

32-2195.09. Recordable forms of contracts

In accordance with regulations adopted by the commissioner, each purchaser of unsubdivided land shall be provided with a copy, in recordable form, of each contract involved in the sale of such land to the purchaser at the closing of the contract.

32-2195.10. Change of plan after approval by commissioner; notice

It is unlawful for an owner, agent or subdivider, after submitting to the commissioner a plan under which unsubdivided lands are to be offered for sale or lease and securing his approval, to change the plan materially without first notifying the commissioner in writing of the intended change. On receipt of a notice of a change of plan, the commissioner, if he determines such action to be necessary for the protection of purchasers, may suspend his approval of the sale or lease pending amendment of the public report.

32-2195.11. Civil penalties; limitation

A. An owner or agent who is subject to the jurisdiction of the department and who violates any provision of this chapter relating to the sale or lease of unsubdivided lands or any rule adopted or order issued by the commissioner relating to the sale or lease of unsubdivided lands or who engages in any unlawful practices defined in section 44-1522 with respect to the sale or lease of unsubdivided lands may be assessed a civil penalty by the commissioner, after a hearing, in an amount of not more than one thousand dollars per infraction. An infraction that concerns more than one lot among unsubdivided lands is a single infraction for the purposes of this section.

B. A proceeding for the imposition of a civil penalty or for suspension or revocation of a license for a violation of this article or any rule adopted or order issued by the commissioner must be commenced within the earlier of five years of either of the following:

1. Actual discovery by the department.
2. Discovery that should have occurred if the department was reasonably diligent.

32-2195.12. Recording of actions

A. Whenever the commissioner issues a cease and desist order, obtains a court order enjoining further sales, issues an order of prohibition or suspends approval of an unsubdivided lands public report, the action shall be recorded in the book of deeds in the office of the county recorder in any county in which the unsubdivided property is located and include the legal description of the affected land. The commissioner shall also provide notice of the order or suspension to all affected parties with an ownership interest of record in any lot, parcel or fractional interest, in the unsubdivided property within ten business days of issuing the order or suspension.

B. In the event of a revocation of any of the orders which require recording in subsection A, an order of release shall be recorded in the same manner within ten business days.

Article 9 Real Estate Timeshares

32-2197. Definitions

In this article, unless the context otherwise requires:

1. "Accommodation" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or other private or commercial structure containing toilet facilities that is designed and available for use and occupancy as a residence by one or more individuals and that is included in the offering of a timeshare plan.
2. "Advertisement" means any written, oral or electronic communication that is directed to or targeted to persons in this state and that contains a promotion, inducement, premium or offer to sell a timeshare plan, including brochures, pamphlets, radio and television scripts, electronic media, telephone and direct mail solicitations and other means of promotions.
3. "Assessment" means the share of funds required for the payment of common expenses that the managing entity assesses periodically against each purchaser.
4. "Association" means any organized body consisting of the purchasers of interests in a timeshare plan.
5. "Component site" means a specific geographic location where accommodations that are part of a multisite timeshare plan are located. Separate phases of a single timeshare property in a specific geographic location and under common management are a single component site.
6. "Developer" means either of the following:
   (a) Any person, corporation, partnership, limited liability company, trust or other entity, other than a sales agent, that creates a timeshare plan or is in the business of selling timeshare interests or employs sales agents to sell timeshare interests.
   (b) Any person or entity that succeeds to the interest of the developer by sale, lease, assignment, mortgage or other transfer if the person offers at least twelve timeshare interests in a particular timeshare plan and the person is in the business of selling timeshare interests or employs sales agents to sell timeshare interests.
7. "Dispose" or "disposition" means a voluntary transfer or assignment of any legal or equitable interest in a timeshare plan other than the creation, transfer, assignment or release of a security interest.
8. "Exchange company" means any person owning or operating or both owning and operating an exchange program.

9. "Exchange program" means any method, arrangement or procedure for the voluntary exchange of timeshare interests or other property interests. Exchange program does not include an assignment of the right to use and occupy accommodations and facilities to purchasers or owners of timeshare interests within a single site timeshare plan.
10. "Managing entity" means the association or other person that undertakes the duties, responsibilities and obligations of the management of a timeshare plan.
11. "Multisite timeshare plan" includes a specific timeshare interest or a nonspecific timeshare interest.
12. "Nonspecific timeshare interest" means the right to use accommodations at more than one component site created by or acquired through the timeshare plan's reservation system, but not including a specific right to use any particular accommodations.
13. "Offer" or "offering" means any marketing, promotion, solicitation or advertising of any kind that is intended to interest prospective customers in the sale, lease or use of a timeshare interest in a timeshare plan, other than as security for an obligation, whether now or in the future. Offer or offering does not include a general promotion of a resort not intended to market timeshare interests.
14. "Person" means a natural person, corporation, limited liability company, partnership, joint venture, association, estate, trust, federal or state government, political subdivision or other legal entity or any combination of these entities.
15. "Premium" means anything of value offered, promised or given to a prospective customer as an incentive to attend a presentation for the sale, lease or use of a timeshare interest or to tour or visit a timeshare property.
16. "Promotion" means a plan or device, including one involving the possibility of a prospective purchaser receiving a vacation, discount vacation, gift or prize, used by a developer or the developer's employee, or on the developer's behalf by an agent or the agent's employee, an independent contractor or the independent contractor's employee in connection with the offering and sale of timeshare interests in a timeshare plan.
17. "Purchaser" means any person, other than a developer, who, by means of a voluntary transfer, acquires a legal or equitable interest in a timeshare plan other than a security for an obligation.
18. "Purchase agreement" means a document that legally obligates a person to sell or buy a timeshare interest.
19. "Redemption certificate" means a premium that grants a right to or the promise of the future delivery of goods or services and that is conditioned on the holder's compliance with stated requirements, limitations or conditions. Redemption certificate does not include a prepaid premium or discount certificate, other than a travel related premium, that is redeemable for goods or services at a business located in this state, including a restaurant or retail store.
20. "Reservation system" means the method, arrangement or procedure in which a purchaser, in order to reserve the use or occupancy of any accommodation of a multisite timeshare plan for one or more timeshare periods, is required to compete with other purchasers in the same multisite timeshare plan, regardless of whether the reservation system is operated and maintained by the multisite timeshare plan managing entity, an exchange company or any other person. If a purchaser is required to use an exchange program as the purchaser's principal means of obtaining the right to use and occupy accommodations, that arrangement is a reservation system. Reservation system does not include the use by an exchange company of a mechanism for the exchange of use of timeshare periods among members of an exchange program.
21. "Sales agent" means a person who, directly or through the person's employees, agents or independent contractors, sells or offers to sell one or more timeshare interests in a timeshare plan to any individual in this state.
22. "Single site timeshare plan" means the right to use accommodations at a single timeshare property.
23. "Specific timeshare interest" means the right to use accommodations at a specific timeshare property, together with use rights in accommodations at one or more other component sites created by or acquired through the timeshare plan's reservation system.
24. "Timeshare estate" means the right of occupancy in a timeshare property that is coupled with an estate in real property.
25. "Timeshare instrument" means one or more documents creating or governing the operation of a timeshare plan.
26. "Timeshare interest" includes either a timeshare estate or a timeshare use.

27. "Timeshare period" means the period of time when the purchaser of a timeshare plan is afforded the opportunity to use the accommodations of a timeshare plan.
28. "Timeshare plan" means any arrangement, plan or similar device, other than an exchange program, whether by membership agreement, sale, lease, deed, license or right-to-use agreement or by any other means, in which a purchaser, in exchange for consideration, receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, but not necessarily for consecutive years. A timeshare plan may be a single site timeshare plan or a multisite timeshare plan.
29. "Timeshare property" means one or more accommodations subject to the same timeshare instrument, together with any other property or rights to property appurtenant to those accommodations.
30. "Timeshare use" is the right to occupy a timeshare property that is not coupled with an estate in real property.

32-2197.01. Creation of timeshare plans; ratio

A timeshare plan may be created in any accommodation unless prohibited by any law or county, city or town zoning ordinance or regulation to the contrary. All timeshare plans shall maintain a one-to-one purchaser-to accommodation ratio so that the total number of purchasers eligible to use the accommodations of the timeshare plan during a given calendar year never exceeds the total number of accommodations available for use in the timeshare plan during the same calendar year. For purposes of calculating the ratio, a purchaser who is delinquent in the payment of timeshare plan assessments shall continue to be considered eligible to use the accommodations of the timeshare plan.

32-2197.02. Notice of intent to sell; application for timeshare plan public report; authorization for pre-sales

A. Any person who sells, offers to sell or attempts to solicit prospective purchasers located in this state to purchase a timeshare interest or any person who creates a timeshare plan with an accommodation in this state, whether or not the plan is sold or offered for sale in this state, shall register a notice of intent to sell and application for a public report with the department.
B. Except as otherwise provided in subsection C of this section, an application for a public report for a timeshare plan must contain the following documents and information:

1. The name and address of the owner and developer. If the holder of any ownership interest in the land is other than an individual, including a corporation, partnership, limited liability company, trust or other entity, a statement naming the type of legal entity and listing the interest and the extent of such interest of each principal in the entity. For the purposes of this paragraph, "principal" means any person or entity having a ten per cent or more financial interest or, if the legal entity is a trust, each beneficiary of the trust holding a ten per cent or more beneficial interest.
2. A comprehensive statement of the timeshare plan.
3. The legal description and location of the timeshare property being offered.
4. To the extent required by applicable local or state laws, a recorded map of the timeshare property showing book, page and date of recording or instrument number and date of recording, and if required by applicable local or state laws, approval by the county or city in which the timeshare property is located. A map, survey or location plan is required for incomplete timeshare properties. A timeshare property involving completed buildings where all purchasers are given an on-site tour prior to a financial commitment may not require a plat map. The need for a map, survey, location plan or building plan on such completed timeshare properties will be determined at the time of application.
5. A description of the total timeshare property in terms of the number of buildings, number of stories, number of units, common areas of the timeshare property or public use areas in any hotel, motel or other facility.
6. Proof of adequate financial arrangements and assurances for completion of any improvements included in the offering to be installed by the developer, the estimated schedule for completion of the improvements and provisions, if any, for the continued maintenance of the improvements.
7. A true statement of the availability of sewage disposal facilities and other public utilities including water, electricity, gas and telephone facilities in the timeshare property and the estimated schedule for their installation.

8. A statement of the provisions that have been made for permanent access, and provisions, if any, for health department approved sewage and solid waste collection and public utilities, including water.
9. A complete disclosure as to the operating costs of the timeshare plan, including all of the variable costs of operation, management and reserves and method of assessment, including evidence of financial arrangements which provide for the developer's guarantee of payment of assessment on unsold interests, or if the developer is not paying such costs, the effect such nonpayment will have on operating costs.
10. A statement that the developer must notify the commissioner if a timeshare plan accommodation may become subject to a tax or other lien arising out of claims against other purchasers in the same timeshare plan. The commissioner may require the developer to notify a prospective purchaser of any potential tax or lien that would materially and adversely affect the prospective purchaser.
11. A current preliminary title report for all accommodations comprising the timeshare property for which the application is being made.
12. The recorded declaration of dedication of the timeshare property or other timeshare instruments or contracts incorporating all covenants of the grantor or lessor and creating the timeshare interests and the provisions of the plan, if any, to include organization of an association.
13. A true statement as to the methods to be used in accordance with section 32-2197.12 to provide that the purchaser of a timeshare interest will not lose or have the purchaser's interest imperiled by the foreclosure of underlying liens, encumbrances or other obligations and that the developer can convey, or cause to be conveyed, the interest in the offering.
14. The terms and conditions as to how a purchaser's interest is to be conveyed including examples of all contracts, purchase agreements, deeds, fact sheets and other instruments to be used in marketing, financing and conveying timeshare interests.
15. A true statement as to title to personal property within the units or timeshare property incident to a purchaser's use and how purchasers will receive assured use of personal property during the term offered.
16. A statement of the provisions made for the management of the timeshare plan, including a copy of the management agreement, relationship with the developer and whether the management entity will be bonded or insured.
17. The name, street address, mailing address and telephone number of:
(a) The designated broker, if any, used by the developer.
(b) A managing entity of the timeshare plan.
18. Copies of all contracts and promotional material pertaining to any exchange program included in the offering.
19. If the timeshare property or timeshare plan being registered is located within the United States, but outside this state, each filing must include evidence that the timeshare property or timeshare plan is qualified for sale in the home state where the timeshare property or timeshare plan is located according to the standards or requirements for the sale of timeshare interests existing in the home state at the time of the filing.
20. if the timeshare property or timeshare plan being registered is located outside the United States, each filing of a foreign timeshare property or timeshare plan must include evidence establishing that all requirements of the country where the timeshare property or timeshare plan is located have been met for the sale of timeshare interests or the local equivalent of timeshare interests in the home country at the time of the filing.
21. A public report that complies with the requirements of section 32-2197.08.
22. Such other information and such other documents and certificates as the commissioner may reasonably require.

C. At the developer's request the commissioner may authorize the developer to conduct pre-sales of the timeshare plan before the issuance of a public report if the application for a public report is administratively complete, as determined by the commissioner or as established by rule. The authorization for pre-sales allows the developer to begin offering and selling timeshare interests while the application for the timeshare public report is in process. To obtain an authorization to conduct pre-sales, the developer shall do all of the following:

1. Submit a formal written request to the commissioner for an authorization to conduct pre-sales.
2. Submit an administratively complete application for a timeshare public report to the commissioner, including all appropriate fees and exhibits required under subsection B of this section.
3. Provide evidence acceptable to the commissioner that all monies received by the developer will be placed in an independent escrow account with instructions that monies will not be released until a timeshare public report has been granted.
4. Give each purchaser and prospective purchaser a copy of the proposed timeshare public report that the developer has submitted to the department with the initial application.
5. Give each purchaser the opportunity to cancel the purchase agreement in accordance with section 32-2197.03. The purchaser shall have an additional opportunity to cancel in accordance with section 32-2197.03 on the issuance of an approved timeshare public report only if the commissioner determines that there is a material and adverse change in the disclosures contained in the approved timeshare public report from those given to the purchaser in the proposed timeshare public report.

32-2197.03. Rescission of contract or agreement

A. The purchaser may rescind the purchase agreement without cause of any kind by sending or delivering written notice of rescission by midnight of the seventh calendar day following the day on which the purchaser or prospective purchaser executed the purchase agreement. The rescission rights shall be conspicuously disclosed in the purchase agreement. If the developer allows the rescission period to extend beyond the seven calendar days, the rescission period disclosure in the purchase agreement shall reflect the longer period of time. The disclosure required by this subsection shall be printed immediately before the space reserved in the purchase agreement for the signature of the purchaser and shall include the following information:

1. The purchaser may cancel the purchase agreement without a penalty or obligation within seven calendar days after the purchaser signs the purchase agreement.
2. If the purchaser decides to cancel the purchase agreement, the purchaser shall notify the seller in writing of the purchaser's intent to cancel.
3. The purchaser's notice of cancellation is effective on the date the cancellation is sent and shall be sent to the seller at the seller's address. The seller's address and telephone number shall be listed on the purchase agreement.
4. The purchaser may execute all closing documents in advance. However, the closing, as evidenced by delivery of the deed or other document, is prohibited before the seven calendar day cancellation period expires.

B. This section applies to any timeshare plan approved by the commissioner pursuant to either article 4 of this chapter or this article, regardless of the date of issuance of the public report.

32-2197.04. Notification of material change

A. The developer of a timeshare plan that is the subject of an outstanding timeshare public report shall immediately report to the department relevant details concerning any material change in the timeshare plan itself or in the program for marketing the timeshare interests.

B. On receipt of a written notice of a material change, the commissioner, if the commissioner determines such action to be necessary for the protection of purchasers, may suspend his approval of the sale or lease pending amendment of the public report. For sales made after the material change and pending amendment of the public report, the commissioner may require the developer to fully disclose the change in a prepared supplement to the public report. The supplement shall be delivered with the previously approved public report to all prospective purchasers until the new public report is issued. The commissioner shall not require the developer to deliver the amended public report to or obtain a receipt from prior purchasers unless the commissioner specifically finds that the developer's disclosure of the changes was not an adequate disclosure

32-2197.05. Escrow or trust account; agreement; evidence of completion; financial assurance

A. A developer of a timeshare plan shall deposit in an escrow or trust account in a federally insured depository one hundred per cent of all monies that are received during the purchaser's rescission period.

The deposit of these monies shall be evidenced by an executed agreement between the escrow or trust account agent and the developer that includes the following provisions:

1. Monies may be disbursed to the developer by the escrow or trust account agent from the account only after expiration of the purchaser's rescission period and in accordance with the purchase agreement, subject to subsection B.
2. If a purchaser cancels the purchase agreement pursuant to the agreement's terms, the monies shall be paid to the purchaser or paid to the developer if the purchaser's monies have been previously refunded by the developer.

B. If a developer contracts to sell a timeshare interest and the construction of any timeshare property in which the timeshare interest is located has not been completed, when the rescission period expires the developer shall continue to maintain in an escrow or trust account all monies received by the developer or on the developer's behalf from the purchaser under a purchase agreement either before or after the rescission period expires. The types of documentation that shall be required for evidence of completion include a certificate of occupancy, a certificate of substantial completion or an equivalent public safety inspection from an agency in the applicable jurisdiction or other evidence of completion acceptable to the commissioner or as provided by rule. Monies shall be released from escrow as follows:

1. If a purchaser properly cancels the purchase agreement pursuant to the agreement's terms, the monies shall be paid to the purchaser or paid to the developer if the developer has previously refunded the purchaser's monies.
2. If a purchaser defaults in the performance of the purchaser's obligations under the purchase agreement, the monies shall be paid to the developer.
3. If the developer defaults in the performance of the developer's obligations under the purchase agreement, the monies shall be paid to the purchaser.
4. If the monies of a purchaser have not been previously disbursed in accordance with paragraph 2 of this subsection, the monies may be disbursed to the developer by the escrow agent on the issuance of acceptable evidence of completion of construction.

C. In lieu of placing monies in escrow in accordance with this section, the commissioner may accept from the developer a surety bond, irrevocable letter of credit or other financial assurance acceptable to the commissioner or as provided by rule. Any acceptable financial assurance must be in an amount equal to or in excess of the monies that would otherwise be placed in escrow or in an amount equal to or in excess of the cost to complete the incomplete property in which the timeshare interest is located.

D. The developer shall make documents related to the escrow or trust account or escrow or trust obligation available to the commissioner on the commissioner's request. The developer shall maintain any disputed monies in the escrow account until either of the following occurs:

1. The developer receives a written direction agreed to and signed by all parties.
2. A civil action regarding the monies has been filed, in which case the developer shall deposit the monies with the court of appropriate jurisdiction.

32-2197.06. Declaration of dedication

The declaration or other documents described in section 32-2197.02, subsection B, paragraph 12 shall include the following general provisions as applicable to the particular timeshare property:

1. Provisions for organization of an association if applicable.
2. A description of the real and personal property for the common ownership or use of the timeshare interest owners.
3. A description of the services to be made available to timeshare interest owners under the timeshare program.
4. Provisions for transfer to the association of control over the timeshare property and services comprising the project.
5. Procedures for calculating and collecting regular and special assessments from timeshare owners to defray expenses of the timeshare plan and for related purposes.
6. Procedures for preparation and dissemination to timeshare owners of budgets, financial statements and other information related to the timeshare plan.
7. Procedures for terminating the membership and selling the interest of a timeshare owner for failure to pay regular or special assessments.

8. Policies and procedures for the disciplining of members for failure to comply with provisions of the governing timeshare instruments for the timeshare plan, including the late payment of assessments.
9. Procedures for employing and for terminating the employment of a managing entity for the timeshare plan.
10. Provisions for adoption of standards and rules of conduct for the use of accommodations by timeshare interest owners.
11. Provisions for establishment of the rights of owners to the use of accommodations according to a schedule or under a first reserved, first served priority system.
12. If applicable, procedures for compensating use periods or monetary compensation for an owner of a timeshare interest in a timeshare plan if an accommodation cannot be made available for the period of use to which the owner is entitled by schedule or under a reservation system because of an error by the association or managing entity.
13. Provisions for comprehensive general liability insurance for death, bodily injury and property damage resulting from the use of an accommodation within the timeshare plan by timeshare owners, their guests and other users.
14. A description of restrictions upon partition of a timeshare property.
15. Policies and procedures for the use of accommodations for transient accommodations or other income producing purposes during a period of nonuse by timeshare owners.
16. Policies and procedures for the inspection of the books and records of the timeshare plan by timeshare owners.
17. Procedures for the amendment of the timeshare instruments for the timeshare plan.
18. If applicable, procedures for annexation of additional accommodations to the timeshare plan.
19. Policies and procedures in the event of condemnation, destruction or extensive damage to accommodations including provisions for the disposition of insurance proceeds or damages payable on account of damage or condemnation.
20. Policies and procedures on regular termination of the timeshare plan including details on what happens to a purchaser's interest on termination.
21. Policies and procedures for collective decision making and the undertaking of action by or in the name of the association, if any, including, if applicable, representation of timeshare interests in an association for the common interest subdivision in which the interests are located.
22. If applicable, allocation of the costs of maintenance and operation between those accommodations dedicated to a timeshare plan and accommodations in the same timeshare plan being used for transient accommodations.
23. Policies and procedures for entry into accommodations of the timeshare plan under authority granted by the association for the purpose of cleaning, maid service, maintenance and repair, including emergency repairs and for the purpose of abating a nuisance or a known or suspected dangerous or unlawful activity.

32-2197.07. Examination of plan by commissioner; fees

A. The commissioner shall examine any timeshare plan offered for sale or lease in this state or located in this state and shall make public his findings.
B. The commissioner may physically inspect any timeshare plan offered for sale or lease in this state or located in this state.
C. An initial filing fee of twenty dollars per interest with a maximum fee of not more than one thousand dollars shall accompany the notice of intention filed pursuant to section 32-2197.02. A filing fee as established by rule shall accompany the application to amend the timeshare public report required in section 32-2197.04.
D. The developer of the timeshare plan shall bear the total cost of travel and subsistence expenses incurred by the department in the examination, in addition to the initial filing fee provided for in this section, on the basis of actual cost to the department.

32-2197.08. Issuance of public report and amended public report by commissioner on timeshare plan; denial of issuance; additional information; use of another state's public report

A. On examination of a timeshare plan, the commissioner, unless there are grounds for denial, shall approve for use by the developer a public report authorizing the sale or lease of the timeshare interests

within the timeshare plan. For all timeshare interests sold in this state, the commissioner shall require the developer to reproduce the public report and furnish each prospective customer with a copy, taking a receipt for each copy. The public report shall be made available to each prospective purchaser in written format and may also be made available in CD-ROM or other electronic format as approved by the commissioner. The public report shall include the following:

1. The name and principal address of the owner and developer.
2. A description of the type of timeshare interests being offered.
3. A description of the existing and proposed accommodations and amenities of the timeshare plan, including type and number, any use restrictions and any required fees for use.
4. A description of any accommodations and amenities that are committed to be built, including:
   (a) The developer's schedule of commencement and completion of all accommodations and amenities.
   (b) The estimated number of accommodations per site that may become subject to the timeshare plan.
5. A brief description of the duration, phases and operation of the timeshare plan.
6. The current annual budget if available or the projected annual budget for the timeshare plan. The budget shall include:
   (a) A statement of the amount or a statement that there is no amount included in the budget as a reserve for repairs and replacement.
   (b) The projected common expense liability, if any, by category of expenditures for the timeshare plan.
   (c) A statement of any services or expenses that are not reflected in the budget and that the developer provides or pays.
7. A description of any liens, defects or encumbrances on or affecting the title to the timeshare interests.
8. A statement that by midnight of the seventh calendar day after execution of the purchase agreement a purchaser may cancel any purchase agreement for a timeshare interest from a developer together with a statement providing the name and street address where the purchaser should mail any notice of cancellation. However, if, by agreement of the parties through the purchase agreement, the purchase agreement allows for cancellation of the purchase agreement for a period of time exceeding seven calendar days, the public report shall include a statement that the cancellation of the purchase agreement is allowed for that period of time exceeding seven calendar days.
9. A description of any bankruptcies, pending suits, adjudications or disciplinary actions material to the timeshare interests of which the developer has knowledge.
10. Any restrictions on alienation of any number or portion of any timeshare interests.
11. Any current or expected fees or charges to be paid by timeshare purchasers for the use of any amenities related to the timeshare plan.
12. The extent to which financial arrangements have been provided for completion of all promised improvements.
13. If the timeshare plan provides purchasers with the opportunity to participate in any exchange programs, a description of the name and address of the exchange companies and the method by which a purchaser accesses the exchange programs.
14. Any other information that the developer, with the approval of the commissioner, desires to include in the public report.
15. If the developer is offering a multisite timeshare plan, the following information, which may be disclosed in a written, graphic or tabular form:
   (a) A description of each component site, including the name and address of each component site.
   (b) The number of accommodations and timeshare periods, expressed in periods of use availability, committed to the multisite timeshare plan and available for use by purchasers.
   (c) Each type of accommodation in terms of the number of bedrooms, bathrooms and sleeping capacity and a statement of whether or not the accommodation contains a full kitchen. For the purposes of this subdivision, "full kitchen" means a kitchen having a minimum of a dishwasher, range, oven, sink and refrigerator.

(d) A description of amenities available for use by the purchaser at each component site.

(e) A description of the reservation system, including the following:

(i) The entity responsible for operating the reservation system.

(ii) A summary of the rules governing access to and use of the reservation system.

(iii) The existence of and an explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first reserved, first served basis.

(f) A description of any right to make any additions, substitutions or deletions of accommodations or amenities and a description of the basis on which accommodations and amenities may be added to, substituted in or deleted from the multisite timeshare plan.

(g) A description of the purchaser's liability for any fees associated with the multisite timeshare plan.

(h) The location and the anticipated relative use demand of each component site in a multisite timeshare plan as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at the time within the multisite timeshare plan.

(i) Any other information reasonably required by the commissioner or established by rule necessary for the protection of purchasers of timeshare interests in timeshare plans.

(j) Any other information that the developer, with the approval of the commissioner, desires to include in the public report.

16. If a developer offers a nonspecific timeshare interest in a multisite timeshare plan, the information set forth in paragraphs 1 through 14 of this subsection as to each component site.

17. Any other information that the commissioner determines or establishes by rule is necessary to implement the purpose of this article.

B. Except as otherwise provided in this subsection, the requirements prescribed by subsection A of this section apply to a developer’s application for approval to use an amended public report for the sale of timeshare interests in a timeshare plan, including an amended public report to disclose and address a material change under Section 32-2197.04. A developer may elect to prepare an amended public report for use in the sale of timeshare interests as follows:

1. The developer shall prepare the amended public report and provide a copy of the report to the commissioner with the submission of the application for an amended public report, including any notification required by Section 32-2197.04, and shall comply with all other requirements of this article.

2. An amendment filing fee established pursuant to Section 32-2197.07 shall accompany the application prescribed by paragraph 1 of this subsection.

3. On receipt of the application and amended public report, the department shall review and, within fifteen business days if the amendment adds less than six new component sites to the timeshare plan or within thirty calendar days if the amendment adds six or more new component sites to the timeshare plan, issue either a certification that the application and amended public report are administratively complete or a denial letter if it appears that the application, amended public report or timeshare plan is not in compliance with all legal requirements, that the applicant has a background of violations of state or federal law or that the applicant or timeshare plan presents an unnecessary risk of harm to the public. If the commissioner has received the application and amended public report but has not issued a certification or a denial letter within the required time period, the application and amended public report are deemed administratively complete.

4. The developer may commence sales or leasing activities as permitted under this article using an amended public report when the commissioner issues a certification of administrative completeness or as of the date the application and amended public report are deemed administratively complete pursuant to paragraph 3 of this subsection. The certification may be issued on paper or electronically.

5. Before or after the commissioner issues a certification of administrative completeness or, if applicable, after the application and amended public report are deemed to be administratively

complete pursuant to paragraph 3 of this subsection, the department may examine any public report, timeshare plan or applicant that has applied for or received the certification. If the commissioner determines that the public report, timeshare plan or applicant is not in compliance with any requirement of state law or that grounds exist under this chapter to suspend, deny or revoke a public report, the commissioner may commence an administrative action under Section 32-2154, 32-2157 or 32-2197.14. If the developer immediately corrects the deficiency and fully complies with state law, the commissioner shall promptly vacate any action that the commissioner may have commenced pursuant to Section 32-2154, 32-2157 or 32-2197.14.

6. The department shall provide forms and guidelines for the submission of the application and amended public report pursuant to this subsection.

C. In the event of denial, suspension or revocation, grounds shall be set forth in writing at the time of denial, suspension or revocation. The commissioner may deny, suspend or revoke the public report on any of the following grounds:

1. Failure to comply with this article or the rules of the commissioner pertaining to this article.

2. The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.

3. Inability to demonstrate that adequate financial or other arrangements acceptable to the commissioner have been made for completion of the timeshare property, installation of all streets, sewers, electric, gas and water utilities, drainage, flood control and other similar improvements included in the offering.

4. The developer, including if an entity, an officer, director, member, manager, partner, owner, trust beneficiary holding ten per cent or more beneficial interest, stockholder owning ten per cent or more of the stock or other person exercising control of the entity, has:

(a) Been convicted of a felony or misdemeanor involving theft, fraud or dishonesty or involving the conduct of any business or a transaction in real estate, cemetery property, timeshare interests or membership camping campgrounds or contracts.

(b) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate, cemetery property, timeshare interests, membership camping campgrounds or contracts, or securities or involving consumer fraud or the Arizona racketeering laws.

(c) Had an administrative order entered against him by a real estate regulatory agency or securities regulatory agency.

(d) Had an adverse decision or judgment entered against him involving fraud or dishonesty or involving the conduct of any business in or a transaction in real estate, cemetery property, timeshare interests or membership camping campgrounds or contracts.

(e) Disregarded or violated this chapter or the rules of the commissioner pertaining to this chapter.

(f) Participated in, operated or held an interest in any entity to which subdivision (b), (c), (d), or (e) of this paragraph applies.

5. If within this state, the timeshare property is incompatible with the existing neighborhood and would introduce into a neighborhood a character of property or use that would clearly be detrimental to property values in that neighborhood.

D. If the timeshare property is within an active management area, as defined in section 45-402, the commissioner shall deny issuance of a public report unless the developer has been issued a certificate of assured water supply by the director of water resources and has paid all applicable fees pursuant to sections 48-3772 and 48-3774.01, or unless the developer has obtained a written commitment of water service for the timeshare property from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576.

E. In areas outside of active management areas, if the timeshare property is located in a county that has adopted the provision authorized by section 11-823, subsection A or in a city or town that has enacted an ordinance pursuant to section 9-463.01, subsection O, the commissioner shall deny issuance of a public report unless one of the following applies:

1. The director of water resources has reported pursuant to section 45-108 that the timeshare property has an adequate water supply.

2. The developer has obtained a written commitment of water service for the timeshare property from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108.

3. The timeshare property was approved pursuant to an exemption authorized by section 9-463.01, subsection K, pursuant to an exemption authorized by section 11-823, subsection B, paragraph 1, pursuant to an exemption granted by the director of water resources under section 45-108.02 and the exemption has not expired or pursuant to an exemption granted by the director of water resources under section 45-108.03.

4. The subdivision received final plat approval from the city, town or county before the requirement for an adequate water supply became effective in the city, town or county, and there have been no material changes to the plat since the final plat approval. If changes were made to the plat after the final plat approval, the director of water resources shall determine whether the changes are material pursuant to the rules adopted by the director to implement section 45-108.

F. In addition to providing to each prospective customer a copy of the public report as required in subsection A of this section, the developer shall also provide to each customer before the close of any transaction information and materials that identify any timeshare exchange companies currently under contract and disclosure statements regarding the use of the timeshare exchange companies, as well as any additional information the commissioner deems appropriate.

G. The commissioner may authorize for use in this state by a developer of a timeshare plan in which all accommodations are located outside of this state a current public report that is issued by another jurisdiction or an equivalent registration and disclosure document that is required before offering a timeshare plan for sale, lease or use and that is issued by another jurisdiction. This authorization does not constitute an exemption from other applicable requirements of this article.

32-2197.09. Rescindable sale or lease

A person shall not sell or lease or offer for sale or lease in this state timeshare interests in a timeshare plan without first obtaining a public report or authorization to conduct pre-sales from the commissioner. Unless exempt, any sale or lease of timeshare interests in a timeshare plan that consists of twelve or more timeshare interests before issuance of the public report or authorization to conduct pre-sales or failure to deliver the public report or evidence of pre-sale authorization renders the sale or lease rescindable by the purchaser or lessee. An action by the purchaser or lessee to rescind the transaction must be brought within three years of the date of the execution of the purchase or lease agreement by the purchaser. In any rescission action, the prevailing party is entitled to reasonable attorney fees as determined by the court.

32-2197.10. Timeshare interest reservations

A. The notice of intent required by section 32-2197.02 and the approval for use of a public report required by section 32-2197.08 are not required for any party to enter into a timeshare interest reservation.

B. Before the approval for use of a public report for a timeshare plan, a deposit may be accepted from a prospective buyer for a timeshare interest reservation if all of the following requirements are met:

1. Before accepting any timeshare interest reservation the prospective seller shall mail or deliver, or provide in written, CD-ROM or other electronic format as approved by the commissioner, notice of the seller's intention to accept timeshare interest reservations to the department. The notice shall include:

(a) The name, address and telephone number of the prospective seller.

(b) The name, address and telephone number of any real estate broker retained by the prospective seller to promote the timeshare interest reservation program.

(c) The name and location of the timeshare property for which timeshare interest reservations are to be offered.

(d) The form to be used for accepting timeshare interest reservations subject to approval by the commissioner.

(e) The name and address of the independent third party escrow or trust account agent responsible for holding the reservation deposits.

2. The reservation deposit for a single timeshare interest shall not exceed twenty per cent of the purchase price.

3. Within one business day after a reservation is accepted by the prospective seller, the reservation deposit shall be delivered to an independent third party escrow or trust account in a federally insured depository. The account may be interest bearing at the direction of either the prospective seller or prospective buyer. Payment of any account fees and payment of interest monies shall be as agreed to between the prospective buyer and prospective seller. All reservation deposits shall remain in the account until cancellation or termination of the timeshare interest reservation or execution of a purchase agreement.

4. Within fifteen calendar days after the prospective seller receives the public report approved for use by the commissioner relating to the reserved timeshare interest, the prospective seller shall provide the prospective buyer with a copy of the public report and a copy of the proposed purchase agreement for the sale of the timeshare interest. The prospective buyer and prospective seller shall have seven business days after the prospective buyer's receipt of the public report and the proposed purchase agreement to enter into a contract for the purchase of the timeshare interest. If the prospective buyer and prospective seller do not enter into a contract for the purchase of the timeshare interest within the seven business day period, the reservation automatically terminates. The prospective seller has no cancellation rights concerning a timeshare interest reservation other than as provided in this subsection.

5. A prospective buyer may cancel a timeshare interest reservation at any time before the execution of a purchase agreement by delivering written notice of termination to the prospective seller as provided in paragraph 9 of this subsection.

6. Within five business days after a timeshare interest reservation has been terminated for any reason the prospective seller shall refund to the prospective buyer all reservation deposits made by the prospective buyer including any interest monies earned less any account fees agreed on if applicable. The independent third party escrow account or trust account agent shall refund to the prospective buyer all reservation deposits made by the prospective buyer including any interest monies earned less any account fees agreed on if the prospective seller is not available. After the refund neither the prospective buyer nor the prospective seller has any obligation arising out of the timeshare interest reservation.

7. A prospective buyer may not transfer rights under a reservation without the prior written consent of the prospective seller, and any purported transfer without the consent of the prospective seller is voidable at the sole discretion of the prospective seller.

8. If the department denies an application for a public report on a timeshare plan on which timeshare interest reservations were taken, within five business days of notification by the department the prospective seller shall notify in writing each prospective buyer who entered into a timeshare interest reservation agreement. The prospective seller shall return any reservation deposits previously taken.

9. All notices required by this section to be given to the department, the prospective buyer or the prospective seller shall be in writing and either hand delivered or sent by certified mail, return receipt requested with postage fully prepaid. Notices sent by mail are deemed delivered on the earlier of actual receipt, as evidenced by the delivery receipt, or seven calendar days after being deposited in the United States mail.

10. Each timeshare interest reservation form shall contain the following statement in conspicuous type: *"The Arizona department of real estate has not inspected or approved this timeshare property and no public report has been issued for the timeshare plan. No offer to sell may be made and no offer to purchase may be accepted before issuance of a public report or pre-sale authorization for the timeshare plan."*

C. The commissioner may deny, suspend or revoke authorization to accept timeshare interest reservations under this section to any person who has violated any provision of this chapter.

32-2197.11. Developer supervisory duties

The developer shall supervise, manage and control all aspects of the offering of the timeshare plan, including promotion, advertising, contracting and closing. The developer is responsible for each timeshare plan registered by the developer with the department and for the actions of any sales agent or managing entity used by the developer in the offering or selling of any registered timeshare plan. Any violation of this article that occurs during the offering activities shall be deemed to be a violation by the developer as well as by the sales agent or managing entity who actually committed the violation. The developer is

responsible for the actions of the association and managing entity only while they are subject to the developer's control, as provided in the timeshare instruments or by law.

32-2197.12. Blanket encumbrance; lien; alternative assurance

Excluding any encumbrance placed against the purchaser's timeshare interest securing the purchaser's payment of purchase money financing for the purchase, the developer is not entitled to the release of any monies placed in escrow under section 32-2197.05 with respect to each timeshare interest and any other property or rights to property appurtenant to the timeshare interest, including any amenities represented to the purchaser as being part of the timeshare plan, until the developer has provided satisfactory evidence to the commissioner of one of the following:

1. The timeshare interest together with any other property or rights to property appurtenant to the timeshare interest, including any amenities represented to the purchaser as being part of the timeshare plan, are free and clear of any of the claims of the developer, any owner of the underlying fee, a mortgagee, judgment creditor or other lienor or any other person having a blanket encumbrance against the timeshare interest or appurtenant property or property rights.
2. The developer, any owner of the underlying fee, a mortgagee, judgment creditor or other lienor or any other person having a blanket encumbrance against the timeshare interest or appurtenant property or property rights, including any amenities represented to the purchaser as being part of the timeshare plan, has recorded a subordination and notice to creditors document in the appropriate public records of the jurisdiction in which the timeshare interest is located. The subordination document shall expressly and effectively provide that the interest holder's right or blanket encumbrance does not adversely affect and is subordinate to the rights of the owners of the timeshare interests in the timeshare plan regardless of the date of purchase, from and after the effective date of the subordination document.
3. The developer, any owner of the underlying fee, a mortgagee, judgment creditor or other lienor or any other person having a blanket encumbrance against the timeshare interest or appurtenant property or property rights, including any amenities represented to the purchaser as being part of the timeshare plan, has transferred the subject accommodations or amenities or all use rights to the accommodations or amenities to a nonprofit organization or owners' association to be held for the use and benefit of the owners of the timeshare plan. The organization or association shall act as a fiduciary to the purchasers, if the developer has transferred control of the organization or association to the owners or does not exercise voting rights in the organization or association with respect to the subject accommodations or amenities. Before the transfer, any blanket encumbrance against the accommodation or facility shall be made subject to a subordination and notice to creditors instrument pursuant to paragraph 2.
4. Alternative arrangements have been made that are adequate to protect the rights of the purchasers of the timeshare interests and approved by the commissioner.

32-2197.13. Hearing on denial of public report

Any applicant objecting to the denial of a public report may, within thirty days after receipt of the order of denial, file a written request for a hearing. The commissioner shall hold the hearing within twenty days thereafter unless the party requesting the hearing requests a postponement. If the hearing is not held within twenty days after a request for a hearing is received, plus the period of any such postponement, or if a proposed decision is not rendered within forty-five days after submission, the order of denial shall be rescinded and a public report issued.

32-2197.14. Investigations; orders; hearings

A. The commissioner, on the commissioner's own motion, or if the commissioner has received a complaint and has satisfactory evidence that the owner, agent or developer is violating any provision of this article or rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 concerning the sale of timeshare interests or deviated from the provisions of the public report, may investigate the timeshare property and examine the books and records of the owner, agent or developer. For the purpose of examination, the owner, agent or developer shall keep and maintain records of all sales transactions and monies received pursuant to such sales transactions and make them accessible to the commissioner upon reasonable notice and demand.

B. The commissioner may conduct an investigation, issue a summary order as provided in section 32-2157 or hold a public hearing, on the commissioner's own motion, or if the commissioner has received a complaint and has satisfactory evidence that:

1. A person has violated any of the provisions of this article or the rules of the commissioner.
2. A person has engaged in any unlawful practice as defined in section 44-1522 concerning the sale of timeshare interests.
3. A person has deviated from the provisions of the public report.
4. The owner, agent, developer, officer or partner, developer trust beneficiary or, if a corporation, any stockholder owning ten per cent or more of the stock in such corporation has participated in, operated or held an interest in any land development company which is bankrupt or has been indicted for fraud or against whom an information for fraud has been filed or has been convicted of a felony, before or after the commissioner issues the public report.

C. After such hearing, the commissioner may issue such order or orders as the commissioner deems necessary to protect the public interest and ensure compliance with the law, or rules or public report, or may bring an action in any court of competent jurisdiction against the person to enjoin the person from continuing such violation or engaging in such violation or doing any act or acts in furtherance of such violation. The court may make such orders or judgments, including the appointment of a receiver, as are necessary to prevent the use or employment by a person of any unlawful practices or which are necessary to restore to any person in interest any monies or property, real or personal, which has been acquired by means of any practice declared to be unlawful in this article.

D. For any timeshare investigation made under this section of an out-of-state timeshare plan, or any in-state timeshare plan to which the commissioner issues any order necessary to protect the public interest and ensure compliance with law, rules or the public report, the developer shall reimburse the department for travel and subsistence expenses incurred by the department.

32-2197.15. Order; appointment of receiver; writ of ne exeat

A. If it appears to the commissioner that a person has engaged in or is engaging in a practice declared to be unlawful by this article, and that such person is concealing assets or self, or has made arrangements to conceal assets or is about to leave this state, the commissioner may apply to the superior court, ex parte, for an order appointing a receiver of the assets of such person or for a writ of ne exeat, or both.

B. The court, upon receipt of an application for the appointment of a receiver or for a writ of ne exeat, or both, shall examine the verified application of the commissioner and such other evidence that the commissioner presents to the court. If satisfied that the interests of the public require the appointment of a receiver or the issuance of a writ ne exeat without notice, the court shall issue an order appointing the receiver or issue the writ, or both. If the court determines that the interests of the public will not be harmed by the giving of notice, the court shall set a time for a hearing and require such notice be given as the court deems satisfactory.

C. If the court appoints a receiver without notice, the court shall further direct that a copy of the order appointing a receiver be served upon the person engaged in or engaging in a practice declared to be unlawful under this article by delivering such order to the last address of the person which is on file with the real estate department. The order shall inform the person that he has the right to request a hearing within ten days of the date of the order, and if requested, the hearing shall be held within thirty days from the date of the order.

32-2197.17. Advertising and promotional requirements; telemarketing and promotional employees; presentations and tours, drawings and contests; commissioner's authority; disclosures

A. Within ten days after a request by the commissioner, the developer shall file with the commissioner a copy of any promotional and advertising material that will be used in connection with the sale, lease or use of timeshare interests. If filing is required, the commissioner shall approve or deny the use of any material within fifteen days of receiving all information and documents. If the commissioner denies the use of promotional and advertising material, specific grounds shall be set forth in writing. The commissioner may grant provisional approval for promotional and advertising material if the developer agrees to correct any deficiencies. Any proposed advertising not requested by the commissioner for review may be filed for review and approval by the commissioner.

B. Any advertising, communication or sales literature of any kind, including oral statements by salespeople or any other person, shall not contain:

1. Any untrue statement of material fact or any omission of material fact which would make such statements misleading in light of the circumstances under which such statements were made.
2. Any statement or representation that the timeshare interests are offered without risk or that loss is impossible.
3. Any statement or representation or pictorial presentation of proposed improvements or nonexistent scenes without clearly indicating that the improvements are proposed and the scenes do not exist.

C. All promotional and advertising material shall be consistent with the information contained in the notice of intention pursuant to section 32-2197.02 and the public report pursuant to section 32-2197.08 and shall clearly indicate that the material is being used to promote the sale, lease or use of an interest in a timeshare plan. An interest in a timeshare plan, vacation ownership plan, fractional ownership plan, vacation club or other term or terms may be approved by the commissioner on a case by case basis after the commissioner finds that such term or terms clearly disclose to prospective purchasers the nature of the timeshare interest being offered.

D. If it appears to the commissioner that any person is engaging or has engaged in advertising or promotional practices in violation of this article, the commissioner may hold a hearing as a contested case under title 41, chapter 6, article 10 and issue such order or orders as the commissioner deems necessary to protect the public interest, or the commissioner may bring an action in any court of competent jurisdiction against such person to enjoin that person from continuing such violation.

E. The commissioner may adopt such written guidelines as the commissioner deems necessary to 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, developer, agent or employee of any timeshare plan or other person with intent directly or indirectly to sell or lease timeshare interests 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. This section does not apply to the owner or publisher of a newspaper or magazine or to any 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.

H. A telemarketing or any other promotional employee involved in activities whose primary duties are limited to soliciting initial interest, scheduling or confirming persons for appointments, handing out promotional literature or explaining promotional incentives and related duties is not required to hold a real estate license. To the extent that a telemarketing or any other promotional employee is engaged in soliciting interest in the actual purchase, lease or use of timeshare interests, the employee shall be employed and supervised by a real estate broker who is licensed in this state subject to the following:

1. Supervision of unlicensed telemarketing and other promotional employees shall be performed directly by a broker or a licensed real estate salesperson under the supervision of the broker.
2. An unlicensed employee in the course of the employee's duties shall not engage in discussions about any details or benefits of the property transaction being promoted, including dimensions of the property, contract terms, discounts, exchange benefits, price and financing.
3. The amount and manner in which an unlicensed employee is individually compensated may not be based, in whole or in part, on the completion of a timeshare transaction.
4. For the purposes of the supervision required under this subsection, a developer may:
    (a) Operate its own promotional program and provide supervision of its unlicensed telemarketing or other promotional employees through its designated broker.
    (b) Establish a branch office that is managed by a licensed real estate salesperson under the supervision of the developer's designated broker and who provides supervision of the developer's unlicensed telemarketing or other promotional employees.
    (c) Pursuant to a written promotion agreement:
        (i) Contract with an unlicensed telemarketer or any other promoter if the agreement requires the developer's designated broker to provide supervision of the telemarketer's or promoter's unlicensed telemarketing or other promotional employees.

(ii) Contract with a telemarketer or any other promoter who is licensed as a broker in this state if the agreement requires the designated broker of the telemarketer or other promoter to provide supervision of unlicensed telemarketing or other promotional employees.

5. The commissioner may exempt from the supervision requirements of this section a timeshare developer that is not based in this state and that desires to conduct telemarketing solicitations of residents of this state or a developer that is based in this state but that desires to use the services of a telemarketer that is not located in this state to conduct telemarketing solicitations of residents of this state on written application containing information about the developer, the timeshare plan and the marketing procedures that will be used. The commissioner may grant such an exemption on a showing that supervision equivalent to that required under this section exists. If the developer does not adhere to the marketing procedures submitted with its application for exemption or if there is any material change in the information submitted with the application, the exemption may be denied or revoked.

I. A timeshare developer may hold a drawing or contest to solicit interest in or promote timeshare interests if all of the following requirements are met:

1. The timeshare plan has in effect a current public report.

2. The developer is not the subject of an ongoing investigation by the commissioner, unless the commissioner in the commissioner's discretion gives written permission to the developer to hold a drawing or contest.

3. The extent to which the drawing or contest is limited in time and scope and the geographic location in which eligible recipients reside are fully disclosed.

4. The estimated odds of winning and all other material terms of the drawing or contest are fully disclosed to all participants.

5. No fee is charged to any person who participates in a drawing or contest.

6. No participant in a drawing or contest, as a condition of participation, is required to attend a timeshare sales presentation or take a site tour.

7. The developer is in compliance with all applicable federal, state and local laws involving drawings or contests.

8. The developer is responsible at all times for the lawful and proper conduct of any drawing or contest.

9. The developer submits the details of the drawing or contest, including the method of awarding any prize, to the department for review and approval at least thirty days before the drawing or contest is offered.

J. A premium may be given to persons who visit timeshare properties or who attend a timeshare presentation. No person is required to attend any presentation or tour for longer than one hundred twenty minutes to receive the premium. The developer shall make complete and clear written disclosure that minimally includes detailed information about any premium offered as an incentive, including its estimated retail value and any conditions that must be met or limitations that apply to receive the premium, and about the one hundred twenty minute limit placed on a site tour or sales presentation to each timeshare prospect before any presentation or tour.

K. A developer or a representative of a developer conducting timeshare presentations or tours may offer a timeshare prospect a redemption certificate in return for participation in a presentation or tour if all of the following requirements are met:

1. If for any reason the goods or services are not provided in the time frame stated in or are not as represented in the redemption certificate and the recipient provides proof of timely satisfaction of all conditions and requirements for redemption, the developer does the following:

(a) Within fifteen days of receipt of notice from the timeshare prospect of the proven nonreceipt of the goods or services, provides the promised goods or services or a reasonable substitute of equal or greater value.

(b) If unable to provide the goods or services or a reasonable substitute within the fifteen day period, immediately pays the redemption certificate recipient an amount equal to the estimated retail value of the premium as advertised in the certificate promotional material or, if the value was not advertised, pays the estimated retail value of the premium.

2. All advertising and offers referring to redemption certificates shall clearly and conspicuously set forth any terms, conditions, restrictions or limitations governing the use of the certificates.

L. The disclosure required by subsection C of this section shall be provided as part of the initial advertising promotion contact with a prospective purchaser. Any other disclosures required pursuant to this section shall be provided before the prospective purchaser is required to pay any money or attend a sales presentation pursuant to the advertising promotion. The disclosures shall be given to each prospective purchaser on only one piece of advertising for each advertising promotion, including advertising promotions that consist of multiple related pieces. If advertising promotions are approved as multiple related pieces, the advertising promotion must be used in that form. If the advertising promotion contains terms and conditions the disclosures required in this section shall be included on any piece containing these terms and conditions. Repetitive filings of the same advertising material are not required.

32-2197.18. Recording of actions

A. If the commissioner issues a cease and desist order, obtains a court order enjoining further sales, issues an order of prohibition or suspends approval of a timeshare plan, the action shall be recorded in the book of deeds in the office of the county recorder in any county in which the timeshare property is located.

B. In the event of revocation of any of the orders which require recording in subsection A, an order of release shall be recorded in the same manner.

32-2197.19. Civil liabilities; prohibitions; limitations

A. If any part of the notice of intention filed pursuant to section 32-2197.02 contains an untrue statement of a material fact or omits a material fact required to be stated in such notice, the developer or agent is liable as provided in this section to any person who acquires a timeshare interest in the timeshare plan covered by the notice of intention during the period the notice of intention remained uncorrected, unless it is proved that at the time of such acquisition the person acquiring the timeshare interest knew of such untruth or omission.

B. A developer or agent who sells or leases a timeshare interest in a timeshare plan in violation of section 32-2197.09 or by means of a public report which contains an untrue statement of a material fact, or omits a material fact required to be stated in such report, is liable to the purchaser of such timeshare interest as provided in this section.

C. No developer or agent shall, in selling or leasing, or offering to sell or lease, any timeshare interest in a timeshare plan:

1. Employ any device, scheme or artifice to defraud.
2. Obtain money or property by means of a material misrepresentation with respect to any information included in the notice of intention or the public report or with respect to any other information pertinent to the timeshare interest or timeshare plan and upon which the purchaser relies.
3. Engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon a purchaser.

D. Damages in any suit brought pursuant to this section are the difference between the amount paid for the timeshare interest, together with the reasonable cost of improvements to such timeshare interest, and whichever of the following amount is less:

1. The value of the timeshare interest and improvements as of the time such suit was brought.
2. The price at which the timeshare interest was disposed of in a bona fide market transaction prior to the suit.
3. The price at which the timeshare interest was disposed of in a bona fide market transaction after suit was brought, but prior to judgment.

E. In any action in which a violation of this section is established, the purchaser is also entitled to recover reasonable attorney fees as determined by the court. If a violation is not established, the court may award reasonable attorney fees to the defendant.

F. Every person who becomes liable to make any payment pursuant to this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment.

G. The amount recoverable pursuant to this section shall not exceed the sum of the purchase price of the timeshare interest, the reasonable cost of improvements installed by the purchaser and reasonable court costs and attorney fees.

H. This section does not preclude any other remedies that may exist at law or in equity.

I. An action shall not be maintained to enforce any liability created pursuant to subsection A or B of this section unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence. An action shall not be maintained to enforce any liability created pursuant to subsection C of this section unless brought within two years after the violation upon which it is based. Any such action under subsection C of this section shall not be brought by a purchaser more than three years after the sale or lease to such purchaser.

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 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 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.

32-2197.21. Payment of finder fees; limits; prohibited activities; records; definition

A. Notwithstanding sections 32-2155, 32-2163 and 32-2165 or any other provision of this chapter, a developer or managing entity may pay a finder fee to a person who is not licensed pursuant to this chapter and who owns a timeshare interest in the developer's timeshare plan or in the timeshare plan managed by that managing entity.

B. A finder fee paid pursuant to this section shall not exceed one thousand dollars in credit or nonmonetary compensation during any twelve month period.

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

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

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

32-2197.22. Exemptions; disclosures; exempt communications

A. Sections 44-1841 and 44-1842 do not apply to a timeshare plan that has been issued a timeshare public report pursuant to this article or exempted by special order of the commissioner.

B. A person is exempt from this article if any of the following applies:

1. The person is either an owner of a timeshare interest or a real estate broker who represents an owner of a timeshare interest if the owner acquired the timeshare interest for the owner's own use and occupancy and offers it for resale.

2. The person is a managing entity or an association or a designated agent of a managing entity or association if all of the following apply:

(a) The entity or association is not a developer of a timeshare plan.

(b) The person solely acts as an association or is under a contract with an association to offer or sell a timeshare interest transferred to the association through foreclosure, deed or gratuitous transfer if done in the regular course of, or incident to, the management of the association for the management's account in the timeshare plan.

(c) The managing entity or the association provides to each purchaser who is not an existing owner in the timeshare plan, the following disclosures before execution of the purchase agreement:

(i) The name and address of the timeshare plan and of the managing entity of the timeshare plan.

(ii) The following statement in conspicuous type located before the disclosure required by item (vi) of this subdivision: The current year's assessment for common expenses allocable to the timeshare interest you are purchasing is $_____. This assessment, which may be increased periodically by the managing entity of the timeshare plan, is payable in full each year on or before _____. This assessment (includes/does not include) yearly ad valorem real estate taxes that (are/are not) billed and collected separately.

(iii) If ad valorem real property taxes are not included in the current year's assessment for common expenses, the following statement must be in conspicuous type located immediately after the disclosure required by item (ii) of this subdivision: The most recent annual assessment for ad valorem real estate taxes for the timeshare interest you are purchasing is $_____.

(iv) If there are any delinquent assessments for common expenses or ad valorem taxes outstanding with respect to the timeshare interest in question, the following statement must be in conspicuous type located immediately after the disclosure required by items (ii) and (iii) of this subdivision: A delinquency in the amount of $_____ for unpaid common expenses or ad valorem taxes currently exists with respect to the timeshare interest you are purchasing, together with a per diem charge of $_____ for interest and late charges.

(v) The following statement in conspicuous type located immediately after the disclosure required by items (ii), (iii) and (iv) of this subdivision: Each owner is personally liable for the payment of the owner's assessments for common expenses, and failure to timely pay these assessments may result in restriction or loss of your use and ownership rights. There are many important documents relating to the timeshare plan that you should review before purchasing a timeshare interest, copies of which are available from the association or the managing entity on request, including the declaration of condominium or covenants and restrictions, the association articles and bylaws, the current year's operating and reserve budgets and any rules affecting the use of timeshare plan accommodations and facilities.

(vi) The year in which the purchaser will first be entitled to occupancy or use of a timeshare period associated with the timeshare interest that is the subject of the resale purchase agreement.

3. The person offers a timeshare plan in a national publication or by electronic media, as determined by the commissioner or as provided by rule, that is not directed to or targeted to any individual located in the state. For purposes of this paragraph, "national publication" or "electronic media" means publications or media circulated, distributed and broadcast on a regional or national basis to residents of the United States and foreign countries. National publication or electronic media includes radio, newspapers, television, the internet and other media that is not intentionally directed to or targeted to individuals located in this state. The sending of a direct solicitation or electronic mail message to the internet address of an individual known to be located in this state is not an offer through a national publication or electronic media.

4. The person has acquired twelve or more timeshare interests in one or more voluntary or involuntary transactions and subsequently conveys, assigns or transfers twelve or more of the timeshare interests received to a single purchaser in a single transaction during the preceding twelve month period.

C. The following are exempt communications from the provisions of this article:

1. Any stockholder communication including an annual report or interim financial report, proxy material, a registration statement, a securities prospectus, a registration, a property report or other material required to be delivered to a prospective purchaser by an agency of any state or the federal government.

2. Any oral or written statement disseminated by a developer to broadcast or print media, other than paid advertising or promotional material, regarding plans for the acquisition or development of timeshare property. Any rebroadcast or any other dissemination of such oral statements to a prospective purchaser by a seller in any manner or any distribution of copies of newspaper or magazine articles or press releases or any other dissemination of written statements to a

prospective purchaser by a seller in any manner constitutes an advertisement and is not an exempt communication.

3. Any advertisement or promotion in any medium to the general public if the advertisement or promotion clearly states that it is not an offer in any jurisdiction in which any applicable registration requirements have not been fully satisfied.

4. Any audio, written or visual publication or material relating to the availability of any accommodations for transient rental if a sales presentation is not a requirement for the availability of the accommodations and if the failure of any transient renter to take a tour of a timeshare property or attend a sales presentation does not result in any reduction in the level of services that would otherwise be available to the transient renter.

5. Any billboard or other sign that is affixed to real or personal property and that is not disseminated by other than visual means to any prospective purchaser and that does not suggest or invite any action on the part of the prospective purchaser.

D. The following communications are exempt from this article if the communications are delivered to any person who has previously executed a contract for the purchase of or is an existing owner of a timeshare interest in a timeshare plan:

1. Any communication addressed to and relating to the account of any person who has previously executed a contract for the sale or purchase of a timeshare interest in a timeshare plan relating to the communication.

2. Any audio, written or visual publication or material relating to an exchange company or exchange program provided to an existing member of the exchange company or exchange program.

3. Any communication by a developer to encourage a person who has previously acquired a timeshare interest from the developer to acquire additional use or occupancy rights or benefits or additional timeshare interests offered by the same developer.

32-2197.23. Power of commissioner to exempt timeshare plans

A. The commissioner may by special order exempt from the provisions of this article timeshare plans upon written petition and upon a showing by the petitioner, satisfactory to the commissioner, that compliance with the provisions of this article is not essential to the public interest or for the protection of purchasers by reason of the special characteristics of the timeshare plan.

B. Special orders issued pursuant to this section shall relate to specific timeshare plans.

C. A petition filed under this section shall be accompanied by an initial fee of three hundred dollars. A fee is not returnable irrespective of the nature of the action upon the petition.

32-2197.24. Applicability of article

A. This article applies to all of the following:

1. A timeshare property located in this state.

2. Timeshare plans with an accommodation or component site in this state if those timeshare plans are sold or offered to be sold to any individual located in this state.

3. Timeshare plans without an accommodation or component site in this state if the timeshare plans are sold or offered to be sold to any individual located in this state.

B. This article does not apply to the following:

1. An exchange program except as provided in subsection C.

2. Timeshare plans consisting of fewer than twelve timeshare interests whether or not an accommodation is located in this state.

3. Timeshare plans the use of which extends over any period of less than three years.

4. Timeshare plans, whether or not an accommodation is located in this state, under which the prospective purchaser's total financial obligation will be less than one thousand five hundred dollars during the entire term of the timeshare plan.

C. A method, arrangement or procedure that meets the definition of an exchange program pursuant to section 32-2197 shall be regulated as a timeshare plan in accordance with this article if the purchaser's total contractual financial obligation exceeds three thousand dollars for any individual, recurring timeshare period.

Article 10 Membership Camping

32-2198. Unlawful offer or sale of membership camping contract

It is unlawful for any person to offer to sell or to sell within or from this state a membership camping contract unless a final membership camping public report has been issued by the commissioner. Any sale of a membership camping contract before the issuance of the final public report is voidable by the purchaser.

32-2198.01. Application for membership camping public report; signature; amendment

A. An application for a membership camping public report shall contain the following documents and information:

1. The name and address of the membership camping operator.
2. A copy of the articles of incorporation, partnership agreement or joint venture agreement and the camping club association bylaws as contemplated or currently in effect.
3. A list of all officers and directors or persons occupying a similar status of the membership camping operator including their names, addresses and occupations during the last five years.
4. A list of material affiliates of the membership camping operator, including the names and addresses of partners, officers, directors and persons with a direct or indirect interest of ten per cent or more in the membership camping operator.
5. A list of all owners of over ten per cent of the voting stock of the membership camping operator, except that this list is not required if the membership camping operator is a reporting company under the securities and exchange act of 1934.
6. Copies of forms of all advertisements intended to be used in connection with the offer or sale of membership camping contracts within this state.
7. A copy of each type of membership camping contract to be sold, a description of the purchase price of each type and, if the price varies, the reason for the variance.
8. A copy of any conditional use permit or any other major use permits indicating approval of the project by this state or a political subdivision of this state for each of the membership camping operator's camping projects located in this state. If the membership camping operator has no projects in this state, the same documents shall be provided for all out of state projects for which membership contracts are to be sold or offered for sale in this state.
9. The financial statements of the membership camping operator prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant.
10. A statement of the total number of membership camping contracts intended to be sold in this state and the method used to determine this number including a statement of commitment that this total number will not be exceeded unless it is disclosed by an amendment to the registration.
11. If membership camping contracts are sold with different privileges or durations, a list of each type of membership camping contract and the approximate number of each type to be sold.
12. A copy of the agreement, if any, between the operator and any person owning, controlling or managing the campground.
13. The names of any other states or foreign countries in which an application for registration of the membership camping operator or the membership camping contract or any similar document has been filed.
14. Complete information concerning any adverse order, judgment or decree involving forgery, theft, extortion, conspiracy to defraud, a crime of moral turpitude or any other like conduct which has been entered by a court or administrative agency in connection with a campground or other business operated by the applicant or in which the applicant has or had an interest at the time of the acts which led to the order, judgment or decree.
15. A current title report which is signed and dated not more than thirty days before receipt by the commissioner and which provides a true statement of the condition of the title to the campground property, including all encumbrances on the property.
16. A statement on the provisions that have been made for permanent access and provisions, if any, for health department approved sewage and solid waste collection and disposal and public utilities, if any, in the proposed campground, including water, electricity, gas and telephone facilities.

17. A statement of the provisions, if any, limiting the use or occupancy of the campground, together with copies of any restrictive covenants affecting all or part of the campground.
18. A true statement of the approximate amount of indebtedness which is a lien on the campground or any part of the campground and which was incurred to pay for the construction of any on-site or off-site improvement or any community or recreational facility.
19. A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area or assessment district within the boundaries of which the campground or any part of the campground is located, and which is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to the campground, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax on the campground or any part of the campground.
20. A true statement as to the approximate amount, if any, of annual taxes, special assessments or fees to be paid by the membership camping contract owner for the proposed annual maintenance of common facilities in the campground.
21. A true statement of assurances for the installation of improvements, such as roads and utilities, and approval by the political subdivision having authority.
22. A true statement of provisions made for financing any community, recreational or other facilities to be included in the offering or represented as being in the offering. The statement shall include a trust agreement or other evidence of assurances for delivery of such facilities and a statement of the provisions, if any, for the continued maintenance of the facilities.
23. A true statement of the nature of any improvements to be installed or represented to be installed, the estimated schedule for completion and the estimated costs related to these improvements which will be borne by membership camping contract owners in the campground.
24. A true statement of the membership camping operator's experience in the membership camping business, including the number of years the operator has been in the membership camping business.
25. A true statement of the nature of the purchaser's right or license to use the membership camping operator's property or facilities.
26. The location of each of the membership camping operator's parks and a brief description for each park of the significant facilities then available for use by purchasers and those which are represented to purchasers as being planned, together with a brief description of any significant facilities that are or will be available to nonpurchasers or nonmembers. As used in this paragraph "significant facilities" includes campsites, swimming pools, tennis courts, recreation buildings, rest rooms and showers, laundry rooms and trading posts or grocery stores.
27. A true statement of the membership camping operator's ownership of or other right to use the camping properties represented to be available for use by purchasers, together with the duration of any lease, license, franchise or reciprocal agreement entitling the membership camping operator to use the property, and any material provisions of any agreements which restrict a purchaser's use of the property.
28. A copy of the rules, restrictions or covenants regulating the purchaser's use of the membership camping operator's properties, including a statement of whether and how the rules, restrictions or covenants may be changed.
29. A description of any restraints on the transfer of the membership camping contract.
30. A true statement of the policies relating to the availability of camping sites and whether reservations are required.
31. A true statement of any grounds for forfeiture of a purchaser's membership camping contract.
32. Any other information, documents and certificates as the commissioner may reasonably require to clarify or ascertain the accuracy of the information required by this section.

B. The application shall be signed by the membership camping operator, an officer or general partner of the membership camping operator or by another person holding a power of attorney for this purpose from the membership camping operator. If the application is signed pursuant to a power of attorney, a copy of the power of attorney or the resolution authorizing the signature shall be included with the application.
C. The application must be submitted on a form prescribed by the commissioner with the application fee.
D. An application for registration to offer to sell or sell membership camping contracts shall be amended when a material change to the information previously filed occurs.

32-2198.02. Issuance of public report; representations prohibited

A. On examination of a membership campground, the commissioner, unless there are grounds for denial, shall issue to the owner or operator a public report authorizing the sale in or from this state of membership camping contracts. The report shall contain the data obtained in accordance with section 32-2198.01 and any other information which the commission determines is necessary to implement the purposes of this article. The commissioner shall require the owner or operator to reproduce the report and furnish each purchaser with a copy, taking a receipt. The owner and licensed broker shall each retain a receipt for at least five years from the date of its taking.

B. The issuance of a public report is not deemed to be an endorsement by the commissioner of the membership camping contract, the operator or the campground. It is unlawful for a person to make or use any statement or promotional device which tends to indicate that issuance constitutes an endorsement.

32-2198.03. Exemptions

A. The following transactions are exempt from the provisions of section 32-2198:

1. An offer, sale or transfer by any one person of not more than one membership camping contract in any twelve month period any agent for the person, participating in more than one transaction in a twelve-month period is not exempt from registration as a membership camping salesperson under this chapter if he receives a commission or similar payment for the sale or transfer.
2. An offer or sale by a government or subdivision of a government agency.
3. An offer, sale or transfer by a membership camping operator of a membership camping contract previously authorized if the offer, sale or transfer constitutes a transfer to an owner other than the original owner of the contract.

B. The commissioner may by special order exempt from the provisions of section 32-2198 the offer for sale or the sale of membership camping contracts on written petition and a showing by the petitioner satisfactory to the commissioner that compliance with this chapter is not essential to the public interest or for the protection of purchasers.

32-2198.04. Examination of project by commissioner

The commissioner, pursuant to an investigation conducted under section 32-2108 or an application for public report pursuant to section 32-2198.01, may examine any membership campground project offered or sold in this state and make his findings public. The total cost of travel and subsistence expenses incurred by the department in the examination shall be borne by the owner of the project on the basis of the actual cost to the department.

32-2198.05. Contracts; cancellation

A membership camping contract may be cancelled by a resident purchaser for any reason at any time before midnight of the third business day after the purchaser has signed and received a copy of the contract. A membership camping contract may be cancelled by a nonresident purchaser for any reason at any time before midnight of the seventh calendar day after the purchaser has signed and received a copy of the contract. To cancel a contract the purchaser may notify the campground operator of the cancellation in writing, by certified mail return receipt requested, or personal delivery, to an address in this state as specified in the contract. Proof of timely cancellation is satisfied if the certified letter is postmarked on or before midnight of the seventh day. All monies paid pursuant to the cancelled contract shall be fully refunded within thirty days of receipt of the notice of cancellation. If the purchaser executed any credit or loan agreement through the campground operator to pay all or part of the camping services, the debt and security instruments shall also be returned within thirty days. The contract shall contain a conspicuous notice printed in at least ten point bold-faced type as follows:

Notice to purchaser

You are entitled to a copy of this contract at the time you sign it.

You may cancel this contract at any time, if a resident of this state, before midnight of the third business day or if a nonresident of this state before midnight of the seventh calendar day after receiving a signed copy of this contract. If you choose to cancel this contract, you must either:

1. Send a signed and dated written notice of cancellation by certified mail, return receipt requested.

2. Personally deliver a signed and dated written notice of cancellation to:
_____(Name of Campground)
_____(Address of Campground)
If you cancel this contract within the time periods set forth above, you are entitled to a full refund of your money. If the last day for giving notice falls on a Sunday or holiday, notice is timely given if it is mailed or delivered as specified on the next business day. Refunds must be made within thirty days of receipt of the cancellation notice by the campground operator.

32-2198.06. Execution of notes; assignment; purchaser's defenses retained

A. A membership camping contract shall not require the execution of any note or series of notes by the purchaser which if separately negotiated would terminate as to third parties any right of action or defense which the customer has against the campground operator.

B. A right of action or defense arising out of a membership camping contract which the customer has against the campground operator shall not be terminated by assignment of the contract whether or not the assignee acquires the contract in good faith and for value.

32-2198.08. Denial, suspension or revocation of a public report

A. The commissioner may order that a public report be denied, suspended or revoked or an application for a public report be denied if he finds that the order is necessary for the protection of purchasers or owners of membership camping contracts and that any of the following is true:

1. The membership camping operator's advertising, sales techniques or trade practices have been or are deceptive, false or misleading under section 44-1522.
2. The membership camping operator has failed to comply with any provision of this article or the rules pertaining to this article.
3. The membership camping operator is not financially responsible or has insufficient capital to warrant its offering or selling membership camping contracts or to complete proposed amenities.
4. The membership camping operator's offering of membership camping contracts has worked or would work a fraud on purchasers or owners of membership camping contracts.
5. The membership camping operator's application or any amendment to the application is incomplete in any material respect.
6. The membership camping operator has represented or is representing to purchasers in connection with the offer or sale of a membership camping contract that any property, facility, campsite or other development is planned without reasonable grounds to believe that the property, facility, campsite or other development will be completed within a reasonable time.
7. The membership camping operator has withdrawn from use all or any substantial portion of any campground, the rights of all purchasers at the affected location have not expired and no adequate provision has been made to provide a substitute campground of comparable quality and attraction in the same general area within a reasonable time after the withdrawal.
8. The membership camping operator or its agent made a representation which is false or misleading in any application, document or statement filed with the commissioner.
9. The membership camping operator has disseminated or caused to be disseminated any false or misleading promotional materials in connection with a campground.
10. The membership camping operator or any of his agents has failed to comply with any representation in the final public report or membership camping contract.
11. The owner, operator, agent, officer, director or partner, trust beneficiary holding ten per cent or more beneficial interest or, if a corporation, any stockholder owning ten per cent or more of the stock in such corporation has:

(a) Been convicted of a felony or misdemeanor involving fraud, dishonesty, moral turpitude or any like offense, or involving a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

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

(c) Had an administrative order entered against him by a real estate regulatory agency or security regulatory agency.
(d) Had an adverse decision or judgment entered against him involving fraud or dishonesty or involving the conduct of any business in or a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.
(e) Disregarded or violated any of the provisions of this chapter or the rules of the commissioner pertaining to this chapter.
(f) Participated in, operated or held an interest in any entity to which subdivision (b), (c), (d) or (e) applies.

B. Within thirty days after receipt of the order of denial, an applicant objecting to the denial of a public report may file a written request for a hearing. The commissioner shall hold the hearing within twenty days thereafter unless the party requesting the hearing has requested a postponement. If the hearing is not held within twenty days after a request for a hearing is received, plus the period of any postponement, or if a proposed decision is not rendered within forty-five days after submisssion, the order of denial shall be rescinded and a public report issued.

C. The commissioner, on his own motion or if he has received a complaint and has satisfactory evidence that grounds exist as provided in subsection A of this section or that any person has deviated from the provisions of the public report, may conduct an investigation of such matter, may issue a summary order as provided in section 32-2157 or may hold a public hearing and, after the hearing, may issue such order or orders as he deems necessary to protect the public interest and ensure compliance with the law, the rules or the public report, or the commissioner may bring an action in any court of competent jurisdiction against the person to enjoin the person from continuing the violation, engaging the violation or doing any act in furtherance of the violation. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by a person of any unlawful practices, or which may be necessary to restore to any person in interest any monies or property, real or personal, which may have been acquired by means of any practice in this article declared to be unlawful.

D. If the commissioner has reasonable cause to believe that a person has engaged or is engaging in a practice declared to be unlawful by this article and that the person is concealing assets or self or has made arrangements to conceal assets or is about to leave this state and that the public health, safety or welfare so requires, the commissioner may apply to the superior court, ex parte, for an order appointing a receiver of the assets of the person or for a writ of ne exeat, or both.

E. The court, on receipt of an application for the appointment of a receiver or for a writ of ne exeat, or both, shall examine the verified application of the commissioner and any other evidence that the commissioner may present the court. If satisfied that the interests of the public require the appointment of a receiver or the issuance of a writ of ne exeat without notice, the court shall issue an order appointing the receiver or issue the writ, or both. Unless the court determines that the interests of the public will be harmed by the giving of notice, the court shall set a time for a hearing and require that such notice be given as the court deems satisfactory.

F. If the court appoints a receiver without notice, the court shall further direct that a copy of the order appointing a receiver be served on the person alleged to have engaged or to be engaging in a practice declared to be unlawful under this article by delivering the order to the last address of the person which is on file with the department. The order shall inform the person that he has the right to request a hearing within ten days of the date of the order and, if requested, that the hearing shall be held within twenty days from the date of the order.

G. If the commissioner determines that the managing camp operator is not financially responsible or has insufficient capital, the commissioner may require a surety bond or if one is unobtainable, other evidence of financial assurances in accordance with generally accepted accounting principles and generally accepted commercial standards of financial responsibility satisfactory to the commissioner to assure the financial responsibility and sufficient capitalization of the membership camping operator or to assure the completion of proposed amenities.

32-2198.09. Fees

A. Each application for a membership camping public report shall be accompanied by a fee of five hundred dollars.

B. Each application for amendment or renewal of a public report shall be accompanied by a fee of three hundred dollars.
C. Each application for a special order of exemption shall be accompanied by a fee of one hundred dollars.

32-2198.10. Advertising plans; disclosures; lotteries and drawings

A. Any advertising, communication or sales literature, including oral statements by salespersons or any other person, shall not contain:

1. Any untrue statement of material fact or any omission of material fact which would make the statements misleading in light of the circumstances under which such statements were made.
2. Any statement or representation that the membership camping contracts are offered without risk or that loss is impossible.
3. Any statement or representation or pictorial presentation of proposed improvements or nonexistent scenes without clearly indicating that the improvements are proposed and the scenes do not exist.

B. It is unlawful for any owner, developer, agent or employee of any membership camping project or other person with intent directly or indirectly to sell membership camping contracts to authorize, use, direct or aid in any advertising, communication, sales literature or promotional practice which violates this section.
C. This section does not apply to the owner or publisher of a newspaper or magazine or to any other publication of printed matter in which an advertisement appears or to the owner or operator of a radio or television station which disseminates an advertisement if the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser.
D. The commissioner may adopt rules permitting lotteries and drawings for the purpose of inducing prospective buyers to attend a sales presentation or to take a campground tour and establishing requirements and conditions for lotteries and drawings. These requirements and conditions shall include that:

1. No membership camping operator may hold a lottery or drawing who does not also have pursuant to section 32-2198.14 a recorded nondisturbance agreement, a bond or irrevocable letter of credit or some other financial assurance acceptable to the commissioner. The commissioner may require the campground operator to provide an independent auditor's report by a certified public accountant or other expert concerning the campground operator's financial condition.
2. No lottery or drawing may be held unless approved in advance by the commissioner.
3. The membership camping operator shall submit an application for approval of a lottery or drawing on a form approved by the commissioner and a fee of at least one hundred dollars and not more than two hundred fifty dollars.
4. The department shall require the applicant to pay all costs of field inspections to audit or oversee the operation of any drawing or lottery, including mileage, lodging and time spent in the field inspections and any experts employed to assist the department.
5. The deed, title, cash amount or other prize or guarantee of the prize shall be held by the department or in a neutral escrow by a disinterested third party approved by the department, pending the award of the prize to the lottery or drawing winner.
6. Any lottery or drawing shall be limited in time, scope and geographic location. The estimated odds of winning and terms of the lottery or drawing shall be disclosed in writing to participants.
7. No fee may be charged to any person who participates in a lottery or drawing.
8. The commissioner may deny or revoke any authorization to conduct a lottery or drawing to any person if the campground operator or broker or a salesperson violates any statute or rule adopted or order issued by the commissioner.
9. Violations of any requirements or conditions set forth in this section or by rule shall be grounds for the commissioner to deny future applications to hold lotteries or drawings.
10. The membership camping broker is responsible at all times for the lawful and proper conduct of any lottery or drawing.

E. No campground facility may be advertised or promoted in any way that appears to guarantee the unimpeded use of or access to campground properties, if a blanket encumbrance exists on the properties, unless a nondisturbance or other acceptable agreement has been recorded, filed and accepted by the department pursuant to section 32-2198.14.

32-2198.11. Purchaser's remedies

A. A membership camping contract entered into in substantial reliance on any false, fraudulent or misleading information, representation, notice or advertisement of the campground operator or its agents is voidable at the option of the purchaser. Reasonable attorney fees shall be awarded to the prevailing party in any action under this chapter.

B. Any waiver of the provisions of this article by the purchaser is void.

C. A purchaser who is injured by a violation of this article may bring an action for the recovery of damages, reasonable attorney fees and, if the violation is wilful, punitive damages in the amount of five thousand dollars per violation.

32-2198.13. Construction of this article

The provisions of this article are in addition to all other causes of action, remedies and penalties available to this state or to the purchaser.

32-2198.14. Advertising availability of campgrounds to campground members; blanket encumbrances

A. No membership campground may be advertised or promoted in any way that guarantees the unimpeded use of or access to the campground's properties unless the membership camping operator applies for and receives approval by filing information satisfactory to the department guaranteeing that the purchasers of membership camping contracts cannot be denied access to and use of campground properties pursuant to the membership camping contracts. The department may require the applicant to pay for any costs of experts hired by the department to evaluate the application, nondisturbance clause or financial condition of the applicant. No lien or encumbrance may be construed to deny access and use.

B. The applicant shall include satisfactory evidence that purchasers of campground memberships acquire an unimpeded and irrevocable right of access to and use of campground properties by means acceptable to the department, including:

1. A duly recorded nondisturbance agreement from each holder of a lien or encumbrance on a membership campground that provides minimally for:
    (a) Enforcement of the agreement by individual campground members.
    (b) Effectiveness of the agreement notwithstanding insolvency, bankruptcy of the membership campground operator or sale of the campground.
    (c) Binding successors in interest of both the campground membership operator and each holder of a lien or encumbrance.
    (d) Alternative means to continue operation of the campground if the campground operator, holder of a lien or encumbrance or purchaser who obtains title or possession of the campground ceases to act as operator.
2. A bond or irrevocable letter of credit posted by the membership camping operator in an aggregate principal amount sufficient to cover the indebtedness remaining under any lien or encumbrance.
3. Other financial assurances reasonably acceptable to the department.

Article 11 Administrative Hearings

32-2199. Administrative adjudication

Pursuant to title 41, chapter 6, article 10, an administrative law judge shall adjudicate complaints regarding and ensure compliance with:

1. Title 33, chapter 9 and condominium documents.
2. Title 33, chapter 16 and planned community documents.

32-2199.01. Hearing; rights and procedures

A. For a dispute between an owner and a condominium association or planned community association that is regulated pursuant to title 33, chapter 9 or 16, the owner or association may petition the department for a hearing concerning violations of condominium documents or planned community documents or violations of the statutes that regulate condominiums or planned communities. The petitioner shall file a petition with the department and pay a filing fee in an amount to be established by

the commissioner. The filing fee shall be deposited in the condominium and planned community hearing office fund established by section 32-2199.05. On dismissal of a petition at the request of the petitioner before a hearing is scheduled or by stipulation of the parties before a hearing is scheduled, the filing fee shall be refunded to the petitioner. The department does not have jurisdiction to hear:

1. Any dispute among or between owners to which the association is not a party.
2. Any dispute between an owner and any person, firm, partnership, corporation, association or other organization that is engaged in the business of designing, constructing or selling a condominium as defined in section 33-1202 or any property or improvements within a planned community as defined in section 33-1802, including any person, firm, partnership, corporation, association or other organization licensed pursuant to this chapter, arising out of or related to the design, construction, condition or sale of the condominium or any property or improvements within a planned community.

B. The petition shall be in writing on a form approved by the department, shall list the complaints and shall be signed by or on behalf of the persons filing and include their addresses, stating that a hearing is desired, and shall be filed with the department.

C. On receipt of the petition and the filing fee the department shall mail by certified mail a copy of the petition along with notice to the named respondent that a response is required within twenty days after mailing of the petition showing cause, if any, why the petition should be dismissed.

D. After receiving the response, the commissioner or the commissioner's designee shall promptly review the petition for hearing and, if justified, refer the petition to the office of administrative hearings. The commissioner may dismiss a petition for hearing if it appears to the commissioner's satisfaction that the disputed issue or issues have been resolved by the parties.

E. Failure of the respondent to answer is deemed an admission of the allegations made in the petition, and the commissioner shall issue a default decision.

F. Informal disposition may be made of any contested case.

G. Either party or the party's authorized agent may inspect any file of the department that pertains to the hearing, if the authorization is filed in writing with the department.

H. At a hearing conducted pursuant to this section, a corporation may be represented by a corporate officer, employee or contractor of the corporation who is not a member of the state bar if:

1. The corporation has specifically authorized the officer, employee or contractor of the corporation to represent it.
2. The representation is not the officer's, employee's or contractor of the corporation's primary duty to the corporation but is secondary or incidental to the officer's, employee's or contractor of the corporation's, limited liability company's, limited liability partnership's, sole proprietor's or other lawfully formed and operating entity's duties relating to the management or operation of the corporation.

32-2199.02. Orders; penalties; disposition

A. The administrative law judge may order any party to abide by the statute, condominium documents, community documents or contract provision at issue and may levy a civil penalty on the basis of each violation. All monies collected pursuant to this article shall be deposited in the condominium and planned community hearing office fund established by section 32-2199.05 to be used to offset the cost of administering the administrative law judge function. If the petitioner prevails, the administrative law judge shall order the respondent to pay to the petitioner the filing fee required by section 32-2199.01.

B. The order issued by the administrative law judge is binding on the parties unless a rehearing is granted pursuant to section 32-2199.04 based on a petition setting forth the reasons for the request for rehearing, in which case the order issued at the conclusion of the rehearing is binding on the parties. The order issued by the administrative law judge is enforceable through contempt of court proceedings and is subject to judicial review as prescribed by section 41-1092.08.

32-2199.04. Rehearing; appeal

A. A person aggrieved by a decision of the administrative law judge may apply for a rehearing by filing with the commissioner a petition in writing pursuant to section 41-1092.09. Within ten days after filing such petition, the commissioner shall serve notice of the request on the other party by mailing a copy of the petition in the manner prescribed in section 32-2199.01 for notice of hearing.

B. The filing of a petition for rehearing temporarily suspends the operation of the administrative law judge's action. If the petition is granted, the administrative law judge's action is suspended pending the decision on the rehearing.

C. In the order granting or denying a rehearing, the commissioner shall include a statement of the particular grounds and reasons for the commissioner's action on the petition and shall promptly mail a copy of the order to the parties who have appeared in support of or in opposition to the petition for rehearing.

D. In a rehearing conducted pursuant to this section, a corporation may be represented by a corporate officer or employee who is not a member of the state bar if:

1. The corporation has specifically authorized such officer or employee to represent it.
2. Such representation is not the officer's or employee's primary duty to the corporation but is secondary or incidental to such officer's or employee's duties relating to the management or operation of the corporation.

32-2199.05. Condominium and planned community hearing office fund

A. The condominium and planned community hearing office fund is established in the department to be administered by the commissioner. Monies in the fund are continuously appropriated. On notice from the commissioner, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

B. Monies in the condominium and planned community hearing office fund shall be used to reimburse the actual costs of the office of administrative hearings in conducting hearings pursuant to section 32-2199.01. Monies remaining in the fund may be used by the department to offset the costs of administering cases filed pursuant to section 32-2199.01.

Arizona Administrative Code, Title 4. Professions and Occupations, Chapter 28. State Real Estate Department

Article 1. General Provisions

R4-28-101. Definitions

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

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

"ADEQ" means the Arizona Department of Environmental Quality.

"ADWR" means the Arizona Department of Water Resources.

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

"Credit hour" means 50 minutes of instruction.

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

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

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

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

"Individual" means a natural person.

"Material change" means any significant change in the size or character of the development, development plan, or interest being offered, or a change that has a significant effect on the rights,

duties, or obligations of the developer or purchaser, or use and enjoyment of the property by the purchaser.

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

Has an Arizona driver's license;

Has an Arizona motor vehicle registration;

Has been employed in Arizona;

Has an Arizona voter registration;

Has transferred banking services to Arizona;

Has changed permanent address on all pertinent records;

Is a domestic corporation or limited liability company;

Has filed an Arizona income tax return with the Department of Revenue during the previous or current tax year; or

Has received benefits from any Arizona public service department or agency, such as welfare, food stamps, unemployment benefits, or worker's compensation.

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

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

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

B. In computing any period of time allowed by these rules or by an order of the Commissioner, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the period is included unless it is Saturday, Sunday, or a legal holiday in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Unless the time period is specified as calendar days, when the period of time allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

R4-28-103. Licensing Time-frames

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

B. Administrative completeness review.

1. The applicable administrative completeness review time-frame established in Table 1 begins on the date the Department receives the application. The Department shall notify the applicant in writing within the administrative completeness review time-frame whether the application is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant, the license application shall be considered complete.

2. An applicant with an incomplete license application shall supply the missing information within the completion request period established in Table 1. The administrative completeness review time-frame is suspended from the date the Department mails the notice of missing information to the applicant until the date the Department receives the information.

3. If the applicant fails to submit the missing information before expiration of the completion request period, the Department shall close the file, unless the applicant requests an extension in writing from the Department before expiration of the Response to Completion Request period in Table 1. The Department shall grant the applicant one extension for the number of days identified as the Response to Completion Request period for the type of license. An applicant whose file has been closed may obtain a license by submitting a new application.

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

1. The Department may schedule an inspection.

2. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional

information period provided in Table 1. The substantive review time-frame is suspended from the date the Department mails the request until the information is received by the Department. If the applicant fails to provide the information identified in the written request the Department shall consider the application withdrawn unless the applicant requests in writing an extension from the Department before expiration of the Response to Additional Information period in Table 1. The Department shall grant the applicant one extension for the number of days identified in the Response to Additional Information period for the type of license.

3. If the application is denied, the Department shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant's right to seek a fair hearing, and the time period for appealing the denial.

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

1. Before the expiration date and there are no changes in the applicant's license or qualifications pursuant to R4-28-301(A), the Department shall send the applicant notice that the license is renewed;

2. After the expiration date, or if a substantive review is required because the applicant wishes to make changes to or has answered in the affirmative any question on the license questionnaire, the Department shall process the application as a modified or amended application.

R4-28-104. Development Inspection Fee

A fee shall be charged for a development site inspection pursuant to A.R.S. §§ 32-2182, 32-2194.02, 32-2195.02, 32-2197.05, and 32-2198.04, before or after issuance of a public report. Multiple inspections and fees may be required based on development circumstances.

Table 1. Time-frames (Calendar Days)

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Review	Response to Additional Information	Overall Time-Frame
Broker or Salesperson	A.R.S. § 32-2122					
(Individual)	A.A.C. R4-28-301	30	30	30	30	60
Individual Renewal	A.A.C. R4-28-303	30	30	30	30	60
Modified/Amended (Change of Name, Address, or License Status)	A.A.C. R4-28-303	30	30	30	30	60
Individual Reinstatement	A.A.C. R4-28-303	30	30	30	30	60
Corp/LLC/Partnership/ PC/PLC/Desig. Broker Status	A.R.S. § 32-2125 A.A.C. R4-28-302	60	30	60	60	120
Branch Office	A.R.S. § 32-2127	60	30	60	60	120
Entity/DB status Renewal	A.A.C. R4-28-303	60	30	60	60	120
Modified/Amended (Change of Name, Address, or License Status)	A.A.C. R4-28-303	60	30	30	60	120
Entity Reinstatement	A.A.C. R4-28-303	60	30	60	60	120
Temporary Broker	A.R.S. § 32-2133	60	30	60	60	120
Temp Cemetery Salesperson	A.R.S. § 32-2134	60	30	60	60	120
Membership Camping Cert. of Convenience	A.R.S. § 32-2134.01 A.A.C. R4-28-305	60	30	60	60	120
School Approval	A.R.S. § 32-2135(A) A.A.C. R4-28-404	10	15	20	15	30
Course Approval:	A.R.S. § 32-2135					
New (Live Instruction)	A.A.C. R4-28-404	10	15	20	15	30
New (Distance Learning)	A.A.C. R4-28-402 A.A.C R4-28-404	30	30	90	30	120
Instructor Approval	A.R.S. § 32-2135 A.A.C. R4-28-404	10	15	20	15	30

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Review	Response to Additional Information	Overall Time-Frame
ADVERTISING						
Membership Campground (only for lottery or drawing)	A.R.S. § 32-2198.10(D) A.R.S. § 32-2198.14 A.A.C. R4-28-503(D)	15	5	0	0	15
Subdivision (only for drawing or contest)	A.R.S. § 32-2183.01(I) A.A.C. R4-28-503(D) A.A.C. R4-28-503(D)	15	5	0	0	15
Time-Share (only for drawing or contest)	A.R.S. § 32-2197.17(I) A.A.C. R4-28-503(D)	15	5	0	0	15
Time Share (the offer of a premium)	A.R.S. § 32-2197.17(K) A.A.C. R4-28-503(D)	15	5	0	0	15
Development Application	A.R.S. § 32-2183(A) A.R.S. § 32-2195.03(A) A.R.S. § 32-2197.06 A.R.S. § 32-2198.02 A.A.C. R4-28-B1203q	40	40	60	40	100
Amended Report	A.R.S. § 32-2184 A.R.S. § 32-2195.10 A.R.S. § 32-2197.03 A.R.S. § 32-2198.01(D) A.A.C. R4-28-B1203	30	30	30	30	60
Certificate of Authority	A.R.S. § 32-2194.03(A)	40	40	60	40	100
Amended Certificate	A.R.S. § 32-2194.10 A.A.C. R4-28-B1204	30	30	30	30	60
WAIVERS						
Pre-license	A.R.S. § 32-2124 A.A.C. R4-28-401	15	60	30	0	45
Continuing Education	A.R.S. § 32-2130 A.R.S. R4-28-402	5	10	7	0	12
EXEMPTIONS						
Subdivision	A.R.S. § 2181.01 A.A.C. R4-28-B1202	40	40	40	40	80
Unsubdivided Lands	A.R.S. § 32-2195.01 A.A.C. R4-28-B1202	40	40	40	40	80
Time-Share	A.R.S. § 32-2197.13	40	40	40	40	80
Membership Camping	A.R.S. § 32-3198.03	40	40	40	40	80

ARTICLE 3. LICENSURE

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

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

1. A signed original licensure or renewal questionnaire, as applicable, disclosing any:

   a. Conviction for a misdemeanor or felony, or deferral of a judgment or sentencing for a misdemeanor or felony;

   b. Order, judgment, or adverse decision entered against the applicant involving fraud or dishonesty, or involving the conduct of any business or transaction in real estate, cemetery property, time-share intervals, membership camping contracts, or campgrounds;

   c. Restriction, suspension, or revocation of a professional or occupational license, or registration currently or previously held by the applicant in any state, district, or possession of the United States or under authority of any federal or state agency; any civil penalty imposed under the license, or any denial of a license; or

   d. Order, judgment, or decree permanently or temporarily enjoining the applicant from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, time-share intervals, membership camping contracts, campgrounds, securities, or involving consumer fraud or violation of the racketeering laws by the applicant, or payment from a recovery fund or fund of last resort due to the applicant's action or inaction.

2. If the applicant discloses information under subsection (A)(1), the applicant shall provide all of the following written documentation:

   a. A signed written statement describing in detail the circumstances surrounding the matter disclosed;

   b. A certified copy of any police report and court record that pertains to each crime for which the applicant has been convicted or for which sentencing or judgment has been deferred. If the applicant is unable to provide documents for each crime, the applicant shall provide written documentation from the court or agency having jurisdiction, stating the reason the records are unavailable.

   c. Three written and dated references from individuals, 18 years or older and not related by blood or marriage to the applicant, who have known the applicant for at least one year before the date of the Department's receipt of the application. Each reference shall be dated no more than one year from the date the application is submitted to the Department and include the writer's name, address, and telephone number;

   d. A 10-year work history, stating each employer's name and address, supervisor's name and telephone number, position held, and dates of employment, specifying any periods of unemployment;

   e. A certified copy of all documents pertaining to every reprimand, censure or sanction, order assessing a civil penalty, or denying, suspending, restricting, or revoking any professional or occupational license currently held or held by the applicant within the last 10 years;

   f. A certified copy of any civil judgment awarded by a court of competent jurisdiction against the applicant that included findings of fraud or dishonest dealings by the applicant;

   g. A certified copy of any document evidencing a payment of a judgment on behalf of the applicant by any recovery fund administered by any state or professional or occupational licensing board, or repayment by the applicant as a judgment debtor to any recovery fund administered by any state or professional or occupational licensing board. If an Arizona real estate or subdivision recovery fund matter, a written disclosure of the file number, approximate date, and approximate amount of payment and current repayment status satisfies this requirement.

h. A certified copy of any temporary or permanent order of injunction entered against the applicant;

i. Any other documentation that the applicant believes supports the applicant's qualifications for licensure.

3. A full set of fingerprints as prescribed in A.R.S. § 32-2108.01;

4. The appropriate license application and fee; and

5. Social security number, if the applicant is an individual.

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

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

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

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

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

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

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

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

1. The name, business address, telephone number, fax number and e-mail address, if any, and designated broker's name, license number and expiration date, and the signature of the designated broker;

2. Whether the broker is an individual, a sole proprietorship, corporation, partnership, limited liability company, professional corporation or professional limited liability company;

3. The mailing address, if different than the business address;

4. The d.b.a. name, if applicable;

5. The bank name and location of each of the broker's trust accounts, if any; and

6. The name and number of the trust account.

B. Partnership.

1. When the applicant is a partnership, the applicant shall name a broker to serve as designated broker:

a. The designated broker shall be a partner of the general partner if the general partner is a partnership.

b. The designated broker shall be a corporate officer of the corporate partner if the general partner is a corporation.

c. The designated broker shall be a member of the member-managed limited liability company or manager of the manager-managed limited liability company if the general partner is a limited liability company.

d. A limited partner of a partnership shall not be designated broker for the partnership.

2. In addition to the information provided in subsection (A), an applicant for an employing broker's license as a partnership shall, if applicable, provide:

a. The name and address of each partner, and the name of any other person with a beneficial or membership interest in the partnership;

b. An agreement signed by all partners, stating the name of the partner appointed to act as the designated broker for the partnership;

c. A written statement signed by the designated broker stating that:

i. The partnership has applied for a broker's license in Arizona;

ii. Each partner has read the complete application on the named partnership as submitted to the Department;

iii. All the information contained in the application is true;

iv. Each general partner is qualified to do business in Arizona; and

v. The name of the partnership complies with A.R.S. § 29-245 and subsections (H) and (I), and is not likely to be misleading or confusing;

d. A copy of the partnership agreement and any amendments;

e. A copy of the application for partnership registration stamped "Received and Filed" by the Arizona Secretary of State; and

f. Any other information required by the Department to verify the applicant's qualifications.

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

1. The name and address of each officer and director, and the name and address of each shareholder controlling or holding more than 10% of the issued and outstanding common shares, or 10% of any other proprietary, beneficial, or membership interest in the corporation;

2. A copy of the Articles of Incorporation and any amendments stamped "Received and Filed" by the Arizona Corporation Commission. If more than one year has elapsed between the date the Articles were stamped "Filed" by the Arizona Corporation Commission and the application for the corporate license, a Certificate of Good Standing from the Arizona Corporation Commission is required;

3. A corporate resolution stating that the designated broker was elected or appointed as a corporate officer, naming the office held, and stating that the individual was appointed to act as designated broker for the corporation;

4. A written statement signed by the designated broker stating that:

a. The corporation has applied for a broker's license in Arizona;

b. Each officer and director has read the complete application on the named corporation as submitted to the Department;

c. All the information contained in the application is true;

d. The name of the corporation complies with A.R.S. § 10-401 and 4 A.A.C. 28, Article 10, and is not likely to be misleading or confusing; and

e. Each corporation is qualified to do business in Arizona; and

5. Any other information required by the Department to verify the applicant's qualifications.

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

1. The name and address of each member and manager, and the name and address of any person controlling or holding more than 10% of the membership interest in the limited liability company;

2. A copy of the Articles of Organization and any amendments stamped "Received and Filed" by the Arizona Corporation Commission. If more than one year has elapsed between the date the Articles were stamped "Filed" by the Arizona Corporation Commission and the application for the limited liability company license, a Certificate of Good Standing from the Arizona Corporation Commission is required;

3. A company resolution signed by all members stating whether management of the limited liability company is established as manager-controlled or member-controlled and the name of the member or manager appointed to act as the designated broker;

4. A written statement signed by the designated broker stating that:

a. The limited liability company has applied for a broker's license in Arizona;

b. Each member and manager has read the complete application on the limited liability company as submitted to the Department;

c. All of the information contained in the application is true;

d. The name of the limited liability company complies with A.R.S. § 29-602 and 4 A.A.C. 28, Article 10, and is not likely to be misleading or confusing; and

e. The limited liability company is qualified to do business in Arizona.

5. A copy of the operating agreement and any amendments; and

6. Any other information required by the Department to verify the applicant's qualifications.

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

1. The agreement and plan of merger;

2. The Certificate of Good Standing;

3. The Certificate of Merger on file in the state in which the applicant is domiciled;

4. The Certificate of Merger on file with the Arizona Corporation Commission;

5. A filed and stamped Articles of Merger;

6. A filed and stamped application for registration of the foreign limited liability company, foreign corporation, or partnership;

7. Any other information required by the Department to verify the applicant's qualifications.

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

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

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

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

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

K. Change of designated broker.

1. To resign as an employing broker's designated broker a broker shall submit to the Department a copy of the broker's letter of resignation and shall return the licenses issued to the designated broker and the employing broker to the Department.

2. A licensed entity may remove its designated broker by submitting to the Department a copy of the partnership agreement, corporate or company resolution removing the broker and returning to the Department the licenses issued to the employing broker and designated broker.

3. The employing broker whose designated broker has resigned or been removed shall cease conducting business until the employing broker has complied with subsection (K)(4).

4. An employing broker whose designated broker has resigned or been removed may continue business without interruption if the incoming designated broker on the same day as, or the next business day following, the departure or removal of the outgoing designated broker:

a. Completes, signs, and submits the Change Form as prescribed in R4-28-303; and

b. If the entity is a corporation or limited liability company, submits a resolution appointing the new broker to act on its behalf; or

c. If the entity is a partnership, submits an amendment to the partnership agreement naming the new broker to act on its behalf.

L. Non-resident employing broker.

1. An employing broker that holds a non-resident license and maintains a principal office outside this state shall:

a. Maintain a trust account or licensed escrow account situated in Arizona for monies received from Arizona transactions;

b. Maintain, in Arizona, copies of all documents pertaining to any Arizona transactions handled by the broker;

c. Provide a written statement to the Department identifying the name, address, and telephone number of the person residing in Arizona, such as a statutory agent or attorney, who has possession of the records; and

d. Identify the physical location of the records.

2. An employing broker that holds a non-resident license and employs a licensed salesperson or broker within the state shall:

a. Establish an office in Arizona and appoint a branch manager; and

b. Provide a statement describing how the licensed employee shall be supervised.

3. An employing broker who holds a non-resident license shall notify the Department within 10 days of any change to any information required under this Section.

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

A. Renewal.

1. If a salesperson or broker makes a timely and sufficient application for license renewal or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the Department, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the Commissioner's order or a later date fixed by order of the reviewing court.

2. Any salesperson or broker applying for a license renewal shall submit the following information on the Application for License Renewal form:

a. Any change or correction to the applicant's licensing information;

b. Whether the renewal application is late;

c. If the renewal is for an active license and is filed in paper format, the Department shall require the application to include the date and signature of the designated broker, authorized branch office manager, or authorized designee under A.R.S. § 32-2127(D). If signed by a branch manager or designee, the branch manager or designee shall attach a copy of the authorization or designation;

d. The signature of the applicant, attesting to the truthfulness of the application information;

e. A completed certification questionnaire, providing details and supporting documents for any affirmative response not previously disclosed in writing to the Department concerning judgments, orders, professional licenses, or convictions, as required under R4-28-301(A).

f. To renew as designated broker for an employing broker, the designated broker shall complete and submit a signed Broker Supervision & Control Audit Declaration for the sole proprietorship or entity on whose behalf the broker acts as designated broker. The completed declaration shall:

i. Be dated and filed before or with the broker's renewal application, and submitted to the Department no earlier than 90 days before the broker's license expiration date;

ii. Be in the form prescribed by the Department;

iii. State the broker's compliance or non-compliance with, or the non-applicability of, specified statutes and rules; and

iv. Identify all of the broker's property management and trust accounts.

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

C. Reinstatement.

1. Any salesperson or broker applying for license reinstatement under A.R.S. § 32-2131 shall, in addition to the requirements in R4-28-301(A), submit the following information on the Application For Reinstatement form:

a. The type of license and status requested;

b. The applicant's legal name, business address, and telephone number;

c. Whether the license was suspended, canceled, terminated, or revoked, and the date of and reason for the action;
d. The license number of the applicant;
e. The mailing address, if different than the business address;
f. The name, address, and telephone number of the employing broker, if applicable;
g. The employer's trade or d.b.a. name, if any;
h. The date of the application; and
i. The signature of the applicant attesting to the above information and that the applicant is aware of the provisions in A.R.S. §§ 32-2131, 32-2153, and 32-2160.01.

2. If the license was active at the time of suspension, cancellation, revocation, or termination, the applicant shall provide the information required under R4-28-306.

D. A salesperson or broker shall notify the Department in writing within 10 days of any change in the individual's personal information or qualifications. The salesperson or broker shall include in the notice the individual's name, signature, license number, and:

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

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

1. If disclosing information required under R4-28-301 such as an adverse judgment, denial, or restriction of or disciplinary action against a professional or occupational license, or recovery fund payment on the person's own behalf or on behalf of any officer, director, member, manager, partner, owner, trust beneficiary holding 10 percent or more beneficial interest, stockholder owning 10 percent or more stock, or other person exercising control of the employing broker, file with the Department a written statement within 10 days of the occurrence, providing detailed information and, upon request by the Department, the supporting documentation identified in R4-28-301(A)(2);
2. If changing the employing broker's legal name, written notice stating the current name and proposed name, supporting documentation, and applicable fee;
3. If changing the employing broker's dba name, written notice stating the current dba name, if any, the proposed dba name, and applicable fee;
4. If changing the employing broker's physical address, changing or adding a business mailing address, or changing the address of any branch office, written notice within 10 days of the change stating the prior address and new address, return all current licenses issued to the former address, and pay the applicable fee;
5. If changing business telephone number, written notice within 10 days of the change, providing the prior and current number. The broker may provide additional telephone numbers or e-mail addresses;
6. If changing the structure or membership of the employing broker as provided in A.R.S. § 32-2125 (G), written notice within 10 days of the change including supporting documentation identified in R4-28-302;

7. If changing branch office managers at an established branch office of the employing broker, or changing the authority delegated to the branch office manager, the application form, applicable fee, and letter of authority that identifies the person appointed and specifies the duties delegated as provided by R4-28-304;

8. If closing a branch office, a written statement informing the Department within 10 days of the closure, accompanied by the branch office license and Department form severing the employment of or transferring to another branch office each employee at the branch;

9. If hiring a salesperson or broker, or transferring a salesperson or broker employed by the employing broker to another office of the employing broker, a change form that includes the name, license number, signature of the employee, and the branch office address where the employee will work, and applicable fee;

10. If severing a licensee employed by the employing broker, written notice and return of the employee's license within 10 days of the severance;

11. If opening or closing a broker's trust account, written notice within 10 days of the opening or closing that provides the name of the account, the account number, and the name and address of the bank where the account is located. If relocating or changing the name of a trust account, the designated broker shall include the information for the previous and new accounts;

12. If appointing a temporary broker, submit the information specified in R4-28-305 and in accordance with provisions of A.R.S. §§ 32-2127 or 32-2133, as applicable; or

13. If an employing broker is changing designated brokers, the information and documentation provided in R4-28-302(K).

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

1. Professional corporation.

a. The name of the professional corporation that includes the full or last name of each officer, director, and shareholder of the professional corporation as it appears in the Articles of Incorporation;

b. The name and business address of each officer, director, and shareholder in the corporation and a written statement that each holds a current and active real estate license;

c. A copy of the Articles of Incorporation, as amended, stamped "Received and Filed" by the Arizona Corporation Commission;

i. The Articles of Incorporation shall state that the corporation's sole purpose is to provide professional real estate, cemetery, or membership camping services, or real estate, cemetery, and membership camping services.

ii. If more than one year has elapsed between the date the Articles of Incorporation were stamped "Filed" by the Arizona Corporation Commission and the date of the application for a license as a professional corporation, the Department shall require the salesperson or associate broker to submit a Certificate of Good Standing from the Arizona Corporation Commission; and

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

2. Professional limited liability company.

a. The name of the professional limited liability company which includes the full or last name of each member of the professional limited liability company as it appears in the Articles of Organization;

b. The name and address of each member and manager in the limited liability company and a written statement that each holds a current and active real estate license;

c. A copy of the Articles of Organization, as amended, stamped "Received and Filed" by the Arizona Corporation Commission:

i. The Articles of Organization shall state that the limited liability company's sole purpose is to provide professional real estate, cemetery, or membership camping services, or real estate, cemetery, and membership camping services.

ii. If more than one year has elapsed between the date the Articles of Organization were stamped "Filed" by the Arizona Corporation Commission and the date of the application for a license as a professional limited liability company, the Department shall require the salesperson or associate broker to submit a certificate of Good Standing from the Arizona Corporation Commission.

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

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

3. To return a license from professional corporation or professional limited liability company status to individual status:

a. The name, license number, and dated signature of the salesperson or broker;

b. A written statement that the salesperson or broker no longer wishes to be licensed as a professional corporation or professional limited liability company; and

c. The change fee.

G. Administrative severance.

1. A salesperson or broker may request that the Department sever the salesperson's or broker's license from the employing broker. The salesperson or broker shall provide the following information on a form or in the manner prescribed by the Department:

a. The name, license number, and dated signature of the salesperson or broker seeking the severance; and

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

2. Upon receipt of the written request for severance as provided in subsection (G)(1)(a), the Department shall administratively sever the license and provide written notice to the employing broker, who shall return the severed person's license to the Department under subsection (E)(10).

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

A. To obtain a branch office license, the designated broker shall submit to the Department before operating the branch office the following information for each branch office of the employing broker on the Application for Branch Office form:

1. The name, date, and signature of the designated broker;
2. The license number and license expiration date of the employing broker;
3. The name, address, telephone, and license number of the main office;
4. The type of employing broker's license;
5. The employing broker's dba name, if applicable;
6. The address, telephone number, and fax number, if any, of the branch office; and
7. The name and license status of the salesperson or broker who is the branch office manager and the authority granted to the branch office manager, including any designation of authority under subsection (B).

B. Branch office manager. A designated broker may authorize in writing an associate broker or salesperson to act as a branch office manager to perform any of the following duties of the designated broker at the branch office. This designation does not relieve the designated broker from any responsibilities. Upon change of the branch manager, the designated broker shall submit a new authorization to the Department within 10 days of the change and shall retain a copy in the broker's main office for five years.

1. If the branch manager is an associate broker, the associate broker may, when dealing with branch office transactions:

a. Review and initial contracts,

b. Supervise the activity of salespersons and associate brokers,

c. Hire or sever a salesperson or associate broker,

d. Sign compensation checks,

e. Be a signer on the branch office trust account and property management trust account,

f. Write checks from the broker's trust accounts, and

g. Be responsible for the handling of all trust account funds administered by the branch manager.

2. If the branch manager is a salesperson, the salesperson may, when dealing with branch office transactions:

a. Perform office management tasks that are not statutory duties of the employing broker, and

b. Be a signer on the broker's trust account and property management trust account.

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

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

2. The broker shall display the subdivision or unsubdivided land name and the licensed name of the employing broker marketing the development in a prominent manner at the entrance to the temporary office.

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

A. Any individual applying for a temporary cemetery salesperson's license, a temporary broker's license, or a membership camping salesperson's certificate of convenience shall submit the following information and applicable fee to the Department:

1. The type of license requested;

2. The name, address, telephone number, and date of birth of the applicant;

3. The mailing address if different from the address in subsection (A)(2);

4. The name, business address, telephone number, fax number, if any, and license number of the employing broker; and

5. The branch office number, address, telephone number, and fax number, if any, where employed, if different than the employing broker in subsection (A)(4).

B. The designated broker shall submit an affidavit under A.R.S. § 32-2134 or 32-2134.01 for:

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

2. An applicant for a membership camping certificate of convenience stating that the applicant will be trained in membership camping and contract laws.

C. In addition to the information required in subsection (A), an applicant for a temporary broker's license pursuant to A.R.S. § 32-2133 shall submit the following information to the Department:

1. A copy of the death certificate or notice, if applicable, or a letter advising the Department of the broker's illness or disability; and

2. A letter from the surviving spouse, an attorney representing the broker or the broker's family, personal representative, or other responsible party, appointing an individual to serve as a temporary broker for 90 days.

R4-28-306. Unlawful License Activity

A. Unlawful license activity is:

1. The performance of acts requiring a license under A.R.S. § 32-2122 by a person who does not hold a current and active license;

2. The performance of acts requiring a license by a person on behalf of a broker other than the person's employing broker; or

3. A broker's employment of a person as a salesperson or broker if the person does not hold a current and active license issued to the person under that employing broker.

B. A person who conducts unlawful license activity shall submit to the Department, as soon as the person becomes aware that the activity has occurred, the following:

1. A written explanation of why the unlawful license activity occurred;

2. A signed statement from the person that the person will not conduct activities requiring licensure under A.R.S. § 32-2122 unless the person holds a current and active license to perform those acts;

3. A signed statement from the employing broker's designated broker, identifying all unlawful activity by the person on behalf of the employing broker;

4. Upon request by the Department:

a. A copy of all listing and employment agreements, offers or contract to buy, sell, lease, exchange, transfer, or manage real estate, cemetery property, or membership camping contracts prepared, negotiated or executed by the person while the person was not properly licensed under the employing broker;

b. Documentation listing all compensation received or to be received by the person based on transactions that occurred while the person was not properly licensed;

c. Documentation listing all compensation received or to be received by the person's employing broker and designated broker, if any, resulting from transactions that occurred while the person was not properly licensed if not provided in response to subsection (B)(4)(b); and

d. A signed statement from the person stating that the information provided under subsection (B)(4) is true and complete and that the copies provided are true copies of all contracts, agreements, statements, and leases and no relevant documents are omitted.

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

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

ARTICLE 4. EDUCATION

R4-28-401. Prelicensure Education Requirements; Waiver

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

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

B. If the waiver request is based on prior education, the applicant shall submit a letter to the Commissioner that includes or demonstrates:

1. The name, mailing, and business address, daytime telephone number, and signature of the applicant;
2. The type of license sought;
3. The name and address of the school;
4. The course description or curriculum, including credit hours; and
5. Completion of one or more real estate courses. Acceptable evidence includes;

a. A signed letter from a school representative or official transcript from a college or university, which indicates:

i. The starting and ending dates of the course;

ii. The number of semesters, quarters, and credit hours awarded per course; and

iii. Whether the course examination was passed.

b. Evidence of course completion provided as part of a certified license history from a state in which the applicant is currently or was previously licensed.

C. If the waiver request is based on experience, or education and experience, the applicant shall submit a letter to the Commissioner that includes:

1. A detailed resume covering the previous 10 years, indicating duties performed and the name and telephone number for each employer; and
2. An original certified license history, including disciplinary action if any, from the real estate regulatory agency in each state in which the applicant is currently licensed and from any other state in which the applicant was licensed during the preceding 10 years; and
3. One or more of the following:

a. Completion of one or more real estate courses. Acceptable evidence includes a signed letter from a school representative, or official transcript from a college or university, which identifies:

i. The starting and ending dates of the course;
ii. The number of semesters, or quarters, and credit hours awarded per course;
iii. Whether the course examination was satisfactorily passed.

b. Evidence of more than five years' experience in a real estate related field; or

c. Evidence of course completion provided as part of a certified license history from a state in which the applicant is currently or was previously licensed.

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

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

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

A. Continuing education requirements.

1. To be eligible for license renewal, a real estate salesperson or broker shall complete continuing education courses approved by the Department under R4-28-404, presented by a real estate school approved under R4-28-404, and taken since the salesperson's or broker's original licensure or effective date of the preceding license, whichever is later.

2. A real estate salesperson or associate broker applying for renewal shall submit proof of satisfactory completion of 24 credit hours of continuing education courses in the categories specified in subsection (A)(5). The renewal applicant shall complete a minimum of three hours in each of the mandatory categories under subsections (A)(5)(a) through (A)(5)(f). The renewal applicant shall take additional courses in the mandatory categories, or shall take courses in the business brokerage or general real estate categories described in subsection (A)(5)(g) and (A)(5)(h) to fulfill the required 24 credit hours.

3. A real estate designated broker applying for renewal shall submit proof of satisfactory completion of 24 credit hours of continuing education courses. The renewal applicant shall complete a minimum of three hours in each of the mandatory categories under subsections (A)(5)(a) through (A)(5)(f) and shall complete a Broker Management Clinic under A.R.S. 32-2136 approved in the Commissioner's Standards category under subsection (A)(5)(c). The renewal applicant shall take additional courses in the mandatory categories, or shall take courses in the business brokerage or general real estate categories described in subsection (A)(5)(g) and (A)(5)(h) to fulfill the required 24 credit hours.

4. A salesperson renewing for the first time may include credit for attendance at the Contract Writing class taken under A.R.S. § 32-2124(L) if taken within one year before the date of the salesperson's original licensure. A broker renewing for the first time may include credit for attendance at the Broker Management Clinic under A.R.S. § 32-2136 taken before the broker's original licensure date.

5. The categories for real estate continuing education courses are:

a. Agency law. The majority of class material concerns agency relationships and disclosure.

b. Contract law. The majority of class material concerns the contract formation and implementation, or the results of contract use, including:

i. Various contract forms and clauses, fundamentals, updates, options, offers, counter offers, first right of refusal, and exchanges;
ii. Contract writing;
iii. Required disclosures, problem-solving, and law and rule requirements;
iv. Recent court decisions and case law studies;
v. Breach of contract issues;
vi. Legal, ethical and agency considerations, procedures, and disclosures;
vii. Accommodating current financing procedures, requirements, and options.

c. Commissioner's standards. The majority of class material relates to license laws, including:

i. Article 26 of the Arizona Constitution;
ii. A.R.S. Title 32, Chapter 20, and A.A.C. Title 4, Chapter 28, which includes trust accounts, recordkeeping, license requirements, exemptions to licensure, commission payments, recovery fund provisions, development requirements, processes for public reports for and sale of subdivided and unsubdivided land,

membership campgrounds and time-shares, cemetery regulations, and grounds for disciplinary action and hearings.

iii. A.R.S. Title 44, Chapter 10, Article 3.1, Trade Names and Business Practices.

d. Real estate legal issues. The majority of class material concerns existing real estate law, including:

i. Sources of real estate law (constitutions, statutes, zoning, common), and the legal system;

ii. Land and its elements (air, mineral rights, real and personal property);

iii. Land, title, and interests in land, homestead, encumbrances, and the Landlord and Tenant Act;

iv. Easements, fixtures, land descriptions, ownership, deeds, and building restrictions;

v. Escrow procedures, financing documents, and lending laws and regulations, including Regulation Z;

vi. Wills and estates, taxes, bankruptcy law, securities laws, title insurance, and appraisal law;

vii. Case law studies, real estate fraud, disclosure law, interstate and international real estate;

viii. Commission issues and forms of business ownership;

ix. Homeowners Association regulations;

x. Real Estate Settlement Procedures Act (RESPA); and

xi. Environmental issues.

e. Fair housing. The majority of class material concerns equal opportunities in housing, including:

i. Americans with Disabilities Act, ADA architectural designs (construction and development), and pertinent court cases;

ii. Arizona and federal fair housing laws, including advertising, marketing, information, and enforcement;

iii. Housing developments, deed restrictions, affordable housing, elder housing, zoning, local ordinances, and disclosures;

iv. Commercial and residential concerns; and

v. Administrative procedures and business practices.

f. Disclosure. The majority of class material concerns the following:

i. Licensee's disclosure obligations to client and others;

ii. Seller's and buyer's disclosure obligations to each other;

iii. Common material facts warranting disclosure, and liability for failure to disclose;

iv. Avoiding inadvertent non-disclosures;

v. Transaction documents that should be reviewed;

vi. Common "red flags" in a real estate transaction;

vii. Homeowner associations and buyers' obligations to homeowner associations; and

viii. Advising buyers and sellers of common "red flags."

g. Business brokerage. The majority of class material concerns business brokerage including:

i. Business brokerage basics including introducing licensees to business brokerage, associated terminology, marketing, prospecting, listing, pricing, closing practices, the use of contracts related to and unique to business brokerage, and the application of business brokerage contracts;

ii. Business valuations and appraisals, and establishing an in-depth review of proper business valuation techniques for small, medium, and large businesses;

iii. Tax structure and considerations, tax law, and policy including subjects such as financing tools available, options available, and tax implications;

iv. Accounting for business brokers;

v. Agency in business brokerages, the use of contracts related to and unique to business brokerage, and the application of business brokerage contracts; and

vi. Disclosure issues in business brokerage, including common "red flags" in a business opportunity transaction, and advising buyers and sellers of common "red flags."

h. General real estate. The majority of class material concerns real estate, but does not fall within any of the categories listed in subsections (A)(5)(a) through (A)(5)(g), including:

i. Appraisal methodology;

ii. General finance, use of financial calculators, mathematics, and managing cash flow;

iii. History of development in metropolitan areas; and

iv. Introduction to property management.

6. The Department may require an individual applying for renewal to obtain credit hours based upon significant current issues in the real estate community. The Department shall notify licensees of a new requirement by written notice published in printed or electronic format.

7. The Department may grant continuing education credit for a course that does not have a certificate of approval under R4-28-404 if the applicant demonstrates to the satisfaction of the Commissioner that the course meets the requirements prescribed in R4-28-404 and the course content requirements of this Section.

8. An applicant may substitute subject matter hours within a 90-hour broker's prelicensure course that meet the criteria for credit under subsections (A)(5)(a) through (A)(5)(h), if taken since the last license renewal, for the continuing education credit required in subsection (A)(2) or (3).

9. If any change in the continuing education course requirements occurs during a renewal applicant's license period and the applicant has fully complied with the continuing education requirement in effect before the change occurs, the Department shall consider the renewal applicant to be in compliance with the continuing education requirements for the license period.

B. Continuing education waiver. Under A.R.S. § 32-2130, the Commissioner may waive all or a portion of the continuing education requirement or grant additional time to complete a continuing education requirement when a salesperson or broker submits a written request to the Commissioner and shows good cause for the waiver or additional time.

1. Good cause may include:

a. A person employed by the state or political subdivision establishes to the satisfaction of the Commissioner that the person's employment during the prior license period involved real estate-related matters;

b. Any officer or employee of the state whose license is on an inactive status due to a possible conflict of interest or other employment requirement;

c. The person demonstrates successful completion of a course on topics specifically related to the person's field of real estate practice;

d. An approved real estate instructor requests a waiver for a course the instructor has taught;

e. The salesperson or broker demonstrates other extraordinary circumstances.

2. A salesperson or broker is granted additional time by the Commissioner to complete the continuing education requirement for license renewal shall complete the continuing education hours by the deadline or be subject to disciplinary action.

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

D. Distance learning.

1. Only a school holding a Certificate of Approval shall offer a distance learning course. The school shall obtain course approval from the Department before advertising the course as approved by the Department for credit hours and before issuing Department credit hours for the course to students.

2. The Department shall not approve a distance learning course unless it contains:

a. Individual modules of instruction for delivery on a computer or other interactive program;

b. At least one learning objective for each module of instruction. The learning objective shall ensure that if all the objectives are met, the entire content of the course is understood;

c. A structured learning method to enable the student to attain each learning objective;

d. A diagnostic assessment of the student's performance during each module of instruction;

i. The assessment shall measure what the student learned throughout the module of instruction, and

ii. Assess the comprehension of each concept covered in the module;

e. Remediation.

i. Repetition of a module if a student is deficient in a diagnostic assessment; and

ii. Continuous repetition of the module until the student understands the content material.

3. An approved instructor shall teach and an approved instructor or the school director shall grade distance learning courses. The instructor or school director shall:

a. Provide the student with assistance, if required;

b. Obtain a signed certification statement from the student indicating that the student has completed each assignment of instruction; and

c. Certify the student as completing a distance learning course only if the student:

i. Completes all required instructional modules,

ii. Attends any required hours of live instruction or testing, or both, for a given course; and

iii. Passes a final examination.

4. As part of its application for approval of a distance learning course, a school shall file a plan with the Department describing how the school will deal with hardware and software failure.

R4-28-403. License Examinations

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

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

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

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

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

1. The name, address, telephone number, and fax number, if any, of the school;

2. The name of the owner and d.b.a. name, if any;

3. Whether the owner is a sole proprietorship, partnership, trust, limited liability company, or corporation;

4. The name, address, telephone number, and percentage ownership of each person, entity, or beneficiary holding or controlling 10% or more financial interest in the school;

5. The name of each individual authorized to act on behalf of the school and sign continuing education certificates or prelicensure verifications, or both;

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

7. In addition to the information required in R4-28-301(A), each school owner, administrator, director, and instructor shall provide a statement of the individual's:

a. Education,

b. Teaching experience, and

c. Employment history.

8. If the owner is a partnership, a copy of the partnership agreement naming the partner authorized to act on its behalf;

9. If the owner is a corporation or limited liability company, a copy of:

a. A corporate or company resolution or operating agreement naming the officer, member, or manager authorized to execute the Certificate of Approval form;

b. A current Certificate of Good Standing from the Arizona Corporation Commission;

c. The latest annual report on file with the Arizona Corporation Commission;

d. The Articles of Incorporation or Organization, as amended.

10. The location of school registration and licensing certification records.

B. Certificate of Course Approval. Any school offering a course of study for original or renewal licensure of a real estate applicant shall apply for and possess a Certificate of Course Approval for each course offered by the school. The school's authorized representative shall submit the following information:

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

C. Instructor approval. Any person wishing to teach an approved real estate course shall apply for an instructors approval, and shall have at least one of the following in the proposed subject area:

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

D. The school shall maintain a record for five years of each student attending the school. The record shall include:

1. The name of each student;
2. The dates of attendance;
3. The title of each course taken;
4. The course number, category, and credit hours awarded;
5. The final grade or score in each prelicensure course; and
6. The original signature roster for each course or course segment taught.

E. The prospective student shall sign an agreement or application to enroll, presented to the student by the school representative, that includes the following, in bold type and capital letters:

1. The course or course segment title within a curriculum,
2. The total credit hours applicable for licensure or renewal,
3. The cost of each course,
4. A statement of the refund policy, and
5. A statement of any job placement service.

F. The Department does not consider lists of employers given to graduates to be a placement service. The school may advertise job placement services only if:

1. Student referrals result from direct contact between the school placement service and prospective employers,
2. Documented evidence of student referrals is maintained and includes:
a. The number of referrals to prospective employers per student,
b. Results of referrals,
c. Final placement or other disposition.

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

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

R4-28-405. Business Brokerage Specialist Designation

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

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

ARTICLE 5. ADVERTISING

R4-28-502. Advertising by a Licensee

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

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

C. A salesperson or broker shall ensure that all advertising contains accurate claims and representations, and fully states factual material relating to the information advertised. A salesperson or broker shall not misrepresent the facts or create misleading impressions.
D. A school shall include its name, address and telephone number in all advertising of Department-approved courses. The school owner, director, or administrator shall supervise all advertising. The school owner shall ensure that the school's advertising is accurate.
E. A salesperson or broker shall ensure that all advertising identifies in a clear and prominent manner the employing broker's legal name or the dba name contained on the employing broker's license certificate.
F. A licensee who advertises property that is the subject of another person's real estate employment agreement shall display the name of the listing broker in a clear and prominent manner.
G. The designated broker shall supervise all advertising, for real estate, cemetery, or membership camping brokerage services.
H. A licensee shall not use the term "acre," either alone or modified, unless referring to an area of land representing 43,560 square feet.
I. Before placing or erecting a sign giving notice that specific property is being offered for sale, lease, rent, or exchange, a salesperson or broker shall secure the written consent of the property owner, and the sign shall be promptly removed upon request of the property owner.
J. The provisions of subsections (E) and (G) do not apply to advertising that does not refer to specific property.
K. Trade Names.

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

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

R4-28-503. Promotional Activities

A. A licensee shall not describe a premium offered at no cost or reduced cost to promote sales or leasing as an "award," or "prize," or use a similar term.
B. A licensee shall clearly disclose to a person in writing the terms, costs, conditions, restrictions, and expiration date of an offer of a premium before the person participates in the offer.
C. Unless otherwise provided by law, a person shall not solicit, sell, or offer to sell an interest in a development by conducting a lottery contest, drawing, or game of chance.
D. A subdivider, time-share developer, or membership camping operator may apply for approval to conduct a lottery, contest, drawing, or game of chance, or award a premium under A.R.S. § 32-2197.17(J), by submitting to the Department the information under A.R.S. §§ 32-2183.01(I), 32-2197.17(J) or 32-2198.10(D), the applicable fee, if any, and:

1. The name, address, telephone number, and fax number, if any, of the subdivider, time-share developer, or operator;
2. The legal name of the broker;
3. The public report number;
4. The time and location for collecting entries for the lottery, contest, or drawing;
5. The date, time, and site for selection of a winner; and
6. The conditions and restrictions to enter, if any.

R4-28-504. Development Advertising

A. If a developer obtains a conditional sales exemption, under R4-28-B1202, or registers a notice of intent with the Department to accept lot reservations under A.R.S. § 32-2181.03, the developer shall disclose on all advertising that only reservations or conditional sales contracts will be taken until the public report has been issued.
B. Only a developer or the developer's authorized representative shall file advertising for a development under A.R.S. §§ 32-2183.01(A), 32-2194.05(A), 32-2195.05(A), 32-2197.17(A) or 32-2198.01(A)(6) with the Department.

C. A developer shall ensure that advertisement of property in a development includes the name of the development as registered with the Department. The Commissioner may waive application of this subsection if the Commissioner determines that the public interest is not affected.
D. A developer shall not advertise a monthly payment, total price, or interest rate that is not available to all prospective purchasers or is restricted, unless the lack of availability or the restriction is conspicuously disclosed to all prospective purchasers within the advertisement.
E. A developer shall not advertise proposed or incomplete improvements unless the following requirements are met:

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

F. The developer shall not reference a proposed public facility or project that purports to effect the value or utility of an interest in a development without disclosing in writing the existing status of the proposed facility. The developer shall base the disclosure upon information supplied or verified by the authority responsible for the public facility or project and shall forward the information to the Department.
G. Pictorial or illustrative depictions, other than unmodified photographs of the property being offered, shall bear a prominent disclosure identifying the nature of the depiction, such as an artist's conception, and shall identify those improvements that are proposed and not in existence.
H. When a pictorial representation is used in an advertisement for a specific development and is not an actual or accurate representation of the property, a statement within the advertisement shall prominently disclose the distance of the pictorial representation from the advertised property.
I. If a map or diagram is used to show the location of the development in relation to other facilities, actual road miles from each facility to the development shall be shown on the map or diagram.
J. A developer shall not expressly state or imply that a facility is available for the exclusive use of purchasers of lots or interests if a public right of access or public use of the facility exists.
K. A developer shall not refer to availability for use of private clubs or facilities in which the owner will not acquire a proprietary interest through purchase of an interest in the development unless a disclosure is made in the advertisement. The disclosure shall affirmatively state the existence of the facilities and that availability for use by owners of an interest in the development is at the pleasure of the owners of the facility.
L. When a standing body of water is described as a feature of a development, all advertising shall indicate the average surface area of the body of water. If a standing body of water or a flowing waterway described as a feature of a development is not permanent, or fluctuates substantially in size or volume, the developer shall disclose this fact in all advertisements describing the feature.
M. At the time an incentive is offered to visit any place where a sales presentation for a development is to be made and before the recipient of the incentive makes the trip, the developer shall disclose in writing all conditions, limitations, or recipient qualifications that will be applied.
N. A developer shall not include in advertising testimonials or endorsements that contain statements that a salesperson or broker would be precluded by law from making on the salesperson's or broker's behalf.

ARTICLE 7. COMPENSATION

R4-28-701. Compensation Sharing Disclosure

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

ARTICLE 8. DOCUMENTS

R4-28-802. Conveyance Documents

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

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

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

R4-28-803. Contract Disclosures

A. A developer or the developer's agent shall ensure that any agreement or contract for the sale or lease of a property interest in a development that requires a public report contains substantially the following language in bold print or print larger than the other print used in the document above the signature portion of the document: *THE DEVELOPER SHALL GIVE A PROSPECTIVE PURCHASER A COPY OF THE PUBLIC REPORT AND AN OPPORTUNITY TO READ AND REVIEW IT BEFORE THE PROSPECTIVE PURCHASER SIGNS THIS DOCUMENT*.

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

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

D. Any agreement or contract for the sale or lease of a property interest in a development where a down payment, earnest money deposit, or other advanced money, if any, is paid directly to the seller and not placed in a neutral escrow depository, shall conspicuously disclose this fact within the document, and the purchaser shall sign or initial this provision indicating approval in the space adjacent to or directly below the disclosure in the purchase contract or agreement of sale. The following disclosure shall be written in large or bold print and shall be included in the public report, purchase contract, and agreement of sale: *Prospective purchasers are advised that earnest money deposits, down payments, and other advanced money will not be placed in a neutral escrow. This money will be paid directly to the seller and may be used by the seller. This means the purchaser assumes a risk of losing the money if the seller is unable or unwilling to perform under the terms of the purchase contract.*

R4-28-804. Rescission of Contract

A. Any agreement or contract for the purchase or lease of an unimproved subdivided lot, or any unsubdivided land, shall contain substantially the following language in bold print or print larger than the other print used in the document above the signature portion of the document: *The purchaser or lessee has the legal right to rescind (cancel) this agreement without cause or reason of any kind, and to the return of any money or other consideration by sending or delivering a written notice of rescission to the seller or lessor by midnight of the seventh calendar day following the day the purchaser or lessee executed the agreement. If the purchaser or lessee does not inspect the lot or parcel before the execution of the agreement, the purchaser or lessee shall have six months to inspect the lot or parcel, and at the time of inspection shall have the right to unilaterally rescind the agreement.*

B. Any agreement or contract for the purchase or lease of a time-share interval shall contain substantially the following language in bold print or print larger than the other print used in the document above the signature portion of the document: *The purchaser or lessee has the legal right to rescind (cancel) this agreement without cause or reason of any kind by sending or delivering a written notice of rescission to the seller or lessor by midnight of the seventh calendar day following the day the purchaser or lessee executed the agreement.*

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

R4-28-805. Public Report Receipt

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

PUBLIC REPORT RECEIPT

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

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

_____ _____

Public Report Registration No. Development Name and Lot No.

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

_____ _____

Buyer's Name Address

_____ _____

Date

ARTICLE 11. PROFESSIONAL CONDUCT

R4-28-1101. Duties to Client

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

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

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

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

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

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

1. Salesperson or broker has a license and is acting as a principal;
2. Purchaser or seller is a member of the salesperson's, broker's, or designated broker's immediate family;

3. Purchaser or seller is the salesperson's or broker's employing broker, or owns or is employed by the salesperson's or broker's employing broker; or

4. Salesperson or broker, or a member of the salesperson's or broker's immediate family, has a financial interest in the transaction other than the salesperson's or broker's receipt of compensation for the real estate services.

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

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

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

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

J. A salesperson or broker shall not:

1. Permit or facilitate occupancy in a person's real property by a third party without prior written authorization from the person; or

2. Deliver possession prior to closing unless expressly instructed to do so by the owner of the property or property interest being transferred.

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

R4-28-1102. Property Negotiations

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

1. The principal waives this requirement in writing, and

2. No licensed representative of the broker is available for 24 hours.

R4-28-1103. Broker Supervision and Control

A. An employing broker and a designated broker shall exercise reasonable supervision and control over the activities of brokers, salespersons, and others in the employ of the broker. Reasonable supervision and control includes the establishment and enforcement of written policies, procedures, and systems to:

1. Review and manage:

a. Transactions requiring a salesperson's or broker's license; and

b. Use of disclosure forms and contracts and, if a real estate broker, real estate employment agreements under A.R.S. § 32-2151.02;

2. Manage:

a. Filing, storing, and maintaining documents pertaining to transactions under subsection (A)(5)(a);

b. Handling of trust funds; and

c. Use of unlicensed assistants by a salesperson or broker;

3. Oversee delegation of authority to others to act on behalf of the broker;

4. Familiarize salespersons and associate brokers with the requirements of federal, state, and local laws relating to the practice of real estate, or the sale of cemetery property or membership camping contracts; and

5. Review and inspect:

a. Documents that may have a material effect upon the rights or obligations of a party to a transaction; and

b. Advertising and marketing by the broker and by salespersons, brokers, and others in the broker's employ.

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

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

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

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

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

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

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

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

A. Any person may submit a development application for a public report, a certificate of authority, or a special order of exemption, provided the applicant has a recorded ownership interest in the land, such as a deed, option, beneficial interest in a trust, or other recorded interest approved by the Commissioner. The application for a public report or certificate of authority shall contain the following information, as applicable:

1. The name of the development or cemetery, as shown on the recorded map, and the marketing name if one will be used;

2. The list of the lots to be offered, including the description of the sales offering;

3. The name, address, telephone number, and fax number, if any, of the applicant; and

4. The applicable information in this Article, Parts A and B.

B. If the applicant is a corporation, the application shall contain the following information:

1. A Certificate of Good Standing from the Arizona Corporation Commission, dated no earlier than one year from the date of the application;

2. A corporate resolution, authorizing the person signing the application on behalf of the corporation; and

3. The name and address of each officer, director, and shareholder controlling or holding more than 10% of the issued and outstanding common shares, or 10% of any other proprietary, beneficial, or membership interest in the entity.

C. If the applicant is a partnership, the application shall contain the following information:

1. A copy of all partnership agreements;

2. Proof of registration with the Secretary of State if any partnership is a limited partnership, foreign or domestic;

3. If the general partner is a corporation, the information requested in subsection (B);

4. If the general partner is a limited liability company, the information requested in subsection (D); and

5. The name and address of each partner in the partnership.

D. If the applicant is a limited liability company, the application shall contain the following information:

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

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

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

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

A. The applicant shall submit a legible copy, no larger than 11" x 17", of the recorded development map showing, as applicable:

1. The county recorder's recording information, including the book and page of maps and recording date;
2. County or city approval;
3. Applicable dedications;
4. Monuments, distances, and bearings; and
5. Registered land surveyor certification.

B. The applicant shall identify the location of the development, including the street, city, county, and state, and:

1. The miles and direction from the nearest city or town, if applicable; and
2. The most direct route for getting to the development from a federal, state, county, or city road.

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

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

R4-28-A1203. Flood and Drainage; Land Uses; Adverse Conditions

The applicant shall state, or include as applicable:

1. Whether the development is subject to any known flooding or drainage problems and a letter bearing the signature and seal of a professional civil, city, and county engineer, or county flood district detailing the drainage conditions and flood hazards. The letter shall include the effect of any flood plain and its location, the effect of a 100 year frequency storm, and whether flood insurance is required.
2. Whether the development lots are subject to subsidence or expansive soils. If subsidence or expansive soils exist, a professional engineer's letter addressing the effects of the condition, remedies, and a buyer's on-going responsibilities in plain language;
3. A description of the existing and proposed land uses in the vicinity of the development that may cause a nuisance or adversely affect lot owners, such as freeways, airports, sewer plants, railroads, and canals, including:
    a. Any unusual safety factors within or near the development, and
    b. A description of all current and proposed adjacent land uses.

4. Whether the development is affected by any unusual or unpleasant odors, noises, pollutants, or other nuisances;
5. A description of any agricultural activity or condition in the area that may adversely affect a lot owner, including any odors, cultivation and related dust, agricultural burning, application of pesticides, or irrigation and drainage;
6. Whether the development lots are subject to any known geological or environmental condition that would or may be detrimental to a purchaser's health, safety, or welfare; or
7. Whether the development lots are located within the boundary of a federal, designated Superfund site or a state designated Water Quality Assurance Revolving Fund site.

R4-28-A1204. Utilities

The applicant shall include information about electrical, telephone, and natural gas utilities available to the development, including:

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

R4-28-A1205. Water Supply

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

1. The type of water provider such as a municipal system, improvement district, public utility, private water company, co-operative, irrigation district, private well, water hauler, or other source;
2. The name, address, and telephone number of the water provider;
3. The compliance status of the water provider with federal and state environmental laws, as of the date of the application. If in noncompliance, provide an explanation;
4. The location of the water lines closest to the development;
5. The name of the person responsible for extending the water lines to the lot lines;
6. The estimated completion date for extending the water lines to the lot lines;
7. The estimated cost a lot purchaser will be required to pay for completion of the water lines to the purchaser's lot line;
8. The estimated cost a lot purchaser will pay for completion of water lines from the lot line to a dwelling;
9. Other costs or requirements before the lot purchaser receives water service, including the current service charges, hookup fees, turn-on fees, meter fees, and development fees;
10. The name of the person responsible for maintenance of the water lines within the development, other than from lot line to dwelling;
11. The name of the person who is or will be responsible for maintenance of the water lines outside the development;
12. If a private well will be used, a description of the requirements and costs involved to install an operational domestic water system;

13. If the source of water is a private well and domestic water cannot be obtained from a private well, whether the purchaser will be offered a refund of the purchase price and if so, an explanation of any condition or restriction involving the refund;
14. The name and location of the water provider if domestic water will be transported or hauled by the lot purchaser. A cost estimate computed on a monthly basis for a four-member family, including the cost of water, cistern, and other holding tanks, pumps, or any other costs necessary to install an operational water system;
15. A water adequacy report from ADWR if the development is a subdivision or part of a subdivision located outside of a groundwater active management area;
16. A water availability report from ADWR if the development is unsubdivided land. A copy of the report or a brief summary of the report, approved by the Department, shall be displayed in all promotional material and contracts for sale; and
17. If a water provider is a public service corporation, whether a Certificate of Convenience and Necessity from the Arizona Corporation Commission has been issued and, if not, an explanation of why a Certificate has not been issued.

R4-28-A1206. Sewage Disposal

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

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

R4-28-A1207. Streets and Access

A. The applicant shall include a statement attesting that:

1. Exterior streets providing access are private; or federal, state, and county highways; or municipal streets;

2. The interior streets are public or private; and

a. If any streets are private, a description of what provisions have been made to assure purchasers of a legal right to use the private streets;

b. Whether the streets are completed;

c. The standards to which the streets will be or are constructed;

d. If the streets are not completed, the person responsible for completion and the estimated completion date;

e. The type of existing and proposed surfacing;

f. The cost, if any, the lot purchaser will pay toward street completion;

g. The name of the person responsible for exterior and interior street maintenance;

h. Whether a city or county is responsible for maintaining the streets and the approximate date when streets will be accepted for maintenance; and

i. The cost, if any, the lot purchaser will pay toward street maintenance.

B. The applicant shall demonstrate that there is permanent access to the land over terrain that may be traversed by conventional 2-wheel drive automobiles and emergency vehicles by providing any of the following information or documents necessary to make the demonstration:

1. A statement from a title insurance company, signed by an authorized title officer, affirming that legal access exists to the development and lots within the development. The statement shall:

a. Describe the legal access by listing all recorded instruments which establish legal access,

b. Be accompanied by a map on which legal access is shown with accurate references to the recorded instruments,

c. Be accompanied by a legible copy of each recorded instrument listed in the statement.

2. A statement bearing the seal and signature of a registered land surveyor or professional engineer, affirming that legal access to and within the development, as described in the title insurance company legal access statement, is over terrain that can be traversed by conventional 2-wheel drive automobiles and emergency vehicles. The statement shall affirm that:

a. The legal access corresponds with the actual physical access to the development and to the lots,

b. The legal access is permanent and describe how that permanence is assured.

3. The recorded subdivision map which shows approval by the applicable city or county officials.

4. Recorded easements or road dedications whether public or private. If private, the applicant shall ensure that development lot owners, emergency vehicles, and utility service providers have access rights.

5. Land, on which easements and roads are provided, is traversable by conventional 2-wheel drive automobiles and emergency vehicles.

6. Road maintenance programs that assure permanent access. Road maintenance programs include those administered by city or county governments, city or county improvement districts, or private property owner associations.

7. Recorded documentation that establishes legal and permanent access for development lot owners through federal or state lands.

R4-28-A1208. Flood Protection and Drainage Improvements

The applicant shall include with the application the following information about flood protection and drainage improvement:

1. A description of any current or proposed improvement;

2. The name of the person responsible for completion of the improvement;

3. The estimated completion date of the improvement;

4. The cost, if any, the lot purchaser will pay for completion of the improvement;

5. The name of the person responsible for the continuing maintenance and expense of the improvement;

6. If a city or county is responsible for maintenance, the approximate date when the improvement will be accepted for maintenance; and

7. The cost, if any, the lot purchaser will pay toward completion and maintenance of the improvement.

R4-28-A1209. Common, Community, or Recreational Improvements

The applicant shall provide with the application a list of all common, community, or recreational improvements, located within the development, and include the following information:

1. The name of the person responsible for completion of each improvement;
2. The estimated completion date of each improvement;
3. The estimated cost a lot purchaser will be required to pay for the completion of each improvement;
4. The name of the person responsible for the continuing maintenance and expense of each improvement; and
5. The cost, if any, the lot purchaser will be responsible for paying toward the maintenance of each improvement.

R4-28-A1210. Master Planned Community

The applicant shall include the following information about a master planned community:

1. A list of all improvements located outside the development, but included in the development offering, including all common, community and recreational improvements;
2. The name of the person responsible for completing each improvement;
3. The estimated completion date of each improvement;
4. The name of the person responsible for the continuing maintenance and expense of each improvement; and
5. The cost, if any, the lot purchaser will pay toward the completion and maintenance of each improvement.

R4-28-A1211. Assurances for Completion and Maintenance of Improvements

A. The applicant shall identify:

1. Whether arrangements have been made to assure the completion, delivery, and continued maintenance of the improvements listed in subsections R4-28-A1204 through R4-28-A1210; and
2. Whether the assurances to complete and deliver the improvements have been approved by the county or city, where applicable, and if so, submit a copy of the county or city approval;

B. An applicant shall provide one or more of the following assurances for completion:

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

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

a. Be stipulated by and payable to a third party who is not the developer;

b. Be accepted and signed by all parties;

c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date;

d. State when and how the third party may draw on the funds;

e. Be in an amount 10% greater than the estimated amount to complete all improvements;

f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements; and

g. State that repayment is the responsibility of the developer and not of the third party even if the third party draws on the funds.

4. A trust or escrow account with a financial institution or escrow company licensed in Arizona. The trust or escrow account shall specify which improvements are included and shall:

a. Be stipulated by and payable to a third party who is not the developer;

b. Be accepted and signed by all parties;

c. Include an expiration date not less than 90 Days beyond the last improvement estimated completion date;

d. State when and how the third party may draw on the funds;

e. Be in an amount 10% greater than the estimated amount to complete all improvements;

f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements; and

g. Directly pay for the improvements completed or release funds to the developer upon written verification from a registered engineer that the improvements have been completed in accordance with the plan.

5. City and county trust agreement. A municipal or county government may enter into an assurance agreement with a trustee to hold a lot conveyance until improvements are completed:

a. The trustee is an escrow company licensed in Arizona, and

b. The agreement is recorded.

6. Written escrow agreement. A developer may enter into a written escrow agreement with a title insurance company or escrow company to escrow all funds and prohibit close of escrow until all improvements are complete. The agreement shall contain the following stipulations:

a. The funds are not released nor the purchaser's deed or other relevant documents recorded until the developer's architect or engineer certifies to the Department and the escrow agent that the project is complete, ready for occupancy, and in compliance with all city and county requirements;

b. If the completion date is not met:

i. The developer will give purchasers notice that completion dates were not met and an updated completion schedule,

ii. A purchaser may, within 30 days of receiving the notice specified in subsection (B)(6)(b)(i), cancel and receive a full refund by sending written notice to the escrow agent,

iii. The public report is invalid and all sales are suspended; and

iv. The Department considers the public report valid if improvements are completed at a later date and the public report is complete and accurate.

7. Subdivision assurances. The municipal or county government shall prohibit occupancy and an subdivider shall not close escrow on lots sold in a subdivision until all proposed or promised subdivision improvements are complete.

a. The subdivider shall submit an agreement or copy of the ordinance from the city or county prohibiting occupancy until all proposed or promised subdivision improvements are complete.

b. If improvements are completed in phases, the subdivider shall submit complete details of the phasing program, including approval of the phasing by the city or county and the completion schedule for the phases to the Department.

c. The subdivider shall submit a written statement that no escrow will close on any lot until all subdivision improvements are complete. If a lot is within a phase of the subdivision where all improvements are complete and can be used and maintained separately from the improvements required for the entire subdivision the escrow may be closed.

d. The subdivider shall submit a copy of the subdivider's purchase contract containing in large or bold print the condition that escrow will not close until the city or county issues its occupancy clearance and all subdivision improvements are complete.

e. Any improvement offered or promised to a purchaser that is scheduled for completion in a later phase of completion shall have its completion assured by an alternative method of assurance listed in this Section.

f. If the subdivider's sales include unimproved (vacant) lots, the subdivider shall deposit all earnest money into a neutral escrow depository until escrow closes.

8. Any other assurance satisfactory to the Department that is not listed in subsections (B)(1) through (B)(7).

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

R4-28-A1212. Schools and Services

A. The applicant shall include the following information about schools:

1. The location of and distance to the nearest public elementary, junior, and high schools and whether school bus or other transportation is available;

2. The type and location of any other school located within a 1/2 mile radius of the exterior boundaries of the development.

B. The applicant shall include the following information about services:

1. Community shopping. The location and distance from the development of the nearest community shopping area where food, drink, and medical supplies may be purchased;

2. Public transportation. The type, provider, location, and distance to the nearest access point to public transportation for the development;

3. Medical facility. The type, provider, location, and distance to the nearest medical facility;

4. Fire protection. Whether fire protection is available to the development, the name of the provider and the cost to the lot purchaser;

5. Ambulance service. Whether ambulance service is available to the development and whether the development is in a 911 service area. If 911 service is not available, the name, address, and telephone number of the ambulance service.

6. Police service. Whether police service is available to the development, and the name of the provider;

7. Refuse collection. Whether provisions have been made for refuse collection, the name of the service provider, and the cost to the lot purchaser. If no provisions have been made, what a buyer will do to dispose of refuse.

R4-28-A1213. Property Owners' Association

The applicant shall provide the following information about a property owner's association:

1. The name of the association, if any;

2. The name of the master property owners' association, if any;

3. The amount of the association assessment that property owners will be required to pay, and how it will be paid;

4. Whether the association is legally formed and operational;

5. When and under what conditions control of the association will be released to lot purchasers;

6. When and under what conditions title to the common areas will be transferred to the association;

7. Whether the common areas are subject to any lien or encumbrance. If yes, explain how purchasers' use and enjoyment of common areas will be protected in the event of default;

8. Whether all lot owners will be required to be members of the association. If not, explain;

9. Whether nonmembers will be liable for payments to the association; and

10. A copy of the Articles of Incorporation and Bylaws in effect.

R4-28-A1214. Development Use

The applicant shall provide the following information about development use:

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

R4-28-A1215. Development Sales

The applicant shall provide a description of the sales offering and:

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

R4-28-A1216. Title Reports and Encumbrances

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

1. Copies of any unrecorded liens or encumbrances against the property;
2. A title report showing:

a. An effective date not more than 30 days before Department receipt. The Department may request that the applicant update the title report so that it is not more than 30 days old when the public report is issued;
b. A legal description based upon a recorded map, condominium or timeshare declaration. Metes and bounds legal descriptions shall be used only for membership camping application title reports;
c. The applicant's interest in the property;
d. The name and telephone number of the person who prepared the title report;
e. A requirement page, if applicable; and
f. The following statement after the title exceptions: "There are no further matters of record affecting the land."

3. Legible copies of all recorded and unrecorded documents reflected by the title report, or known to applicant, such as restrictions, easements, liens, encumbrances, trust agreements, options, and maps.

R4-28-A1217. ADEQ Approval
The applicant shall obtain subdivision approval from ADEQ or its designee.

R4-28-A1218. Property Registrations in Other Jurisdictions
The applicant shall provide a list of the jurisdictions where a property registration was filed with or accepted by another department of real estate or similar regulatory agency.

R4-28-A1219. Condominium Developments
The applicant shall provide the following information about condominium developments:

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

R4-28-A1220. Foreign Developments
A. Unless exempt pursuant to A.R.S. § 32-2181.02, an applicant shall ensure that any development located outside the state that is advertised, promoted, or sold within the state complies with all Arizona laws and rules as if the land was located in the state.
B. Any law or rule that is specific to Arizona may be waived by the Department, or the Department may request and accept the domicile state or country's equivalent form of documentation.
C. The applicant shall provide evidence that the domicile state or country has authorized the sale of lots and that the development is in compliance and good standing. If the domicile state or country issues a public report or equivalent, the application shall include the report.

R4-28-A1221. Cemetery Developments
The applicant shall provide the following information about cemetery developments:

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

R4-28-A1222. Membership Camping Developments
The applicant shall provide the following information about a membership camping development:

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

R4-28-A1223. Affidavit
The applicant shall sign an affidavit attesting that the information found in the application is true and correct.

PART B. GENERAL INFORMATION

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

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

1. The correct application form has been used and is two-hole punched at the top in standard placement. The application is placed on a two-prong AACO-type fastener in a file folder and delivered to the Department in an expanding file folder. Maps may be left off the fastener, folded, and placed in the expanding file. The application shall include:
    a. The Expedited Registration Request letter signed by the applicant; and
    b. The completed Department checklist for administrative completeness which indicates inclusion of the documents required by A.R.S. Title 32, Chapter 20, Article 4 and 4 A.A.C. 28, Article 12, Part A.
2. The filing fees have been included with the application;
3. All application questions have been answered;
4. The application signature page has been properly executed;
5. All required documents have been submitted; and
6. A complete and accurate public report in the Department's published format on a computer diskette, formatted in a word processing program compatible with the Department's current computer operating system and word processing software, has been submitted and all exhibits used for disclosure have been included on the diskette. (The developer may obtain a diskette containing the public report template from the Department upon request.)

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

R4-28-B1202. Conditional Sales Exemption

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

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

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

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

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

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

C. Completion Date Extension.

1. A developer may apply to the Department for an amendment to a public report to extend the completion date of any improvement by providing an affidavit from the developer attesting that each purchaser, owner, and the city or county officials responsible for improvements were provided written notice of the completion status of the improvement, including a list of all people who were provided notice.

2. The Department may deny the application to extend the completion date beyond the first extension if a purchaser, owner, or city or county official opposes issuance of an amended public report to extend a completion date.

3. If an extension is denied, the developer shall provide the Department with a written agreement to suspend sales until the improvement is complete or the Department may issue a summary suspension order as provided in A.R.S. § 32-2157(B).

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

1. The name and registration number of the development;

2. The name and signature of the developer;

3. A list of the changes to the development and sales offering or in the information previously provided to the Department;

4. Status of sales as prescribed in subsections (C) and (E); and

5. A purchase contract addendum, to be signed and dated by both seller and purchaser, acknowledging that the sale is conditioned upon issuance of the amended public report and purchaser's receipt and acceptance of the amended public report.

E. Suspension of sales.

1. If necessary for the protection of purchasers, the Department may suspend approval to sell or lease pending amendment of the report.

2. In lieu of issuing a suspension order under A.R.S. § 32-2157, the Department may accept a developer's written agreement to suspend sales until the amended public report has been issued by the Department.

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

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

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

R4-28-B1204. Cemetery Notice; Amendments

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

R4-28-B1205. Contiguous Parcels

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

R4-28-B1206. Filing with HUD

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

R4-28-B1207. Subsequent Owner

A. Except as provided in A.R.S. § 32-2181.02, any developer who is a successor in interest to six or more lots within a subdivision on which the Department previously issued a public report shall file an application for and obtain a new public report before offering or selling any lot.

B. Any developer who is a successor in interest to six or more parcels within an unsubdivided land development on which the Department previously issued a public report shall file an application for and obtain a new public report before offering or selling any parcel.

C. Any developer who is a successor in interest to 12 or more time-share intervals within a time-share project on which the Department previously issued a public report shall file an application for and obtain a new public report, before offering or selling any interval.

D. The Department shall not issue a new public report to a subsequent owner of a development if the previous developer failed to complete proposed improvements in accordance with estimated completion dates specified in the previously issued public report until one of the following occurs:

1. The subsequent owner makes financial arrangements, as described in R4-28-A1211, in favor of the local governmental authority and for the benefit of purchaser, securing the owner's promise to complete the previously proposed improvements by a designated date; or
2. The subsequent owner becomes obligated to place all sales funds in a neutral escrow depository until the Department is furnished satisfactory evidence that all proposed improvements have been completed or accepted by the city or county; or
3. Permission is obtained by all previous purchasers in the development for completion of the proposed improvements by the new designated date for completion; or
4. The subsequent owner establishes to the satisfaction of the Department that adequate financial arrangements have been made to assure completion of the proposed improvements by the new designated date for completion.

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

R4-28-B1208. Public Report Correction

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

R4-28-B1209. Options; Blanket Encumbrances; Releases

A. The Department shall not issue or amend a public report for any lot held under option or subject to a blanket encumbrance if a condition precedent to the optionee's right to acquire the lot or to release from the blanket encumbrance shows that the lot shall:

1. Be acquired or released in a particular sequence,
2. Be acquired or released only after one or more additional lots have been acquired or released, or
3. Not be released if the encumbrance is in default because of a cross-default provision contained in the encumbrance,

B. The developer may require payment of a premium to permit the acquisition or release of the lot.

C. When a blanket encumbrance clouds title to a development, the developer shall place a written statement from the holder of the blanket encumbrance in the public report application, quoting the provisions that enable a buyer to acquire title to a lot, free of the blanket encumbrance.

R4-28-B1210. Earnest Money

The developer shall deposit earnest money and down payments in a neutral depository if:

1. The seller is in bankruptcy;
2. The sale is conditional pursuant to R4-28-B1202; or
3. The Department perceives a risk to the buyer.

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

ARTICLE 13 ADMINISTRATIVE PROCEDURES

R4-28-1302. Service of Pleadings Subsequent to Complaint and Notice
A. Service of pleadings subsequent to complaint and notice of hearing shall be made by personal service or by mail to the last known address of record of the party or the party's counsel. If service is made by mail, response time shall be increased by five days. Service by mail is complete upon mailing.
B. Any person filing a pleading or brief with the Department shall also file with the Attorney General.

R4-28-1303. Information Obtained in an Investigation
A. The Department shall ensure that information and documents in open audits and investigations remain confidential. Officers and employees of the Department shall not make confidential information or documents available to anyone other than the Attorney General or the Attorney General's representative, or authorized employees of the Department, unless the Commissioner authorizes disclosure of the information or production of documents as being in the public interest.
B. Upon request, the Department shall disclose the existence of and make available for review audit and investigative files that were closed within five years of the request for the information, subject to redaction of confidential or privileged information such as date of birth, social security number, bank and trust account numbers, home address and telephone number of active-status licensees, criminal history reports, attorney-client privileged communications, work product, and information regarding settlement negotiations.

R4-28-1304. Response; Default
A. A response shall specifically admit, deny, or state that the party does not have, or is unable to obtain, sufficient information to admit or deny each allegation in the complaint. A statement of a lack of information shall have the effect of a denial. Any allegation not denied is deemed to be admitted. When a party intends in good faith to deny only a part of an allegation, the party shall admit so much of it as is true and shall deny the remainder.
B. If the party fails to file a response or after being served notice, fails to appear at a hearing within the time provided by the statute under which the hearing is commenced, the Department may file an Affidavit of Default against the party, and proceed to take action against the party based upon the allegations of the charges. This action may be taken before the hearing date established in the Notice of Hearing. The party may file a motion to vacate the default and any action taken by the Commissioner within 15 days after receiving a copy of the default and the action or order by the Commissioner. For good cause, the Commissioner may vacate a default and any action taken and reschedule a hearing.
C. Every response filed pursuant to this Section shall be signed by the filing party or by at least one attorney, in the attorney's individual name, who represents the party, and shall be verified.

R4-28-1305. Notice of Appearance of Counsel
A. A party may participate in the party's own behalf or be represented by a member of the State Bar of Arizona.
B. Any person intending to appear at a contested case hearing or appealable agency action as counsel or representative of a party shall file a Notice of Appearance which shall advise the Department of the person's intent to appear on behalf of a party. The notice shall be filed with the Office of Administrative Hearings and served on all parties and shall contain:

1. The title of the case,
2. The name of the agency ordering the hearing,
3. The current address and telephone number of the person appearing, and
4. The name of the party for whom the person is appearing.

R4-28-1310. Rehearing or Review of Decision; Response; Decision
A. Unless otherwise provided by statute or rule, any party to a hearing before the Office of Administrative Hearings who is aggrieved by a decision rendered in a case may, pursuant to A.R.S. § 41-1092.09, file

with the Commissioner a written motion for rehearing or review of the decision. The motion shall specify the particular grounds for rehearing or review. The moving party shall serve copies upon all other parties. A motion for rehearing or review under this Section may be amended at any time before the Commissioner rules upon the motion.

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

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

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

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

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

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

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

R4-28-1313. Correction of Clerical Mistakes

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

SUBSTANTIVE POLICY STATEMENTS

No. 2016.01. Short Title: Acceptable Forms of Payment

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

Description of Practice/Procedure:

The Department will only accept payment for fees and for any other purposes when made by credit card, check, or money order.

Acceptable checks include pre-printed personal or business account checks or drafts, either in-state or out-of-state. Two-party checks, counter checks or any check not pre-printed with the name and address of the account holder, the name of the subject financial institution and the account number are considered unacceptable forms of payment.

Payment of a civil penalty shall be by credit card, money order, certified check, or cashier's check.

If an individual or entity has an outstanding "bad check," no further checks or payment of any other kind for any purpose will be accepted by the Department from that individual or entity until the outstanding check is redeemed, using a credit card, cashier's check, money order, or certified check.

The Department will accept one form of payment per transaction.

Authority: A.R.S. §§ 32-2125.01, -2129, -2130, -2186, -2194.02, -2195.02, -2196, -2197.05 and -2198.09 authorize the Commissioner to assess fees and prescribe the amounts to be charged. A.R.S. § 35-142(I) authorizes state agency acceptance of credit card payments pursuant to § 35-315.
Policy Program: Commissioner's Office
Effective Date: June 18, 1999; Revised & Renumbered May 28, 2004; Revised & Renumbered April 1, 2005; Revised & Renumbered February 8, 2008; Revised & Renumbered March 29, 2016.

No. 2015.01. Short Title: Instructor Professional Development Requirements
This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under A.R.S. 41-1033 for a review of the statement.

Description of Practice/Procedure:

This Substantive Policy Statement is intended to inform the regulated real estate education industry of the Department's interpretation and implementation of the education statutes and rules under the Department's original jurisdiction, through the establishment of real estate instructor professional development requirements.

CONTENT INSTRUCTOR PROFESSIONAL DEVELOPMENT REQUIREMENTS

The Law: In addition to instructor qualifications required pursuant to A.A.C. R4-28-404(C), the Department has established content instructor professional development requirements. Specifically: "The commissioner may determine… appropriate professional qualifications for approving instructors to teach individual educational courses." A.R.S. § 32-2135(E); and "The commissioner may withdraw or deny

certification or approval of… real estate instructors for… failing to attend any continuing education course required by the commissioner." A.R.S. § 32-2135(C)(5).

Requirements and Administration:

1. For an Instructor Applying for Individual Continuing Education Category Teaching Approval: Upon an original or renewal instructor approval application, or during the instructor's current four year approval period, the applicant shall provide evidence to the Department of having attended any combination of six hours of live classroom and/or distance learning Department-approved continuing education (CE) courses, taken within the 48 months immediately preceding the date of application, for each of the following seven CE categories in which the applicant wishes to be approved to teach:
   a. Agency Law
   b. Contract Law
   c. Commissioner's Standards
   d. Real Estate Legal Issues
   e. Fair Housing
   f. Disclosure
   g. General Real Estate
2. For a Licensed Arizona Broker or Salesperson: As an alternative to paragraph 1 above, upon an original or renewal instructor approval application, or during the instructor's current approval period, a licensee applicant shall provide evidence to the Department of having renewed the licensee's Arizona broker's or salesperson's license twice within the 48 months immediately preceding the date of application for each of the following seven CE categories in which the applicant wishes to be approved to teach:
   a. Agency Law
   b. Contract Law
   c. Commissioner's Standards
   d. Real Estate Legal Issues
   e. Fair Housing
   f. Disclosure
   g. General Real Estate
3. For an Arizona Broker Applying for Approval to Teach a Prelicense Education Course: Upon an original or renewal instructor approval application, or during the instructor's current approval period, the applicant shall provide evidence to the Department of having met the requirements of either paragraph 1 or 2 above for all seven CE categories, and paragraph 5 for all three Broker Management Clinic subject areas. A currently approved prelicense instructor who does not hold a current broker's license is grandfathered and may maintain the prelicense approval by meeting the requirements of paragraph 1 above for all seven CE categories, and paragraph 5 for all three Broker Management Clinic subject areas.
4. For an Instructor Applying for Approval to Teach the 6-hour Contract Writing ("Boot Camp"): Upon an original or renewal instructor approval application, or during the instructor's current approval period, the applicant shall provide evidence to the Department of having attended twelve hours of Department-approved Contract Law courses, taken within the 48 months immediately preceding the date of application. No more than six of the CE hours may be in distance learning.
5. For an Arizona Broker Applying for Approval to Teach the Broker Management Clinic ("BMC"): Upon an original or renewal instructor approval application, or during the instructor's current approval period, the applicant shall provide evidence to the Department of having attended two different live classroom BMC courses for each of the following three CE subject areas in which the applicant wishes to be approved to teach, within the 48 months immediately preceding the date of application:

	Courses	Hours
a. Broker Management Clinic #1 – Statutes And Rules	2	6
b. Broker Management Clinic #2 – Broker Policies	2	6
c. Broker Management Clinic #3 – Supervision	2	6
Total:	6	18

CONTENT INSTRUCTOR DEVELOPMENT WORKSHOP ("CONTENT IDW")

The Law: Pursuant to authority of the Department: "The commissioner may determine… appropriate professional qualifications for approving instructors to teach individual educational courses." A.R.S. § 32-2135(E); and "The commissioner may withdraw or deny certification or approval of… real estate instructors for… failing to attend any continuing education course required by the commissioner." A.R.S. § 32-2135(C)(5).

Discontinuance of the Content IDW Program:

1. The Department previously approved numerous Content IDW courses that were individually designed and approved to satisfy twice their number of CE hours required for instructor approval to teach in a specific CE or prelicense course area. Effective the date of this Substantive Policy, the Content IDW Program is discontinued and no new Content IDW applications will be accepted by the Department. Previously approved Content IDW courses will not be eligible for renewal and will expire upon the course expiration date on the Department's course approval system.
2. A three hour minimum Content IDW previously taken by an instructor applicant within the 48 months prior to the original or renewal application date, or during the instructor's current approval period, with evidence of attendance submitted to the Department, will be accepted as equal to and qualifying for two of the regular CE courses in that category of instruction.

SKILLS INSTRUCTOR DEVELOPMENT WORKSHOP ("SKILLS IDW")

The Law: "Beginning January 1, 2012, in the twenty-four months before application, each instructor original or renewal applicant, other than a panelist, guest speaker, an attorney or out-of-state instructor, shall attend at least a three hour professional seminar or workshop, approved by the department, emphasizing instruction methods, techniques and skills." A.R.S. § 32-2135(K).

Skills IDW Requirements & Administration:

1. For Approval to Teach Prelicense or Continuing Education: Upon the original or renewal instructor approval application, the applicant shall provide evidence to the Department of having attended at least one live Department-approved 3-hour Skills IDW within the 24 months immediately preceding the date of application.
2. For Approval to Teach a Skills IDW: Upon an original or renewal instructor approval application, or during the instructor's current approval period, the applicant shall provide evidence to the Department of having attended at least six hours of live Department-approved Skills IDW course(s) within the 24 months immediately preceding the date of application.

Authority: A.R.S. § 32-2135 and A.A.C. R4-28-404.

Policy Program: Education

Effective Dates: March 20, 2015

No. 2013.01. Short Title: Multifamily Housing Records Retention

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

Description of Practice/Procedure:

Per A.R.S. §32-2175 - A broker managing multifamily housing may designate an onsite leasing office as an off-site storage location in this state for residential rental agreements, related residential rental agreement documents and records of finder's fees if the Department of Real Estate is notified in writing.

Off-site storage location may include a multifamily leasing office as well as electronic storage. If electronic, then ADRE shall be notified of the physical location and records host as prescribed in SPS No. 2010.01 Electronic Records Storage.

Per A.R.S. §32-2151 trust account records shall not be maintained at an onsite leasing office.

The broker managing multifamily housing shall notify the department within 10 days of any change in location of the off-site storage location.

Authority: A.R.S. §§32-2102, 32-2151, 32-2175

Policy Program: Multifamily Housing Records Retention

Effective Date: March 28, 2013

No. 2012.01. Short Title: Broker Management Clinic Course/Instructor Requirements

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

Description of Practice/Procedure:

The Arizona Department of Real Estate (Department) presents the following clarification of the requirements for Broker Management Clinic (BMC) classes and instructors under the Department's original jurisdiction and as provided by amendments adopted by the 2012 Legislature. This legislation provides that on and after January 1, 2013, each real estate Designated Broker (DB) and Delegated Associate Broker (DAB) with duties authorized in writing pursuant to A.R.S. § 32-2151.01(G) to act on the designated broker's behalf to review and initial contracts or similar instruments, shall complete a BMC consisting of nine (9) credit hours (three (3) courses of three (3) hours each). This brings the total renewal credit hours required for these licensees to 30 per 24-month license period.

BMC COURSE STANDARDS AND GUIDELINES

The BMC shall be presented in three (3) different three (3) hour classes and may be delivered in either live classroom or distance learning format. Each class shall be approved for three (3) hours of continuing education credit in Commissioner's Standards and may include/emphasize a specific real estate discipline (specialty) as described below under BMC Specialty Option that includes the distinct Specialty Name in the course title. To meet statutory requirements these three (3) classes shall be designed as follows:

<u>BMC #1- Statutes and Rules (Specialty Name)</u> This class shall include the following topic areas:

Record keeping requirements	Contracts	Department Audits
Trust fund accounts	Fiduciary duties	Advertising and promotions
Material disclosures	Employment agreements	Department Investigations
Other related statutes and rules		

<u>BMC #2- Broker Policies (Specialty Name)</u> This class shall include the following topic areas:

1. Broker Policy Development
2. Related Topics, including a minimum of <u>one</u> of the following three areas:
    a. Establishment of broker policies (A.A.C. R4-28-1103
    b. Practical application enforcing
    c. Emphasis on those policies which ADRE has policies identified as common complaints/ violations to avoid

<u>BMC #3- Supervision(Specialty Name)</u> This class shall include the following topic areas:

1. Broker supervision

2. Broker responsibilities/legal obligations
3. Broker risk management
4. Other related topics

BMC Specialty Option A BMC course may include/emphasize a specific real estate discipline, or disciplines, such as:

Residential resale	Business brokerage	Property management
Timeshares	Commercial real estate	New home sales
Other specific real estate issues		

The Department will accept BMC course applications beginning August 1, 2012, to ensure the availability of courses prior to the January 1, 2013 implementation date. **Current BMC courses approved prior to August 1, 2012, will terminate January 1, 2013.**

BMC COURSE INSTRUCTOR QUALIFICATIONS

A BMC course instructor applicant, original or renewal, may apply to be an instructor in any or all of the classes that make up the Broker Management Clinic per Real Estate Instructor Approval/Renewal/Change Application (Form ED-101). Current/existing BMC course instructors must apply to instruct any or all of the new BMC classes, their existing certification will terminate January 1, 2013. The applicant shall:

a) Possess the appropriate subject area experience/expertise in the content areas required to be included in the specific BMC class(es).

b) A current licensed Arizona Real Estate Broker for three (3) of the immediately preceding five (5) years.

c) Have satisfactorily completed six separate 3-hour BMC courses (2 each of BMC #1, #2, and #3) within the immediately preceding 48 months, or a 9-hour BMC instructor Development Workshop (IDW) within the immediately preceding 24 months. (An instructor application submitted prior to March 1, 2013 may petition the Commissioner to accept evidence of equivalent education if a 9-hour BMC IDW or six (6) 3-hour BMCs were not available.)

REAL ESTATE BROKER LICENSING/RENEWAL REQUIREMENTS

Original broker license applicants who have not completed the licensing process prior to January 1, 2013, shall take the nine (9) hour BMC course prior to becoming licensed brokers pursuant to A.R.S. § 32-2136(C).

Associate Brokers (AB) without the authority pursuant to A.R.S. § 32-2151.01(G) are not required to complete a BMC course to meet the renewal requirements.

Designated Brokers subject to this legislation who complete the current BMC continuing education requirements prior to January 1, 2013, are exempt pursuant to A.A.C. R4-28-402 (A) (9) and may renew their license without meeting the new BMC course requirements.

DABs subject to this legislation who complete their current continuing education requirements prior to January 1, 2013, are exempt pursuant to A.A.C. R4-28-402 (A) (9) and may renew their license without meeting the new BMC course requirements.

Designated Brokers subject to this legislation who do not complete the current continuing education requirements by January 1, 2013, must complete a nine (9) hour BMC course.

DABs subject to this legislation who do not complete the current continuing education requirements by January 1, 2013, must complete a nine (9) hour BMC course.

An AB applying to become a DB on or after January 1, 2013, shall have completed a nine (9) hour BMC course within the past 23 months.

An AB shall have completed a nine (9) hour BMC course within the past 23 months before acting under the delegated authority pursuant to A.R.S. § 32-2151.01(G) on or after January 1, 2013.

Real Estate Salespersons and ABs who are delegated the authority to act as a temporary broker during a designated broker's temporary absence pursuant to A.R.S. § 32-2127(D) are not required to complete a BMC course to meet the requirements of A.R.S. § 32-2136.

Licensees may take the three BMC classes in any order, and from any combination of approved schools within any discipline, however all three classes must be completed for the current license period.

Authority: A.R.S. § 32-2102 provides that the Department of Real Estate, under the direction of the Real Estate Commissioner, shall administer Title 32, Chapter 20. A.R.S. § 32-2130 specifies the educational requirements for license renewal. A.R.S. § 32-2136 specifies the content of Broker Management Clinics. Arizona Administrative Code R4-28-402(A)(9) specifies the requirements for course completion

Policy Program: Education

Effective Date: 8-1-2012

No. 2010.03. Short Title: Real Estate School Audit Declaration

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

Description of Practice/Procedure:

STATEMENT OF PURPOSE AND SCOPE

This Substantive Policy Statement is intended to inform the regulated real estate education industry of the Department's current enforcement approach to and opinion of the requirements of education statutes and rules under the Department's original jurisdiction, by establishing a biennial reporting requirement by schools, to assist the Department in the regulation of real estate schools. The *Real Estate School Audit Declaration* will collect important information about real estate schools specific to school compliance with education statutes and rules. The *School Audit Declaration* is calculated to reduce the audit burden of the Department and to gather more reliable and valuable information.

REAL ESTATE SCHOOL AUDIT DECLARATION

School Audit Declaration: A *Real Estate School Audit Declaration* shall be completed by each school that holds Department approval to teach real estate. The *School Audit Declaration* shall:

1. Be completed by the school administrator, in an online form provided by the Department, not earlier than December 15, 2010 and not later than January 31, 2011, and shall be re-submitted every other year thereafter between December 15 and January 31.
2. Be required for every approved real estate school – prelicensure, continuing education and distance learning.
3. Be signed by the school administrator, attesting to the reliability and truthfulness of the information provided.
4. Contain audit questions concerning the operations and activities of the school, including:
    a. Appropriate content of approved courses.
    b. Courses where content is no longer current or is substantially changed.
    c. Courses requiring revision and approval resubmission.
    d. Reasonable supervision of the school and instructors.
    e. Assignment of competent instructors.
    f. Proper certification of student attendance or performance.
    g. Teaching of unapproved courses.
    h. Course outlines which accurately reflect the content taught.
    i. Unapproved courses being advertised as "pending."

j. Adherence to the 50-minute hour for every hour of course credit issued by the school.
k. Advertising which contains no misleading or inaccurate statistics or which is otherwise deceptive.

Authority: A.R.S. §§ 32-2101, 32-2108, 32-2135 and 32-2153, and A.A.C. §§ R4-28-101, R4-28-401, R4-28-402 and R4-28-404.

Policy Program: Education/Regulation/Enforcement

Effective Date: 11-1-2010

No. 2010.02. Short Title: Distance Learning Guidelines

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

Description of Practice/Procedure:

STATEMENT OF PURPOSE AND SCOPE

This Substantive Policy Statement is intended to inform the regulated real estate education industry of the Department's current approach to and opinion of the requirements of education statutes and rules under the Department's original jurisdiction, by establishing sensible distance learning standards, guidelines and parameters that are based on the Department's interpretation and application of the education statutes and rules. "Distance Learning" applies solely to the delivery of Continuing Education courses.

Course Approval: In facilitating the original approval and renewal of courses:

1. Prior to Department approval of a course, the real estate school shall provide access to the Department to view and evaluate the proposed course, in the manner that the course is proposed by the school to be delivered. The school shall additionally permit access to the Department to view and evaluate a currently-approved course, as required.
2. All real estate course content, including laws, administrative code, practices, policies, codes of ethics, customs and standards of care, shall be applicable to Arizona real estate practice. No course shall include content based on laws, practices, policies, codes of ethics or standards of care that have no practical or meaningful application to Arizona real estate.
3. For each original course approval submission to the Department, the school shall identify the Department-approved instructor who has authored the course and that the course meets all Department requirements. The approved instructor must meet applicable instructor qualifications established for instructors of live classroom course delivery, including course content competence.
4. Each Distance Learning Course must meet the requirements for the applicable course credit category before being approved for continuing education credit in that category.
5. A continuing education distance learning course approval shall not be issued later than 90 days after filing with the Department. If approval is not granted within 90 days, the course shall be automatically approved on a provisional basis for 180 days, unless the Department otherwise notifies the school of specific deficiencies or unfulfilled requirements for the course submission.

Course Administration: The following are required in the school administration of distance learning courses:

Course Timing Requirements

1. The 50-minute-per-credit-hour rule shall be enforced for each course. For example, a 3-credit-hour course must incorporate a requirement that the student log a total of at least 150 minutes to complete the course. Each school must have the ability to measure the amount of time spent by the student in the school's course, and enforcement of the 50-minute-per-credit-hour requirement shall be subject to Department audit.

2. A course completion certificate may be issued only after student satisfaction of the 50-minute-per-credit-hour requirement for the course.
3. Each 3-hour segment of a course shall be divided into five or more timed divisions (i.e., "modules") for the purpose of course delivery. Each module shall be timed such that the student may not proceed in the course until the minimum time for the module has elapsed. The sum of the minimum times of the modules for a 3-hour course, for example, will equal 150 minutes

Course Quizzes and Exam

1. Course delivery must include interactivity, and course performance shall be measured by a diagnostic assessment in the form of quizzes and exams.
2. Each course module shall include a quiz. The student shall achieve a minimum passing score of 80% before proceeding in the course. The difficulty of the quiz shall be reflective of the content presented in that module.
3. Each course shall include a final exam. The student shall achieve a passing score of at least 80% on the final exam before completing the course and being awarded a course completion certificate. The difficulty of the exam shall be reflective of the content presented in the course.
4. Each module shall contain a minimum of 5 instances of interactivity, which may be achieved via multiple choice, true-false, fill-in-the-blank, matching, prioritizing, etc., at the discretion of the author. In addition, each module shall contain a minimum of 5 unique end-of-module multiple choice quiz questions with only one correct/best answer.
5. The course final exam shall have a minimum of 25 multiple-choice questions with only one correct/best answer. If an end-of-module quiz question is repeated in a final exam retake, the order of the exam questions shall be randomly reselected and/or any repeated questions shall have the answers reordered.

Miscellaneous

1. Each course shall include the means for the student to attest to the identity of the student and to provide the student's Arizona real estate license number, before issuance of the course completion certificate.
2. Each school shall include with each course approval filing the school's plan for dealing with possible hardware and software failure. The plan shall include appropriate contact information on the school's website and/or within the course.
3. The school administrator shall insure that any instructor who is represented as the course author is a Department-approved instructor in the applicable category and is competent to field content questions regarding the course.
4. The business hours for contacting the school shall be easily available through the school's website and/or within the course.

Application of Provisions: The above provisions apply to every original and renewal application for course approval.

Authority: A.R.S. §§ 32-2101, 32-2108, 32-2130, 32-2135 and 32-2153, and A.A.C. §§ R4-28-101, R4-28-401, R4-28-402 and R4-28-404.

Policy Program: Education/Regulation

Effective Date: 11-1--2010 for original course approval applications; Revised 11-2-2010

No. 2010.01. Short Title: Guidance for using Electronic Real Estate Transaction Management and/or Document Storage Programs

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

Description of Practice/Procedure: Designated brokers may implement a Transaction Management (TM) program for internal standardization of document storage, so long as the document storage program adheres to the guidelines mandated by the Arizona Revised Statutes ("A.R.S." or "statutes") and the Arizona Administrative Code Rules ("A.A.C. R" or "rules") applicable to the Arizona Department of Real Estate ("Department" or ADRE).

Understanding there are several computer based TM and/or document storage programs ("TM system" or "electronic storage system"), this advisory provides guidance and outlines the responsibilities of brokers who are using or intend to use any electronic record program. This advisory also provides guidance to brokers using electronic record programs who have signed or intend to sign the Department's User Agreement, which provides the Department access to their electronic storage systems.

Electronic Record Keeping:

1. **Backing up records:** Transaction and employment records required to be maintained pursuant to statute or rule, must be backed-up (duplicated and stored in a secure, offsite location) in a manner allowing restoration in the event electronic data maintained at the principal place of business is destroyed.
2. **Production of records:** Records must be reproducible for the Department, at the broker's expense, in a legible, paper form ("hard copy") upon the request of the Commissioner, or the Commissioner's representative, for auditing, inspection, or investigation purposes. Brokers who maintain electronic records in a computer based TM and/or document storage program may provide the Department with electronic access to records, unless a hard copy is specifically requested by the Department.
3. Electronic records maintained in an electronic storage system should be legible, exact duplicates of the original documents.
4. **Maintenance of a log:** Brokers using web based TM and/or document storage programs shall maintain a log in a chronological or other systematic manner that lists each real estate purchase contract or lease agreement, and identifies the file in which these documents are maintained. If the web based TM and/or document storage program maintains this log or list electronically, it should be made easily accessible upon request by the Commissioner or the Commissioner's representatives. If the web based TM and/or document storage program is not capable of maintaining this log or list electronically, the broker shall maintain a separate list or log in either written or electronic form and shall make it available to the Commissioner or the Commissioner's representative upon request.
5. **Notification requirements:** If the file servers containing a broker's web based TM and/or document storage program are directly or indirectly owned by the broker, the broker shall inform the Commissioner in writing of the location of these file servers. If the file servers containing a broker's web based TM and/or document storage program are not directly or indirectly owned by the broker, the broker shall inform the Commissioner in writing of the legal address and name of the entity responsible for storing such records. The broker may be required to show evidence that the broker's electronic records are backed-up in accordance with this SPS, and SPS 2005.06 addressing "Electronic Record Keeping":
    a. **ADRE Online Review/Audit Option:** A broker using a web based TM and/or document storage program may opt to sign the Department's User Agreement and provide the Department with direct access to his/her electronic storage system. Providing the Department access to brokers' electronic storage systems is intended to enable efficient, streamlined exchanges of information with the Department, increase efficiency within the brokerage, and assist in ensuring compliance among real estate salespersons and associate brokers licensed to brokers. This capability is available using a web based TM and/or document storage program if a broker complies with the following requirements: (1) the broker must sign a User Agreement with ADRE allowing ADRE internet access to all required documents; (2) the broker must be able to produce the required documents and files in hard copy format if hard copies of documents are specifically requested by the Commissioner or the Commissioner's representative; and (3) the broker must sign a

guarantee that the documents and files will be maintained for the mandatory time frames set forth in the relevant statutes and rules including, but not limited to, A.R.S. §§ 32-2151.01, 32-2153(A)(17) and 32-2175.

b. The Commissioner's access to broker's files shall be used for:

   i. Preliminary review/research of consumer complaints against brokers and salespersons;

   ii. Routine audits or audit reviews of broker files to ensure compliance with any requirements in the relevant statutes and rules, including but not limited to ensuring that brokers properly maintain documents in a timely manner; and

   iii. Any other purposes the Commissioner deems necessary to protect Arizona consumers.

Electronic Signature

1. A broker's statutory review of contracts and agreements maintained on an electronic TM and/or document storage system may be recorded through a dated secure electronic signature in compliance with A.R.S. § 44-7031. The TM and/or document system must have a means of demonstrating, in accordance with A.R.S. §§ 44-7032 thru 44-7034 as applicable, that when the signature was made, the signature was:

   a. Unique to the person using it;

   b. Capable of verification;

   c. Under the sole control of the person using it; and

   d. Linked to the electronic record it relates to in such a manner that if the record were changed the electronic signature would be invalidated;

2. Electronic review of any document is permitted in lieu of actual initials on a document, providing that such electronic review is recorded in an unalterable history or log file.

3. The broker must enforce a written supervision policy requiring personal computer security that, at a minimum, requires each person with electronic signature authority and capability to lock or sign off his/her computer every time he/she walks away from the computer.

4. The broker must have a backup system defining how and when contracts and agreements would be reviewed in situations where the broker's computers become inaccessible for an extended period of time.

5. The electronic TM and/or document storage system must have the ability to create a secure history log of all activity for electronic signatures or broker review which can be reviewed by Department auditors and investigators.

Authority: A.R.S. §§ 32-2108, 32-2151, 32-2151.01, 32-2151.02, 32-2153, 32-2175, and A.A.C. R4-28-701, R4-28-802, R4-28-803, R4-28-804, R4-28-805, R4-28-1101, R4-28-1102, R4-28-1103, R4-28-1303.

Policy Program: Regulation

Effective Date: 4-8-2010

No. 2008.06 rev. Short Title: Preventing Mortgage Fraud through Disclosure

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Description of Practice/Procedure:

1. This policy statement applies to real estate transactions with financing.
2. The Department considers a conviction under A.R.S. § 13-2320 to warrant disciplinary action under A.R.S. § 32-2153(B). The Department recommends that a licensee who provides a premium, credit, or rebate in a real estate transaction disclose the premium, credit, or rebate to all parties in the transaction, including the lender and third-party service providers, such as appraisers, in the purchase agreement and the HUD-1 statement (or other writing if no HUD-1 is required).
3. A licensee is in violation of Title 32 Chapter 20 and AAC Title 4 Chapter 28 if:
    a. The licensee gives a premium, credit or rebate or otherwise pays an individual and is convicted of A.R.S. § 13-2320 (Residential Mortgage Fraud).
    b. The licensee gives a credit, rebate, premium or otherwise pays an individual in violation of 12 U.S.C. § 2607 et seq. (RESPA's prohibitions against kickbacks, fee splitting, and unearned fees), Fannie Mae, Freddie Mac, FHA, VA, other federal and state requirements.

Authority: A.R.S. §§ 32-2151.01(A), 32-2153(A), 32-2155(A)(B), 32-2163, 32-2176, and R4-28-1101(B). A.R.S. § 32-2102 provides that the department of Real Estate, under the direction of the Real Estate Commissioner, shall administer Title 32 Chapter 20.

Policy Program: Regulation

Effective Date: 6-18-2008

No. 2008.05 rev. Short Title: Continuing Education Requirements for Renewal of 4-Year License (REPEALED effective January 29, 2014)

No. 2008.04 rev. Short Title: Business Brokers; License Requirement Clarification (REPEALED effective January 27, 2011)

No. 2008.03 rev. Short Title: Acceptable Forms of Payment (REPEALED effective August 8, 2016)

No. 2008.02 rev. Short Title: Subsequent Owners/Subdivision Disclosure Reports (Public Reports) (REPEALED effective September 13, 2013)

No. 2008.01 rev. Short Title: Pre-license Education Waiver (REPEALED effective March 3, 2011)

No. 2007.18 rev. Short Title: Real Estate Licensee Advertising

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

Description of Practice/Procedure:

R4-28-502 (G) states that the designated broker shall supervise all advertising, for real estate, cemetery, or membership camping brokerage services.

R4-28-502 (E) requires that the (legal or dba) name of the EMPLOYING BROKER (the corporation, partnership, limited liability company or sole proprietor) appears in all advertising in "a clear and prominent manner."

R4-28-502 also addresses other requirements for advertising not addressed in this Substantive Policy Statement.

Authority: A.R.S. § 32-2102 provides that the Department of Real Estate, under the direction of the Real Estate Commissioner, shall administer Title 32, Chapter 20. A.R.S. § 32-2153(A)(3) provides that violation of the Commissioner's Rules is subject to disciplinary action.

Policy Program: Regulation

Effective Date: Revised, effective 2-12-2007, Revised, effective, 9-6-2016

No. 2007.17. Short Title: Electronic License Certificate Complies with Statutory Requirement (REPEALED effective August 8, 2016)

No. 2006.16 rev. (REPEALED)

No. 2005.15. Short Title: Broker Home Office

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

Description of Practice/Procedure: This policy is to describe the circumstances when the Department will not require compliance with the signage requirement. Some brokers retain their licenses on active status but do little or no real estate related activity and do not maintain an office outside their home. A.R.S. § 32-2126(B) provides, in part, that ‘‘Each designated broker and, if applicable, each employing broker shall cause a sign to be affixed at the entrance to the broker’s place of business, in a place and position clearly visible to all entering the place of business, with the name of the broker, the name under which the broker is doing business if other than the broker’s given name, . . .’’

The Department will not consider a broker to be in violation of the signage requirement under the provisions of A.R.S. § 32-2126(B) when the broker:

A. maintains a home office in the broker’s PRIMARY RESIDENCE,
B. handles FEWER THAN 3 transactions a year (0, 1, or 2), and
C. has no real estate related employees (licensed or unlicensed)

The broker shall clearly and obviously display the broker’s real estate license in the home office, and comply with all other applicable statutory and rule requirements to hold a broker’s license.

Authority: A.R.S. § 32-2102 provides that the Department of Real Estate, under the direction of the Real Estate Commissioner, shall administer Title 32, Chapter 20, Ariz. Rev. Stat.

Policy Program: Licensing/Enforcement/Auditing

Effective Date: December 28, 2005

No. 2005.14. Short Title: Fair Housing Course Substitute

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

Description of Practice/Procedure: Fair Housing Issues is a mandatory category for real estate license renewal: Real estate licensees must take a minimum of three credit hours in the six mandatory categories, and a total of twenty-four credit hours of Department-approved courses to apply for renewal of their real estate licenses.

Some licensees engage exclusively in specialties in which Fair Housing is not an issue, for instance, farm and ranch sales, business brokerage and commercial sales/leasing. These licensees who deal exclusively in real estate specialty areas have requested an accommodation to allow them to substitute a class applicable to their area of specialization instead of taking a course in Fair Housing.

1. A real estate renewal applicant who is engaged in a specialty that does not include residential transactions may substitute an additional class that has been approved for a minimum of three credit hours in place of the mandatory Fair Housing course when all of the following apply:

a. The licensee's business is exclusively in a specialty field in which the fair housing law does not apply;

b. The licensee provides proof (or has previously provided proof) of attendance at a Department-approved fair housing course; and

c. The substitute course proposed is more applicable to the licensee's real estate activities.

2. To request the course substitution, the licensee shall submit an email through the Message Center prior to initiating the license renewal application process that specifically states the licensee's compliance with the criteria listed in 1 above.

3. The Education Division will approve or deny the requested replacement class and inform the licensee of the decision. If approved the licensee may proceed with the renewal process using the substitute course.**Authority**: Attendance at continuing education classes is required of all real estate licensees for renewal of licensure. (A.R.S. § 32-2130 (A)) A.A.C. R4-28-402 (A) (5) prescribes the categories of class content areas for license renewal. The Commissioner's authority to waive a licensee's continuing education for license renewal is in A.R.S. § 32-2130 and A.A.C. R4-28-402 (B).

Policy Program: Education

Effective Date: August 9, 2005; Revised November 5, 2008; Revised August 8, 2016.

No. 2005.13. Short Title: Agent Responsibility to Client

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

Description of Practice/Procedure: A licensee is a real estate professional with a fiduciary duty to his or her client to act in the client's best interests as described in R4-28-1101(I). Reasonable care or competence may include recommending that a client seek professional or technical advice when the matter is beyond the expertise of the agent.

Licensees are expected to take reasonable steps to assist their clients in confirming or verifying information under circumstances in which a reasonably prudent real estate professional has reason to question the accuracy of the information being provided in a transaction, or where the client has questioned the accuracy of the information.

These considerations are intended to provide a reasonable standard for licensees to follow in complying with their duties and obligations under statute and rule.

Authority: Commissioner's Rule R4-28-1101 describes a licensee's ''professional duties'' and A.R.S. § 32-2153(A)(3) and (22) identify violation of rules and negligence as grounds for disciplinary action against a licensee.

Policy Program: Enforcement

Effective Date: Revised 6/1/2001; revised and renumbered 5/28/04, revised and renumbered 4/8/2005.

No. 2005.12. Short Title: Continuing Education and the Residential Resale Purchase Contract (REPEALED effective January 27, 2011)

No. 2005.11. Short Title: Subdivision Public Report Application Form, Changes (REPEALED effective July 17, 2015)

No. 2005.10. Short Title: Electronic Signatures

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

Description of Practice/Procedure: A broker may use an electronic signature to indicate the broker's approval of contracts and agreements as required by statute. The following elements or requirements must be met and will be the basis for any Broker Audit of that aspect of the broker's practice:

A. System must meet the criteria under A.R.S. §44-7031:

A signature is a secure electronic signature if, through the application of a security procedure, it can be demonstrated that the electronic signature at the time the signature was made was all of the following:

1. Unique to the person using it.

2. Capable of verification.

3. Under the sole control of the person using it.

4. Linked to the electronic record to which it relates in such a manner that if the record were changed the electronic signature would be invalidated.

B. The brokerage must have and enforce a written internal policy regarding personal computer security and, at a minimum, require that any person with electronic signature authority and capability locks or signs off his/her computer every time they walk away from their computer.

C. The brokerage must have a back-up system defined for when the computers are down for an extended period of time. (i.e. how and when contracts and agreements will be manually reviewed)

D. The system must have the ability to create a secure history log of all activity for electronic signatures which can be reviewed by Department auditors and investigators.

Authority: A.R.S. § 32-2151.01 identifies Arizona Licensed Broker requirements for record keeping. Subsection G requires the designated broker to review each listing agreement, purchase or lease agreement or similar instrument within 5 days of the date the parties executed the document, and to place the broker's initials and date of review on the same page as the parties' signatures. Commissioner's Rule R4-28-1103 describes a broker's professional duties and requirement for written policy manual.

Policy Program: Enforcement/Auditing

Effective Date: 11/5/2004; Renumbered 4/01/05; Revised 8/8/16.

No. 2005.09 rev. Short Title: Non-commercial Requests to Inspect Department Records & Fees for Copies

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

Description of Practice/Procedure: Arizona's public record statute, A.R.S. § 39-121, provides: "Public records and other matters in the office of any officer at all times during office hours shall be open to inspection by any person."

Contact the Custodian of Records, Arizona Department of Real Estate, 2910 N. 44th Street, Suite 100, Phoenix, AZ 85018, to request an appointment to review, or in writing to request copies of, any file of

record at The Department. If the request is for numerous files or a requested file is stored off-site, additional time may be required. Fees charged to ADRE for retrieval will be passed on to the requesting party. The charge for photocopies of records is published in the ADRE Fee Schedule available on the ADRE web site: www.azre.gov, for non-commercial use, except in response to any Subpoena Duces Tecum. Fees for certification of copies, fees for employment histories, and other similar services are also published in that Schedule.

The following sets out the average number of days typically required for files to be retrieved and any restricted information to be redacted:

1-7 days advance notice to retrieve files stored off-site. 1-3 days advance notice to redact any restricted information. Note: Time required to redact restricted information may take more or less time depending on the size of the file.

The Department will deny public inspection of a particular document if: 1) the document is made confidential by statute; 2) the document involves the privacy interests of persons; 3) disclosure would be detrimental to the best interests of the state; 4) it is correspondence between the Attorney General's Office and the Department, or any other document, that contains information protected under attorney / client privilege; 5) it is criminal history record information; or 6) it is a written offer to settle or compromise, or is correspondence related to settlement of administrative actions by the Department; 7) it is an internal memorandum regarding regulated parties and case strategy; and 8) it is an instrument of the internal deliberative process.

The Department will deny public inspection or reproduction of information and documents in open (active or pending) audits and investigations, unless the Commissioner authorizes disclosure of the information or production of documents as being in the public interest. Such open files remain confidential until the matter is final, a notice of hearing is issued, or the matter is settled by consent order.

The following information shall be redacted: a licensee's date of birth, Social Security Number, residential address and email address.

Authority: The authority to charge a fee for copying is at A.R.S § 39-121.03. Fees for copies required by a Subpoena Duces Tecum are set by Arizona Rules of Civil Procedure. The authority to withhold specific documents from the Department's public record is cited for the following types of documents: correspondence between the Attorney General's Office and the Department as well as advice given to the Department from the Attorney General's Office pursuant to A.R.S. § 12-2234; criminal history record information pursuant to A.A.C. R4-28-1303 B; written offers to settle or compromise administrative actions by the Department; all correspondence related to settlement negotiations pursuant to Rule 408, Arizona Rules of Evidence; and memoranda, both interoffice & intra-office, to the Commissioner, either directly or through the supervisory chain of command, of an advisory or consultative nature pursuant to the deliberative process privilege. The authority to keep confidential all information and documents in an open audit file or investigation file is found at A.A.C. R4-28-1303 A. The authority to redact certain data from the Department's records before they are produced includes: a licensee's residential address, electronic mail address, residential address, residential telephone number and social security number pursuant to A.R.S. §32-2125.03.

Policy Program: Administration; Administrative Actions; Education & Licensing; Investigations & Audits; Subdivision Compliance.

Effective Date: 6/18/1999; Revised & Renumbered 5/28/04; Renumbered 4/01/2005; Revised 8/21/2006; Revised 8/29/2016.

No. 2005.08. Short Title: Payment of Commission to Salesperson After License Expiration or Transfer of Employment

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy

statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

Description of Practice/Procedure: When a real estate licensee has rightfully earned a commission while in the employ of a broker, and in accordance with their agreement, that broker shall pay the licensee, even though the licensee may have left the employ of that broker. The same finding applies to similar circumstances for an associate broker.

Authority: A.R.S. § 32-2155

Policy Program: Enforcement

Effective Date: 6/18/99; Revised & Renumbered 5/28/04; Renumbered 4/01/05.

No. 2005.07. Short Title: Department Investigation of Cases Involving Civil Litigation

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

Description of Practice/Procedure: A Complainant's filing of a civil suit has no bearing on whether the Department will pursue an alleged violation of a statute or rule within the Department's jurisdiction. The Department shall commit the appropriate resources to investigate possible violations.

The Department monitors and regulates real estate licensees, but does not determine a licensee's civil liability to third parties. A finding by the Department that a violation warranting administrative action did or did not occur, is not dispositive of liability and does not create any presumption regarding whether or not civil liability exists.

The Department's investigations shall not be utilized for the purpose of circumventing the Arizona Rules of Civil Procedure or as a means of discovery of evidence for use in civil litigation. The Department will not intentionally place itself in the position of providing discovery and building a prima facie case for a Complainant, only to have the Complainant use the Department's investigative file as evidence in a civil suit. It is not the Department's role to assist a Complainant to develop a case that will assist them pursuing damages.

The Department shall not delay an investigation to await the outcome of a civil court proceeding. Such a delay may discourage or financially inhibit a Complainant's pursuit of a civil cause of action. Such a delay might also encourage a licensee to assert the Department's inaction as an argument in the licensee's favor.

Authority: The Department's authority to investigate alleged or perceived violations of Arizona Revised Statutes Title 32, Chapter 20, and Title 4, Chapter 28 of the Arizona Administrative Code, is found at A.R.S. § 32-2108.

Policy Program: Enforcement.

Effective Date: 6/18/99; Revised & Renumbered 5/28/04; Renumbered 4/01/05.

No. 2005.06. Short Title: Electronic Record Keeping

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

Description of Practice/Procedure: Licensees of the Department (brokers, property management companies and cemetery owners) are required to retain copies of transactions[1]. Brokers and management companies are also required to keep employment records[2]. Records pertaining to trust accounts, if kept electronically, must be able to be reconstructed ‘‘. . . in the event of destruction of electronic data.’’

A licensee may retain the required transaction and employment records by electronic means, providing that all of the following conditions are met:

1) The records are maintained in a manner allowing reconstruction in the event of destruction of electronic data.
2) The records can be produced, at the broker’s expense, in legible, written form (‘‘hard copy’’) upon request by the Commissioner, or the Commissioner’s representative, for auditing, inspection, or investigation purposes.
3) The electronic records are exact duplicates of the original.
4) The stored records are legible.

Authority: Brokers are required to retain records pursuant to A.R.S. §§ 32-2151(B)(2), 32-2151.01(A), 32-2151.01(H), 32-2175(A), 32-2175(B) and 32-2194.06(A) and (B). A.R.S. § 32-2151(B)(2) requires that trust account records that are maintained electronically be able to be reconstructed. A.R.S. § 32-2194.03(E) requires a cemetery owner or the owner’s agent to keep and maintain records of all sales transactions and monies received, and authorizes examination of the books and records of the cemetery owner or agent. A.R.S. §§ 32-2108(A), 32-2175(H) and 32-2194.06 (B) authorize the Commissioner to examine the books and records of any natural person or entity engaged in the business or acting in the capacity of a broker, salesperson or developer. Pursuant to A.R.S. § 32-2107, the Commissioner is authorized to administer the Department and the provisions under its jurisdiction.

Policy Program: Licensing

Effective Date: 8/15/2000; Revised & Renumbered 5/28/04; Renumbered 4/01/05.

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[1] Transaction records, referenced herein, include records of all real estate, cemetery, time-share and membership camping transactions handled by or through a broker, property management firm, or cemetery owner or agent, including contracts and addenda, earnest money receipts, closing statements showing all receipts, disbursements and adjustments, lease contracts, employment agreements (including property management, listing, and buyer-broker agreements), residential and nonresidential leasing or rental agreements.

[2] Employment records include forms evidencing hiring, severing (terminating), or license renewal of employed licensees.

No. 2005.05. Short Title: Access to Arizona Real Estate Law Book on the World Wide Web

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

Description of Practice/Procedure: A.R.S. § 32-2123(E) states, in part: "Each person licensed pursuant to this article, whether the license is active or inactive, shall have available for the licensee's use a current copy of the department's statutes, rules and annotations pertaining to real estate laws."

The Commissioner considers unrestricted access to the World Wide Web, and thus to the online edition of the Arizona Real Estate Law Book on the Department's Web site at http://www.azre.gov, to satisfy the requirements of this statute.

"Unrestricted access" is defined as access to the Department Web Site at any time without the permission or assistance of others.

Authority: Pursuant to A.R.S. § 32-2107, the Commissioner has charge of the Department and authority to administer the laws and rules adopted pursuant to Arizona Revised Statutes, Title 32, Chapter 20.

Policy Program: Education

Effective Date: December 6, 1999; Renumbered 5/28/04; Renumbered 4/01/05; Revised 8/8/2016.

No. 2005.04. Short Title: Unlicensed Assistants

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

Description of Practice/Procedure: In looking at the issue of unlicensed assistants, various aspects must be considered, including what activities the individual will perform and how the individual is paid. If an unlicensed assistant is paid on any basis that relies on the ultimate sale of a property, then that person **must** be licensed.

An unlicensed assistant in the employ of a licensed real estate broker *may*:

1) Perform telephone duties, to include calls to:
    a. collect demographic information
    b. solicit interest in engaging the services of a licensee or brokerage
    c. set or confirm appointments (with no other discussion) for:
        i. A licensee to list or show property
        ii. A buyer with a loan officer
        iii. A property inspector to inspect a home
        iv. A repair/maintenance person to perform repairs/maintenance
        v. An appraiser to appraise property
    d. mortgage and/or title companies to track the status of a file, check daily interest rates and points, whether buyer has been qualified, confirm closing appointment for licensee, and so forth
2) Assist a licensee at an open house
3) Unlock a home for a licensee so that licensee can show a buyer the property or preview the property (no discussion about the property)
4) Deliver documents (as a mail or delivery service only)

An unlicensed assistant *shall not* perform the following activities:

1) Hold/host an open house without an agent being present
2) Perform a walk-through inspection

3) Answer questions relating to a transactional document
4) Give instructions to inspectors, appraisers or maintenance/repair people. Because these instructions are part of the licensee's regular duties and there is a direct relationship to the (potential) transaction, a license is required in order to give instructions to inspectors appraisers or repair/maintenance people

Authority: A.R.S. § 32-2101(46) defines the activities of a real estate broker, for which licensure is required pursuant to A.R.S. § 32-2122. See also A.R.S. § 32-2121.

Policy Program: Enforcement

Effective Date: Revised April 3, 2000; Revised & Renumbered 5/28/04; Renumbered 4/01/05.

No. 2005.03. Short Title: Disclosure of Licensee's Home Address (REPEALED effective August 29, 2016)

No. 2005.02. Short Title: Attendance Requirements for Credit & Enforcement

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ARS 41-1033 for a review of the statement.

Description of Practice/Procedure: A.R.S. § 32-2124(B) and (C) and § 32-2130(A) require licensees to attend a prescribed amount of time in pre-licensure and continuing education classes. Tardiness may preclude a student from receiving credit for the course. Commissioner's Rule R4-28-101(3) defines ''credit hour'' as a fifty minute period of instruction, which allows students a 10-minute break for each sixty minutes and still receive an ''hour'' of credit for each 50 minutes spent under instruction.

When a course sponsor schedules a class, the customary practice is to schedule just enough time to cover breaks and meet the ''fifty-minutes-of-instruction'' definition (standard) to award each approved credit hour. The course instructor and the real estate school providing the course are responsible for enforcing the above standard.

Authority: The authority to approve or disapprove courses and course sponsors exists in A.R.S. § 32-2135 and Title 4, Chapter 28, Article 4 of the Arizona Administrative Code. Attendance is required in order for Department-approved credit is issued pursuant to A.R.S. §§ 32-2124 (B) and (C), 32-2130 and A.A.C. R4-28-101.

Policy Program: Education

Effective Date: June 18, 1999; Revised & Renumbered 5/28/04; Renumbered 4/01/05.

Title 11, Chapter 8 DEVELOPMENT FEES

Article 2 Real Estate Transfer Affidavit and Fee

11-1131. Definitions

In this article, unless the context otherwise requires:

1. "Department" means the department of revenue.
2. "Value" means:

(a) In any case other than a gift, the amount of the full actual consideration that is paid or to be paid, including the amount of any lien or liens.

(b) In the case of a gift or a contract or deed with nominal consideration or without stated consideration, the estimated price the property would bring in an open market and under the prevailing market conditions in a sale between a willing seller and a willing buyer, both of whom are conversant with the property and with prevailing general price levels.

11-1132. Real estate transfer fee; collection; disposition of proceeds

A. Before recording a deed or contract relating to the sale or transfer of real property, the county recorder shall collect a fee of two dollars for the deed or contract, in addition to the fee collected pursuant to section 11-475.

B. The county shall retain all monies collected pursuant to this section in the same manner as monies collected under section 11-475.

11-1133. Affidavit of legal value

A. Each deed evidencing a transfer of title and any contract relating to the sale of real property shall have appended at the time of recording an affidavit of the seller and the buyer to the transaction, or the agent of either the seller or buyer, or both, in a form approved by the department of revenue, who shall declare and jointly certify the following information:

1. The name and address of the buyer and seller.
2. The name and address where a tax statement may be sent.
3. The complete legal description of the property.
4. The situs address, if any, of the property.
5. The date of sale.
6. The total consideration paid for the property, the amount of cash down payment and whether or not the type of financing included cash, a new third party loan, a new loan from the seller, an assumption of an existing loan or an exchange or trade of property.
7. Whether or not the estimated market value of personal property received by the buyer equals five per cent or more of the total consideration.
8. The assessor's parcel number or numbers assigned to the real property by the county assessor or, in the case of a new parcel or parcels not yet assigned a parcel number, the parcel number or numbers of the previous parcel or parcels from which the new parcel or parcels are created.
9. The conditions of the transaction including the relationship, if any, of the parties.
10. The use and description of the property and, in the case of a residential dwelling, whether the property is to be owner-occupied or rented.
11. The name and address of the person to contact regarding information contained on the affidavit.

B. If a beneficiary of a foreclosed trustee's deed receives payment based on private mortgage insurance covering the sale that is in addition to the proceeds of the sale, the beneficiary shall submit, in a form approved by the department of revenue, to the county recorder in the county where the property is located within four months after the date of the trustee's sale a beneficiary's declaration of additional funds received that contains the following:

1. The county assessor's parcel number or numbers assigned as of the date of the trustee's sale.
2. The name and address of the beneficiary submitting the declaration.
3. The date of the trustee's sale.
4. The highest bid amount received by the trustee at the trustee's sale.
5. The recording number of the trustee's deed on sale.
6. The amount of any additional compensation received by the beneficiary within three months after the date of the trustee's sale.

C. The county recorder shall refuse to record any deed and any contract relating to the sale of real property if a complete affidavit of legal value is not appended unless the instrument bears a notation indicating an exemption pursuant to section 11-1134.

D. An affidavit is complete for purposes of this section if all of the required information is stated on the affidavit form or is indicated on the form as "not applicable".

11-1134. Exemptions

A. The affidavit and fee required by this article do not apply to the following instruments:

1. A deed that represents the payment in full or forfeiture of a recorded contract for the sale of real property.
2. A lease or easement on real property, regardless of the length of the term.

3. A deed, patent or contract for the sale or transfer of real property in which an agency or representative of the United States, this state, a county, city or town of this state or any political subdivision of this state is the named grantor, and authorized seller, or purchaser.
4. A quitclaim deed to quiet title as described in section 12-1103, subsection B or otherwise executed for no monetary consideration.
5. A conveyance of real property that is executed pursuant to a court order.
6. A deed to an unpatented mining claim.
7. A deed of gift.

B. The affidavit and fee required by this article do not apply to a transfer of title:
1. Solely in order to provide or release security for a debt or obligation, including a trustee's deed pursuant to power of sale under a deed of trust.
2. That confirms or corrects a deed that was previously recorded.
3. When the transfer of title has only nominal actual consideration for the transfer of residential property between:
(a) Husband and wife or ancestor of the husband and wife.
(b) Parent and child, including natural or adopted children and their descendants.
(c) Grandparent and grandchild.
(d) Natural or adopted siblings.
4. On a sale for delinquent taxes or assessments.
5. On partition.
6. Pursuant to a merger.
7. For no consideration or nominal consideration:
(a) By a subsidiary to its parent or from a parent to a subsidiary.
(b) Among commonly controlled entities.
(c) From a member to its limited liability company or from a limited liability company to a member.
(d) From a partner to its partnership.
(e) From a partnership to a partner.
(f) From a joint venturer to its joint venture.
(g) From a joint venture to a joint venturer.
(h) From a trust beneficiary to its trustee.
(i) From a trustee to its trust beneficiary.
(j) From any of the entities in subdivisions (a) through (i) of this paragraph to a single purpose entity in order to obtain financing.
8. From a person to a trustee or from a trustee to a trust beneficiary with only nominal actual consideration for the transfer.
9. To and from an intermediary for the purpose of creating a joint tenancy estate or some other form of ownership.
10. From a husband and wife or one of them to both husband and wife to create an estate in community property with right of survivorship.
11. From two or more persons to themselves to create an estate in joint tenancy with right of survivorship.
12. Pursuant to a beneficiary deed with only nominal actual consideration for the transfer.
13. From an owner to itself or a related entity for no or nominal consideration solely for the purpose of consolidating or splitting parcels.
14. Due to a legal name change.

C. Any instrument that describes a transaction that is exempt under this section shall note the exemption on the face of the instrument at the time of recording, indicating the specific exemption that is claimed.

11-1135. Transmitting affidavit or data to county assessor, Arizona state library, archives and public records and department of revenue

A. The county recorder shall:
1. Place the fee or recording number of the deed and the date of recording on the original affidavit.

2. Scan the affidavit and transmit an electronic copy to the department and the Arizona state library, archives and public records, and transmit either the original or an electronic copy of the original to the county assessor.

B. The county assessor shall transmit the data contained within the affidavit to the department.

C. The county shall transmit the original affidavit, when no longer in active use, to the Arizona state library, archives and public records.

11-1136. Administrative and enforcement powers of department

A. The department may prescribe rules that are reasonably necessary to facilitate and expedite the imposition, collection and administration of the fee imposed pursuant to this article.

B. The department or its authorized agents may:

1. Examine books, papers, records or other data bearing on the correctness of any affidavit that is filed or fee that is collected pursuant to this article.
2. Require the attendance of any person and administer oaths and take testimony with respect to these matters.

11-1137. Violations; classification

A. A county recorder or employee of the recorder who knowingly records any deed or contract for which a fee is charged by this article without collecting the additional fee is guilty of a class 2 misdemeanor.

B. Any person who knowingly fails to provide or knowingly falsifies the information that is required by this article on the affidavit of legal value is guilty of a class 2 misdemeanor.

Title 33, Chapter 7 LIENS

Article 10 Commercial Real Estate Broker Liens

33-1071. Commercial real estate broker lien; definition

A. Except as prescribed by subsection C, an employing real estate broker pursuant to title 32, chapter 20 has a lien against real property for the amount of compensation that is agreed to be paid to the broker by the owner of the real property for the broker's services in the lease or rental of the real property. The lien is created only if all of the following apply:

1. There is a written agreement between the broker and the owner of the real property that provides for the payment of a commission or other compensation to that broker for the broker's services in a real estate transaction and that agreement discloses in the same size type as the majority of the remainder of the agreement above the portion of the agreement calling for the signature of the owner of the real property that the failure to pay the agreed upon commission or compensation may give rise to lien rights as provided by this article.
2. The broker produces a person or entity that is ready, willing and able to lease or rent the real property on the terms provided in the written agreement between the broker and the owner of the real property or on terms that are otherwise acceptable to the owner as evidenced by a written instrument that is signed by the owner.
3. The broker fully complies with sections 33-1072 and 33-1073.
4. All of the conditions for the payment of the commission or other compensation described in the written agreement have been satisfied.

B. Mechanics' and materialmen's lien rights established pursuant to title 33, chapter 7, article 6 have priority over the lien rights created by this article.

C. Consensual liens, mortgages and deeds of trust that are recorded before the recordation of the broker's preliminary notice of intent to lien have priority over the lien rights created by this article and over the notice of commercial real estate broker lien recorded pursuant to this article.

D. Real property is not subject to a commercial real estate broker lien pursuant to this article if either of the following apply:

1. The real property is conveyed to a bona fide purchaser for value before the recordation of a broker's preliminary notice of intent to lien.

2. It is encumbered by a bona fide lender for value before the recordation of a broker's preliminary notice of intent to lien.

E. Except as provided in subsection D of this section, the lien rights provided by this article apply to all commercial real property and do not apply to any transaction involving either of the following:

1. Residential real property with fewer than five residential units.
2. Real property on which single family mobile home lots, manufactured housing lots, residences or condominiums are sold unit by unit.

F. For purposes of this article, "real property" or "subject real property" means the real property interest that is owned by the person who is the party to the agreement with the broker as prescribed by this section.

33-1072. Lien attachment; notice of commercial real estate broker lien; notice to owner

A. A lien pursuant to this article attaches to the subject real property when all of the following occur:

1. The broker produces a person or entity that is ready, willing and able to lease or rent the real property on the terms provided in the written agreement between the broker and the owner of the real property or on terms that are otherwise acceptable to the owner as evidenced by a written instrument that is signed by the owner.
2. The broker fully complies with subsection B of this section.
3. The broker records a document entitled "notice of commercial real estate broker lien" in the office of the county recorder in the county or counties in which the subject real property is located. The notice of commercial real estate broker lien shall be recorded as follows:
   (a) Except as provided in subdivision (b), if the notice of commercial real estate broker lien is based on a lease or rental of the real property, the notice of commercial real estate broker lien shall be recorded within ninety days after the tenant takes possession of the leased premises.
   (b) If the notice of commercial real estate broker lien is based on compensation that is to be paid in installments and any of those installments are due after the lease or rental of the real property, the notice of commercial real estate broker lien shall be recorded within ninety days after the tenant takes possession of the real property and is valid only to the extent that monies remain unpaid by the owner of the real property to the broker.

B. On recording the notice of commercial real estate broker lien, the broker's lien is perfected.

C. Not later than fifteen days before the date that the tenant takes possession of the leased premises, the broker shall record a document entitled "broker's preliminary notice of intent to lien" in the office of the county recorder in the county in which the real property is located and shall deliver personally or by first class mail a copy of the broker's preliminary notice of intent to lien to the owner of the real property interest. The broker's preliminary notice of intent to lien shall state that the broker is entitled to compensation under the terms set forth in the written agreement between the broker and the owner and that the broker intends to claim a lien on the real property. The broker's preliminary notice of intent to lien shall include all of the information prescribed by section 33-1073, subsection A and shall be entitled "broker's preliminary notice of intent to lien". The broker's failure to record the broker's preliminary notice of intent to lien within the time prescribed by this subsection extinguishes the broker's lien rights.

33-1073. Contents of notice of lien; verification

A. The notice of commercial real estate broker lien shall include all of the following:

1. The name and the address of the principal place of business of the broker who claims the lien and the broker's real estate license number.
2. The name and the mailing address of the owner of the real property.
3. The real property interest that is owned by the owner.
4. The amount of the lien.
5. The legal description of the real property that is the subject of the lien.
6. The street address of the real property, if any.
7. The statement that the broker who claims the lien is entitled to compensation from the owner of the real property.
8. The notarized signature of the real estate broker that avows that based on information and belief the contents of the notice of commercial real estate broker lien are true and accurate.

B. The words "unknown" or "not available" and similar terms may not be used in lieu of the information prescribed by subsection A, and any use of those terms in the notice of commercial real estate broker lien or broker's preliminary notice of intent to lien invalidates the commercial real estate broker lien.

33-1074. Foreclosure; limitation of action; attorney fees

A. A commercial real estate broker lien recorded pursuant to this article is enforceable by foreclosure action in superior court as if the lien were a mortgage.

B. A lien pursuant to this article is only valid for two years after the date that it is recorded unless an action is brought within that two years to enforce the lien and a notice of pendency of the action is recorded pursuant to section 12-1191 in the office of the county recorder in the county in which the property is located within five days after filing the action.

C. In any action to foreclose a commercial real estate broker lien, the prevailing party shall be awarded costs and reasonable attorney fees.

33-1075. Satisfaction of lien; damages

A. On satisfaction of any lien established pursuant to this article, the lienholder shall record a satisfaction of the lien within thirty days. The satisfaction shall be in the form prescribed by section 11-480. A lienholder who fails to record a satisfaction of lien pursuant to this section is subject to the penalties prescribed by section 33-712.

B. A broker shall record a waiver and release of claim of lien that extinguishes the broker's lien rights on either of the following:

1. Within thirty days after satisfaction of a broker's claim of lien arising pursuant to this article if satisfaction occurs before recording a notice of commercial real estate broker lien.
2. Within ten days after receipt of a written request from the owner and if the broker fails to record a notice of commercial real estate broker lien within the time period prescribed by section 33-1072, subsection A, paragraph 3, subdivision (a) or (b).

C. A broker who is required to record a waiver and release of claim of lien by subsection B of this section and who fails to record a waiver is subject to the penalties prescribed by section 33-712.

D. A waiver and release of claim of lien is sufficient if it complies with other applicable laws and if it is in substantially the following form:

Waiver and Release of Claim of Lien

I (we) hereby unconditionally waive and release any claim of lien evidenced by the recording of a "broker's preliminary notice of intent to lien" or "notice of commercial real estate broker lien", or both, recorded on (date) in docket or book _____ at page _____, or instrument number _____, records of _____ county, Arizona.

Dated:

Signature

(Acknowledgment)

33-1076. Discharge of commercial real estate broker's liens; bond; limitations of actions; discharge of surety; judgment

A. After perfection of a lien pursuant to this article, an owner, including any person who has a legal or equitable interest in the land that is subject to the lien, a mortgagee or any other lien creditor may, either before or after the commencement of an action to foreclose the lien, cause to be recorded in the office of the county recorder in the county in which the land is located a surety bond in the form described in subsection B of this section, together with a power of attorney disclosing the authority of the person executing the bond on behalf of the surety. On the recordation of the bond, the property shall be discharged of the lien whether or not a copy of the bond is served on the claimant or the claimant perfects the claimant's rights against the bond.

B. A surety bond to discharge a lien perfected under this article shall be executed by the person seeking to discharge the lien, as principal, and by a surety company or companies holding a certificate of authority to transact surety business in this state that is issued by the director of the department of insurance pursuant to title 20, chapter 2, article 1. The bond is for the sole protection of the claimant who perfected the lien. Notwithstanding any other statute, the surety bond shall not be executed by individual surety or sureties, even if the requirements of section 7-101 are satisfied. The bond shall be in an amount equal to one and one-half times the claim secured by the lien and shall be conditioned for the payment of the

judgment that would have been rendered against the property for the enforcement of the lien. The legal description of the property and the docket and page of the lien sought to be discharged shall be set forth in the bond.

C. On recordation of the bond with the county recorder, the principal on the bond shall cause a copy of the bond to be served within a reasonable time on the lien claimant, and if a suit is then pending to foreclose the lien, the claimant, within ninety days after receipt of the bond, shall cause proceedings to be instituted to add the surety and the principal as parties to the lien foreclosure suit.

D. The bond shall be discharged and the principal and sureties shall be released on any of the following:

1. The failure of the lien claimant to commence a suit within the time allowed pursuant to section 33-1074.
2. Failure of the lien claimant to name the principal and sureties as parties to the action seeking foreclosure of the lien if a copy of the bond has been served on the claimant. If the bond is served on the claimant fewer than ninety days after the date the claimant would be required to commence an action pursuant to section 33-1074, the claimant has ninety days from the date of receiving a copy of the bond to add the principal and the sureties as parties to the lien foreclosure suit.
3. The dismissal of the foreclosure suit with prejudice as to the claimant or the entry of judgment in a suit against the claimant.

E. In an action to foreclose a lien under this article, if a bond has been filed and served as prescribed by this section a judgment for the claimant on the bond shall be against the principal and the principal's sureties and shall not be against the property.

F. If a copy of the bond is not served on the claimant as provided in subsection C of this section, the claimant has six months after the discovery of the bond to commence an action on the bond, except that no action may be commenced on the bond after two years from the date it was recorded as provided in this section.

G. The county recorder of the county in which the bond and contract are recorded shall index the bond and contract under the index classification in which commercial real estate broker liens are recorded.

Title 33, Chapter 8 HOMESTEAD AND PERSONAL PROPERTY EXEMPTION

Article 1 Homesteads and Homestead Exemption

33-1101. Homestead exemptions; persons entitled to hold homesteads

A. Any person the age of eighteen or over, married or single, who resides within the state may hold as a homestead exempt from attachment, execution and forced sale, not exceeding one hundred fifty thousand dollars in value, any one of the following:

1. The person's interest in real property in one compact body upon which exists a dwelling house in which the person resides.
2. The person's interest in one condominium or cooperative in which the person resides.
3. A mobile home in which the person resides.
4. A mobile home in which the person resides plus the land upon which that mobile home is located.

B. Only one homestead exemption may be held by a married couple or a single person under this section. The value as specified in this section refers to the equity of a single person or married couple. If a married couple lived together in a dwelling house, a condominium or cooperative, a mobile home or a mobile home plus land on which the mobile home is located and are then divorced, the total exemption allowed for that residence to either or both persons shall not exceed one hundred fifty thousand dollars in value.

C. The homestead exemption, not exceeding the value provided for in subsection A, automatically attaches to the person's interest in identifiable cash proceeds from the voluntary or involuntary sale of the property. The homestead exemption in identifiable cash proceeds continues for eighteen months after the date of the sale of the property or until the person establishes a new homestead with the proceeds, whichever period is shorter. Only one homestead exemption at a time may be held by a person under this section.

33-1102. Exemption by operation of law; designation of multiple properties on creditor's request; recording

A. A person who is entitled to a homestead exemption as prescribed by section 33-1101 holds that exemption by operation of law and no written claim or recording is required. If a person has more than one property interest to which a homestead exemption may reasonably apply, a creditor may require the person to designate which property, if any, is protected by the homestead exemption. The creditor shall demand the designation by sending a letter by certified mail, return receipt requested, to each address of the person which may reasonably be protected by the homestead exemption. The person shall designate the property by recording a homestead exemption in the office of the county recorder where the property is located or by sending the creditor a certified letter, return receipt requested, within thirty days of receiving the creditor's demand letter. If the person receives the creditor's letter and fails to respond as provided by this subsection, the person may only assert the homestead exemption by recording a claim in the office of the county recorder where the property is located.

B. If the person is married, the homestead may be selected from the community property, the joint property or the separate property of the person.

33-1103. Effective date of homestead exemption; extent of exemption; exceptions

A. The homestead provided for in section 33-1101, subsection A is exempt from process and from sale under a judgment or lien, except:

1. A consensual lien, including a mortgage or deed of trust, or contract of conveyance.
2. A lien for labor or materials claimed pursuant to section 33-981.
3. A lien for child support arrearages or spousal maintenance arrearages. An award of court ordered support is not a lien for the purposes of this paragraph unless one of the following applies:
   (a) An arrearage has been reduced to judgment.
   (b) A lien exists pursuant to section 25-516.
   (c) The court orders a specific security interest of the property for support.
4. To the extent that a judgment or other lien may be satisfied from the equity of the debtor exceeding the homestead exemption under section 33-1101.

B. A sale as described in subsection A of this section and not excepted by subsection A, paragraph 1, 2, 3 or 4 of this section is invalid and does not convey an interest in the homestead, whether made under a judgment existing before or after the homestead is established.

C. In a contempt proceeding brought to enforce payment of any form of child support or spousal maintenance, the court may consider the portion of property claimed as exempt pursuant to section 33-1101, subsection A, as a resource from which an obligor has the ability to pay.

33-1104. Abandonment of homestead; encumbrance of homestead

A. A homestead may be abandoned by any of the following:

1. A declaration of abandonment or waiver.
2. A transfer of the homestead property by deed of conveyance or contract for conveyance.
3. A permanent removal of the claimant from the residence or the state. A claimant may remove from the homestead for up to two years without an abandonment or a waiver of the exemption.

B. A declaration of abandonment or waiver shall be executed by the claimant and acknowledged. A declaration of abandonment or waiver is effective only from the time of its recording in the office of the county recorder in the county in which the homestead property is located.

C. This article shall not be construed to repeal the provisions of section 25-214, subsection C, pertaining to the acquisition, conveyance or encumbrance of community property.

D. Any recorded consensual lien, including a mortgage or deed of trust, encumbering homestead property shall not be subject to or affected by the homestead claim or exemption.

E. Notwithstanding the provisions of subsection A, paragraph 2 of this section, a transfer of the homestead property by deed of conveyance or contract for conveyance under a trust, as defined in section 14-1201, in which the claimant retains the power to administer and revoke the trust shall not constitute an abandonment of the homestead.

33-1105. Sale by judgement creditor of property subject to homestead exemption

A judgment creditor other than a mortgagee or beneficiary under a trust deed may elect to sell by judicial sale as specified in title 12 the property in which the judgment debtor has a homestead under section 33-

1101, subsection A, provided that the judgment debtor's interest in the property shall exceed the sum of the judgment debtor's homestead plus the amount of any consensual liens on the property having priority to the judgment. A bid shall not be accepted by the officer in charge of a sale under this section which does not exceed the amount of the judgment debtor's homestead plus the amount of any consensual liens on the property having a priority to the judgment plus the costs of the sale allowable under title 12. After receipt of a sufficient bid, the officer shall sell the property. From the proceeds, the officer shall first pay the amount of the homestead to the judgment debtor plus the amount of any consensual liens on the property having a priority to the judgment and then pay the costs of the sale. The remaining proceeds shall be applied in accordance with the provisions of section 12-1562, subsection A. If the sale does not occur, either because of voluntary abandonment by the judgment creditor or because no sufficient bid is made, the judgment creditor may not charge any costs or attorney fees incurred in connection with the sale against the judgment debtor by addition to the judgment or otherwise.

Article 2 Personal Property Exemption

33-1121. Definitions
In this article, unless the context otherwise requires:
1. "Debtor" means an individual whether married or single utilizing property described in this article for personal, family or household use.
2. "Process" means execution, attachment, garnishment, replevin, sale or any final process issued from any court or any other judicial remedy provided for collection of debts.

33-1121.01. Availability of exemptions
In the case of married persons, each spouse is entitled to the exemptions provided in this article, which may be combined with the other spouse's exemption in the same property or taken in different exempt property.

33-1122. Debtor’s property not exempt from process
The property declared exempt by this article is not exempt from process utilized to enforce a security interest in or pledge of such property, or to obtain possession of leased property.

33-1123. Household furniture, furnishings and appliances
Household furniture and furnishings, household goods, including consumer electronic devices, and household appliances personally used by the debtor or a dependent of the debtor and not otherwise specifically prescribed in this chapter are exempt from process provided their aggregate fair market value does not exceed six thousand dollars.

33-1124. Food, fuel and provisions
All food, fuel and provisions actually provided for the debtor's individual or family use for six months are exempt from process.

33-1125. Personal items
The following property of a debtor used primarily for personal, family or household purposes shall be exempt from process:
1. All wearing apparel not in excess of a fair market value of five hundred dollars.
2. All musical instruments provided for the debtor's individual or family use not in excess of an aggregate fair market value of four hundred dollars.
3. Domestic pets, horses, milk cows and poultry not in excess of an aggregate fair market value of eight hundred dollars.
4. All engagement and wedding rings not in excess of an aggregate fair market value of two thousand dollars.
5. The library of a debtor, including books, manuals, published materials and personal documents not in excess of an aggregate fair market value of two hundred fifty dollars.
6. One watch not in excess of a fair market value of one hundred fifty dollars.

7. One typewriter, one computer, one bicycle, one sewing machine, a family bible, a lot in any burial ground, one shotgun or one rifle or one pistol, not in excess of an aggregate fair market value of one thousand dollars.
8. Equity in one motor vehicle not in excess of six thousand dollars. If the debtor or debtor's dependent is a person with a physical disability, the equity in the motor vehicle shall not exceed twelve thousand dollars.
9. Professionally prescribed prostheses for the debtor or a dependent of the debtor, including a wheelchair.

33-1126. Money benefits or proceeds; exception

A. The following property of a debtor is exempt from execution, attachment or sale on any process issued from any court:

1. All money received by or payable to a surviving spouse or child on the life of a deceased spouse, parent or legal guardian, not exceeding twenty thousand dollars.
2. The earnings of the minor child of a debtor or the proceeds of these earnings by reason of any liability of the debtor not contracted for the special benefit of the minor child.
3. All monies received by or payable to a person entitled to receive child support or spousal maintenance pursuant to a court order.
4. All money, proceeds or benefits of any kind to be paid in a lump sum or to be rendered on a periodic or installment basis to the insured or any beneficiary under any policy of health, accident or disability insurance or any similar plan or program of benefits in use by any employer, except for premiums payable on the policy or debt of the insured secured by a pledge, and except for collection of any debt or obligation for which the insured or beneficiary has been paid under the plan or policy and except for payment of amounts ordered for support of a person from proceeds and benefits furnished in lieu of earnings that would have been subject to that order and subject to any exemption applicable to earnings so replaced.
5. All money arising from any claim for the destruction of, or damage to, exempt property and all proceeds or benefits of any kind arising from fire or other insurance on any property exempt under this article.
6. The cash surrender value of life insurance policies where for a continuous unexpired period of two years the policies have been owned by a debtor. The policy shall have named as beneficiary the debtor's surviving spouse, child, parent, brother or sister. The policy may have named as beneficiary any other family member who is a dependent, in the proportion that the policy names any such beneficiary, except that, subject to the statute of limitations, the amount of any premium that is recoverable or avoidable by a creditor pursuant to title 44, chapter 8, article 1, with interest thereon, is not exempt. The exemption provided by this paragraph does not apply to a claim for the payment of a debt of the insured or beneficiary that is secured by a pledge or assignment of the cash value of the insurance policy or the proceeds of the policy. For the purposes of this paragraph, "dependent" means a family member who is dependent on the insured debtor for not less than half support.
7. An annuity contract where for a continuous unexpired period of two years that contract has been owned by a debtor and has named as beneficiary the debtor, the debtor's surviving spouse, child, parent, brother or sister, or any other dependent family member, except that, subject to the statute of limitations, the amount of any premium, payment or deposit with respect to that contract is recoverable or avoidable by a creditor pursuant to title 44, chapter 8, article 1 is not exempt. The exemption provided by this paragraph does not apply to a claim for a payment of a debt of the annuitant or beneficiary that is secured by a pledge or assignment of the contract or its proceeds. For the purposes of this paragraph, "dependent" means a family member who is dependent on the debtor for not less than half support.
8. Any claim for damages recoverable by any person by reason of any levy on or sale under execution of that person's exempt personal property or by reason of the wrongful taking or detention of that property by any person, and the judgment recovered for damages.
9. A total of three hundred dollars held in a single account in any one financial institution as defined by section 6-101. The property declared exempt by this paragraph is not exempt from normal service charges assessed against the account by the financial institution at which the account is carried.

10. An interest in a college savings plan under section 529 of the internal revenue code of 1986, either as the owner or as the beneficiary. This does not include money contributed to the plan within two years before a debtor files for bankruptcy.

B. Any money or other assets payable to a participant in or beneficiary of, or any interest of any participant or beneficiary in, a retirement plan under section 401(a), 403(a), 403(b), 408, 408A or 409 or a deferred compensation plan under section 457 of the United States internal revenue code of 1986, as amended, whether the beneficiary's interest arises by inheritance, designation, appointment or otherwise, is exempt from all claims of creditors of the beneficiary or participant. This subsection does not apply to any of the following:

1. An alternate payee under a qualified domestic relations order, as defined in section 414(p) of the United States internal revenue code of 1986, as amended. The interest of any and all alternate payees is exempt from any and all claims of any creditor of the alternate payee.
2. Amounts contributed within one hundred twenty days before a debtor files for bankruptcy.
3. The assets of bankruptcy proceedings filed before July 1, 1987.

C. Any person eighteen years of age or over, married or single, who resides within this state and who does not exercise the homestead exemption under article 1 of this chapter may claim as a personal property homestead exempt from all process prepaid rent, including security deposits as provided in section 33-1321, subsection A, for the claimant's residence, not exceeding two thousand dollars.

D. This section does not exempt property from orders that are the result of a judgment for arrearages of child support or for a child support debt.

33-1127. School equipment

The library and philosophical and chemical or other apparatus belonging to a debtor and used for the instruction of youth in any university, college, seminary of learning, or school shall be exempt from execution, attachment or sale on any process issued from any court.

33-1128. Fire fighting equipment

All fire engines, hooks and ladders, with the carts, trucks, carriages, hose, buckets, implements and apparatus appertaining thereto, and all furniture and uniforms of any fire company or department organized under any law of this state shall be exempt from execution, attachment or sale on any process issued from any court.

33-1129. Public property or property of a public character

All court houses, jails, public offices, buildings, lots, grounds and personal property, the fixtures, furniture, books and papers and appurtenances belonging and pertaining to the jail and public offices belonging to any county or any city of this state and all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or city or dedicated by such town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this state shall be exempt from execution, attachment or sale on any process issued from any court.

33-1130. Tools and equipment used in a commercial activity, trade, business or profession

The following tools and equipment of a debtor used in a commercial activity, trade, business or profession shall be exempt from process:

1. The tools, equipment, instruments and books, including telephone numbers, client or customer contact information, or marketing tools, such as websites, domain names or any other intangible work product, in the possession of a debtor or the spouse of a debtor primarily used in, and necessary to carry on or develop, the commercial activity, trade, business or profession of the debtor or the debtor's spouse, not in excess of an aggregate fair market value of five thousand dollars. For the purpose of this paragraph, tools do not include a motor vehicle primarily used by a debtor for personal, family or household purposes such as transportation to and from the debtor's place of employment.
2. Farm machinery, utensils, implements of husbandry, feed, seed, grain and animals not in excess of an aggregate value of two thousand five hundred dollars belonging to a debtor whose primary income is derived from farming.
3. All arms, uniforms and accoutrements required by law to be kept by a debtor.

33-1131. Definition; wages; salary; compensation
A. For the purposes of this section, "disposable earnings" means that remaining portion of a debtor's wages, salary or compensation for his personal services, including bonuses and commissions, or otherwise, and includes payments pursuant to a pension or retirement program or deferred compensation plan, after deducting from such earnings those amounts required by law to be withheld.
B. Except as provided in subsection C, the maximum part of the disposable earnings of a debtor for any workweek which is subject to process may not exceed twenty-five per cent of disposable earnings for that week or the amount by which disposable earnings for that week exceed thirty times the minimum hourly wage prescribed by federal law in effect at the time the earnings are payable, whichever is less.
C. The exemptions provided in subsection B do not apply in the case of any order for the support of any person. In such case, one-half of the disposable earnings of a debtor for any pay period is exempt from process.
D. The exemptions provided in this section do not apply in the case of any order of any court of bankruptcy under chapter XIII of the federal bankruptcy act or any debt due for any state or federal tax.

33-1132. Waiver of exemption rights void
Notwithstanding any agreement to the contrary, a waiver of the exemption rights provided by this article shall be void and unenforceable, except as specifically provided in section 33-1122 and when done with notice.

33-1133. Other exemption laws
A. Nothing in this article shall be construed to displace other provisions of law which afford additional or greater protection to a debtor's property.
B. Notwithstanding subsection A, in accordance with 11 U.S.C. 522 (b), residents of this state are not entitled to the federal exemptions provided in 11 U.S.C. 522 (d). Nothing in this section affects the exemptions provided to residents of this state by the constitution or statutes of this state.

Article 3 Exemption From Execution of Foreign Judgement

33-1151. Exemption from execution
A. In addition to any other exemption provided by law, all real, personal, tangible or intangible property of a judgment debtor in this state is exempt from execution of a judgment in favor of another state for failure to pay that state's income tax on benefits received from a pension or other retirement plan to the extent those benefits were received while the judgment debtor was a resident of this state. The exempt property may include community, joint or separate property of the judgment debtor.

B. If the judgment debtor dies or absconds and leaves a spouse or dependent any property that is exempt under this section, the property remains exempt to the spouse or dependent.

C. A claim or judgment in favor of another state for failure to pay that state's income tax on benefits received from a pension or other retirement plan to the extent those benefits were received while the judgment debtor was a resident of this state is not a lien on any property in this state that is owned by a resident of this state.

33-1152. Recording; effect
A. A person must claim the exemption under this article under oath and in writing that establishes that the person is a resident of this state and particularly designates the real and personal property for which the exemption is claimed. The claim shall be recorded in the office of the county recorder in the county where the property is located.
B. From and after the date of recording the claim the property is exempt from process and from sale under a judgment described in section 33-1151 existing before or after recording the claim, and any such sale is void.

33-1153. Abandonment of exemption; maintenance of residency
A. A claim of exemption under this article may be abandoned by a declaration or grant of abandonment or waiver or by permanent removal of the claimant from this state. A claimant may remove from this state for up to two years without an abandonment or waiver of the exemption.
B. A declaration of abandonment, waiver or grant must be executed and acknowledged by the claimant and is effective from and after the date it is recorded in the office of the county recorder in which the claim of exemption was recorded.

Title 33, Chapter 9 CONDOMINIUMS

Article 1 General Provisions

33-1201. Applicability
This chapter applies to all condominiums created within this state without regard to the date the condominium was created.

33-1202. Definitions
In the condominium documents, unless specifically provided otherwise or the context otherwise requires, and in this chapter:
1. "Affiliate of a declarant" means any person who controls, is controlled by or is under common control with a declarant.
2. "Allocated interests" means the undivided interests in the common elements, the common expense liability and votes in the association allocated to each unit.
3. "Articles of incorporation" means the instrument by which an incorporated association or unit owners' association is formed and organized under this state's corporate statutes.
4. "Association" or "unit owners' association" means the unit owners' association organized under section 33-1241.
5. "Board of directors" means the body, regardless of its name, designated in the declaration and given general management powers to act on behalf of the association.
6. "Bylaws" means the bylaws required by section 33-1246.
7. "Common elements" means all portions of a condominium other than the units.
8. "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section 33-1217.
9. "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.
10. "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.
11. "Condominium documents" means the declaration, bylaws, articles of incorporation, if any, and rules, if any.
12. "Declarant" means any person or group of persons who reserves, is granted or succeeds to any special declarant right.
13. "Declaration" means any instruments, however denominated, that create a condominium and any amendments to those instruments.
14. "Development rights" means any right or combination of rights reserved by or granted to a declarant in the declaration to do any of the following:
    (a) Add real estate to a condominium.
    (b) Create easements, units, common elements or limited common elements within a condominium.
    (c) Subdivide units, convert units into common elements or convert common elements into units.
    (d) Withdraw real estate from a condominium.
    (e) Make the condominium part of a larger condominium or planned community.

(f) Amend the declaration during any period of declarant control, pursuant to section 33-1243, subsection E, to comply with applicable law or to correct any error or inconsistency in the declaration, if the amendment does not adversely affect the rights of any unit owner.

(g) Amend the declaration during any period of declarant control, pursuant to section 33-1243, subsection E, to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments.

15. "Identifying number" means a symbol or address that identifies one unit in a condominium.

16. "Leasehold condominium" means a condominium in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size.

17. "Limited common element" means a portion of the common elements specifically designated as a limited common element in the declaration and allocated by the declaration or by operation of section 33-1212, paragraph 2 or 4 for the exclusive use of one or more but fewer than all of the units.

18. "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity. In the case of a subdivision trust, as defined in section 6-801, person means the beneficiary of the trust who holds the right to subdivide, develop or sell the real estate rather than the trust or trustee.

19. "Real estate" means any legal, equitable, leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. Real estate includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water.

20. "Rules" means the provisions, if any, adopted pursuant to the declaration or bylaws governing maintenance and use of the units and common elements.

21. "Special declarant rights" means any right or combination of rights reserved by or granted to a declarant in the declaration to do any of the following:

(a) Construct improvements provided for in the declaration.

(b) Exercise any development right.

(c) Maintain sales offices, management offices, signs advertising the condominium, and models.

(d) Use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium.

(e) Appoint or remove any officer of the association or any board member during any period of declarant control.

22. "Unit" means a portion of the condominium designated for separate ownership or occupancy.

23. "Unit owner" means a declarant or other person who owns a unit or, unless otherwise provided in the lease, a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium but does not include a person having an interest in a unit solely as security for an obligation. In the case of a contract for conveyance, as defined in section 33-741, of real property, unit owner means the purchaser of the unit.

33-1203. Variation

Except as expressly provided in this chapter, the provisions of this chapter shall not be varied by agreement and rights conferred by this chapter shall not be waived. A person shall not use any device to evade the limitations or prohibitions of this chapter.

33-1204. Separate titles and taxation

A. If there is a unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

B. Except as provided in subsection C, if there is a unit owner other than a declarant, each unit shall be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements.

C. Any portion of the common elements which the declarant reserves the right to withdraw from the condominium shall be separately taxed and assessed against the declarant and the declarant alone is liable for payment of those taxes, as long as the declarant retains this right to withdraw.

D. If there is no unit owner other than a declarant, the real estate comprising the condominium shall be taxed and assessed as a single parcel.

33-1205. Applicability of local ordinances, rules and building codes

A. A zoning, subdivision or building code or other real estate use law, ordinance or rule shall not prohibit a condominium form of ownership or impose any requirement on a condominium which it would not impose on a physically identical development under a different form of ownership.

B. Except as provided in subsection A, this chapter does not invalidate or modify any provision of any zoning, subdivision or building code or other real estate use law, ordinance or rule.

33-1206. Eminent domain

A. If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for his unit and its interest in the common elements, regardless of whether any common elements are acquired. On acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection becomes a common element.

B. Except as provided in subsection A of this section, if part of a unit is acquired by eminent domain the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements, regardless of whether any common elements are acquired. On acquisition, unless the decree otherwise provides, all of the following apply:

1. The unit's allocated interests are reduced in proportion to the reduction in the size of the unit or on any other basis specified in the declaration.
2. The portion of the allocated interests divested from the partially acquired unit is automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

C. If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken shall be paid to the association for the benefit of the unit owners. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element shall be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

D. The court decree shall be recorded in every county in which any portion of the condominium is located.

E. If all of the units of the condominium are acquired by eminent domain, the condominium is terminated and the provisions of section 33-1228 apply.

F. This section does not restrict the rights of lessees, mortgagees, declarants or any other person holding an interest in a unit or its common elements from receiving separate compensation or a portion of the compensation payable, or both, pursuant to this section.

33-1207. Severability

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are severable.

Article 2 Creation, Alteration, and Termination of Condominiums

33-1211. Creation of condominium

A condominium may only be created pursuant to this chapter by recording a declaration in the same manner as a deed in each county in which any portion of the condominium is located. The declaration shall be indexed in the name of the condominium, the name of the association and otherwise as required by law.

33-1212. Unit boundaries

Except as provided by the declaration:

1. If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces are a part of the unit, and all other portions of the walls, floors or ceilings are a part of the common elements.
2. If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a unit, any portion serving only that unit is a limited common element allocated solely to that unit and any portion serving more than one unit or any portion of the common elements is a part of the common elements.
3. Subject to the provisions of paragraph 2, all spaces, interior partitions and other fixtures and improvements within the boundaries of a unit are a part of the unit.
4. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, entryways or patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

33-1213. Construction and validity of declaration and bylaws
A. All provisions of the condominium documents are severable.
B. The rule against perpetuities shall not be applied to defeat any provision of the condominium documents.
C. Except to the extent inconsistent with this chapter:
1. If a conflict exists between the provisions of the declaration and the other condominium documents, the declaration prevails.
2. If a conflict exists between the provisions of the articles of incorporation and the bylaws or rules, the articles of incorporation prevail.
3. If a conflict exists between the provisions of the bylaws and the rules, the bylaws prevail.
D. Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of any condominium documents to comply with this chapter.

33-1214. Description of units
A description of a unit which sets forth the name of the condominium, the recording data for the declaration, the county or counties in which the condominium is located and the identifying number of the unit is a sufficient legal description of that unit and all common elements, rights, obligations and interests appurtenant to that unit.

33-1215. Contents of declaration
A. The declaration shall contain:
1. The name of the condominium, which shall include the word "condominium" or be followed by the words "a condominium", and the name of the association.
2. The name of every county in which any portion of the condominium is located.
3. A legal description of the real estate included in the condominium.
4. A description of the boundaries of each unit created by the declaration, including each unit's identifying number.
5. A description of any limited common elements, other than those specified in section 33-1212, paragraphs 2 and 4, but the declaration shall contain a description of any porches, balconies, patios and entryways, if any, as provided in section 33-1219, subsection B, paragraph 11.
6. A description of any development rights and other special declarant rights, together with a legal description of the real estate to which each of those rights applies, any time limit within which each of those rights must be exercised and any other conditions or limitations under which the rights described in this paragraph may be exercised or will lapse.
7. An allocation to each unit of the allocated interests in the manner described in section 33-1217.
8. Any restrictions on use, occupancy and alienation of the units.
9. All matters required by sections 33-1216, 33-1217, 33-1218, 33-1219 and 33-1226 and section 33-1243, subsection E.
10. A statement that the assessment obligation of the unit owner under section 33-1255 is secured by a lien on the owner's unit in favor of the association pursuant to section 33-1256.

11. If the condominium is a conversion from multifamily rental to condominiums, a statement containing all of the following:

(a) A statement that the property is a conversion from multifamily rental to condominiums.

(b) The date original construction was completed.

(c) The name and address of the original owner, builder, developer and general contractor as shown on the applicable city, town or county building permit.

(d) The name and address of each subsequent owner as determined by a search of the county recorder's records in the county in which the property is located.

(e) The subdivider's agreement to provide the following information on request:

(i) The name and address of any builder, developer, general contractor, subcontractor, architect and engineer who designed or made improvements to the property immediately before the first condominium was sold.

(ii) A specific description of all improvements made.

B. If a city, town or county is unable to produce a building permit as required in subsection A, paragraph 11, subdivision (c) of this section, the subdivider shall submit a letter from the applicable city, town or county stating that the information required by subsection A, paragraph 11, subdivision (c) of this section is not available.

C. The declaration may contain any other matters the declarant deems appropriate.

33-1216. Leasehold condominiums

A. Any lease, the expiration or termination of which may terminate the condominium or reduce its size, shall be recorded. Unless the lease otherwise specifically provides for the creation of a leasehold condominium and the rights and benefits set forth in this section, each lessor of those leases shall sign or otherwise consent to the provisions of the declaration. The declaration shall state all of the following:

1. The recording data for the lease.

2. The date on which the lease is scheduled to expire.

3. A legal description of the real estate subject to the lease.

4. Any right of the unit owners to acquire title to their units free of the lease or a statement that they do not have this right.

5. Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease or that they do not have this right.

6. Any rights of the unit owners to renew the lease and the conditions of any renewal or that they do not have those rights.

B. After the declaration for a leasehold condominium is recorded, neither the lessor nor his successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of his share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.

C. Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

D. If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with section 33-1206, subsection A as though those units had been taken by eminent domain.

33-1217. Allocation of common element interests, votes and common expense liabilities

A. The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. Except as otherwise provided in this chapter, the allocations shall not discriminate in favor of units owned by the declarant.

B. If units may be added to or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

C. The declaration may provide:

1. That different allocations of votes shall be made to the units on particular matters specified in the declaration.

2. For cumulative voting only for the purpose of electing members of the board of directors.

3. For class voting on specified issues affecting the class if necessary to protect valid interests of the class.

D. Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as fractions or one hundred per cent if stated as percentages. If a discrepancy exists between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

E. Except as otherwise permitted by the provisions of this chapter, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.

33-1218. Limited common elements

A. Except for the limited common elements described in section 33-1212, paragraphs 2 and 4, other than porches, balconies, patios and entryways, the declaration shall specify to which unit or units each limited common element is allocated. The allocation shall not be altered without the consent of the unit owners whose units are affected.

B. Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration. The amendment shall be executed by the unit owners between or among whose units the reallocation is made, shall state the manner in which the limited common elements are to be reallocated and, before recording the amendment, shall be submitted to the board of directors. Unless the board of directors determines within thirty days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the association shall execute its approval and record the amendment.

C. A common element not previously allocated as a limited common element shall not be so allocated except pursuant to provisions in the declaration. The allocations shall be made by amendments to the declaration.

33-1219. Plat

A. The plat is a part of the declaration. The plat must be clear and legible.

B. The plat shall show:

1. The name of the condominium.

2. The boundaries of the condominium and a legal description of the real estate included in the condominium.

3. The extent of any encroachments on any portion of the condominium.

4. To the extent feasible, the location and dimensions of all easements serving or burdening any portion of the condominium.

5. The location and dimensions of the vertical boundaries of each unit, and each unit's identifying number.

6. Any horizontal unit boundaries, with reference to an established datum, and each unit's identifying number.

7. Any units with respect to which the declarant has reserved the right to create additional units or common elements, identified appropriately.

8. The location and dimensions of all real estate subject to the development right of withdrawal identified as such.

9. The location and dimensions of all real estate in which the unit owner will only own an estate for years labeled as a "leasehold condominium".

10. The distance between noncontiguous parcels of real estate comprising the condominium.

11. The location and dimensions of limited common elements, including porches, balconies, patios and entryways, other than the limited common elements described in section 33-1212, paragraphs 2 and 4.

12. Any other matters the declarant deems appropriate.

C. Unless the declaration provides otherwise, the horizontal boundaries of a part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plat.

D. On exercising any development right, the declarant shall record a new plat conforming to the requirements of subsections A and B of this section. No new plat need be recorded if the development right exercised was clearly depicted on the original plat and a document is recorded which references the declaration and original plat and declares that the development right has been exercised.

33-1220. Exercise of development rights

A. To exercise a development right the declarant shall prepare, execute and record an amendment to the declaration which shall include a new plat conforming to the requirements of section 33-1219, subsections A and B, if the previously recorded plat does not show the boundaries of the parcel or parcels as to which the development right is exercised. The amendment to the declaration shall assign an identifying number to each new unit created and, except in the case of subdivision or conversion of units described in subsection C of this section, reallocate the allocated interests among all units. The amendment shall describe any common elements and any limited common elements created and, in the case of limited common elements, designate the unit to which each is allocated as required by section 33-1218.

B. Development rights may be reserved within any real estate added to the condominium if the amendment adding that real estate includes all matters required by section 33-1215 or 33-1216, whichever is applicable, and the plat includes all matters required by section 33-1219. This subsection does not extend any time limit on the exercise of development rights imposed by the declaration pursuant to section 33-1215, subsection A, paragraph 6.

C. Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units or common elements, or both:

1. If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain.
2. If the declarant subdivides the unit into two or more units, whether any part of the unit is converted into common elements, the amendment to the declaration shall reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

D. If the declaration provides that all or a portion of the real estate is subject to the development right of withdrawal:

1. If all the real estate is subject to withdrawal and the declaration does not describe separate portions of the real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser without the written consent of all unit owners in the condominium and any mortgagees or beneficiaries of deeds of trust or sellers under a contract, as defined in section 33-741, for conveyance of real property encumbering the units.
2. If a portion or portions are subject to withdrawal, a portion shall not be withdrawn after a unit in that portion has been conveyed to a purchaser without the written consent of all unit owners in the condominium and any mortgagees or beneficiaries of deeds of trust or sellers under contract, as defined in section 33-741, for conveyance of real property encumbering the units.

E. No development right shall be exercised in any manner which would eliminate or materially reduce in size any tennis court, swimming pool, clubhouse or other recreational facility which is part of the common elements and which was specified in the public report issued on the condominium by the commissioner of the state real estate department, unless the exercise of the development right is approved by an affirmative vote of the unit owners to which at least eighty per cent of the votes in the association are allocated.

33-1221. Alterations of units

Subject to the provisions of the declaration and other provisions of law, a unit owner:

1. May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium.
2. Shall not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the condominium, without written permission of the association.
3. After acquiring an adjoining unit or, if the declaration expressly permits, an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures in intervening partitions, even if the partition in whole or in part is a common element, if those acts do not impair the structural

integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

33-1222. Relocation of boundaries between adjoining units

If the declaration expressly permits, the boundaries between or among adjoining units may be relocated by an amendment to the declaration. The owners of the units shall prepare an amendment to the declaration, including the plat, that identifies the units involved, specifies the altered boundaries of the units and their dimensions and includes the units' identifying numbers. If the owners of the adjoining units have specified a reallocation between their units of the allocated interests, the amendment shall state the proposed reallocation in a reasonable manner. The amendment shall be executed by the owners of those units, shall contain words of conveyance between or among them and, before recording the amendment, shall be submitted to the board of directors. Unless the board of directors determines within thirty days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the association shall execute its approval and record the amendment.

33-1223. Subdivision of units

If the declaration expressly permits, a unit may be subdivided into two or more units. A unit owner shall prepare an amendment to the declaration, including the plat, which identifies the unit involved, specifies the boundaries of each unit created and its dimensions, assigns an identifying number to each unit created and allocates the allocated interests formerly allocated to the subdivided unit to the new units in a reasonable manner. The amendment shall be executed by the owner of the unit to be subdivided and, before recording, submitted to the board of directors. Unless the board of directors determines within thirty days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the association shall execute its approval and record the amendment.

33-1224. Easement for encroachments

To the extent that any unit or common element encroaches on any other unit or common element as a result of original construction, shifting or settling, or alteration or restoration authorized by the declaration, a valid easement for the encroachment exists.

33-1225. Use for sale purposes

A declarant may maintain sales offices, management offices and models in units or on common elements in the condominium unless:

1. The declaration provides otherwise.
2. Such use is prohibited by another provision of law or local ordinances.

33-1226. Easement to facilitate exercise of special declarant rights

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration.

33-1227. Amendment of declaration

A. Except in cases of amendments that may be executed by a declarant under section 33-1220, by the association under section 33-1206 or section 33-1216, subsection D, or by certain unit owners under section 33-1218, subsection B, section 33-1222, section 33-1223 or section 33-1228, subsection B, and except to the extent permitted or required by other provisions of this chapter, the declaration, including the plat, may be amended only by a vote of the unit owners to which at least sixty-seven per cent of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use. The declaration may also provide that the consent of the declarant is required to an amendment during any period of declarant control pursuant to section 33-1243. Within thirty days after the adoption of any amendment pursuant to this subsection, the association shall prepare, execute and record a written instrument setting forth the amendment.

B. An action to challenge the validity of an amendment adopted by the association pursuant to this section shall not be brought more than one year after the amendment is recorded.

C. An amendment to the declaration shall be recorded in each county in which any portion of the condominium is located and is effective only on recordation in the same manner as required for the declaration under section 33-1211.
D. Except to the extent expressly permitted or required by other provisions of this chapter, an amendment shall not create or increase special declarant rights, increase the number of units or change the boundaries of any unit, the allocated interests of a unit or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.
E. An amendment shall not terminate or decrease any unexpired development right, special declarant right or period of declarant control unless the declarant approves.
F. Amendments to the declaration required by this chapter to be executed by the association shall be executed on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

33-1228. Termination of condominium
A. Except in the case of a taking of all the units by eminent domain, a condominium may be terminated only by agreement of unit owners of units to which at least eighty per cent of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.
B. An agreement to terminate shall be evidenced by the execution or ratifications of a termination agreement, in the same manner as a deed, by the requisite number of unit owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications of a termination agreement shall be recorded in each county in which a portion of the condominium is situated and is effective only on recordation.
C. A termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.
D. The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections A and B. If any real estate in the condominium is to be sold following termination, title to that real estate on termination vests in the association as trustee for the holders of all interest in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection G. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each unit owner and his successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.
E. If the real estate constituting the condominium is not to be sold following termination, title to all the real estate in the condominium vests in the unit owners on termination as tenants in common in proportion to their respective interests as provided in subsection G, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit.
F. Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units which were recorded before termination may enforce those liens in the same manner as any lienholder.
G. The respective interests of unit owners referred to in subsections D, E and F are as follows:

1. Except as provided in paragraph 2, the respective interests of unit owners are the fair market values of their units, limited common elements and common element interests immediately before the termination, as determined by an independent appraiser selected by the association. The determination of the independent appraiser shall be distributed to the unit owners and becomes final unless disapproved within thirty days after distribution by unit owners of units to which fifty per cent of the votes in the association are allocated. The proportion of any unit owner's interest

to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.

2. If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value of the unit or element before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

H. Except as provided in subsection I, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the condominium, but the person taking title may require from the association, on request, an amendment excluding the real estate from the condominium.

I. If a lien or encumbrance against a portion of the real estate comprising the condominium has priority over the declaration, and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may, on foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the condominium.

J. The provisions of subsections C through I do not apply if the original declaration, an amendment to the original declaration recorded before the conveyance of any unit to an owner other than the declarant or an agreement by all of the unit owners contain provisions inconsistent with such subsections.

33-1229. Rights of secured lenders

The declaration may require that all or a specified number or percentage of the mortgagees, beneficiaries of deeds of trust or sellers under contracts, as defined in section 33-741, for conveyance of real property encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but requirement for approval shall not operate to either:

1. Deny or delegate control over the general administrative affairs of the association by the unit owners or the board of directors.

2. Prevent the association or the board of directors from commencing, intervening in or settling any litigation or proceeding, or receiving and distributing any insurance proceeds pursuant to section 33-1253.

33-1230. Merger or consolidation of condominiums

A. Any two or more condominiums, by agreement of the unit owners as provided in subsection B, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all preexisting associations.

B. An agreement of two or more condominiums to merge or consolidate pursuant to subsection A shall be evidenced by an agreement prepared, executed, recorded and certified by the president of the association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement shall be recorded in each county in which a portion of the condominium is located and is not effective until recorded. A merger or consolidation of two or more condominiums shall be considered an amendment to the declaration of each of the condominiums merged or consolidated.

C. Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either by stating:

1. The reallocations or the formulas on which they are based.

2. The percentage of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominiums.

Article 3 Management of the Condominium

33-1241. Organization of unit owners' association

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under section 33-1228, or their heirs, successors or assigns. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association.

33-1242. Powers of unit owners' association; notice to unit owner of violation

A. Subject to the provisions of the declaration, the association may:

1. Adopt and amend bylaws and rules.
2. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners.
3. Hire and discharge managing agents and other employees, agents and independent contractors.
4. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium.
5. Make contracts and incur liabilities.
6. Regulate the use, maintenance, repair, replacement and modification of common elements.
7. Cause additional improvements to be made as a part of the common elements.
8. Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that common elements may be conveyed or subjected to a security interest only pursuant to section 33-1252.
9. Grant easements, leases, licenses and concessions through or over the common elements.
10. Impose and receive any payments, fees or charges for the use, rental or operation of the common elements other than limited common elements described in section 33-1212, paragraphs 2 and 4 and for services provided to unit owners.
11. Impose charges for late payment of assessments after the association has provided notice that the assessment is overdue or provided notice that the assessment is overdue or provided notice that the assessment is considered overdue after a certain date and, after notice and an opportunity to be heard, impose reasonable monetary penalties on unit owners for violations of the declaration, bylaws and rules of the association.
12. Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of unpaid assessments.
13. Provide for the indemnification of its officers and executive board of directors and maintain directors' and officers' liability insurance.
14. Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly provides.
15. Be a member of a master association or other entity owning, maintaining or governing in any respect any portion of the common elements or other property benefitting or related to the condominium or the unit owners in any respect.
16. Exercise any other powers conferred by the declaration or bylaws.
17. Exercise all other powers that may be exercised in this state by legal entities of the same type as the association.
18. Exercise any other powers necessary and proper for the governance and operation of the association.

B. A unit owner who receives a written notice that the condition of the property owned by the unit owner is in violation of a requirement of the condominium documents without regard to whether a monetary penalty is imposed by the notice may provide the association with a written response by sending the response by certified mail within twenty-one calendar days after the date of the notice. The response shall be sent to the address contained in the notice or in the recorded notice prescribed by section 33-1256, subsection J.

C. Within ten business days after receipt of the certified mail containing the response from the unit owner, the association shall respond to the unit owner with a written explanation regarding the notice that shall provide at least the following information unless previously provided in the notice of violation:

1. The provision of the condominium documents that has allegedly been violated.
2. The date of the violation or the date the violation was observed.

3. The first and last name of the person or persons who observed the violation.
4. The process the unit owner must follow to contest the notice.

D. Unless the information required in subsection C, paragraph 4 of this section is provided in the notice of violation, the association shall not proceed with any action to enforce the condominium documents, including the collection of attorney fees, before or during the time prescribed by subsection C of this section regarding the exchange of information between the association and the unit owner and shall give the unit owner written notice of the unit owner's option to petition for an administrative hearing on the matter in the department of fire, building and life safety pursuant to section 41-2198.01. At any time before or after completion of the exchange of information pursuant to this section, the unit owner may petition for a hearing pursuant to section 32-2199.01 if the dispute is within the jurisdiction of the state real estate department as prescribed in section 32-2199.01.

33-1243. Board of directors and officers; conflict; powers; limitations; removal; annual audit; applicability

A. Except as provided in the declaration, the bylaws, subsection B of this section or other provisions of this chapter, the board of directors may act in all instances on behalf of the association.

B. The board of directors shall not act on behalf of the association to amend the declaration, terminate the condominium, elect members of the board of directors or determine the qualifications, powers and duties or terms of office of board of directors members. Except as provided in subsection H of this section, the board of directors may fill vacancies in its membership for the unexpired portion of any term.

C. If any contract, decision or other action for compensation taken by or on behalf of the board of directors would benefit any member of the board of directors or any person who is a parent, grandparent, spouse, child or sibling of a member of the board of directors or a parent or spouse of any of those persons, that member of the board of directors shall declare a conflict of interest for that issue. The member shall declare the conflict in an open meeting of the board before the board discusses or takes action on that issue and that member may then vote on that issue. Any contract entered into in violation of this subsection is void and unenforceable.

D. Except as provided in the declaration, within thirty days after adoption of any proposed budget for the condominium, the board of directors shall provide a summary of the budget to all the unit owners. Unless the board of directors is expressly authorized in the declaration to adopt and amend budgets from time to time, any budget or amendment shall be ratified by the unit owners in accordance with the procedures set forth in this subsection. If ratification is required, the board of directors shall set a date for a meeting of the unit owners to consider ratification of the budget not fewer than fourteen nor more than thirty days after mailing of the summary. Unless at that meeting a majority of all the unit owners or any larger vote specified in the declaration rejects the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the board of directors.

E. The declaration may provide for a period of declarant control of the association, during which period a declarant or persons designated by the declarant may appoint and remove the officers and members of the board of directors. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of:

1. Ninety days after conveyance of seventy-five percent of the units that may be created to unit owners other than a declarant.
2. Four years after all declarants have ceased to offer units for sale in the ordinary course of business.

F. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of the period prescribed in subsection E of this section, but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

G. Not later than the termination of any period of declarant control the unit owners shall elect a board of directors of at least three members, at least a majority of whom must be unit owners. The board of directors shall elect the officers. The board members and officers shall take office on election.

H. Notwithstanding any provision of the declaration or bylaws to the contrary, all of the following apply to a meeting at which a member of the board of directors, other than a member appointed by the declarant, is proposed to be removed from the board of directors:

1. The unit owners who are eligible to vote at the time of the meeting may remove any member of the board of directors, other than a member appointed by the declarant, by a majority vote of those voting on the matter at a meeting of the unit owners.
2. The meeting of the unit owners shall be called pursuant to this section and action may be taken only if a quorum is present.
3. The unit owners may remove any member of the board of directors with or without cause, other than a member appointed by the declarant.
4. For purposes of calling for removal of a member of the board of directors, other than a member appointed by the declarant, the following apply:

(a) In an association with one thousand or fewer members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least twenty-five percent of the votes in the association or by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one hundred votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association as prescribed by section 33-1248, subsection B.

(b) Notwithstanding section 33-1248, subsection B, in an association with more than one thousand members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least ten percent of the votes in the association or by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one thousand votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association. The board shall provide written notice of a special meeting as prescribed by section 33-1248, subsection B.

(c) The special meeting shall be called, noticed and held within thirty days after receipt of the petition.

(d) For purposes of a special meeting called pursuant to this subsection, a quorum is present if the number of owners who are eligible to vote in the association at the time the person attends the meeting equal to at least twenty percent of the votes of the association or the number of persons who are eligible to vote in the association at the time the person attends the meeting equal to at least one thousand votes, whichever is less, is present at the meeting in person or as otherwise permitted by law.

(e) If a civil action is filed regarding the removal of a board member, the prevailing party in the civil action shall be awarded its reasonable attorney fees and costs.

(f) The board of directors shall retain all documents and other records relating to the proposed removal of the member of the board of directors and any election or other action taken for that director's replacement for at least one year after the date of the special meeting and shall permit members to inspect those documents and records pursuant to section 33-1258.

(g) A petition that calls for the removal of the same member of the board of directors shall not be submitted more than once during each term of office for that member.

5. On removal of at least one but fewer than a majority of the members of the board of directors at a special meeting of the membership called pursuant to this subsection, the vacancies shall be filled as provided in the condominium documents.
6. On removal of a majority of the members of the board of directors at a special meeting of the membership called pursuant to this subsection, or if the condominium documents do not provide a method for filing board vacancies, the association shall hold an election for the replacement of the removed directors at a separate meeting of the members of the association that is held not later than thirty days after the meeting at which the members of the board of directors were removed.
7. A member of the board of directors who is removed pursuant to this subsection is not eligible to serve on the board of directors again until after the expiration of the removed board member's term of office, unless the condominium documents specifically provide for a longer period of ineligibility.

I. For an association in which board members are elected from separately designated voting districts, a member of the board of directors, other than a member appointed by the declarant, may be removed only by a vote of the members from that voting district, and only the members from that voting district are eligible to vote on the matter or be counted for purposes of determining a quorum.

J. Unless any provision in the condominium documents requires an annual audit by a certified public accountant, the board of directors shall provide for an annual financial audit, review or compilation of the association. The audit, review or compilation shall be completed no later than one hundred eighty days after the end of the association's fiscal year and shall be made available on request to the unit owners within thirty days after its completion.
K. This section does not apply to timeshare plans or associations, or the period of declarant control under timeshare instruments, that are subject to chapter 20 of this title.

33-1244. Transfer of special declarant rights
A. A special declarant right created or reserved under this chapter shall not be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.
B. On transfer of any special declarant right, the liability of a transferor declarant is as follows:
1. A transferor is not relieved of any obligation or liability arising before the transfer.
2. If a transferor retains any special declarant right, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.
3. A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant.
C. Unless otherwise provided in a mortgage or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, forfeiture of interest of a purchaser under a contract for conveyance of real property or sale under bankruptcy code or receivership proceedings, of any units owned by a declarant or real estate in a condominum subject to development rights, a person acquiring title to all the real estate being foreclosed or sold succeeds to all special declarant rights related to that real estate held by that declarant whether or not the judgment or instrument conveying title provides for transfer of the special declarant rights.
D. The liabilities and obligations of a person who succeeds to special declarant rights are as follows:
1. A successor to any special declarant right, other than a successor described in paragraph 2 of this subsection, is subject to all liabilities and obligations imposed by this chapter or the declaration:
(a) On a declarant which relate to his exercise or nonexercise of special declarant rights.
(b) On his transferor, other than:
(i) Misrepresentations by any previous declarant.
(ii) Warranty obligations on improvements made by any previous declarant or made before the condominium was created.
(iii) Breach of any fiduciary obligation by any previous declarant or his appointees to the board of directors.
(iv) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.
2. A successor to special declarant rights under subsection C is subject to liability only for his own acts in the exercise of those special declarant rights.

33-1245. Termination of contracts and leases of declarant; applicability
A. A contract for any of the following, if entered into before the board of directors elected by the unit owners pursuant to section 33-1243, subsection G takes office, shall contain a provision in the contract that the contract may be terminated without penalty by the association at any time after the board of directors elected by the unit owners takes office:
1. Any management contract or employment contract.
2. Any other contract or lease between the association and a declarant or an affiliate of a declarant.
3. Any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing.
B. The board of directors shall notify the appropriate contractual party of the termination at least thirty days before termination.
C. This section does not apply to any lease if the termination of the lease would terminate the condominium or reduce its size.

D. If a contract covered by this section fails to contain the provisions required by subsection A of this section, the contract is voidable at the option of the association.
E. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

33-1246. Bylaws
A. At the time the unit owners' association is organized, the association shall adopt bylaws which provide for each of the following:

1. The number of members of the board of directors and the titles of the officers of the association.
2. Election by the board of directors of a president, treasurer, secretary and any other officers of the association which the bylaws specify.
3. The qualifications, powers and duties, terms of office and manner of electing and removing board members and officers and filling vacancies.
4. Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent.
5. Which of its officers may execute, certify and record amendments to the declaration on behalf of the association.
6. The method of amending the bylaws.

B. Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

33-1247. Upkeep of the condominium
A. Except to the extent provided by the declaration, subsection C of this section or section 33-1253, subsection B, the association is responsible for maintenance, repair and replacement of the common elements and each unit owner is responsible for maintenance, repair and replacement of the unit. On reasonable notice, each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through the unit reasonably necessary for those purposes. If damage is inflicted on the common elements or any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair of the damage.
B. For any residential rental units that have been declared a slum property by the city or town pursuant to section 33-1905 and that are in the condominium complex, the association is responsible for enforcing any requirement for a licensed property management firm that is imposed by a city or town pursuant to section 33-1906.
C. In addition to the liability borne by the declarant as a unit owner under this chapter, the declarant alone is liable for the maintenance, repair and replacement of any portion of the common elements which the declarant reserves the right to withdraw from the condominium, as long as the unit owner maintains that right.

33-1248. Open meetings; exceptions
A. Notwithstanding any provision in the declaration, bylaws or other documents to the contrary, all meetings of the unit owners' association and the board of directors, and any regularly scheduled committee meetings, are open to all members of the association or any person designated by a member in writing as the member's representative and all members or designated representatives so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings. The board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a member or a member's designated representative to speak once after the board has discussed a specific agenda item but before the board takes formal action on that item in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue. Persons attending may audiotape or videotape those portions of the meetings of the board of directors and meetings of the members that are open. The board of directors of the association may adopt reasonable rules governing the audiotaping or videotaping of open portions of the meetings of the board and the membership, but such rules shall not preclude such audiotaping or videotaping by those attending. Any portion of a meeting may be closed only if that portion of the meeting is limited to consideration of one or more of the following:

1. Legal advice from an attorney for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.
2. Pending or contemplated litigation.
3. Personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.
4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.
5. Discussion of a unit owner's appeal of any violation cited or penalty imposed by the association except on request of the affected unit owner that the meeting be held in an open session.

B. Notwithstanding any provision in the condominium documents, all meetings of the unit owners' association and the board shall be held in this state. A meeting of the unit owners' association shall be held at least once each year. Special meetings of the unit owners' association may be called by the president, by a majority of the board of directors or by unit owners having at least twenty-five per cent, or any lower percentage specified in the bylaws, of the votes in the association. Not fewer than ten nor more than fifty days in advance of any meeting of the unit owners, the secretary shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting of the unit owners shall state the time and place of the meeting. The notice of any special meeting of the unit owners shall also state the purpose for which the meeting is called, including the general nature of any proposed amendment to the declaration or bylaws, any changes in assessments that require approval of the unit owners and any proposal to remove a director or officer. The failure of any unit owner to receive actual notice of a meeting of the unit owners does not affect the validity of any action taken at that meeting.

C. Notwithstanding any provision in the declaration, bylaws or other condominium documents, for meetings of the board of directors that are held after the termination of declarant control of the association, notice to unit owners of meetings of the board of directors shall be given at least forty-eight hours in advance of the meeting by newsletter, conspicuous posting or any other reasonable means as determined by the board of directors. An affidavit of notice by an officer of the association is prima facie evidence that notice was given as prescribed by this section. Notice to unit owners of meetings of the board of directors is not required if emergency circumstances require action by the board before notice can be given. Any notice of a board meeting shall state the time and place of the meeting. The failure of any unit owner to receive actual notice of a meeting of the board of directors does not affect the validity of any action taken at that meeting.

D. Notwithstanding any provision in the declaration, bylaws or other condominium documents, for meetings of the board of directors that are held after the termination of declarant control of the association, all of the following apply:

1. The agenda shall be available to all unit owners attending.
2. An emergency meeting of the board of directors may be called to discuss business or take action that cannot be delayed until the next regularly scheduled board meeting. The minutes of the emergency meeting shall state the reason necessitating the emergency meeting. The minutes of the emergency meeting shall be read and approved at the next regularly scheduled meeting of the board of directors.
3. A quorum of the board of directors may meet by means of a telephone conference if a speakerphone is available in the meeting room that allows board members and unit owners to hear all parties who are speaking during the meeting.
4. Any quorum of the board of directors that meets informally to discuss association business, including workshops, shall comply with the open meeting and notice provisions of this section without regard to whether the board votes or takes any action on any matter at that informal meeting.

E. It is the policy of this state as reflected in this section that all meetings of a condominium, whether meetings of the unit owners' association or meetings of the board of directors of the association, be

conducted openly and that notices and agendas be provided for those meetings that contain the information that is reasonably necessary to inform the unit owners of the matters to be discussed or decided and to ensure that unit owners have the ability to speak after discussion of agenda items, but before a vote of the board of directors is taken. Toward this end, any person or entity that is charged with the interpretation of these provisions shall take into account this declaration of policy and shall construe any provision of this section in favor of open meetings.
F. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

33-1249. Quorums; applicability
A. Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast at least twenty-five per cent of the votes in the association are present in person or by proxy at the beginning of the meeting.
B. Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the board of directors if persons entitled to cast at least fifty per cent of the votes on that board are present at the beginning of the meeting.
C. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

33-1250. Voting; proxies; absentee ballots; applicability; definition
A. If only one of the multiple owners of a unit is present at a meeting of the association, the owner is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.
B. During the period of declarant control, votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. The proxy is revoked on presentation of a later dated proxy executed by the same unit owner. A proxy terminates one year after its date, unless it specifies a shorter term or unless it states that it is coupled with an interest and is irrevocable.
C. Notwithstanding any provision in the condominium documents, after termination of the period of declarant control, votes allocated to a unit may not be cast pursuant to a proxy. The association shall provide for votes to be cast in person and by absentee ballot and, in addition, the association may provide for voting by some other form of delivery, including the use of e-mail and fax delivery. Notwithstanding section 10-3708 or the provisions of the condominium documents, any action taken at an annual, regular or special meeting of the members shall comply with all of the following if absentee ballots or ballots provided by some other form of delivery are used:

1. The ballot shall set forth each proposed action.
2. The ballot shall provide an opportunity to vote for or against each proposed action.
3. The ballot is valid for only one specified election or meeting of the members and expires automatically after the completion of the election or meeting.
4. The ballot specifies the time and date by which the ballot must be delivered to the board of directors in order to be counted, which shall be at least seven days after the date that the board delivers the unvoted ballot to the member.
5. The ballot does not authorize another person to cast votes on behalf of the member.
6. The completed ballot and envelope and any related materials shall contain the name, address and either the actual or electronic signature of the person voting, except that if the condominium documents permit secret ballots, and only the envelope or any nonballot-related materials shall contain the name, address and either the actual or electronic signature of the voter.
7. Ballots, envelopes and related materials, including sign-in sheets if used, shall be retained in electronic or paper format and made available for unit owner inspection for at least one year after completion of the election.

D. Votes cast by absentee ballot or other form of delivery, including the use of e-mail and fax delivery, are valid for the purpose of establishing a quorum.
E. Notwithstanding subsection C of this section, an association for a timeshare plan as defined in section 32-2197 may permit votes by a proxy that is duly executed by a unit owner.
F. If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units all of the following apply:

1. The provisions of subsections A and B of this section apply to lessees as if they were unit owners.
2. Unit owners who have leased their units to other persons shall not cast votes on those specified matters.
3. Lessees are entitled to notice of meetings, access to records and other rights respecting those matters as if they were unit owners. Unit owners shall also be given notice, in the manner prescribed in section 33-1248, of all meetings at which lessees may be entitled to vote.

G. Unless the declaration provides otherwise, votes allocated to a unit owned by the association shall not be cast.
H. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.
I. For the purposes of this section, "period of declarant control" means the time during which the declarant or persons designated by the declarant may elect or appoint the members of the board of directors pursuant to the condominium documents or by virtue of superior voting power.

33-1251. Tort and contract liability
A. An action alleging a wrong done by the association shall be brought against the association and not against any unit owner.
B. A statute of limitation affecting any right of action of the association against the declarant is tolled until the period of declarant control terminates.
C. A unit owner is not precluded from bringing an action against the association because he is a unit owner or a member or officer of the association.
D. Liens resulting from judgments against the association are governed by section 33-1256.

33-1252. Conveyance or encumbrance of common elements
A. Portions of the common elements may be conveyed or subjected to a mortgage, deed of trust or security interest by the association if persons entitled to cast at least eighty per cent of the votes in the association, or any larger percentage the declaration specifies, agree to that action in the manner prescribed in subsection B, except that all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a mortgage, deed of trust or security interest. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses. Proceeds of the sale or encumbrance of the common elements are an asset of the association.
B. An agreement to convey common elements or subject them to a mortgage, deed of trust or security interest shall be evidenced by the execution of an agreement, or ratifications of the agreement, in the same manner as a deed, by the requisite number of unit owners. The agreement shall specify a date after which the agreement will be void unless previously recorded. The agreement and all ratifications of the agreement shall be recorded in each county in which a portion of the condominium is situated and are effective only on recordation.
C. The association, on behalf of the unit owners, may contract to convey common elements or subject them to a mortgage, deed of trust or security interest, but the contract is not enforceable against the association until approved pursuant to subsections A and B. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.
D. Except as permitted in this chapter, any purported conveyance, encumbrance, judicial sale or other voluntary transfer of common elements is void.
E. A conveyance or encumbrance of common elements pursuant to this section does not deprive any unit of its rights of access and support.
F. A conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

33-1252.01. Conveyance of certain real property

A. Real property that is held as an asset of the association and that is not held as a common element of the condominium may be conveyed by the association if persons entitled to cast at least eighty per cent of the votes in the association, or any larger percentage the declaration specifies, agree to the conveyance in the manner prescribed in subsection B.

B. An agreement to convey real property that is held as an asset of the association and that is not held as a common element of the condominium shall be evidenced by the execution of an agreement, or ratifications of the agreement, in the same manner as a deed and by the requisite number of unit owners. The agreement shall specify a date after which the agreement will be void unless previously recorded. The agreement and all ratifications of the agreement shall be recorded in each county in which a portion of the condominium is situated and are effective only on recordation.

C. The association, on behalf of the unit owners, may contract to convey the real property but the contract is not enforceable against the association until approved pursuant to subsections A and B. Thereafter, the association has all powers necessary and appropriate to effect the conveyance, including the power to execute deeds or other instruments.

D. Except as permitted in this chapter, any purported conveyance or other voluntary transfer of real property is void.

E. A conveyance of real property pursuant to this section does not affect the priority or validity of preexisting encumbrances.

F. Property an association acquires in an assessment lien foreclosure action shall not be considered real property held as an asset of the association for the purpose of this section.

33-1253. Insurance

A. Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available, both:

1. Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against or, as determined by the board of directors against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty per cent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.
2. Liability insurance in an amount determined by the board of directors but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the common elements.

B. To the extent available, the insurance maintained under subsection A, paragraph 1 of this section, if determined by the board, includes the units or any portion of those units but need not include improvements and betterments installed by unit owners or the personal property of unit owners.

C. If the insurance described in subsection A of this section is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

D. Insurance policies carried pursuant to subsection A of this section shall provide the following:

1. Each unit owner is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association.
2. The insurer waives its right to subrogation under the policy against any unit owner or members of his household.
3. No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy.
4. If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same property covered by the policy, the association's policy provides primary insurance.

E. Any loss covered by the property policy under subsection A, paragraph 1 and subsection B of this section shall be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee

or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection H of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

F. An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for his own benefit.

G. An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, on written request, to any unit owner, mortgagee or beneficiary under a deed of trust. The insurer issuing the policy shall not cancel or refuse to renew it until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

H. Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless any of the following apply:

1. The condominium is terminated.
2. Repair or replacement would be illegal under any state or local health or safety statute or ordinance.
3. Eighty per cent of the unit owners, including every owner of a unit or allocated limited common element which will not be rebuilt, vote not to rebuild.

I. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire condominium is not repaired or replaced:

1. The insurance proceeds attributable to the damaged common elements in proportion to their common element interests or as otherwise provided in the declaration shall be used to restore the damaged area to a condition compatible with the remainder of the condominium.
2. The insurance proceeds attributable to units and allocated limited common elements which are not rebuilt shall be distributed in proportion to their common element interests or as otherwise provided in the declaration to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders as their interests may appear.
3. The remainder of the proceeds shall be distributed to all the unit owners or lienholders as their interests may appear in proportion to the common element interests of all the units.

J. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated on the vote as if the unit had been condemned under section 33-1206, subsection A, and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations.

K. Notwithstanding the provisions of subsections H, I and J of this section, section 33-1228 governs the distribution of insurance proceeds if the condominium is terminated.

L. If all units are restricted to nonresidential use, the provisions of a subsection or paragraph of this section do not apply if the declaration, articles of incorporation or amended bylaws contain provisions inconsistent with such subsection or paragraph.

M. This section does not prohibit the declaration from requiring additional or greater amounts of insurance coverage or does not prohibit the board of directors from acquiring additional or greater amounts of coverage as it reasonably deems appropriate.

33-1254. Surplus monies

Unless otherwise provided in the declaration, any surplus monies of the association remaining after payment of or provision for common expenses and any prepayment of reserves shall be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

33-1255. Assessments for common expenses; applicability

A. Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments shall be made at least annually, based on a budget adopted at least annually by the association.

B. Except for assessments under subsections C, D, E and F of this section, all common expenses shall be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to section 33-1217, subsection A. Any past due common expense assessment or installment bears interest at the rate established by the board subject to the condominium documents.
C. Unless otherwise provided for in the declaration all of the following apply:

1. Any common expense associated with the maintenance, repair or replacement of a limited common element shall be equally assessed against the units to which the limited common element is assigned.
2. Any common expense or portion of a common expense benefitting fewer than all of the units shall be assessed exclusively against the units benefitted.

D. Assessments to pay a judgment against the association may be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities.
E. If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against that unit.
F. If the declaration so provides, the common expense assessment for any unit on which construction has not been substantially completed may be an amount which is not less than twenty-five per cent of the common expense assessment for units which have been substantially completed. However, this reduced common expense assessment shall not be permitted, unless the declarant is obligated under the declaration to pay to the association any deficiency in monies due to the declarant having paid a reduced common assessment and necessary for the association to be able to timely pay all common expenses.
G. If common expense liabilities are reallocated, common expense assessments and any installment on the assessments not yet due shall be recalculated in accordance with the reallocated common expense liabilities.
H. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

33-1256. Lien for assessments; priority; mechanics' and materialmen's liens; applicability
A. The association has a lien on a unit for any assessment levied against that unit from the time the assessment becomes due. The association's lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may be foreclosed in the same manner as a mortgage on real estate but may be foreclosed only if the owner has been delinquent in the payment of monies secured by the lien, excluding reasonable collection fees, reasonable attorney fees and charges for late payment of and costs incurred with respect to those assessments, for a period of one year or in the amount of one thousand two hundred dollars or more, whichever occurs first. Fees, charges, late charges, monetary penalties and interest charged pursuant to section 33-1242, subsection A, paragraphs 10, 11 and 12, other than charges for late payment of assessments, are not enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due. The association has a lien for fees, charges, late charges, other than charges for late payment of assessments, monetary penalties or interest charged pursuant to section 33-1242, subsection A, paragraphs 10, 11 and 12 after the entry of a judgment in a civil suit for those fees, charges, late charges, monetary penalties or interest from a court of competent jurisdiction and the recording of that judgment in the office of the county recorder as otherwise provided by law. The association's lien for monies other than for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may not be foreclosed and is effective only on conveyance of any interest in the real property.
B. A lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments under this section is prior to all other liens, interests and encumbrances on a unit except:

1. Liens and encumbrances recorded before the recordation of the declaration.
2. A recorded first mortgage on the unit, a seller's interest in a first contract for sale pursuant to chapter 6, article 3 of this title on the unit recorded prior to the lien arising pursuant to subsection A of this section or a recorded first deed of trust on the unit.
3. Liens for real estate taxes and other governmental assessments or charges against the unit.

C. Subsection B of this section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. The lien under this section is not subject to chapter 8 of this title.
D. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.
E. Recording of the declaration constitutes record notice and perfection of the lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments. Further recordation of any claim of lien for assessments under this section is not required.
F. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.
G. This section does not prohibit actions to recover sums for which subsection A of this section creates a lien or does not prohibit an association from taking a deed in lieu of foreclosure.
H. A judgment or decree in any action brought under this section shall include costs and reasonable attorney fees for the prevailing party.
I. The association on written request shall furnish to a lienholder, escrow agent, unit owner or person designated by a unit owner a statement setting forth the amount of unpaid assessments against the unit. The statement shall be furnished within ten days after receipt of the request and the statement is binding on the association, the board of directors and every unit owner if the statement is requested by an escrow agency that is licensed pursuant to title 6, chapter 7. Failure to provide the statement to the escrow agent within the time provided for in this subsection shall extinguish any lien for any unpaid assessment then due.
J. The association shall record in the office of the county recorder in the county in which the condominium is located a notice stating the name of the association or designated agent or management company for the association, the address for the association and the telephone number of the association or its designated agent or management company. The notice shall include the name of the condominium community, the date of the recording and the recorded instrument number or book and page for the main document that constitutes the declaration. If an association's address, designated agent or management company changes, the association shall amend its notice or record a new notice within ninety days after the change.
K. Notwithstanding any provision in the condominium documents or in any contract between the association and a management company, unless the member directs otherwise, all payments received on a member's account shall be applied first to any unpaid assessments, for unpaid charges for late payment of those assessments, for reasonable collection fees and for unpaid attorney fees and costs incurred with respect to those assessments, in that order, with any remaining amounts applied next to other unpaid fees, charges and monetary penalties or interest and late charges on any of those amounts.
L. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

33-1257. Other liens affecting the condominium
A. Except as provided in subsection B of this section, a legally recorded judgment for money against the association is not a lien on the common elements but is a lien in favor of the judgment lienholder against all of the units in the condominium at the time the judgment was entered. Other property of a unit owner is not subject to the claims of creditors of the association.
B. If the association has granted a mortgage, deed of trust or security interest in the common elements to a creditor of the association pursuant to section 33-1252, the holder of that security interest must exercise its right against the common elements before its judgment lien on any unit may be enforced.
C. Whether perfected before or after the creation of the condominium, if a lien other than a deed of trust or mortgage becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his unit, and the lienholder, on receipt of payment, shall promptly deliver a release of the lien covering that unit. The amount of the payment shall be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association shall not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

D. A judgment against the association shall be indexed in the name of the condominium and the association and shall include the legal description of the unit subject to the lien. When so indexed, the judgment is notice of the lien against the units.

33-1258. Association financial and other records; applicability

A. Except as provided in subsection B of this section, all financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. The association shall not charge a member or any person designated by the member in writing for making material available for review. The association shall have ten business days to fulfill a request for examination. On request for purchase of copies of records by any member or any person designated by the member in writing as the member's representative, the association shall have ten business days to provide copies of the requested records. An association may charge a fee for making copies of not more than fifteen cents per page.

B. Books and records kept by or on behalf of the association and the board may be withheld from disclosure to the extent that the portion withheld relates to any of the following:

1. Privileged communication between an attorney for the association and the association.
2. Pending litigation.
3. Meeting minutes or other records of a session of a board meeting that is not required to be open to all members pursuant to section 33-1248.
4. Personal, health or financial records of an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.
5. Records relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

C. The association shall not be required to disclose financial and other records of the association if disclosure would violate any state or federal law.

D. This section does not apply to an association for a timeshare plan that is subject to chapter 20 of this title.

33-1259. Association as trustee

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

33-1260. Resale of units; information required; fees; civil penalty; applicability; definition

(*Amended by Laws 2014, Ch. 94)*

A. For condominiums with fewer than fifty units, a unit owner shall mail or deliver to a purchaser or a purchaser's authorized agent within ten days after receipt of a written notice of a pending sale of the unit, and for condominiums with fifty or more units, the association shall mail or deliver to a purchaser or a purchaser's authorized agent within ten days after receipt of a written notice of a pending sale that contains the name and address of the purchaser, all of the following in either paper or electronic format:

1. A copy of the bylaws and the rules of the association.
2. A copy of the declaration.
3. A dated statement containing:

(a) The telephone number and address of a principal contact for the association, which may be an association manager, an association management company, an officer of the association or any other person designated by the board of directors.

(b) The amount of the common expense assessment for the unit and any unpaid common expense assessment, special assessment or other assessment, fee or charge

currently due and payable from the selling unit owner. If the request is made by a lienholder, escrow agent, unit owner or person designated by a unit owner pursuant to section 33-1256, failure to provide the information pursuant to this subdivision within the time provided for in this subsection shall extinguish any lien for any unpaid assessment then due against that unit.

(c) A statement as to whether a portion of the unit is covered by insurance maintained by the association.

(d) The total amount of money held by the association as reserves.

(e) If the statement is being furnished by the association, a statement as to whether the records of the association reflect any alterations or improvements to the unit that violate the declaration. The association is not obligated to provide information regarding alterations or improvements that occurred more than six years before the proposed sale. Nothing in this subdivision relieves the seller of a unit from the obligation to disclose alterations or improvements to the unit that violate the declaration, nor precludes the association from taking action against the purchaser of a unit for violations that are apparent at the time of purchase and that are not reflected in the association's records.

(f) If the statement is being furnished by the unit owner, a statement as to whether the unit owner has any knowledge of any alterations or improvements to the unit that violate the declaration.

(g) A statement of case names and case numbers for pending litigation with respect to the unit filed by the association against the unit owner or filed by the unit owner against the association. The unit owner or the association shall not be required to disclose information concerning the pending litigation that would violate any applicable rule of attorney-client privilege under Arizona law.

(h) A statement that provides "I hereby acknowledge that the declaration, bylaws and rules of the association constitute a contract between the association and me (the purchaser). By signing this statement, I acknowledge that I have read and understand the association's contract with me (the purchaser). I also understand that as a matter of Arizona law, if I fail to pay my association assessments, the association may foreclose on my property." The statement shall also include a signature line for the purchaser and shall be returned to the association within fourteen calendar days.

4. A copy of the current operating budget of the association.

5. A copy of the most recent annual financial report of the association. If the report is more than ten pages, the association may provide a summary of the report in lieu of the entire report.

6. A copy of the most recent reserve study of the association, if any.

7. A statement summarizing any pending lawsuits, except those relating to the collection of assessments owed by unit owners other than the selling unit owner, in which the association is a named party, including the amount of any money claimed.

B. A purchaser or seller who is damaged by the failure of the unit owner or the association to disclose the information required by subsection A of this section may pursue all remedies at law or in equity against the unit owner or the association, whichever failed to comply with subsection A of this section, including the recovery of reasonable attorney fees.

C. The association may charge the unit owner a fee of no more than an aggregate of four hundred dollars to compensate the association for the costs incurred in the preparation of a statement or other documents furnished by the association pursuant to this section for purposes of resale disclosure, lien estoppel and any other services related to the transfer or use of the property. In addition, the association may charge a rush fee of no more than one hundred dollars if the rush services are required to be performed within seventy-two hours after the request for rush services, and may charge a statement or other documents update fee of no more than fifty dollars if thirty days or more have passed since the date of the original disclosure statement or the date the documents were delivered. The association shall make available to any interested party the amount of any fee established from time to time by the association. If the aggregate fee for purposes of resale disclosure, lien estoppel and any other services related to the transfer or use of a property is less than four hundred dollars on January 1, 2010, the fee may increase at a rate of no more than twenty per cent per year based on the immediately preceding fiscal year's amount not to exceed the four hundred dollar aggregate fee. The association may charge the same fee without

regard to whether the association is furnishing the statement or other documents in paper or electronic format.
D. The fees prescribed by this section shall be collected no earlier than at the close of escrow and may only be charged once to a unit owner for that transaction between the parties specified in the notice required pursuant to subsection A of this section. An association shall not charge or collect a fee relating to services for resale disclosure, lien estoppel and any other services related to the transfer or use of a property except as specifically authorized in this section. An association that charges or collects a fee in violation of this section is subject to a civil penalty of no more than one thousand two hundred dollars.
E. This section applies to a managing agent for an association that is acting on behalf of the association.
F. The following are exempt from this section:

1. A sale in which a public report is issued pursuant to sections 32-2183 and 32-2197.02.
2. A sale pursuant to section 32-2181.02.
3. A conveyance by recorded deed that bears an exemption listed in section 11-1134, subsection B, paragraph 3 or 7. On recordation of the deed and for no additional charge, the unit owner shall provide the association with the changes in ownership including the unit owner's name, billing address and phone number. Failure to provide the information shall not prevent the unit owner from qualifying for the exemption pursuant to this section.

G. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.
H. For the purposes of this section, unless the context otherwise requires, "unit owner" means the seller of the condominium unit title and excludes any real estate salesperson or real estate broker who is licensed under title 32, chapter 20 and who is acting as a salesperson or broker, any escrow agent who is licensed under title 6, chapter 7 and who is acting as an escrow agent and also excludes a trustee of a deed of trust who is selling the property in a trustee's sale pursuant to chapter 6.1 of this title.

33-1260.01. Rental property; unit owner and agent information; fee; disclosure
(*Added by Laws 2014, Ch. 83)*
A. A unit owner may use the unit owner's unit as a rental property unless prohibited in the declaration and shall use it in accordance with the declaration's rental time period restrictions.
B. A unit owner may designate in writing a third party to act as the unit owner's agent with respect to all association matters relating to the rental unit, except for voting in association elections and serving on the board of directors. The unit owner shall sign the written designation and shall provide a copy of the written designation to the association. On delivery of the written designation, the association is authorized to conduct all association business relating to the unit owner's rental unit through the designated agent. Any notice given by the association to a unit owner's designated agent on any matter relating to the unit owner's rental unit constitutes notice to the unit owner.
C. Notwithstanding any provision in the condominium documents, on rental of a unit an association shall not require a unit owner or a unit owner's agent to disclose any information regarding a tenant other than the name and contact information for any adults occupying the unit, the time period of the lease, including the beginning and ending dates of the tenancy, and a description and the license plate numbers of the tenants' vehicles. If the condominium is an age restricted condominium, the unit owner, the unit owner's agent or the tenant shall show a government issued identification that bears a photograph and that confirms that the tenant meets the condominium's age restrictions or requirements.
D. On request of an association or its managing agent for the disclosures prescribed in subsection C of this section, the managing agent or, if there is no managing agent, the association may charge a fee of not more than twenty-five dollars, which shall be paid within fifteen days after the postmarked request. The fee may be charged for each new tenancy for that unit but may not be charged for a renewal of a lease. Except for the fee permitted by this subsection and fees related to the use of recreational facilities, the association or its managing agent shall not assess, levy or charge a fee or fine or otherwise impose a requirement on a unit owner's rental unit any differently than on an owner-occupied unit in the association.
E. Notwithstanding any provision in the condominium documents, the association is prohibited from doing any of the following:

1. Requiring a unit owner to provide the association with a copy of the tenant's rental application, credit report, lease agreement or rental contract or other personal information except as

prescribed by this section. This paragraph does not prohibit the association from acquiring a credit report on a person in an attempt to collect a debt.

2. Requiring the tenant to sign a waiver or other document limiting the tenant's due process rights as a condition of the tenant's occupancy of the rental unit.

3. Prohibiting or otherwise restricting a unit owner from serving on the board of directors based on the owner's not being an occupant of the unit.

4. Imposing on a unit owner or managing agent any fee, assessment, penalty or other charge in an amount greater than fifteen dollars for incomplete or late information regarding the information requested pursuant to subsection C of this section

F. Any attempt by an association to exceed the fee, assessment, penalty or other charge authorized by subsection D or E of this section voids the fee, assessment, penalty or other charge authorized by subsection D or E of this section. This section does not prevent an association from complying with the housing for older persons act of 1995 (P.L. 104–76; 109 Stat. 787).

G. An owner may use a CRIME free addendum as part of a lease agreement. This section does not prohibit the owner's use of a crime free addendum.

H. This section does not prohibit and an association may lawfully enforce a provision in the condominium documents that restricts the residency of persons who are required to be registered pursuant to section 13-3821 and who are classified as level two or level three offenders.

I. An owner of rental property shall abate criminal activity as authorized in section 12-991.

33-1261. Flag display; for sale, rent or lease signs; political signs and activities; applicability *(Amended by Laws 2014, Ch. 83)*

A. Notwithstanding any provision in the condominium documents, an association shall not prohibit the outdoor display of any of the following:

1. The American flag or an official or replica of a flag of the United States army, navy, air force, marine corps or coast guard by a unit owner on that unit owner's property if the American flag or military flag is displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code sections 4 through 10).

2. The POW/MIA flag.

3. The Arizona state flag.

4. An Arizona Indian nations flag.

5. The Gadsden flag.

B. The association shall adopt reasonable rules and regulations regarding the placement and manner of display of the American flag, the military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian nations flag. The association rules may regulate the location and size of flagpoles but shall not prohibit the installation of a flagpole.

C. Notwithstanding any provision in the condominium documents, an association shall not prohibit or charge a fee for the use of, the placement of or the indoor or outdoor display of a for sale, for rent or for lease sign and a sign rider by a unit owner on that owner's property in any combination, including a sign that indicates the unit owner is offering the property for sale by owner. The size of a sign offering a property for sale, for rent or for lease shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches. This subsection applies only to a commercially produced sign and an association may prohibit the use of signs that are not commercially produced. With respect to real estate for sale, for rent or for lease in the condominium, an association shall not prohibit in any way other than as is specifically authorized by this section or otherwise regulate any of the following:

1. Temporary open house signs or a unit owner's for sale sign. The association shall not require the use of particular signs indicating an open house or real property for sale and may not further regulate the use of temporary open house or for sale signs that are industry standard size and that are owned or used by the seller or the seller's agent.

2. Open house hours. The association may not limit the hours for an open house for real estate that is for sale in the condominium, except that the association may prohibit an open house being held before 8:00 a.m. or after 6:00 p.m. and may prohibit open house signs on the common elements of the condominium.

3. An owner's or an owner's agent's for rent or for lease sign unless an association's documents prohibit or restrict leasing of a unit or units. An association shall not further regulate a for rent or

for lease sign or require the use of a particular for rent or for lease sign other than the for rent or for lease sign shall not be any larger than the industry standard size sign of eighteen by twenty-four inches and on or in the unit owner's property. If rental or leasing of a unit is allowed, the association may prohibit an open house for rental or leasing being held before 8:00 a.m. or after 6:00 p.m.

D. Notwithstanding any provision in the condominium documents, an association shall not prohibit door to door political activity, including solicitations of support or opposition regarding candidates or ballot issues, and shall not prohibit the circulation of political petitions, including candidate nomination petitions or petitions in support of or opposition to an initiative, referendum or recall or other political issue on property normally open to visitors within the association, except that an association may do the following:

1. Restrict or prohibit door to door political activity regarding candidates or ballot issues from sunset to sunrise.
2. Require the prominent display of an identification tag for each person engaged in the activity, along with the prominent identification of the candidate or ballot issue that is the subject of the support or opposition.

E. Notwithstanding any provision in the condominium documents, an association shall not prohibit the indoor or outdoor display of a political sign by a unit owner by placement of a sign in the common element ground that is adjacent to the unit or on that unit owner's property, including any limited common elements for that unit, except that an association may prohibit the display of political signs earlier than seventy-one days before the day of an election and later than three days after an election day. An association may regulate the size and number of political signs that may be placed in the common element ground, on a unit owner's property or on a limited common element for that unit if the association's regulation is no more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential property. If the city, town or county in which the property is located does not regulate the size and number of political signs on residential property, the association shall not limit the number of political signs, except that the maximum aggregate total dimensions of all political signs on a unit owner's property shall not exceed nine square feet. An association shall not make any regulations regarding the number of candidates supported, the number of public officers supported or opposed in a recall or the number of propositions supported or opposed on a political sign. For the purposes of this subsection, "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer.

F. An association shall not require political signs to be commercially produced or professionally manufactured or prohibit the utilization of both sides of a political sign.

G. A condominium is not required to comply with subsection D of this section if the condominium restricts vehicular or pedestrian access to the condominium. Nothing in this section requires a condominium to make its common elements other than roadways and sidewalks that are normally open to visitors available for the circulation of political petitions to anyone who is not an owner or resident of the community.

H. An association or managing agent that violates subsection C of this section forfeits and extinguishes the lien rights authorized under section 33-1256 against that unit for a period of six consecutive months from the date of the violation.

I. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

Article 4 Administration of the Condominium Act

33-1270. Department of real estate; enforcement

A. Nothing in this chapter shall be construed to increase or decrease or otherwise affect any rights or powers granted to the commissioner of the department of real estate under title 32, chapter 20 with respect to the issuance of public reports.

B. The commissioner of the department of real estate shall require compliance with section 33-1215 and section 33-1219 in connection with the administration of the subdivision laws of this state under title 32, chapter 20, article 4. The commissioner shall not be required to administer or enforce any other provisions of this chapter.

Title 33, Chapter 16 PLANNED COMMUNITIES

Article 1 General Provisions

33-1801. Applicability; exemption
A. This chapter applies to all planned communities.
B. Notwithstanding any provisions in the community documents, this chapter does not apply to any school that receives monies from this state, including a charter school, and a school is exempt from regulation or any enforcement action by any homeowners' association that is subject to this chapter. With the exception of homeschools as defined in section 15-802, schools shall not be established within the living units of a homeowners' association. The homeowners' association may enter into a contractual agreement with a school district or charter school to allow use of the homeowners' association's common areas by the school district or charter school.
C. This chapter does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

33-1802. Definitions
In this chapter and in the community documents, unless the context otherwise requires:
1. "Association" means a nonprofit corporation or unincorporated association of owners that is created pursuant to a declaration to own and operate portions of a planned community and that has the power under the declaration to assess association members to pay the costs and expenses incurred in the performance of the association's obligations under the declaration.
2. "Community documents" means the declaration, bylaws, articles of incorporation, if any, and rules, if any.
3. "Declaration" means any instruments, however denominated, that establish a planned community and any amendment to those instruments.
4. "Planned community" means a real estate development that includes real estate owned and operated by or real estate on which an easement to maintain roadways or a covenant to maintain roadways is held by a nonprofit corporation or unincorporated association of owners, that is created for the purpose of managing, maintaining or improving the property and in which the owners of separately owned lots, parcels or units are mandatory members and are required to pay assessments to the association for these purposes. Planned community does not include a timeshare plan or a timeshare association that is governed by chapter 20 of this title or a condominium that is governed by chapter 9 of this title.

33-1803. Penalties; notice to member of violation
A. Unless limitations in the community documents would result in a lower limit for the assessment, the association shall not impose a regular assessment that is more than twenty percent greater than the immediately preceding fiscal year's assessment without the approval of the majority of the members of the association. Unless reserved to the members of the association, the board of directors may impose reasonable charges for the late payment of assessments. A payment by a member is deemed late if it is unpaid fifteen or more days after its due date, unless the community documents provide for a longer period. Charges for the late payment of assessments are limited to the greater of fifteen dollars or ten percent of the amount of the unpaid assessment and may be imposed only after the association has provided notice that the assessment is overdue or provided notice that the assessment is considered overdue after a certain date. Any monies paid by the member for an unpaid assessment shall be applied first to the principal amount unpaid and then to the interest accrued.
B. After notice and an opportunity to be heard, the board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules of the association. Notwithstanding any provision in the community documents, the board of directors shall not impose a charge for a late payment of a penalty that exceeds the greater of fifteen dollars or ten percent of the amount of the unpaid penalty. A payment is deemed late if it is unpaid fifteen or more days after its due date, unless the declaration, bylaws or rules of the association provide for a longer period. Any monies paid by a member for an unpaid penalty shall be applied first to the principal amount unpaid and then to the interest accrued. Notice pursuant to this subsection shall include information pertaining to the manner in which the penalty shall be enforced.

C. A member who receives a written notice that the condition of the property owned by the member is in violation of the community documents without regard to whether a monetary penalty is imposed by the notice may provide the association with a written response by sending the response by certified mail within twenty-one calendar days after the date of the notice. The response shall be sent to the address identified in the notice.
D. Within ten business days after receipt of the certified mail containing the response from the member, the association shall respond to the member with a written explanation regarding the notice that shall provide at least the following information unless previously provided in the notice of violation:
1. The provision of the community documents that has allegedly been violated.
2. The date of the violation or the date the violation was observed.
3. The first and last name of the person or persons who observed the violation.
4. The process the member must follow to contest the notice.
E. Unless the information required in subsection D, paragraph 4 of this section is provided in the notice of violation, the association shall not proceed with any action to enforce the community documents, including the collection of attorney fees, before or during the time prescribed by subsection D of this section regarding the exchange of information between the association and the member and shall give the member written notice of the member’s option to petition for an administrative hearing on the matter in the department of fire, building and life safety pursuant to section 41-2198.01. At any time before or after completion of the exchange of information pursuant to this section, the member may petition for a hearing pursuant to section 32-2199.01 if the dispute is within the jurisdiction of the state real estate department as prescribed in section 32-2199.01.

33-1804. Open meetings; exceptions
A. Notwithstanding any provision in the declaration, bylaws or other documents to the contrary, all meetings of the members' association and the board of directors, and any regularly scheduled committee meetings, are open to all members of the association or any person designated by a member in writing as the member's representative and all members or designated representatives so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings. The board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a member or member's designated representative to speak once after the board has discussed a specific agenda item but before the board takes formal action on that item in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue. Persons attending may tape record or videotape those portions of the meetings of the board of directors and meetings of the members that are open. The board of directors of the association may adopt reasonable rules governing the taping of open portions of the meetings of the board and the membership, but such rules shall not preclude such tape recording or videotaping by those attending. Any portion of a meeting may be closed only if that closed portion of the meeting is limited to consideration of one or more of the following:
1. Legal advice from an attorney for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.
2. Pending or contemplated litigation.
3. Personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.
4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.
5. Discussion of a member's appeal of any violation cited or penalty imposed by the association except on request of the affected member that the meeting be held in an open session.
B. Notwithstanding any provision in the community documents, all meetings of the members' association and the board shall be held in this state. A meeting of the members' association shall be held at least once each year. Special meetings of the members' association may be called by the president, by a

majority of the board of directors or by members having at least twenty-five per cent, or any lower percentage specified in the bylaws, of the votes in the association. Not fewer than ten nor more than fifty days in advance of any meeting of the members the secretary shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address for each lot, parcel or unit owner or to any other mailing address designated in writing by a member. The notice shall state the time and place of the meeting. A notice of any special meeting of the members shall also state the purpose for which the meeting is called, including the general nature of any proposed amendment to the declaration or bylaws, changes in assessments that require approval of the members and any proposal to remove a director or an officer. The failure of any member to receive actual notice of a meeting of the members does not affect the validity of any action taken at that meeting.

C. Notwithstanding any provision in the declaration, bylaws or other community documents, for meetings of the board of directors that are held after the termination of declarant control of the association, notice to members of meetings of the board of directors shall be given at least forty-eight hours in advance of the meeting by newsletter, conspicuous posting or any other reasonable means as determined by the board of directors. An affidavit of notice by an officer of the corporation is prima facie evidence that notice was given as prescribed by this section. Notice to members of meetings of the board of directors is not required if emergency circumstances require action by the board before notice can be given. Any notice of a board meeting shall state the time and place of the meeting. The failure of any member to receive actual notice of a meeting of the board of directors does not affect the validity of any action taken at that meeting.

D. Notwithstanding any provision in the declaration, bylaws or other community documents, for meetings of the board of directors that are held after the termination of declarant control of the association, all of the following apply:

1. The agenda shall be available to all members attending.
2. An emergency meeting of the board of directors may be called to discuss business or take action that cannot be delayed until the next regularly scheduled board meeting. The minutes of the emergency meeting shall state the reason necessitating the emergency meeting. The minutes of the emergency meeting shall be read and approved at the next regularly scheduled meeting of the board of directors.
3. A quorum of the board of directors may meet by means of a telephone conference if a speakerphone is available in the meeting room that allows board members and association members to hear all parties who are speaking during the meeting.
4. Any quorum of the board of directors that meets informally to discuss association business, including workshops, shall comply with the open meeting and notice provisions of this section without regard to whether the board votes or takes any action on any matter at that informal meeting.

E. It is the policy of this state as reflected in this section that all meetings of a planned community, whether meetings of the members' association or meetings of the board of directors of the association, be conducted openly and that notices and agendas be provided for those meetings that contain the information that is reasonably necessary to inform the members of the matters to be discussed or decided and to ensure that members have the ability to speak after discussion of agenda items, but before a vote of the board of directors is taken. Toward this end, any person or entity that is charged with the interpretation of these provisions shall take into account this declaration of policy and shall construe any provision of this section in favor of open meetings.

33-1805. Association financial and other records

A. Except as provided in subsection B of this section, all financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. The association shall not charge a member or any person designated by the member in writing for making material available for review. The association shall have ten business days to fulfill a request for examination. On request for purchase of copies of records by any member or any person designated by the member in writing as the member's representative, the association shall have ten business days to provide copies of the requested records. An association may charge a fee for making copies of not more than fifteen cents per page.

B. Books and records kept by or on behalf of the association and the board may be withheld from disclosure to the extent that the portion withheld relates to any of the following:

1. Privileged communication between an attorney for the association and the association.
2. Pending litigation.

3. Meeting minutes or other records of a session of a board meeting that is not required to be open to all members pursuant to section 33-1804.
4. Personal, health or financial records of an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.
5. Records relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

C. The association shall not be required to disclose financial and other records of the association if disclosure would violate any state or federal law.

33-1806. Resale of units; information required; fees; civil penalty; definition

A. For planned communities with fewer than fifty units, a member shall mail or deliver to a purchaser or a purchaser's authorized agent within ten days after receipt of a written notice of a pending sale of the unit, and for planned communities with fifty or more units, the association shall mail or deliver to a purchaser or a purchaser's authorized agent within ten days after receipt of a written notice of a pending sale that contains the name and address of the purchaser all of the following in either paper or electronic format:

1. A copy of the bylaws and the rules of the association.
2. A copy of the declaration.
3. A dated statement containing:
   (a) The telephone number and address of a principal contact for the association, which may be an association manager, an association management company, an officer of the association or any other person designated by the board of directors.
   (b) The amount of the common regular assessment and the unpaid common regular assessment, special assessment or other assessment, fee or charge currently due and payable from the selling member. If the request is made by a lienholder, escrow agent, member or person designated by a member pursuant to section 33-1807, failure to provide the information pursuant to this subdivision within the time provided for in this subsection shall extinguish any lien for any unpaid assessment then due against that property.
   (c) A statement as to whether a portion of the unit is covered by insurance maintained by the association.
   (d) The total amount of money held by the association as reserves.
   (e) If the statement is being furnished by the association, a statement as to whether the records of the association reflect any alterations or improvements to the unit that violate the declaration. The association is not obligated to provide information regarding alterations or improvements that occurred more than six years before the proposed sale. Nothing in this subdivision relieves the seller of a unit from the obligation to disclose alterations or improvements to the unit that violate the declaration, nor precludes the association from taking action against the purchaser of a unit for violations that are apparent at the time of purchase and that are not reflected in the association's records.
   (f) If the statement is being furnished by the member, a statement as to whether the member has any knowledge of any alterations or improvements to the unit that violate the declaration.
   (g) A statement of case names and case numbers for pending litigation with respect to the unit filed by the association against the member or filed by the member against the association. The member shall not be required to disclose information concerning such pending litigation that would violate any applicable rule of attorney-client privilege under Arizona law.
   (h) A statement that provides "I hereby acknowledge that the declaration, bylaws and rules of the association constitute a contract between the association and me (the purchaser). By signing this statement, I acknowledge that I have read and understand the association's contract with me (the purchaser). I also understand that as a matter of Arizona law, if I fail to pay my association assessments, the association may foreclose on my property." The statement shall also include a signature line for the purchaser and shall be returned to the association within fourteen calendar days.
4. A copy of the current operating budget of the association.

5. A copy of the most recent annual financial report of the association. If the report is more than ten pages, the association may provide a summary of the report in lieu of the entire report.
6. A copy of the most recent reserve study of the association, if any.
7. A statement summarizing any pending lawsuits, except those relating to the collection of assessments owed by members other than the selling member, in which the association is a named party, including the amount of any money claimed.

B. A purchaser or seller who is damaged by the failure of the member or the association to disclose the information required by subsection A of this section may pursue all remedies at law or in equity against the member or the association, whichever failed to comply with subsection A of this section, including the recovery of reasonable attorney fees.

C. The association may charge the member a fee of no more than an aggregate of four hundred dollars to compensate the association for the costs incurred in the preparation of a statement or other documents furnished by the association pursuant to this section for purposes of resale disclosure, lien estoppel and any other services related to the transfer or use of the property. In addition, the association may charge a rush fee of no more than one hundred dollars if the rush services are required to be performed within seventy-two hours after the request for rush services, and may charge a statement or other documents update fee of no more than fifty dollars if thirty days or more have passed since the date of the original disclosure statement or the date the documents were delivered. The association shall make available to any interested party the amount of any fee established from time to time by the association. If the aggregate fee for purposes of resale disclosure, lien estoppel and any other services related to the transfer or use of a property is less than four hundred dollars on January 1, 2010, the fee may increase at a rate of no more than twenty per cent per year based on the immediately preceding fiscal year's amount not to exceed the four hundred dollar aggregate fee. The association may charge the same fee without regard to whether the association is furnishing the statement or other documents in paper or electronic format.

D. The fees prescribed by this section shall be collected no earlier than at the close of escrow and may only be charged once to a member for that transaction between the parties specified in the notice required pursuant to subsection A of this section. An association shall not charge or collect a fee relating to services for resale disclosure, lien estoppel and any other services related to the transfer or use of a property except as specifically authorized in this section. An association that charges or collects a fee in violation of this section is subject to a civil penalty of no more than one thousand two hundred dollars.

E. This section applies to a managing agent for an association that is acting on behalf of the association.

F. The following are exempt from this section:
1. A sale in which a public report is issued pursuant to sections 32-2183 and 32-2197.02.
2. A sale pursuant to section 32-2181.02.
3. A conveyance by recorded deed that bears an exemption listed in section 11-1134, subsection B, paragraph 3 or 7. On recordation of the deed and for no additional charge, the member shall provide the association with the changes in ownership including the member's name, billing address and phone number. Failure to provide the information shall not prevent the member from qualifying for the exemption pursuant to this section.

G. For the purposes of this section, unless the context otherwise requires, "member" means the seller of the unit title and excludes any real estate salesperson or real estate broker who is licensed under title 32, chapter 20 and who is acting as a salesperson or broker, any escrow agent who is licensed under title 6, chapter 7 and who is acting as an escrow agent and also excludes a trustee of a deed of trust who is selling the property in a trustee's sale pursuant to chapter 6.1 of this title.

33-1806.01. Rental property; member and agent information; fee; disclosure

A. A member may use the member's property as a rental property unless prohibited in the declaration and shall use it in accordance with the declaration's rental time period restrictions.

B. A member may designate in writing a third party to act as the member's agent with respect to all association matters relating to the rental property, except for voting in association elections and serving on the board of directors. The member shall sign the written designation and shall provide a copy of the written designation to the association. On delivery of the written designation, the association is authorized to conduct all association business relating to the member's rental property through the designated agent. Any notice given by the association to a member's designated agent on any matter relating to the member's rental property constitutes notice to the member.

C. Notwithstanding any provision in the community documents, on rental of a member's property an association shall not require a member or a member's agent to disclose any information regarding a tenant other than the name and contact information for any adults occupying the property, the time period of the lease, including the beginning and ending dates of the tenancy, and a description and the license plate numbers of the tenants' vehicles. If the planned community is an age restricted community, the member, the member's agent or the tenant shall show a government issued identification that bears a photograph and that confirms that the tenant meets the community's age restrictions or requirements.
D. On request of an association or its managing agent for the disclosures prescribed in subsection C of this section, the managing agent or, if there is no managing agent, the association may charge a fee of not more than twenty-five dollars, which shall be paid within fifteen days after the postmarked request. The fee may be charged for each new tenancy for that property but may not be charged for a renewal of a lease. Except for the fee permitted by this subsection and fees related to the use of recreational facilities, the association or its managing agent shall not assess, levy or charge a fee or fine or otherwise impose a requirement on a member's rental property any differently than on an owner-occupied property in the association.
E. Notwithstanding any provision in the community documents, the association is prohibited from doing any of the following:

1. Requiring a member to provide the association with a copy of the tenant's rental application, credit report, lease agreement or rental contract or other personal information except as prescribed by this section. This paragraph does not prohibit the association from acquiring a credit report on a person in an attempt to collect a debt.
2. Requiring the tenant to sign a waiver or other document limiting the tenant's due process rights as a condition of the tenant's occupancy of the rental property.
3. Prohibiting or otherwise restricting a member from serving on the board of directors based on the member's not being an occupant of the property.
4. Imposing on a member or managing agent any fee, assessment, penalty or other charge in an amount greater than fifteen dollars for incomplete or late information regarding the information requested pursuant to subsection C of this section.

F. Any attempt by an association to exceed the fee, assessment, penalty or other charge authorized by subsection D or E of this section voids the fee, assessment, penalty or other charge authorized by subsection D or E of this section. This section does not prevent an association from complying with the housing for older persons act of 1995 (P.L. 104-76; 109 Stat. 787).
G. An owner may use a crime free addendum as part of a lease agreement. This section does not prohibit the owner's use of a crime free addendum.
H. This section does not prohibit and an association may lawfully enforce a provision in the community documents that restricts the residency of persons who are required to be registered pursuant to section 13-3821 and who are classified as level two or level three offenders.
I. An owner of rental property shall abate criminal activity as authorized in section 12-991.

33-1807. Lien for assessments; priority; mechanics' and materialmen's liens
A. The association has a lien on a unit for any assessment levied against that unit from the time the assessment becomes due. The association's lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may be foreclosed in the same manner as a mortgage on real estate but may be foreclosed only if the owner has been delinquent in the payment of monies secured by the lien, excluding reasonable collection fees, reasonable attorney fees and charges for late payment of and costs incurred with respect to those assessments, for a period of one year or in the amount of one thousand two hundred dollars or more, whichever occurs first. Fees, charges, late charges, monetary penalties and interest charged pursuant to section 33-1803, other than charges for late payment of assessments are not enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due. The association has a lien for fees, charges, late charges, other than charges for late payment of assessments, monetary penalties or interest charged pursuant to section 33-1803 after the entry of a judgment in a civil suit for those fees, charges, late charges, monetary penalties or interest from a court of competent jurisdiction and the recording of that judgment in the office of the county recorder as otherwise provided by law. The association's lien for monies other than for assessments, for charges for late

payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may not be foreclosed and is effective only on conveyance of any interest in the real property.

B. A lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments under this section is prior to all other liens, interests and encumbrances on a unit except:

1. Liens and encumbrances recorded before the recordation of the declaration.
2. A recorded first mortgage on the unit, a seller's interest in a first contract for sale pursuant to chapter 6, article 3 of this title on the unit recorded prior to the lien arising pursuant to subsection A of this section or a recorded first deed of trust on the unit.
3. Liens for real estate taxes and other governmental assessments or charges against the unit.

C. Subsection B of this section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. The lien under this section is not subject to chapter 8 of this title.

D. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate those liens have equal priority.

E. Recording of the declaration constitutes record notice and perfection of the lien for assessments, for charges for late payment of assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments. Further recordation of any claim of lien for assessments under this section is not required.

F. A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due.

G. This section does not prohibit:

1. Actions to recover amounts for which subsection A of this section creates a lien.
2. An association from taking a deed in lieu of foreclosure.

H. A judgment or decree in any action brought under this section shall include costs and reasonable attorney fees for the prevailing party.

I. On written request, the association shall furnish to a lienholder, escrow agent, unit owner or person designated by a unit owner a statement setting forth the amount of any unpaid assessment against the unit. The association shall furnish the statement within ten days after receipt of the request, and the statement is binding on the association, the board of directors and every unit owner if the statement is requested by an escrow agency that is licensed pursuant to title 6, chapter 7. Failure to provide the statement to the escrow agent within the time provided for in this subsection shall extinguish any lien for any unpaid assessment then due.

J. Notwithstanding any provision in the community documents or in any contract between the association and a management company, unless the member directs otherwise, all payments received on a member's account shall be applied first to any unpaid assessments, for unpaid charges for late payment of those assessments, for reasonable collection fees and for unpaid attorney fees and costs incurred with respect to those assessments, in that order, with any remaining amounts applied next to other unpaid fees, charges and monetary penalties or interest and late charges on any of those amounts.

33-1808. Flag display; political signs; caution signs; for sale, rent or lease signs; political activities

A. Notwithstanding any provision in the community documents, an association shall not prohibit the outdoor front yard or backyard display of any of the following:

1. The American flag or an official or replica of a flag of the United States army, navy, air force, marine corps or coast guard by an association member on that member's property if the American flag or military flag is displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code sections 4 through 10).
2. The POW/MIA flag.
3. The Arizona state flag.
4. An Arizona Indian nations flag.
5. The Gadsden flag.

B. The association shall adopt reasonable rules and regulations regarding the placement and manner of display of the American flag, the military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian nations flag. The association rules may regulate the location and size of flagpoles, may limit the

member to displaying no more than two flags at once and may limit the height of the flagpole to no more than the height of the rooftop of the member's home but shall not prohibit the installation of a flagpole in the front yard or backyard of the member's property.

C. Notwithstanding any provision in the community documents, an association shall not prohibit the indoor or outdoor display of a political sign by an association member on that member's property, except that an association may prohibit the display of political signs earlier than seventy-one days before the day of an election and later than three days after an election day. An association may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential property. If the city, town or county in which the property is located does not regulate the size and number of political signs on residential property, the association shall not limit the number of political signs, except that the maximum aggregate total dimensions of all political signs on a member's property shall not exceed nine square feet. For the purposes of this subsection, "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer.

D. Notwithstanding any provision in the community documents, an association shall not prohibit the use of cautionary signs regarding children if the signs are used and displayed as follows:

1. The signs are displayed in residential areas only.
2. The signs are removed within one hour of children ceasing to play.
3. The signs are displayed only when children are actually present within fifty feet of the sign.
4. The temporary signs are no taller than three feet in height.
5. The signs are professionally manufactured or produced.

E. Notwithstanding any provision in the community documents, an association shall not prohibit children who reside in the planned community from engaging in recreational activity on residential roadways that are under the jurisdiction of the association and on which the posted speed limit is twenty-five miles per hour or less.

F. Notwithstanding any provision in the community documents, an association shall not prohibit or charge a fee for the use of, placement of or the indoor or outdoor display of a for sale, for rent or for lease sign and a sign rider by an association member on that member's property in any combination, including a sign that indicates the member is offering the property for sale by owner. The size of a sign offering a property for sale, for rent or for lease shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches. This subsection applies only to a commercially produced sign, and an association may prohibit the use of signs that are not commercially produced. With respect to real estate for sale, for rent or for lease in the planned community, an association shall not prohibit in any way other than as is specifically authorized by this section or otherwise regulate any of the following:

1. Temporary open house signs or a member's for sale sign. The association shall not require the use of particular signs indicating an open house or real property for sale and may not further regulate the use of temporary open house or for sale signs that are industry standard size and that are owned or used by the seller or the seller's agent.
2. Open house hours. The association may not limit the hours for an open house for real estate that is for sale in the planned community, except that the association may prohibit an open house being held before 8:00 a.m. or after 6:00 p.m. and may prohibit open house signs on the common areas of the planned community.
3. An owner's or an owner's agent's for rent or for lease sign unless an association's documents prohibit or restrict leasing of a member's property. An association shall not further regulate a for rent or for lease sign or require the use of a particular for rent or for lease sign other than the for rent or for lease sign shall not be any larger than the industry standard size sign of eighteen by twenty-four inches on or in the member's property. If rental or leasing of a member's property is not prohibited or restricted, the association may prohibit an open house for rental or leasing being held before 8:00 a.m. or after 6:00 p.m.

G. Notwithstanding any provision in the community documents, an association shall not prohibit door to door political activity, including solicitations of support or opposition regarding candidates or ballot issues, and shall not prohibit the circulation of political petitions, including candidate nomination petitions or

petitions in support of or opposition to an initiative, referendum or recall or other political issue on property normally open to visitors within the association, except that an association may do the following:

1. Restrict or prohibit the door to door political activity from sunset to sunrise.
2. Require the prominent display of an identification tag for each person engaged in the activity, along with the prominent identification of the candidate or ballot issue that is the subject of the support or opposition.

H. A planned community shall not make any regulations regarding the number of candidates supported, the number of public officers supported or opposed in a recall or the number of propositions supported or opposed on a political sign.

I. A planned community shall not require political signs to be commercially produced or professionally manufactured or prohibit the utilization of both sides of a political sign.

J. A planned community is not required to comply with subsection G if the planned community restricts vehicular or pedestrian access to the planned community. Nothing in this section requires a planned community to make its common elements other than roadways and sidewalks that are normally open to visitors available for the circulation of political petitions to anyone who is not an owner or resident of the community.

K. An association or managing agent that violates subsection F of this section forfeits and extinguishes the lien rights authorized under section 33-1807 against that member's property for a period of six consecutive months from the date of the violation.

33-1809. Parking; public service and public safety emergency vehicles; definition

A. Notwithstanding any provision in the community documents, an association shall not prohibit a resident from parking a motor vehicle on a street or driveway in the planned community if the vehicle is required to be available at designated periods at the person's residence as a condition of the person's employment and either of the following applies:

1. The resident is employed by a public service corporation that is regulated by the corporation commission, an entity regulated by the federal energy regulatory commission or a municipal utility and the public service corporation or municipal utility is required to prepare for emergency deployments of personnel and equipment for repair or maintenance of natural gas, electrical, telecommunications or water infrastructure, the vehicle has a gross vehicle weight rating of twenty thousand pounds or less and is owned or operated by the public service corporation or municipal utility and the vehicle bears an official emblem or other visible designation of the public service corporation or municipal utility.
2. The resident is employed by a public safety agency, including police or fire service for a federal, state, local or tribal agency or a private fire service provider or an ambulance service provider that is regulated pursuant to title 36, chapter 21.1, and the vehicle has a gross vehicle weight rating of ten thousand pounds or less and bears an official emblem or other visible designation of that agency.

B. For the purposes of this section, "telecommunications" means the transmission of information of the user's choosing between or among points specified by the user without change in the form or content of the information as sent and received. Telecommunications does not include commercial mobile radio services.

33-1810. Board of directors; annual audit

Unless any provision in the planned community documents requires an annual audit by a certified public accountant, the board of directors shall provide for an annual financial audit, review or compilation of the association. The audit, review or compilation shall be completed no later than one hundred eighty days after the end of the association's fiscal year and shall be made available upon request to the members within thirty days after its completion.

33-1811. Board of directors; contracts; conflict

If any contract, decision or other action for compensation taken by or on behalf of the board of directors would benefit any member of the board of directors or any person who is a parent, grandparent, spouse, child or sibling of a member of the board of directors or a parent or spouse of any of those persons, that member of the board of directors shall declare a conflict of interest for that issue. The member shall declare the conflict in an open meeting of the board before the board discusses or takes action on that issue and that member may then vote on that issue. Any contract entered into in violation of this section is void and unenforceable.

33-1812. Proxies; absentee ballots; definition

A. Notwithstanding any provision in the community documents, after termination of the period of declarant control, votes allocated to a unit may not be cast pursuant to a proxy. The association shall provide for votes to be cast in person and by absentee ballot and, in addition, the association may provide for voting by some other form of delivery, including the use of e-mail and fax delivery. Notwithstanding section 10-3708 or the provisions of the community documents, any action taken at an annual, regular or special meeting of the members shall comply with all of the following if absentee ballots or ballots provided by some other form of delivery are used:

1. The ballot shall set forth each proposed action.
2. The ballot shall provide an opportunity to vote for or against each proposed action.
3. The ballot is valid for only one specified election or meeting of the members and expires automatically after the completion of the election or meeting.
4. The ballot specifies the time and date by which the ballot must be delivered to the board of directors in order to be counted, which shall be at least seven days after the date that the board delivers the unvoted ballot to the member.
5. The ballot does not authorize another person to cast votes on behalf of the member.
6. The completed ballot and envelope and any related materials shall contain the name, address and signature of the person voting, except that if the community documents permit secret ballots, and the envelope and any nonballot-related materials shall contain the name, address and signature of the voter.
7. Ballots, envelopes and related materials, including sign-in sheets if used, shall be retained in electronic or paper format and made available for member inspection for at least one year after completion of the election.

B. Votes cast by absentee ballot or other form of delivery, including the use of e-mail and fax delivery, are valid for the purpose of establishing a quorum.

C. Notwithstanding subsection A of this section, an association for a timeshare plan as defined in section 32-2197 may permit votes by a proxy that is duly executed by a unit owner.

D. For the purposes of this section, "period of declarant control" means the time during which the declarant or persons designated by the declarant may elect or appoint the members of the board of directors pursuant to the community documents or by virtue of superior voting power.

33-1813. Removal of board member; special meeting

A. Notwithstanding any provision of the declaration or bylaws to the contrary, all of the following apply to a meeting at which a member of the board of directors, other than a member appointed by the declarant, is proposed to be removed from the board of directors:

1. The members of the association who are eligible to vote at the time of the meeting may remove any member of the board of directors, other than a member appointed by the declarant, by a majority vote of those voting on the matter at a meeting of the members.
2. The meeting of the members shall be called pursuant to this section and action may be taken only if a quorum is present.
3. The members of the association may remove any member of the board of directors with or without cause, other than a member appointed by the declarant.
4. For purposes of calling for removal of a member of the board of directors, other than a member appointed by the declarant, the following apply:
   (a) In an association with one thousand or fewer members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least twenty-five percent of the votes in the association or by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one hundred votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association as prescribed by section 33-1804, subsection B.
   (b) Notwithstanding section 33-1804, subsection B, in an association with more than one thousand members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least ten percent of the votes in the association or by the

number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one thousand votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association. The board shall provide written notice of a special meeting as prescribed by section 33-1804, subsection B.

(c) The special meeting shall be called, noticed and held within thirty days after receipt of the petition.

(d) For purposes of a special meeting called pursuant to this subsection, a quorum is present if the number of owners who are eligible to vote in the association at the time the person attends the meeting equal to at least twenty percent of the votes of the association or the number of persons who are eligible to vote in the association at the time the person attends the meeting equal to at least one thousand votes, whichever is less, is present at the meeting in person or as otherwise permitted by law.

(e) If a civil action is filed regarding the removal of a board member, the prevailing party in the civil action shall be awarded its reasonable attorney fees and costs.

(f) The board of directors shall retain all documents and other records relating to the proposed removal of the member of the board of directors and any other action taken for that director's replacement for at least one year after the date of the special meeting and shall permit members to inspect those documents and records pursuant to section 33-1805.

(g) A petition that calls for the removal of the same member of the board of directors shall not be submitted more than once during each term of office for that member.

5. On removal of at least one but fewer than a majority of the members of the board of directors at a special meeting of the membership called pursuant to this subsection, the vacancies shall be filled as provided in the community documents.

6. On removal of a majority of the members of the board of directors at a special meeting of the membership called pursuant to this subsection, or if the community documents do not provide a method for filling board vacancies, the association shall hold an election for the replacement of the removed directors at a separate meeting of the members of the association that is held not later than thirty days after the meeting at which the members of the board of directors were removed.

7. A member of the board of directors who is removed pursuant to this subsection is not eligible to serve on the board of directors again until after the expiration of the removed board member's term of office unless the community documents specifically provide for a longer period of ineligibility.

B. For an association in which board members are elected from separately designated voting districts, a member of the board of directors, other than a member appointed by the declarant, may be removed only by a vote of the members from that voting district, and only the members from that voting district are eligible to vote on the matter or be counted for purposes of determining a quorum.

33-1814. Slum property; professional management

For any residential rental units that have been declared a slum property by the city or town pursuant to section 33-1905 and that are in the planned community, the association is responsible for enforcing any requirement for a licensed property management firm that is imposed by a city or town pursuant to section 33-1906.

33-1815. Association authority; commercial signage

Notwithstanding any provision in the community documents, after an association has approved a commercial sign, including its registered trademark that is located on properties zoned for commercial use in the planned community, the association, including any subsequently elected board of directors, may not revoke or modify its approval of that sign if the owner or operator of the sign has received approval for the sign from the local or county governing body with jurisdiction over the sign.

33-1816. Solar energy devices; reasonable restrictions; fees and costs

A. Notwithstanding any provision in the community documents, an association shall not prohibit the installation or use of a solar energy device as defined in section 44-1761.

B. An association may adopt reasonable rules regarding the placement of a solar energy device if those rules do not prevent the installation, impair the functioning of the device or restrict its use or adversely affect the cost or efficiency of the device.

C. Notwithstanding any provision of the community documents, the court shall award reasonable attorney fees and costs to any party who substantially prevails in an action against the board of directors of the association for a violation of this section.

33-1817. Declaration amendment; design, architectural committees; review

A. Except during the period of declarant control, or if during the period of declarant control with the written consent of the declarant in each instance, the following apply to an amendment to a declaration:

1. The declaration may be amended by the association if any, or, if there is no association or board, the owners of the property that is subject to the declaration, by an affirmative vote or written consent of the number of owners or eligible voters specified in the declaration, including the assent of any individuals or entities that are specified in the declaration.

2. An amendment to a declaration may apply to fewer than all of the lots or less than all of the property that is bound by the declaration and an amendment is deemed to conform to the general design and plan of the community if both of the following apply:

(a) The amendment receives the affirmative vote or written consent of the number of owners or eligible voters specified in the declaration, including the assent of any individuals or entities that are specified in the declaration.

(b) The amendment receives the affirmative vote or written consent of all of the owners of the lots or property to which the amendment applies.

3. Within thirty days after the adoption of any amendment pursuant to this section, the association or, if there is no association or board, an owner that is authorized by the affirmative vote on or the written consent to the amendment shall prepare, execute and record a written instrument setting forth the amendment.

4. Notwithstanding any provision in the declaration that provides for periodic renewal of the declaration, an amendment to the declaration is effective immediately on recordation of the instrument in the county in which the property is located.

B. Notwithstanding any provision in the community documents:

1. Membership on a design review committee, an architectural committee or a committee that performs similar functions, however denominated, for the planned community shall include at least one member of the board of directors who shall serve as chairperson of the committee.

2. For new construction of the main residential structure on a lot or for rebuilds of the main residential structure on a lot and only in a planned community that has enacted design guidelines, architectural guidelines or other similar rules, however denominated, and if the association documents permit the association to charge the member a security deposit and the association requires the member to pay a security deposit to secure completion of the member's construction project or compliance with approved plans, all of the following apply:

(a) The deposit shall be placed in a trust account with the following instructions:

(i) The cost of the trust account shall be shared equally between the association and the member.

(ii) If the construction project is abandoned, the board of directors may determine the appropriate use of any deposit monies.

(iii) Any interest earned on the refundable security deposit shall become part of the security deposit.

(b) The association or the design review committee must hold a final design approval meeting for the purpose of issuing approval of the plans, and the member or member's agent must have the opportunity to attend the meeting. If the plans are approved, the association's design review representative shall provide written acknowledgement that the approved plans, including any approved amendments, are in compliance with all rules and guidelines in effect at the time of the approval and that the refund of the deposit requires that construction be completed in accordance with those approved plans.

(c) The association must provide for at least two on-site formal reviews during construction for the purpose of determining compliance with the approved plans. The member or member's agent shall be provided the opportunity to attend both formal reviews. Within five business days after the formal reviews, the association shall cause a written report to be provided to the member or member's agent specifying any deficiencies, violations or unapproved variations from the approved plans as amended that have come to the attention of the association.

(d) Within thirty business days after the second formal review, the association shall provide to the member a copy of the written report specifying any deficiencies, violations or unapproved variations from the approved plans as amended that have come to the attention of the association. If the written report does not specify any deficiencies, violations or unapproved variations from the approved plans, as amended, that have come to the attention of the association, the association shall promptly release the deposit monies to the member. If the report identifies any deficiencies, violations or unapproved variations from the approved plans, as amended, the association may hold the deposit for one hundred eighty days or until receipt of a subsequent report of construction compliance, whichever is less. If a report of construction compliance is received before the one hundred eightieth day, the association shall promptly release the deposit monies to the member. If a compliance report is not received within one hundred eighty days, the association shall release the deposit monies promptly from the trust account to the association.

(e) Neither the approval of the plans nor the approval of the actual construction by the association or the design review committee shall constitute a representation or warranty that the plans or construction comply with applicable governmental requirements or applicable engineering, design or safety standards. The association in its discretion may release all or any part of the deposit to the member before receiving a compliance report. Release of the deposit to the member does not constitute a representation or warranty from the association that the construction complies with the approved plans.

3. Approval of a construction project's architectural designs, plans and amendments shall not unreasonably be withheld.

33-1818. Community authority over public roadways; applicability

A. Notwithstanding any provision in the community documents, after the period of declarant control, an association has no authority over and shall not regulate any roadway for which the ownership has been dedicated to or is otherwise held by a governmental entity.

B. This section applies only to those planned communities for which the declaration is recorded after December 31, 2014.

Title 33, Chapter 18 HOMEOWNERS' ASSOCIATION DWELLING ACTIONS

Article 1 General Provisions

33-2001. Definitions

In this chapter, unless the context otherwise requires:

1. "Community documents" means condominium documents as defined in section 33-1202 or community documents as defined in section 33-1802, including covenants, conditions and restrictions and deed restrictions applicable to the dwelling.
2. "Dwelling" means a newly constructed single family or multifamily unit designed for residential use and property and improvements that are either owned by a homeowners' association or jointly by all of the members of a homeowners' association. Dwelling includes the systems, other components and improvements that are part of a newly constructed single family or multifamily unit at the time of construction.
3. "Good faith" means honesty in fact in the conduct or transaction concerned.
4. "Homeowners' association" means an association as defined in section 33-1202 or 33-1802.
5. "Homeowners' association dwelling action" means any action involving a construction defect as defined in section 12-1361 filed by a homeowners' association against the seller of a dwelling arising out of or related to the design, construction, condition or sale of the dwelling.
6. "Seller" means any of the following:

   (a) Any person, firm, partnership, corporation, association or other organization that is engaged in the business of building or selling dwellings.

(b) Any person, firm, partnership, corporation, association or other organization that performs functions relating to or furnishes the design, specifications, surveying, planning, supervising, testing, constructing or observation of the constructing of a dwelling.
(c) A real estate broker or salesperson as defined in section 32-2101.

33-2002. homeowners' association dwelling actions; conditions

A. Notwithstanding any provision to the contrary in title 10, chapter 39 or chapter 9 or 16 of this title and in addition to any requirements prescribed in the community documents of a homeowners' association, a homeowners' association may file a homeowners' association dwelling action only after all of the following have occurred:

1. The board of directors has provided full disclosure in writing to all members of the association of all material information relating to the filing of the action. The material information shall include a statement that describes the nature of the action and the relief sought including any demands, notices, offers to settle or responses to offers to settle made either by the association or the seller and the expenses and fees that the association anticipates will be incurred, directly or indirectly, in prosecuting the action including attorney fees, consultant fees, expert witness fees, court costs and impacts on the values of the dwellings that are the subject of the action and those that are not. The material information described by this paragraph shall be distributed to all members before the meeting described in paragraph 2 of this subsection occurs.
2. The association has held a meeting of its members and board of directors for which reasonable and adequate notice was provided to all members in the manner prescribed in section 33-1248 or 33-1804, as applicable.
3. The board of directors of the homeowners' association authorizes the filing of the action pursuant to the procedures prescribed in the community documents. At the time of commencing a dwelling action or amending a complaint to add a cause of action for a construction defect, the homeowners' association has an affirmative duty to demonstrate compliance with the procedures prescribed in the community documents and the requirements of this section.
4. The association provides the seller with notice of the alleged construction defects and the right to repair or replace the alleged construction defects pursuant to section 12-1363.

B. If the notice required by subsection A, paragraph 2 of this section is provided to the homeowners' association's members less than sixty days before the expiration of a statute of limitations affecting the right of the association to bring a homeowners' association dwelling action, the statute of limitations is tolled for sixty days. The homeowners' association may meet the remaining requirements of subsection A of this section during the tolling period.

C. Notwithstanding any provision to the contrary in title 10, chapter 39 or in chapter 9 or 16 of this title and in addition to any requirements prescribed in the community documents of a homeowners' association, the board of directors of a homeowners' association or its authorized representative shall disclose in writing to the members of the association a plan that describes the manner in which the proceeds of a homeowners' association dwelling action, whether obtained by way of judgment, settlement or other means, have been or will be allocated. The plan shall be disclosed within thirty days after the association receives the proceeds of any homeowners' association dwelling action. The plan is not binding on the homeowners' association, but the board of directors or its authorized representative must disclose any material changes to the plan to the members of the association within thirty days of making the changes.

D. A homeowners' association shall prepare and preserve for a period of five years records that are adequate to demonstrate its compliance with this section.

E. A director who acts in good faith pursuant to this chapter is not liable for any act or failure to act pursuant to this chapter. In any action filed against a director arising out of any act or failure to act pursuant to this chapter, a director is presumed in all cases to have acted in good faith. The burden is on the party challenging a director's conduct to establish by clear and convincing evidence facts that rebut the good faith presumption.

F. In any contested dwelling action, the seller has standing to assert a failure of the homeowners' association to comply with the procedures prescribed by the community documents and the requirements of this section.

33-2003. Applicability

A. This chapter applies only to homeowners' association dwelling actions. This chapter does not apply to:

1. Actions filed by individual members of a homeowners' association against a seller.
2. Claims for personal injury, death or damage to property other than a dwelling.
3. Common law fraud claims.
4. Proceedings brought pursuant to title 32, chapter 10, whether filed by a homeowners' association or by individual members of a homeowners' association.

B. A homeowners' association dwelling action is also subject to title 12, chapter 8, article 14.

Title 10, Chapter 24 GENERAL PROVISIONS-NONPROFIT CORPORATIONS

Article 1 Short Title

10-3101. Short Title

Chapters 24 through 40 shall be known and may be cited as the Arizona nonprofit corporation act.

10-3102. Reservation of power to amend or repeal

The legislature has the power to amend or repeal all or part of this act at any time and all domestic and foreign corporations subject to this act are governed by the amendment or repeal.

Article 2 Filing Documents and Fees-Nonprofit Corporations

10-3120. Filing Requirements

A. In order to qualify for filing by the commission, a document shall satisfy the requirements of this section and any other section of chapters 24 through 42 of this title that adds to or varies these requirements.

B. Chapters 24 through 42 of this title require or permit filing of the document in the office of the commission.

C. The document shall contain the information required by chapters 24 through 42 of this title. It may contain other information.

D. The document shall be typewritten or printed and shall be legible and capable of microfilm or other process reduction and subsequent reproduction as determined by the commission.

E. The document and any exhibits to the document shall be in the English language or accompanied by an English translation certified as accurate by or on behalf of the person causing the document to be delivered for filing.

F. The document shall be executed:

1. By the presiding officer or its board of directors of a domestic or foreign corporation, its president or by another of its officers.
2. If directors have not been selected or the corporation has not been formed, by an incorporator.
3. If the corporation is in the hands of a receiver, trustee or other court appointed fiduciary, by that fiduciary.

G. The document shall state the name of each person who signs it and the capacity in which each person signs. The document may but need not contain:

1. The corporate seal.
2. An attestation by the secretary or an assistant secretary.
3. An acknowledgment, verification or proof.

H. If the commission has prescribed a mandatory form for the document under section 10-3121, the document shall be in or on the prescribed form.

I. Except as provided in subsection J of this section and sections 10-3503 and 10-11509, the document shall be delivered to the office of the commission for filing and shall be accompanied by the correct fee and any other payment or penalty required by chapters 24 through 42 of this title or other law.

J. Notwithstanding subsection I of this section:

1. A person may deliver by means of a fax or electronic transmission a document that is required or permitted by chapters 24 through 42 of this title to be delivered to the commission for filing. The person shall retain the original document for at least twelve months in the books and records of the corporation or of the person making the delivery for filing, if the delivery is not made on behalf of the corporation,

and the person shall make the original documents available for inspection and copying by the commission on reasonable notice.

2. A document that is reproduced at a fax machine or through an electronic transmission at the commission is deemed delivered to the commission:

(a) On the date of the reproduction if reproduced on or before 5:00 p.m. mountain standard time and if the day is a business day of the commission.

(b) On the next succeeding business day if reproduced after 5:00 p.m. mountain standard time and if the day is a business day of the commission.

3. On the request of the person transmitting the document, the commission shall confirm by fax or electronic transmission or other writing the receipt of the document.

4. A person shall pay and deliver to the commission any fee or penalty imposed by this title with respect to delivery of a document to the commission for filing in the manner as the commission determines.

5. If the commission determines that the legality of the document reproduced by means of a fax or electronic transmission is not sufficient, the commission may require that either:

(a) The document be delivered to the commission by means of an additional fax or electronic transmission.

(b) An original document be delivered to the commission by means other than a fax or electronic transmission.

6. The commission shall not file a document if any required amount is not paid as provided in paragraph 4 of this subsection or if any required additional counterpart is not delivered as provided in paragraph 5 of this subsection.

7. A reproduced document delivered under this subsection is deemed to satisfy any requirement in chapters 24 through 42 of this title for delivery of an original and one or more copies of the document. A document subject to this paragraph is deemed to have been delivered on the date on which it was delivered as provided in paragraph 2 of this subsection only if the first reproduction at a minimum permits identification of the corporation to which the document pertains and of the general nature of the document and the commission subsequently determines that paragraphs 4 and 5 of this subsection and any other requirements of chapters 24 through 42 of this title regarding the document have been satisfied.

8. The commission may prescribe the format of an electronic document delivered to the commission pursuant to this subsection.

10-3121. Forms

A. Certificates, reports and statements required by section 10-3202, subsection D and sections 10-11622 and 10-11623 to be delivered to and filed by the commission shall be made on the forms that are prescribed and furnished by the commission.

B. The commission may prescribe and furnish on request forms for other documents required or permitted to be filed by chapters 24 through 40 of this title, but their use is not mandatory.

10-3122. Filing, service and copying fees; public access fund; expedited report filing and access; same day and next day services

A. The commission shall collect and deposit, pursuant to sections 35-146 and 35-147, in the state general fund the following nonrefundable fees when the documents described in this subsection are delivered to the commission for filing or issuance:

Document	Fee
1. Articles of incorporation	$ 30
2. Application for use of indistinguishable name	$ 10
3. Application for reserved name	$ 10
4. Notice of transfer of reserved name	$ 10
5. Application for registered name	$ 10
6. Application for renewal of registered name	$ 10
7. Agent's statement of resignation	$ 10
8. Amendment of articles of incorporation	$ 25
9. Restatement of articles of incorporation with amendment of articles	$ 25
10. Statement of merger, interest exchange,	

conversion, domestication or division if the entity responsible for filing the statement is a nonprofit corporation	$100
11. Articles of dissolution	$ 25
12. Articles of revocation of dissolution	$ 25
13. Application for reinstatement following administrative dissolution or revocation, in addition to other fees and penalties due	$ 25
14. Application for authority	$150
15. Application for withdrawal	$ 25
16. Annual report	$ 10
17. Articles of correction	$ 25
18. Application for certificate of good standing	$ 10

B. The commission shall collect a nonrefundable fee of twenty-five dollars each time process is served on it under chapters 24 through 42 of this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding. The fee collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

C. The commission shall charge and collect fifty cents per page for copying documents on request. The commission shall also charge five dollars plus fifty cents per page for certifying the copy of a filed document. The fees collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

D. A penalty of one hundred dollars payable in addition to other fees accrues and is payable if a foreign corporation fails to file an amendment, restated articles that include an amendment, or articles of merger within sixty days of the time of filing in the jurisdiction in which the corporation is domiciled. The penalty collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. Pursuant to section 10-122, subsection F, the commission shall provide for and establish an expedited service for the filing of all documents and services provided pursuant to chapters 24 through 42 of this title.

F. Pursuant to section 10-122, subsection F, the commission may provide for and establish same day and next day services for the filing of any documents and services provided pursuant to chapters 24 through 42 of this title.

G. The commission may charge persons who access the commission's data processing system that is maintained pursuant to section 10-122.01 from remote locations and persons requesting special computer generated printouts, reports and tapes a reasonable fee that does not exceed the cost of the time, equipment and personnel necessary to provide this service or product as determined by the commission.

H. Except as provided in section 10-122.01, subsection B, paragraph 3, in addition to any fee charged pursuant to this section, the commission may charge and collect the following nonrefundable fees to help defray the cost of the improved data processing system that is maintained pursuant to section 10-122.01:

1. Filing articles of incorporation of a domestic corporation, ten dollars.
2. Filing an application of a foreign corporation for authority to transact business in this state, twenty-five dollars.

I. All monies received pursuant to subsections E through H of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the public access fund established by section 10-122.01.

J. Fees charged pursuant to this section are exempt from section 39-121.03, subsection A, paragraph 3.

K. Any person may advance monies to the commission to pay fees required pursuant to this section for future filings and services. All monies received pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the money on deposit account in the public access fund established by section 10-122.01.

10-3123. Effective time and date of document

A. Except as provided in subsections B and C of this section, a document delivered to the commission for filing is effective when the document is delivered to the commission for filing.

B. A document may specify a delayed effective time or date, or both, and if so, the document is effective at the time and date specified. If a delayed effective date but no time is specified, the document is

effective at 12:01 a.m. mountain standard time on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is delivered.
C. Subject to section 10-3124, if the commission determines that the requirements of chapters 24 through 40 of this title for filing have not been met, the document shall not be filed and, except as provided in section 10-3203, the delivery of the document is ineffective. If the commission determines that the requirements for filing have been met, the commission shall file the document as provided in section 10-3125 and the filing is effective as of the date and time determined pursuant to subsection A or B of this section.

10-3124. Correcting filed document; articles of incorporation; application for authority to conduct affairs

A. A domestic or foreign corporation may correct a document that has been filed by the commission if the document either:
1. Contains an incorrect statement and the correction does not materially alter a substantive provision.
2. Was defectively executed, attested, sealed, verified or acknowledged.

B. A document is corrected by both:
1. Preparing articles of correction that:
(a) Describe the document or attach a copy of it to the articles.
(b) Specify the date the document was delivered to the commission.
(c) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective.
(d) Correct the incorrect statement or other defect.
2. Delivering the articles to the commission for filing.

C. Articles of correction are effective on the effective date of the document they correct except as to persons who rely on the incorrect statement or other defect and who are adversely affected by the correction. As to those persons, articles of correction are effective as provided in section 10-123.
D. If articles of incorporation, articles of domestication or an application for authority to conduct affairs is rejected for filing by the commission, the articles or application may be resubmitted within thirty days of the date of rejection together with a copy of the rejected document. If the resubmitted articles or application cures the defect that caused the rejection, the resubmitted articles or application shall be filed by the commission and is effective on the date that would have been the effective date of filing the articles or application if the articles or application had not been rejected.

10-3125. Filing duty of commission

A. At the time of delivery of a document to the commission, the commission shall stamp, endorse or attach the date and time of delivery of the document.
B. The commission shall file a document delivered to the commission for filing if both of the following apply:
1. The commission determines that the document satisfies the requirements of chapters 24 through 40 of this title.
2. The corporation filing the document or on whose behalf the document is being filed is in good standing pursuant to section 10-3128.

C. The commission may file a document delivered to the commission in which either the corporation has filed articles of dissolution or the corporation has filed a document that is required to bring the corporation into good standing. The commission shall deliver the document copy to the domestic or foreign corporation or its representative.
D. If the commission refuses to file a document, it shall return it or a copy of the original to the domestic or foreign corporation or its representative within five days after the determination of the refusal to file, together with a brief written explanation of the reason for the refusal.
E. The filing or refusing to file a document by the commission does not:
1. Affect the validity or invalidity of the document in whole or in part, except to the extent that filing is required to make the document valid.
2. Relate to the correctness or incorrectness of information contained in the document.
3. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

10-3127. Evidentiary effect of copy of filed document
A stamp affixed to a copy of a document filed by the commission, bearing the signature of the executive director of the commission, which may be in facsimile, and the seal of the commission, is conclusive evidence that the original document is on file with the commission.

10-3128. Certificate of good standing
A. A person may apply to the commission to furnish a certificate of good standing for a domestic or foreign corporation.
B. The certificate of good standing sets forth all of the following:
1. The domestic corporation's corporate name or the foreign corporation's corporate name used in this state.
2. That either:
(a) The domestic corporation is incorporated under the law of this state and the date of its incorporation.
(b) The foreign corporation is authorized to transact business in this state.
3. That all affidavits and annual reports required before the date of the certificate have been filed with the commission.
4. That all annual filing fees due before the date of the certificate have been paid.
5. That according to the records of the commission, the corporation is in good standing in this state.
C. Subject to any qualification stated in the certificate, a certificate of good standing issued by the commission may be relied on as conclusive evidence of the matters stated in the certificate.

Article 3 Arizona Corporation Commission

10-3130. Powers
The commission has the power and authority reasonably necessary to enable it to administer this title efficiently and to perform the duties imposed on it by this title, including the power and authority to make rules and regulations for those purposes.

Article 4 Definitions, Notice, Private Foundations, Judicial Relief and Religious Organizations

10-3140. Definitions
In chapters 24 through 40 of this title, unless the context otherwise requires:
1. "Acknowledged" or "acknowledgment" means either an acknowledgment pursuant to title 33, chapter 4, article 5 or the signature, without more, of the person or persons signing the instrument, in which case the signature or signatures constitute the affirmation or acknowledgment of the signatory, under penalties of perjury, that the instrument is the act and deed of the signatory and that the facts stated in the instrument are true.
2. "Act of the board of directors" means either:
(a) An act of the majority of the directors present at a duly called meeting at which a quorum is present, unless the act of a greater number is required by chapters 24 through 40 of this title, the articles of incorporation or the bylaws.
(b) Action taken by written consent of the directors in accordance with chapters 24 through 40 of this title.
3. "Act of the members" means either:
(a) An act adopted or rejected by a majority of the votes represented and voting at a duly held meeting at which a quorum is present where affirmative votes also constitute a majority of the required quorum unless a greater number of votes is required by chapters 24 through 40 of this title, the articles of incorporation or the bylaws.
(b) An action taken by written consent of the members in accordance with chapters 24 through 40 of this title.
(c) An action taken by written ballot of the members in accordance with this chapter.
4. "Address" means a mailing address.

5. "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the person specified.
6. "Articles of incorporation" means the original or restated articles of incorporation or articles of merger and all amendments to the articles of incorporation or merger and includes amended and restated articles of incorporation and articles of amendment and merger.
7. "Board", "board of directors" or "board of trustees" means the group of persons vested with the direction of the affairs of the corporation irrespective of the name by which the group is designated, except that no person or group of persons shall be deemed to be the board of directors solely because of powers delegated to that person or group pursuant to section 10-3801, subsection C.
8. "Business day" means a day that is not a Saturday, a Sunday or any other legal holiday in this state.
9. "Bylaws" means the code of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name by which those rules are designated.
10. "Certificate of disclosure" means the certificate of disclosure described in section 10-3202.
11. "Class" refers to a group of memberships that have the same rights with respect to voting, dissolution, redemption and transfer. Rights are the same if they are determined by a formula applied uniformly.
12. "Commission" means the Arizona corporation commission.
13. "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics, boldface or contrasting color or typing in capitals or underlined is conspicuous.
14. "Corporation" or "domestic corporation" means a nonprofit corporation that is not a foreign corporation and that is incorporated under or subject to chapters 24 through 40 of this title.
15. "Corporation sole" means a corporation formed pursuant and subject to chapter 42, article 1 of this title.
16. "Court" means the superior court of this state.
17. "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.
18. "Deliver" includes mail, private courier, fax or electronic mail.
19. "Delivery" means actual receipt by the person or entity to which directed.
20. "Directors" or "trustees" means individuals, designated in the articles of incorporation or bylaws or elected by the incorporators, and their successors and individuals elected or appointed by any other name or title to act as members of the board.
21. "Dissolved" means the status of a corporation on either:
   (a) Effectiveness of articles of dissolution pursuant to section 10-11403, subsection B or section 10-11421, subsection B.
   (b) A decree pursuant to section 10-11433, subsection B becoming final.
22. "Distribution" means a direct or indirect transfer of money or other property or incurrence of indebtedness by a corporation to or for the benefit of its members in respect of any of its membership interests. A distribution may be in the form of any of the following:
   (a) A declaration of payment of a dividend.
   (b) Any purchase, redemption or other acquisition of membership interests.
   (c) A distribution of indebtedness.
   (d) Otherwise.
23. "Effective date of notice" is prescribed in section 10-3141.
24. "Electronic mail" means an electronic record as defined in section 44-7002 and that is sent pursuant to section 44-7015, subsection A.
25. "Employee" means an officer, director or other person who is employed by the corporation.
26. "Entity" includes a corporation, foreign corporation, not for profit corporation, business corporation, foreign business corporation, profit and not for profit unincorporated association, close corporation, corporation sole, limited liability company or registered limited liability partnership, a professional corporation, association or limited liability company or registered limited liability partnership, a business trust, estate, partnership, trust or joint venture, two or more persons having a joint or common economic interest, any person other than an individual and a state, the United States and a foreign government.
27. "Executed by the corporation" means executed by manual or facsimile signature on behalf of the corporation by a duly authorized officer or, if the corporation is in the hands of a receiver or trustee, by the receiver or trustee.

28. "Filing" means the commission completing the following procedure with respect to any document delivered for that purpose:

(a) Determining that the filing fee requirements of this title have been satisfied.

(b) Determining that the document appears in all respects to conform to the requirements of chapters 24 through 40 of this title.

(c) On making the determinations, endorsement of the word "filed" with the applicable date on or attached to the document and the return of copies to the person who delivered the document or the person's representative.

29. "Foreign corporation" means a corporation that is organized under a law other than the law of this state and that would be a nonprofit corporation if formed under the laws of this state.

30. "Governmental subdivision" includes an authority, county, district, municipality and political subdivision.

31. "Includes" and "including" denotes a partial definition.

32. "Individual" includes the estate of an incompetent individual.

33. "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.

34. "Known place of business" means the known place of business required to be maintained pursuant to section 10-3501.

35. "Mail", "to mail" or "have mailed" means to deposit or have deposited a communication in the United States mail with first class postage prepaid.

36. "Means" denotes an exhaustive definition.

37. "Member" means, without regard to what a person is called in the articles of incorporation or bylaws, any person or persons who, pursuant to a provision of a corporation's articles of incorporation or bylaws, have the right to vote for the election of a director or directors. A person is not a member by virtue of any of the following:

(a) Any rights that person has as a delegate.

(b) Any rights that person has to designate a director or directors.

(c) Any rights that person has as a director.

(d) Being referred to as a member in the articles of incorporation, bylaws or any other document, if the person does not have the right to vote for the election of a director or directors.

38. "Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles of incorporation, bylaws and chapters 24 through 40 of this title.

39. "Newspaper" has the same meaning prescribed in section 39-201.

40. "Notice" and "notify" are prescribed in section 10-3141.

41. "Person" includes individual and entity.

42. "President" means that officer designated as the president in the articles of incorporation or bylaws or, if not so designated, that officer authorized in the articles of incorporation, bylaws or otherwise to perform the functions of the chief executive officer, irrespective of the name by which designated.

43. "Principal office" means the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located or in any other document executed by the corporation by an officer and delivered to the commission for filing. If an office has not been so designated, principal office means the known place of business of the corporation.

44. "Proceeding" includes a civil suit and a criminal, administrative and investigatory action.

45. "Publish" means to publish in a newspaper of general circulation in the county of the known place of business for three consecutive publications.

46. "Record date" means the date, if any, established under chapter 29 or 30 of this title on which a corporation determines the identity of its members and their membership interests for purposes of chapters 24 through 40 of this title. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

47. "Secretary" means that officer designated as the secretary in the articles of incorporation or bylaws or that officer authorized in the articles of incorporation, the bylaws or otherwise to perform the functions of secretary, irrespective of the name by which designated.

48. "State" if referring to a part of the United States, includes a state and commonwealth and their agencies and governmental subdivisions and a territory and insular possession of the United States and their agencies and governmental subdivisions.

49. "Treasurer" means that officer designated as the treasurer in the articles of incorporation or bylaws or that officer authorized in the articles of incorporation, bylaws or otherwise to perform the functions of treasurer, irrespective of the name by which designated.
50. "United States" includes a district, authority, bureau, commission and department and any other agency of the United States.
51. "Vice-president" means an officer designated as a vice-president in the articles of incorporation or bylaws or an officer authorized in the articles of incorporation, the bylaws or otherwise to perform the functions of a vice-president, irrespective of the name by which designated.
52. "Vote" includes authorization by written ballot and written consent.
53. "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote that is contingent on the happening of a condition or event that has not occurred at the time. If a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

10-3141. Notice

A. Notice under chapters 24 through 40 of this title must be in writing unless oral notice is reasonable under the circumstances. Oral notice is not permitted if written notice is required under chapters 24 through 40 of this title.
B. Notice may be communicated in person, by telephone, telegraph, teletype, fax, electronic mail or other form of wire or wireless communication, or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television or other form of public broadcast communication.
C. Written notice by a domestic or foreign corporation to its members or directors, if in comprehensible form, is effective when mailed, if correctly addressed to the member's address shown on the corporation's current list of members or directors. Notice given by electronic mail, if in comprehensible form, is effective when directed to an electronic mail address shown on the corporation's current list of members or directors.
D. A written notice or report by a domestic or foreign corporation to its members delivered as part of a newsletter, magazine or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if addressed or delivered to one of such members, at the address appearing on the current list of members.
E. Written notice to a domestic or foreign corporation that is authorized to transact business in this state, other than in its capacity as a member, may be addressed to its statutory agent at its known place of business or to the corporation or its secretary at its principal office shown in its most recent annual report on file with the commission, or in the case of a foreign corporation that has not yet delivered an annual report in its application for a certificate of authority.
F. Except as provided in subsection C, written notice, if in a comprehensible form, is effective at the earliest of the following:
1. When received.
2. Five days after its deposit in the United States mail as evidenced by the postmark, if mailed postpaid and correctly addressed.
3. On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and if the receipt is signed by or on behalf of the addressee.
G. Oral notice is effective when communicated if communicated in a comprehensible manner.
H. If chapters 24 through 40 of this title prescribe notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements that are not inconsistent with this section or other provisions of chapters 24 through 40 of this title those requirements govern.

10-3150. Private foundations; definition

A. Except if otherwise determined by a court of competent jurisdiction or to the extent no longer required by the internal revenue code of 1986, a corporation that is a private foundation as defined in section 509(a) of the internal revenue code of 1986 shall:

1. Distribute such amounts for each taxable year at a time and in a manner that does not subject the corporation to tax under section 4942 of the code.
2. Not engage in any act of self-dealing as defined in section 4941(d) of the code.
3. Not retain any excess business holdings as defined in section 4943(c) of the code.
4. Not make any taxable expenditures as defined in section 4944 of the code.
5. Not make any taxable expenditures as defined in section 4945(d) of the code.

B. For the purposes of this section, "code" means the internal revenue code of 1986 as amended.

10-3160. Judicial relief

A. If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates or directors, or otherwise obtain their consent, in the manner prescribed by its articles of incorporation, bylaws, or chapters 24 through 40 of this title, on petition of a director, officer, delegate or member, the court may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.

B. The court, in an order issued pursuant to this section, shall provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles of incorporation, bylaws and chapters 24 through 40 of this title, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section the court may determine who the members or directors are.

C. The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, than would otherwise be imposed by the articles of incorporation, bylaws, or chapters 24 through 40 of this title.

D. If practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles of incorporation or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without being subject to this section.

E. Notwithstanding subsection D, an order under this section may also authorize the obtaining of the votes and approvals that are necessary for the dissolution, merger or sale of assets.

F. Any meeting or other method of obtaining the vote of members, delegates or directors conducted pursuant to an order issued under this section, and that complies with all the provisions of that order, is a valid meeting or vote and shall have the same force and effect as if it complied with every requirement imposed by the articles of incorporation, bylaws and chapters 24 through 40 of this title.

10-3180. Religious corporations; constitutional protections

If religious doctrine governing the affairs of a corporation organized primarily for religious purposes is inconsistent with the provisions of chapters 24 through 40 of this title on the same subject, the religious doctrine shall control to the extent required by the Constitution of the United States or the constitution of this state or both.

Title 10, Chapter 25 INCORPORATION-NONPROFIT CORPORATIONS

Article 1 Incorporation

10-3201. Incorporators

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation and a certificate of disclosure to the commission for filing.

10-3202. Articles of incorporation

A. The articles of incorporation shall set forth:
1. A corporate name for the corporation that satisfies the requirements of section 10-3401.
2. A brief statement of the character of affairs that the corporation initially intends to conduct. This statement does not limit the affairs that the corporation may conduct.

3. The name and address of each person who is to serve as a director until a successor is elected and qualifies.
4. The name, street address and signature of the corporation's statutory agent.
5. The street address of the known place of business for the corporation, if different from that of its statutory agent.
6. The name and address of each incorporator.
7. Whether or not the corporation will have members.
8. Any provision elected by the incorporators that under chapters 24 through 40 of this title or any other law of this state may be elected only by specific inclusion in the articles of incorporation.
9. The signatures of all incorporators.

B. The articles of incorporation may set forth:
1. A provision eliminating or limiting the liability of a director to the corporation or its members for money damages for any action taken or any failure to take any action as a director, except liability for any of the following:
(a) The amount of a financial benefit received by a director to which the director is not entitled.
(b) An intentional infliction of harm on the corporation or the members.
(c) A violation of section 10-3833.
(d) An intentional violation of criminal law.
2. A provision permitting or making obligatory indemnification of a director for liability, as defined in section 10-3850, to any person for any action taken, or any failure to take any action, as a director, except liability for any of the exceptions described in paragraph 1 of this subsection.
3. Any other provision, not inconsistent with law.

C. The articles of incorporation need not set forth any of the corporate powers enumerated in chapters 24 through 40 of this title.

D. The certificate of disclosure shall set forth all of the following:
1. The following information regarding all persons who at the time of its delivery are officers, directors, trustees and incorporators:
(a) Whether any of the persons have been convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the five-year period immediately preceding the execution of the certificate.
(b) Whether any of the persons have been convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses or restraint of trade or monopoly in any state or federal jurisdiction within the five-year period immediately preceding the execution of the certificate.
(c) Whether any of the persons are or have been subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the five-year period immediately preceding the execution of the certificate, if the injunction, judgment, decree or permanent order involved any of the following:
(i) The violation of fraud or registration provisions of the securities laws of that jurisdiction.
(ii) The violation of consumer fraud laws of that jurisdiction.
(iii) The violation of the antitrust or restraint of trade laws of that jurisdiction.
(d) With regard to any of the persons who have been convicted of the crimes or who are the subject of the judicial action described in subdivisions (a), (b) and (c) of this paragraph, information regarding:
(i) Identification of the persons, including present full name, all prior names or aliases, including full birth name, present home address, all prior addresses for the immediately preceding five-year period and date and location of birth.
(ii) The nature and description of each conviction or judicial action, the date and location, the court and public agency involved, and the file or case number of the case.
2. A brief statement disclosing whether any persons who at the time of its delivery are officers, directors, trustees and incorporators and who have served in any such capacity in any other corporation on the bankruptcy or receivership of the other corporation. If so, for each corporation, the certificate shall include:
(a) The names and addresses of each corporation and the person or persons involved.
(b) The state in which each corporation:
(i) Was incorporated.

(ii) Transacted business.

(c) The dates of corporate operation.

3. The signatures of all the incorporators.

4. The date of its execution, which shall be not more than thirty days before its delivery to the commission.

5. A declaration by each signer that the signer swears to its contents under penalty of law.

E. The certificate of disclosure may set forth the name and address of any other person whom the incorporator or incorporators choose to be the subject of those disclosures required under subsection D, paragraph 1 of this section.

F. If within sixty days after delivering the articles of incorporation and certificate of disclosure to the commission any person becomes an officer, director or trustee and the person was not the subject of the disclosures set forth in the certificate of disclosure, the incorporator or incorporators or, if the organization of the corporation has been completed as provided in section 10-3205, the corporation shall execute and deliver to the commission within the sixty day period a declaration, sworn to under penalty of law, setting forth all information required by subsection D, paragraph 1 of this section, regarding the person. If the incorporator or incorporators or, as applicable, the corporation fails to comply with this subsection, the commission may administratively dissolve the corporation pursuant to section 10-11421.

G. If any of the persons described in subsection D, paragraph 1 of this section have been convicted of the crimes or are the subject of the judicial action described in subsection D, paragraph 1 of this section, the commission may direct detailed interrogatories to the persons requiring any additional relevant information deemed necessary by the commission. The interrogatories shall be completely answered within thirty days after mailing of the interrogatories. With respect to corporations incorporating or seeking authority to conduct affairs, articles of incorporation or an application for authority shall not be filed until all outstanding interrogatories have been answered to the satisfaction of the commission. With respect to existing domestic and foreign corporations, if the interrogatories are not answered as provided in this subsection or the answers to the interrogatories otherwise indicate proper grounds for an administrative dissolution, the commission shall initiate an administrative dissolution in accordance with chapters 24 through 40 of this title.

H. On a quarterly updated basis, the commission shall provide to the attorney general a list of all persons who are convicted of the crimes or who are the subject of the judicial action described in subsection D, paragraph 1 of this section as indicated by the certificate of disclosure filed during the preceding three months.

I. Any person who executed or contributed information for a certificate of disclosure and who intentionally makes any untrue statement of material fact or withholds any material fact with regard to the information required in subsection D, paragraph 1 of this section is guilty of a class 6 felony.

10-3203. Incorporation

A. Unless a delayed effective date is specified in the articles of incorporation, incorporation occurs and the corporate existence begins when the articles of incorporation and certificate of disclosure are delivered to the commission for filing.

B. The commission's filing of the articles of incorporation and certificate of disclosure is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation pursuant to chapter 37 of this title.

C. Subject to section 10-3124, if the commission determines that the requirements of chapters 24 through 42 of this title for filing have not been met, the articles of incorporation and certificate of disclosure shall not be filed and the corporate existence terminates at the time the commission completes the determination. If the corporate existence is terminated pursuant to this subsection, sections 10-11404, 10-11405 and 10-11406 apply.

D. Within sixty days after the commission approves the filing, either of the following must occur:

1. A copy of the articles of incorporation shall be published. An affidavit evidencing the publication may be filed with the commission.

2. The commission shall input the information regarding the approval into the database as prescribed by section 10-130.

10-3204. Liability of noncorporate transactions
All persons purporting to act as or on behalf of a corporation with actual knowledge that no corporation exists under chapters 24 through 40 of this title are jointly and severally liable to the extent not precluded by section 12-2506 for all liabilities created while so acting.

10-3205. Organization of corporation
After incorporation the board of directors shall hold an organizational meeting at the call of a majority of the directors to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting.

10-3206. Bylaws
A. The board of directors of a corporation shall adopt initial bylaws for the corporation.
B. The bylaws of a corporation may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

10-3207. Emergency Bylaws
A. Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection D of this section. The emergency bylaws are subject to amendment or repeal by the members and may make all provisions necessary for managing the corporation during the emergency, including all of the following:
1. Procedures for calling a meeting of the board of directors.
2. Quorum requirements for the meeting.
3. Designation of additional or substitute directors.

B. All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.
C. Corporate action taken in good faith in accordance with the emergency bylaws both:
1. Binds the corporation.
2. May not be used to impose liability on a corporate director, officer, employee or agent.

D. An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of a local emergency, a state of emergency or a state of war emergency, all as defined in section 26-301.

Title 10, Chapter 26 PURPOSES AND POWERS-NONPROFIT CORPORATIONS

Article 1 General Provisions

10-3301. Purposes
Subject to any limitations or requirements contained in its articles of incorporation or in any other applicable law, a corporation shall have the purpose of engaging in and may engage in any lawful activity including the practice of medicine as defined in section 32-1401 or the practice of dentistry as described in section 32-1202, or both, provided that the corporation engages in the practice of medicine or dentistry only through individuals licensed to practice in this state. This section does not alter any law or change any liability that might otherwise be applicable to the relationship between persons furnishing a professional service and persons receiving a professional service, including liability arising from that relationship.

10-3302. General powers
Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including power to:
1. Sue and be sued, complain and defend in its corporate name.
2. Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing or in any other manner reproducing it.

3. Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation.
4. Purchase, receive, lease or otherwise acquire and own, hold, improve, use and otherwise deal with real or personal property or any interest in property wherever located.
5. Sell, convey, mortgage, pledge, lease, exchange and otherwise dispose of all or any part of its property.
6. Purchase, receive, subscribe for or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge or otherwise dispose of and deal with shares or other interests in or obligations of any entity.
7. Make contracts and guarantees, incur liabilities, borrow monies, issue its notes, bonds and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage, deed of trust, security agreement, pledge or other encumbrance of any of its property, franchises or income.
8. Issue any bond, debenture or debt security of the corporation by causing one or more officers designated in the bylaws or by the board of directors to sign the bond, debenture or debt security either manually or in facsimile and, if deemed necessary or appropriate by the officers, by causing its authentication, countersignature or registration, either manually or in facsimile, by a trustee, transfer agent or registrar other than the corporation itself or an employee of the corporation. If an officer who has signed, either manually or in facsimile, a bond, debenture or debt security as provided in this paragraph ceases for any reason to be an officer before the security is issued, the corporation may issue the security with the same effect as if the officer were still in office at the date of issue.
9. Lend monies, invest and reinvest its monies and receive and hold real and personal property as security for repayment, except as limited by section 10-3833.
10. Be a promoter, incorporator, partner, member, associate or manager of any entity.
11. Conduct its activities, locate offices and exercise the powers granted by chapters 24 through 40 of this title within or without this state.
12. Elect or appoint directors, officers, employees and agents of the corporation, define their duties, fix their compensation and lend them monies and credit.
13. Pay pensions and establish pension plans, pension trusts and other benefit or incentive plans for any of its or its affiliates' current or former directors, officers, employees and agents.
14. Eliminate or limit the liability of its directors in the manner and to the extent provided by section 10-3202 and chapter 31, article 5 of this title.
15. Make payments or donations not inconsistent with law for the public welfare or for charitable, religious, scientific or educational purposes and for other purposes that further the corporate interest.
16. Impose dues, assessments, admission and transfer fees on its members.
17. Establish conditions for admission of members, admit members and issue memberships.
18. Carry on a business.
19. Transact any lawful activity that will aid governmental policy.
20. Do any other act not inconsistent with law that furthers the activities and affairs of the corporation.

10-3303. Emergency powers

A. In anticipation of or during an emergency as prescribed in subsection D of this section, the board of directors of a corporation may:
1. Modify lines of succession to accommodate the incapacity of any director, officer, employee or agent.
2. Relocate the principal office, designate alternative principal offices or regional offices or authorize the officers to do so.

B. During an emergency as prescribed in subsection D of this section, unless emergency bylaws provide otherwise:
1. Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio.
2. One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

C. Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation:
1. Binds the corporation.
2. May not be used to impose liability on a corporate director, officer, employee or agent.

D. An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of a local emergency, a state of emergency or a state of war emergency all as defined in section 26-301.

10-3304. Validity of actions

A. Except as provided in subsection B of this section, the validity of corporate action shall not be challenged on the ground that the corporation lacks or lacked power to act.

B. A corporation's power to act may be challenged by any of the following:

1. In a proceeding by members of a corporation that is not a condominium association as defined in section 33-1202, or a planned community association as defined in section 33-1802, having at least ten per cent or more of the voting power or by at least fifty members, unless a lesser percentage or number is provided in the articles of incorporation, against the corporation to enjoin the act.
2. In a proceeding by any member of a condominium or a planned community association against the corporation to enjoin the act pursuant to title 12, chapter 10, article 1.
3. In a proceeding by the corporation, directly, derivatively or through any receiver, trustee or other legal representative, against an incumbent or former director, officer, employee or agent of the corporation.

C. In a member's proceeding under subsection B, paragraph 1 of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

Title 10, Chapter 27 NAME-NONPROFIT CORPORATIONS

Article 1 General Provisions

10-3401. Corporate name

A. A corporate name shall not contain language that states or implies that the corporation is organized for a purpose other than the purpose permitted by section 10-3301 and in its articles of incorporation.

B. Except as authorized by subsection C of this section, a corporate name must be distinguishable from all of the following:

1. The corporate name of a corporation incorporated in this state or a foreign corporation authorized to conduct affairs in this state.
2. A corporate name reserved under section 10-402 or 10-3402 or registered under section 10-403 or 10-3403.
3. A fictitious name of a foreign corporation under section 10-1506 or 10-11506.
4. The corporate name of a business corporation incorporated under this title or a foreign business corporation authorized to transact business in this state.
5. The partnership name of a limited partnership organized and registered under the laws of this state or of a foreign limited partnership authorized to transact business in this state.
6. The name of a limited liability company organized under title 29, chapter 4 or a foreign limited liability company authorized to transact business in this state.
7. A trade name registered pursuant to title 44, chapter 10, article 3.1.
8. The name of a registered limited liability partnership registered under title 29, chapter 5, article 10 or a foreign registered limited liability partnership authorized to transact business in this state.

C. A corporation may apply to the commission for authorization to use a name that is not distinguishable from one or more of the names described in subsection B of this section. The commission shall authorize use of the name applied for if either:

1. The other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the commission to change its name to a name that is distinguishable from the name of the applying corporation.
2. The applicant delivers to the commission a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

D. A corporation may use the name, including a fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business or conduct affairs in this state and the proposed user corporation either has:

1. Merged with the other corporation.
2. Been formed by reorganization of the other corporation.
3. Acquired all or substantially all of the assets, including the corporate name, of the other corporation.

E. Chapters 24 through 42 of this title do not control the use of fictitious names.

10-3402. Reserved name

A. A person may reserve the exclusive use of a corporate name, including a fictitious name to be adopted by a foreign corporation under section 10-11506, by delivering an application to the commission for filing. The application shall be executed by the applicant or an authorized agent of the applicant and shall set forth the name and address of the applicant and the name proposed to be reserved. If the commission finds that the corporate name applied for is available, it shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty day period.

B. The owner of a reserved corporate name may transfer the reservation to another person by delivering to the commission a notice of the transfer that shall be executed by the applicant or an authorized agent of the applicant and that states the name and address of the transferee. The transfer shall not extend the period for which the name is reserved.

10-3403. Registered name

A. A foreign corporation may register its corporate name, or its corporate name with any change required by section 10-11506, if the name is distinguishable from the corporate names that are not available under section 10-3401, subsection B.

B. A foreign corporation registers its corporate name or its corporate name with any change required by section 10-11506, by delivering to the commission an application both:

1. Setting forth its corporate name or its corporate name with any change required by section 10-11506, the state or country and date of its incorporation and a brief description of the nature of the activities in which it is engaged.
2. Accompanied by a certificate of existence or a similar document from the state or country of incorporation that has been issued within sixty days of delivering the application for filing with the commission.

C. The name is registered for the applicant's exclusive use on the effective date of the application. The registration expires one year after the effective date of the application unless it is renewed pursuant to subsection D of this section.

D. A foreign corporation whose registration is effective may renew it for successive years by delivering to the commission for filing a renewal application that complies with the requirements of subsection B of this section. The renewal application renews the registration for one year after the effective date of the renewal application.

E. A foreign corporation whose registration is effective may qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under chapters 24 through 42 of this title or by another foreign corporation authorized to conduct affairs in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

Title 10, Chapter 28 OFFICE AND AGENT-NONPROFIT CORPORATIONS

Article 1 Place of Business and Agent

10-3501. Known place of business and statutory agent

Each corporation shall continuously maintain in this state both:

1. A known place of business that may be the address of its statutory agent.
2. A statutory agent who may be either:
   (a) An individual who resides in this state.

(b) A domestic business or nonprofit corporation formed under this title.
(c) A foreign business or nonprofit corporation authorized to transact business or conduct affairs in this state.
(d) A limited liability company formed under title 29.
(e) A limited liability company authorized to transact business in this state.

10-3502. Change of known place of business and statutory agent

A. A corporation may change its known place of business or statutory agent by delivering to the commission for filing a statement of change that may be the annual report and that sets forth:

1. The name of the corporation.
2. The street address of its current known place of business.
3. If the current known place of business is to be changed, the street address of the new known place of business.
4. The name and street address of its current statutory agent.
5. If the current statutory agent is to be changed, the name and street address of the new statutory agent and the new agent's written consent to the appointment.

B. The statement of change shall be executed by the corporation by an officer and delivered to the commission. The change or changes set forth in the statement of change are effective on delivery to the commission for filing.

C. If the statutory agent changes its street address, it shall give written notice to the corporation of the change and sign, either manually or in facsimile, and deliver to the commission for filing a statement that complies with the requirements of subsection A and that recites that the corporation has been given written notice of the change. The change or changes set forth in the statement are effective on delivery to the commission for filing.

10-3503. Resignation of statutory agent

A. A statutory agent may resign its agency appointment by signing and delivering to the commission for filing the signed original statement of resignation. The statement may include a statement that the known place of business is also discontinued. The statutory agent shall give written notice of its resignation to the corporation at an address other than the statutory agent's address.

B. After filing the statement, the commission shall mail one copy to the corporation at its known place of business, if not discontinued, and another copy to the corporation at its principal office.

C. The agency appointment is terminated and, if so provided in the statement, the known place of business is discontinued on the thirty-first day after the date on which the statement was delivered to the commission for filing.

10-3504. Service on corporation

A. The statutory agent appointed by a corporation is an agent of the corporation on whom process, notice or demand that is required or permitted by law to be served on the corporation may be served and that, when so served, is lawful personal service on the corporation.

B. If a corporation fails to appoint or maintain a statutory agent at the address shown on the records of the commission, the commission is an agent of the corporation on whom any process, notice or demand may be served. Pursuant to the Arizona rules of civil procedure, service on the commission of any process, notice or demand for an entity that is registered pursuant to this title shall be made by delivering to and leaving with the commission duplicate copies of the process, notice or demand, and the commission shall immediately cause one of the copies of the process, notice or demand to be forwarded by mail, addressed to the corporation at its known place of business. Service made on the commission is returnable pursuant to applicable law relative to personal service on the corporation. If service is made on the commission, whether under this chapter or a rule of court, the corporation has thirty days to respond in addition to the time otherwise provided by law.

C. The commission shall keep a permanent record of all processes, notices and demands served on it under this section and shall record in the record the time of the service and its action with reference to the service.

D. Notice required to be served on a corporation pursuant to section 10-11421 or 10-11422 may be served:

1. By mail addressed to the statutory agent of the corporation or, if the corporation fails to appoint and maintain a statutory agent, addressed to the known place of business required to be maintained pursuant to section 10-3501.
2. Pursuant to the rules for service of process authorized by the Arizona rules of civil procedure.

Title 10, Chapter 29 MEMBERS AND MEMBERSHIP-NONPROFIT CORPORATIONS

Article 1 Admission of Members

10-3601. Admission
A. The articles of incorporation or bylaws may establish criteria or procedures for admission of members and continuation of membership.
B. No person shall be admitted as a member without that person's consent. Consent may be express or implied.

10-3602. Consideration
Except as provided in its articles of incorporation or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

10-3603. No requirement of members
A corporation is not required to have members.

Article 2 Types of Memberships-Members' Rights and Obligations

10-3610. Difference in rights and obligations of members
All members have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles of incorporation or bylaws establish classes of membership with different rights or obligations or otherwise provide. All members have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles of incorporation or bylaws.

10-3611. Transfers
A. Except as set forth in or authorized by the articles of incorporation or bylaws, no member of a corporation may transfer a membership or any right arising from that membership.
B. If transfer rights are provided, no restriction on them is binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

10-3612. Member's liability to third parties
A member of a corporation is not personally liable for the acts, debts, liabilities or obligations of the corporation.

10-3613. Member's liability for dues, assessments and fees
A. A member may become liable to the corporation for dues, assessments and fees. A provision of the articles of incorporation, a provision of the bylaws or a resolution adopted by the board authorizing or imposing dues, assessments or fees does not, of itself, create liability for dues, assessments or fees. An express or implied agreement, consent or acquiescence by the member is necessary to create liability for dues, assessments or fees. A member is deemed to have agreed to the liability if there exists at the time the member becomes a member a provision of the articles of incorporation, a provision of the bylaws, a provision of the declaration of a condominium or a planned community or a resolution adopted by the board authorizing or imposing dues, assessments or fees.
B. A home buyer may implicitly consent to liability for dues, assessments and fees.
C. Unless the provision authorizing dues expressly limits the amount of the dues, the amount and the member's liability are subject to increase or decrease.

10-3614. Creditor’s action against member
A. No creditor of the corporation may bring a proceeding to reach the liability of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation, and execution has been returned unsatisfied in whole or in part.
B. All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection A to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in that proceeding.
C. In any proceeding by a creditor under this section, the member shall pay any amount that is determined to be owed by the member to the corporation directly to the corporation and not to any creditor. The member is not liable directly or indirectly for any costs incurred by the creditor in the proceeding. If the member has paid the amount to the corporation, the liability of the member to the corporation for that amount is fully satisfied, the member is no longer a party to the proceeding and is immune from further proceedings under this section for the amount.

Article. 3 Resignation and Termination

10-3620. Resignation
A. A member may resign at any time, except as set forth in or authorized by the articles of incorporation or bylaws.
B. The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.
C. This section does not apply to corporations that are condominium associations or planned community associations.

10-3621. Termination, expulsion and suspension
A. No member of a corporation may be expelled or suspended, and no membership or memberships in such a corporation may be terminated or suspended, except pursuant to a procedure that is set forth in the articles of incorporation, bylaws or an agreement between the member and the corporation or a procedure that is otherwise appropriate.
B. For purposes of subsection A, a procedure is otherwise appropriate if either:
1. The following are provided:
   (a) A written notice at least fifteen days before the expulsion, suspension or termination and the reasons therefor.
   (b) An opportunity for the member to be heard, orally or in writing, at least five days before the effective date of the expulsion, suspension or termination by a person or persons authorized to decide that the proposed expulsion, termination or suspension should not take place.
2. It is fair and reasonable taking into consideration all of the relevant facts and circumstances.

C. Any written notice that is mailed shall be sent to the last address of the member shown on the corporation's records.
D. Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, shall begin within six months after the effective date of the expulsion, suspension or termination.
E. A member who has been expelled or suspended may be liable to the corporation for dues, assessments or fees as a result of obligations incurred or commitments made prior to expulsion or suspension.
F. This section does not apply to corporations organized primarily for religious purposes.

10-3622. Purchase of memberships
Except as provided in the articles of incorporation or bylaws, a corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles of incorporation or bylaws. A corporation shall not make a payment that violates section 10-11301 or 10-11302.

Article 4 Derivative Suits

10-3630. Definitions

In this article, unless the context otherwise requires:

1. "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in section 10-3637, in the right of a foreign corporation.
2. "Independent person" means a person with no personal interest in the transaction and no personal or other relationship which influences the person.

10-3631. Standing

A. A proceeding may be brought in the right of a domestic corporation to procure a judgment in its favor by either:

1. In the case of a corporation that has members, any member or members having twenty-five per cent or more of the voting power or by fifty members, whichever is less.
2. In the case of a corporation that does not have members, any director or twenty-five per cent of the directors, whichever is greater.

B. In any such proceeding, each complainant shall both:

1. Have been a member or director, as applicable, of the corporation at the time of the act or omission complained of.
2. Fairly and adequately represent the interests of the corporation in enforcing the right of the corporation.

10-3632. Demand

No complainant may commence a derivative proceeding until both:

1. A written demand has been made on the corporation to take suitable action.
2. Ninety days have expired from the date the demand was made unless the complainant has earlier been notified that the demand has been rejected by the corporation or unless the statute of limitations will expire within the ninety days or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety day period.

10-3633. Stay of proceedings

If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

10-3634. Dismissal

A. A derivative proceeding shall be dismissed by the court on motion by the corporation on any legal grounds, including if one of the groups specified in subsections B or F has determined in good faith after conducting a reasonable inquiry on which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.

B. Unless a panel is appointed pursuant to subsection F, the determination in subsection A shall be made by either:

1. A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum.
2. A majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constitute a quorum.

C. None of the following shall by itself or collectively cause a director to be considered not independent for purposes of this section:

1. The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded.
2. The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded.
3. The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

D. If a derivative proceeding is commenced after a determination has been made that rejects a demand by the complainants, the complaint shall allege with particularity facts that establish either:

1. That a majority of the board of directors did not consist of independent directors at the time the determination was made.
2. That the requirements of subsection A have not been met.

E. If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation has the burden of proving that the requirements of subsection A have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff has the burden of proving by clear and convincing evidence that the requirements of subsection A have not been met.

F. The court may appoint a panel of one or more independent persons on motion by the corporation to determine whether the maintenance of the derivative proceeding is in the best interests of the corporation. In that case, the plaintiff has the burden of proving by clear and convincing evidence that the requirements of subsection A have not been met. A person appointed by the court is not liable for a determination made pursuant to this section.

10-3635. Discontinuance or settlement

No derivative proceeding may be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's members or a class of members, the court shall direct that notice be given to the affected members.

10-3636. Payment of expenses

On termination of the derivative proceeding the court may either:

1. Order the corporation to pay the plaintiff's reasonable expenses, including attorney fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation.
2. Order the plaintiff to pay any defendant's reasonable expenses, including attorney fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.
3. Order a party to pay an opposing party's reasonable expenses, including attorney fees, incurred because of the filing of any pleading, motion or other paper, if it finds that the pleading, motion or other paper was not well grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law and was interposed for an improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation.

10-3637. Applicability to foreign corporations

In any derivative proceeding in the right of a foreign corporation, the matters covered by this article are governed by the laws of the jurisdiction of incorporation of the foreign corporation except for sections 10-3633, 10-3635 and 10-3636.

Article 5 Delegates

10-3640. Delegates

A. A corporation may provide in its articles of incorporation or bylaws for delegates that have some or all of the authority of members.

B. The articles of incorporation or bylaws may set forth provisions relating to:

1. The characteristics, qualifications, rights, limitations and obligations of delegates including the delegates' selection and removal.
2. Calling, noticing, holding and conducting meetings of delegates.
3. Carrying on corporate activities during and between meetings of delegates.

Title 10, Chapter 30 MEMBERS' MEETINGS AND VOTING-NONPROFIT CORPORATIONS

Article 1 Meetings and Action Without Meetings

10-3701. Annual and regular meetings; exceptions

A. Unless otherwise provided in the articles of incorporation or bylaws, a corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

B. A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

C. A corporation may hold annual and regular membership meetings in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, the corporation shall hold annual and regular meetings at the corporation's principal office.

D. At regular meetings the members shall consider and act on any matter raised and that is consistent with the notice requirements of section 10-3705.

E. The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

F. Notwithstanding this chapter, a condominium association shall comply with title 33, chapter 9 and a planned community association shall comply with title 33, chapter 16 to the extent that this chapter is inconsistent with title 33, chapters 9 and 16.

10-3702. Special meeting

A. A corporation with members shall hold a special meeting of members either:

1. On the call of its board or of the person or persons authorized to do so by the articles or bylaws.
2. Except as provided in the articles of incorporation or bylaws of a corporation organized primarily for religious purposes, if the holders of at least ten per cent of the voting power of any corporation sign, date and deliver to any corporate officer one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

B. The close of business on the thirtieth day before delivery of the demand or demands for a special meeting to any corporate officer is the record date for the purpose of determining whether the ten per cent requirement of subsection A of this section has been met.

C. A corporation may hold a special meeting of members in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, the corporation shall hold special meetings at the corporation's principal office.

D. Unless otherwise provided in the articles of incorporation or bylaws, the corporation may conduct only those matters at a special meeting of members that are within the purpose or purposes described in the meeting notice required by section 10-3705.

10-3703. Court ordered meeting; costs; attorney fees

A. The court in the county where a corporation's principal office is located, or if the corporation has no principal office in this state, the court in the county where the corporation's known place of business is located, may summarily order a meeting to be held on application by any of the following:

1. Any member, if an annual meeting was not held within fifteen months after its last annual meeting.
2. Any member, if a regular meeting is not held within forty days after the date it was required to be held.
3. A member who signed a demand for a special meeting that is valid under section 10-3702 or a person or persons entitled to call a special meeting, if either:
   (a) Notice of the special meeting was not given within thirty days after the date that the demand was delivered to a corporate officer.
   (b) The special meeting was not held in accordance with the notice.

B. The court may:

1. Fix the time and place of the meeting.
2. Specify a record date for determining members entitled to notice of and to vote at the meeting.
3. Prescribe the form and content of the meeting notice.

C. If the court orders a meeting, it may also order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order.

10-3704. Action by written consent; definition

A. The members may approve any action that is required or permitted by chapters 24 through 40 of this title and that requires the members' approval without a meeting of members if the action is approved by members holding at least a majority of the voting power, unless the articles of incorporation, bylaws or chapters 24 through 40 of this title require a different amount of voting power. The action shall be evidenced by one or more written consents describing the action taken, signed by those members representing at least the requisite amount of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

B. If not otherwise fixed under section 10-3703 or 10-3707, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection A of this section.

C. The consent signed under this section has the effect of a meeting vote and may be described as such in any document.

D. Written notice of member approval pursuant to this section shall be given to all members who have not signed the written consent.

E. Unless otherwise specified in the consent or consents, the action is effective on the date that the consent or consents are signed by the last member whose signature results in the requisite amount of the voting power, except that if chapters 24 through 40 of this title require notice of proposed actions to members who are not entitled to vote in the action and the action is to be taken by unanimous consent of the members entitled to vote, the effective date is not before ten days after the corporation gives its members not entitled to vote written notice of the proposed action. The notice shall contain or be accompanied by the same material that under chapters 24 through 40 of this title would have been sent to members not entitled to vote in a notice of meeting at which the proposed action would have been submitted to the members for action.

F. Any member may revoke the member's consent by delivering a signed revocation of the consent to the president or secretary before the date that the consent or consents are signed by the last member whose signature results in the requisite amount of the voting power.

G. For the purposes of this section, "signature" includes an electronic signature as defined in section 44-7002.

10-3705. Notice of meeting

A. Except as provided in section 33-2208, a corporation shall notify members of the date, time and place of each annual, regular and special members' meeting at least ten days but not more than sixty days before the meeting date. Unless chapters 24 through 40 of this title or the articles of incorporation or bylaws require otherwise, the corporation shall give notice only to members entitled to vote at the meeting.

B. Unless chapters 24 through 40 of this title or the articles of incorporation or bylaws require otherwise, the notice of an annual or regular meeting does not require a description of the purpose or purposes for which the meeting is called.

C. Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.

D. If not otherwise fixed under section 10-3703 or 10-3707, the record date for determining members entitled to notice of and to vote at an annual, regular or special members' meeting is the day before the effective date of the first notice to the members.

E. Unless the bylaws require otherwise, if an annual, regular or special members' meeting is adjourned to a different date, time or place, a notice of the new date, time or place is not required if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 10-3707, the corporation shall give notice of the adjourned meeting pursuant to this section to persons who are members as of the new record date.

10-3706. Waiver of notice

A. A member may waive any notice required by chapters 24 through 40 of this title, the articles of incorporation or bylaws before or after the date and time stated in the notice. The waiver shall be in

writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

B. A member's attendance at a meeting:

1. Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.
2. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter at the time it is presented.

10-3707. Record date; determining members entitled to notice and vote

A. The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing that record date, the board may fix a future date as that record date. If that record date is not fixed, members at the close of business on the business day before the day on which notice is given, or if notice is waived, at the close of business on the business day before the day on which the meeting is held, are entitled to notice of the meeting.

B. The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing that record date, the board may fix a future date as that record date. If that record date is not fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

C. The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing that record date, the board may fix in advance that record date. If that record date is not fixed, members at the close of business on the day on which the board adopts the resolution relating to that record date, or the sixtieth day before the date of other action, whichever is later, are entitled to exercise those rights.

D. The record date fixed under this section shall not be more than seventy days before the meeting or action requiring a determination of members.

E. A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting, unless the board fixed a new date for determining the right to notice or the right to vote. The board shall fix a new date for determining the right to notice or the right to vote if the meeting is adjourned to a date that is more than seventy days after the record date for determining members entitled to notice of the original meeting.

F. If a court orders a meeting adjourned to another date, the original record date for notice of voting continues in effect.

10-3708. Action by written ballot

A. Unless prohibited or limited by the articles of incorporation or bylaws, any action that the corporation may take at any annual, regular or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

B. A written ballot shall:

1. Set forth each proposed action.
2. Provide an opportunity to vote for or against each proposed action.

C. Approval by written ballot pursuant to this section is valid only if both:

1. The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.
2. The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

D. All solicitations for votes by written ballot shall:

1. Indicate the number of responses needed to meet the quorum requirements.
2. State the percentage of approvals necessary to approve each matter other than election of directors.
3. Specify the time by which a ballot must be delivered to the corporation in order to be counted, which time shall not be less than three days after the date that the corporation delivers the ballot.

E. Except as otherwise provided in the articles of incorporation or bylaws, a written ballot shall not be revoked.

F. After providing notice that complies with subsection G of this section to members that a vote shall be conducted by electronic means, a written ballot may be delivered through an online voting system that does all of the following:

1. Authenticates the member's identity.
2. Authenticates the validity of each electronic vote to ensure that the vote is not altered in transit.
3. Transmits a receipt to each member who casts an electronic vote.
4. Stores electronic votes for recount, inspection and review purposes.

G. The notice prescribed by subsection F of this section shall include a reasonable procedure by which a member may obtain and cast a ballot through some other form of deliver, including United States mail delivery and fax transmission.

Article 2 Voting

10-3720. Members' list for meeting

A. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all of its members who are entitled to notice of the meeting. The list shall show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting another list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting and the corporation shall prepare that list on the same basis and make it a part of the list of members.

B. For the purpose of communication with other members concerning the meeting the corporation shall make the list of members available for inspection by any member at the corporation's principal office or at another place identified in the meeting notice in the city where the meeting will be held. On written demand a member, a member's agent or a member's attorney may inspect and, subject to the limitations of section 10-11602, subsection C, and section 10-11605, may copy the list, during regular business hours and at the member's expense, during the period it is available for inspection.

C. The corporation shall make the list of members available at the meeting, and any member, a member's agent or a member's attorney may inspect the list at any time during the meeting or during any adjournment.

D. If the corporation refuses to allow a member, a member's agent or a member's attorney to inspect the list of members before or at the meeting or copy the list as permitted by subsection B of this section, the court in the county where a corporation's principal office is located, or if no principal office is located in this state, the court in the county where a corporation's known place of business is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

E. Refusal or failure to comply with this section does not affect the validity of any action taken at the meeting.

F. The articles of incorporation or bylaws of a corporation organized primarily for religious purposes may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

10-3721. Voting entitlement generally

A. Unless the articles of incorporation or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members. A member is entitled to vote only on those matters expressly provided in the articles of incorporation or bylaws.

B. Unless the articles of incorporation or bylaws or written agreement signed by the subject members and delivered to the corporation provide otherwise, if a membership stands of record in the names of two or more persons, those persons' acts with respect to voting shall have the following effect:

1. If only one votes, the act binds all.
2. If more than one votes, the vote shall be divided on a pro rata basis.

10-3722. Quorum requirements

Unless chapters 24 through 40 of this title or the articles of incorporation provide for a higher or lower quorum the bylaws may provide the number or percentage of members entitled to vote, present or represented by proxy, or the number or percentage of votes entitled to be cast by members present or represented by proxy, that shall constitute a quorum at a meeting of members. In the absence of that

provision, members, present or represented by proxy, holding one-tenth of the votes entitled to be cast, shall constitute a quorum.

10-3723. Voting requirements

Unless chapters 24 through 40 of this title provide otherwise, the articles of incorporation or the bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting, for which affirmative votes also constitute a majority of the required quorum, is the act of the members.

10-3724. Proxies

A. A member may vote the member's votes in person or by proxy.

B. Unless the articles of incorporation or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form, either personally or by the member's attorney-in-fact.

C. An appointment of a proxy is effective on receipt by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided in the appointment form.

D. An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of any of the following:

1. A pledgee.
2. A person who purchased, agreed to purchase, holds an option to purchase or holds any other right to acquire the membership interest.
3. A creditor of the corporation who extended or continued credit to the corporation under terms requiring the appointment.
4. An employee of the corporation whose employment contract requires the appointment.
5. A party to a voting agreement created pursuant to section 10-3731.

E. The death or incapacity of the member who appoints a proxy does not affect the right of the corporation to accept the proxy's authority unless the secretary or other officer or agent authorized to tabulate votes receives written notice of the death or incapacity before the proxy exercises authority under the appointment.

F. Appointment of a proxy is revoked by the person who appoints the proxy by either:

1. Attending any meeting and voting in person.
2. Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

G. An appointment made irrevocable under subsection D of this section is revoked if the interest with which it is coupled is extinguished.

H. A transferee for value of a membership interest subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence at the time that the transferee acquired the membership interest and the existence of the irrevocable appointment was not noted conspicuously on the transfer documents.

I. Subject to section 10-3727 and to any express limitation on the proxy's authority that appears on the face of the appointment form, a corporation may accept the proxy's vote or other action as that of the member making the appointment.

10-3725. Cumulative voting for directors

A. If the articles of incorporation or bylaws provide for cumulative voting by members, members may cumulate their votes for directors, by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote and casting the product for a single candidate or by distributing the product among two or more candidates.

B. Cumulative voting is not authorized at a particular meeting unless either:

1. The meeting notice or statement accompanying the notice states conspicuously that cumulative voting is authorized.
2. A member who has the right to cumulate votes gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes during the meeting, and if one member gives this notice all other members in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

C. A director elected by cumulative voting may be removed by the members without cause if the requirements of section 10-3808 are met unless the votes cast against removal, or those members not consenting in writing or by ballot to the removal, would be sufficient to elect that director if voted cumulatively at an election at which the same total number of votes were cast or, if the action is taken by written consent or ballot, all memberships entitled to vote were voted and the entire number of directors authorized at the time of the director's most recent election were then being elected.

10-3726. Other methods of electing directors

A corporation may provide in its articles of incorporation or bylaws the process for election of directors by members or delegates by any of the following means:

1. On the basis of chapter or other organizational unit.
2. By region or other geographic unit.
3. By preferential voting.
4. By any other reasonable method.

10-3727. Corporation's acceptance of votes

A. If the name signed on a vote, consent, waiver or proxy appointment corresponds to the name of a member, the corporation if acting in good faith is entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the member.

B. If the name signed on a vote, consent, waiver or proxy appointment does not correspond to the record name of a member, the corporation if acting in good faith is entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the member if:

1. The member is an entity and the name signed purports to be that of an officer or agent of the entity.
2. The name signed purports to be that of an administrator, executor, guardian or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment.
3. The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment.
4. The name signed purports to be that of a pledgee, beneficial owner or attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver or proxy appointment.
5. Two or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders.

C. The corporation is entitled to reject a vote, consent, waiver or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

D. The corporation and its officer or agent who accepts or rejects a vote, consent, waiver or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

E. Corporate action based on the acceptance or rejection of a vote, consent, waiver or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

Article 3 Voting Agreements of Trusts

10-3730. Voting trusts

If and to the extent a membership is transferable as provided in section 10-3611, and unless otherwise provided in the articles of incorporation or bylaws, one or more members may create a voting trust, conferring on one or more trustees the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust and transferring their memberships to the trustee or trustees. The agreement may contain any lawful provision not inconsistent with the purposes of the trust.

10-3731. Voting agreements

A. Two or more members may provide for the manner in which they will vote by signing an agreement for that purpose.

B. Unless otherwise provided in the voting agreement, a voting agreement created under this section is specifically enforceable.

10-3732. Member agreements

A. An agreement among the members of a corporation that complies with this section is effective among the members and the corporation even though it is inconsistent with one or more other provisions of chapters 24 through 40 of this title if it meets any of the following conditions:

1. Restricts the discretion or powers of the board of directors.
2. Governs the authorization or making of distributions whether or not in proportion to ownership of memberships, subject to the limitations in sections 10-11301 and 10-11302.
3. Establishes who shall be directors or officers of the corporation, their terms and conditions of office or employment or their manner of selection or removal.
4. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the members and directors or by or among any of them, including use of weighted voting rights or director proxies.
5. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any member, director, officer or employee of the corporation or among any of them.
6. Transfers to one or more members or other persons all or part of the authority to exercise the corporate powers or to manage the affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or members.
7. Requires dissolution of the corporation at the request of one or more of the members or on the occurrence of a specified event or contingency.
8. Establishes the terms and conditions of employment of members.
9. Addresses the use of arbitration or other forms of dispute resolution to resolve disputes among members.
10. Restricts the transfer of memberships.
11. Otherwise governs the exercise of the corporate powers or the management of the affairs of the corporation, its liquidation and dissolution or the relationship among the members, the directors and the corporation, or among any of them.

B. An agreement authorized by this section shall be:

1. Set forth either:
   (a) In the articles of incorporation or bylaws and approved by all persons who are members at the time of the agreement.
   (b) In a written agreement that is signed by all persons who are members at the time of the agreement and that is filed with the corporation.
2. Subject to amendment or termination only by all persons who are members at the time of the amendment, unless the agreement provides otherwise.
3. Valid for the duration of the corporation's existence, unless the agreement provides otherwise.

C. An agreement authorized by this section is enforceable by any party to the agreement against any other party to the agreement. The existence of an agreement authorized by this section shall be noted conspicuously in an information statement provided to any person who becomes a member and who was not a signatory of the agreement. The failure to note the existence of the agreement in the information statement does not affect the validity of the agreement or any action taken pursuant to it. Any transferee of a membership who at the time of transfer did not have knowledge of the existence of the agreement is entitled to rescission of the membership. A transferee shall be deemed to have knowledge of the existence of the agreement if its existence is noted in the information statement in compliance with this subsection and the information is delivered to the transferee at or before the time of transfer of the membership or the transferee has actual notice of the existence of the agreement at the time of transfer. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety days after discovery of the existence of the agreement or two years after the time of the transfer of the membership.

D. If the agreement ceases to be effective for any reason, the board of directors, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, may adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.
E. An agreement that is authorized by this section and that limits the discretion or powers of the board of directors relieves the directors of and imposes on the person or persons in whom such discretion or powers are vested liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.
F. The existence or performance of an agreement authorized by this section is not a ground for imposing personal liability on any member for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were an unincorporated association or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.
G. Incorporators may act as members with respect to an agreement authorized by this section if no members have been admitted when the agreement is made.
H. This section does not apply to, limit or invalidate agreements that are otherwise valid or authorized without regard to this section, including without limitation member agreements between or among some or all of the members or agreements between or among the corporation and one or more members. The procedure set forth in this section is not the exclusive method of agreement among members or among members and the corporation with respect to any of the matters described in this section.

Title 10, Chapter 31 DIRECTORS AND OFFICERS-NONPROFIT CORPORATIONS

Article 1 Board of Directors

10-3801. Requirement for and duties of board
A. Each corporation shall have a board of directors.
B. All corporate powers shall be exercised by or under the authority of and the affairs of the corporation shall be managed under the direction of its board of directors, subject to any limitation set forth in the articles of incorporation.
C. The articles of incorporation may authorize one or more members, delegates or other persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized the authorized person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from those duties and responsibilities.

10-3802. Qualifications of directors
The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a member of the corporation unless the articles of incorporation or bylaws so prescribe.

10-3803. Number of directors
A. A board of directors shall consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.
B. The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed, from time to time, within the minimum and maximum, by the members or the board of directors.

10-3804. Election, designation and appointment of directors
A. If the corporation has members, the members shall elect all the directors except the initial directors at the first annual meeting of members, and at each annual meeting after the first annual meeting, unless either:
1. The terms of the directors are staggered pursuant to section 10-3806.
2. The articles of incorporation or bylaws provide some other time or method of election.

3. The articles of incorporation or bylaws provide that some of the directors are appointed by some other person or some of the directors are designated.

B. If the corporation does not have members, all the directors except the initial directors shall be elected, appointed or designated as provided in the articles of incorporation or bylaws. If no method of designation or appointment is set forth in the articles of incorporation or bylaws, the board of directors shall elect the directors other than the initial directors.

10-3805. Terms of directors generally

A. The terms of the initial directors of a corporation expire at the first election, appointment or designation of directors as provided in section 10-3804.

B. The articles of incorporation or bylaws shall specify the terms of directors. In the absence of any term specified in the articles of incorporation or bylaws, the term of each director is one year. Unless otherwise provided in the articles of incorporation or bylaws, directors may be elected for successive terms.

C. A decrease in the number of directors or term of office does not shorten the term of any incumbent director.

D. Except as provided in the articles of incorporation or bylaws:

1. The term of a director elected to fill a vacancy in the office of a director elected by members expires at the next election of directors by members.
2. The term of a director elected to fill any other vacancy expires at the end of the unexpired term that the director is filling.

E. Despite the expiration of a director's term, a director shall continue to hold office until the director's successor is elected, designated or appointed and qualifies, until the director's resignation or removal or until there is a decrease in the number of directors.

10-3806. Staggered terms for directors

The articles of incorporation or bylaws may provide for staggering the directors' terms of office by dividing the total number of directors into two or more groups. The terms of office of the several groups need not be uniform.

10-3807. Resignation of directors

A. A director may resign at any time by delivering written notice to the board of directors, its presiding officer or the corporation.

B. A resignation is effective when the notice is delivered unless the notice specifies a later effective date or event. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

10-3808. Removal of directors elected by members or directors

A. A director may be removed from office pursuant to any procedure provided in the articles of incorporation or bylaws.

B. If the articles of incorporation or bylaws do not provide a procedure for removal of a director from office:

1. The members may remove one or more directors elected by them with or without cause unless the articles of incorporation provide that directors may be removed only for cause.
2. If a director is elected by a class, chapter, region or other organizational or geographic unit or grouping only the members of that class, chapter, region, unit or grouping may participate in the vote to remove the director.
3. Except as provided in paragraph 9, a director may be removed under paragraph 1 or 2 only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.
4. If cumulative voting is authorized, a director may not be removed if the number of votes, or if the director was elected by a class, chapter, region, unit or grouping of members, the number of votes of that class, chapter, region, unit or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.
5. A director elected by members may be removed by the members at a meeting by written consent or by written ballot of the members authorized to vote on such removal. If the removal is to occur at a

meeting, the meeting notice shall state that the purpose or one of the purposes of the meeting is removal of the director.
6. In computing whether a director is protected from removal under paragraphs 2 through 4, it is assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.
7. An entire board of directors may be removed under paragraphs 1 through 5.
8. Except as provided in subsection C, a director elected by the board may be removed with or without cause by the vote of two-thirds of the directors then in office or any greater number as is set forth in the articles of incorporation or bylaws.
9. If, at the beginning of a director's term on the board of directors, the articles of incorporation or bylaws provide that the director may be removed for missing a specified number of meetings of the board of directors, the board of directors may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

C. Notwithstanding subsection B, paragraph 8, a director elected by the board to fill the vacancy of a director elected by the members may be removed with or without cause by the members, but not by the board of directors.

10-3809. Removal of designated or appointed directors

A. A designated director may be removed by an amendment to the articles of incorporation or bylaws deleting or changing the designation.
B. Except as otherwise provided in the articles of incorporation or bylaws, an appointed director may be removed with or without cause by the person appointing the director. The person removing the director shall give written notice of the removal to the director and either the board of directors, its presiding officer or the corporation. A removal is effective when the notice is delivered unless the notice specifies a later effective date or event.

10-3810. Removal of directors by judicial proceeding

A. The court in the county where a corporation's known place of business or, if none in this state, its statutory agent is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its members holding at least twenty-five per cent of the voting power of any class, if the court finds that both:
1. The director engaged in fraudulent conduct or intentional criminal conduct with respect to the corporation.
2. Removal is in the best interests of the corporation.

B. The court that removes a director may bar the director from serving on the board for a period prescribed by the court, but in no event may the period exceed five years.
C. If members commence a proceeding under subsection A, they shall make the corporation a party defendant, unless the corporation elects to become a party plaintiff.
D. The articles of incorporation or bylaws of a corporation organized for religious purposes may limit or prohibit the application of this section.

10-3811. Vacancy on board

A. Unless the articles of incorporation or bylaws provide otherwise, and except as provided in subsections B and C of this section, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors, either:
1. The members, if any, may fill the vacancy.
2. The board of directors may fill the vacancy.
3. If the directors remaining in office constitute fewer than a quorum of the board of directors, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

B. Unless the articles of incorporation or bylaws provide otherwise, if the vacant office was held by a director elected by a class, chapter, region or other organizational or geographic unit or grouping, only members of the class, chapter, region, unit or grouping are entitled to vote to fill the vacancy if it is filled by the members.
C. Unless the articles of incorporation or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

D. If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles of incorporation or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.
E. A vacancy that will occur at a specific later date by reason of a resignation effective at a later date under section 10-3807, subsection B or otherwise may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.
F. If at any time by reason of death or resignation or other cause a corporation has no directors in office, any officer or any member may call a special meeting of members.

10-3812. Compensation of directors
Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Article 2 Meetings and Action of the Board

10-3820. Regular and special meetings
A. If the time and place of a directors' meeting is fixed by the bylaws or the board of directors, the meeting is a regular meeting. All other meetings are special meetings.
B. A board of directors may hold regular or special meetings in or out of this state.
C. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by or conduct the meeting through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

10-3821. Action without meeting
A. Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by chapters 24 through 40 of this title to be taken at a directors' meeting may be taken without a meeting if the action is taken by all of the directors. The action must be evidenced by one or more written consents describing the action taken, signed by each director and included in the minutes filed with the corporate records reflecting the action taken.
B. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.
C. The consent signed under this section has the effect of a meeting vote and may be described as such in any document.
D. Any director may revoke a consent by delivering a signed revocation of the consent to the president or secretary before the date the last director signs the consent.
E. For the purposes of this section, a consent may be signed using an electronic signature as defined in section 44-7002.

10-3822. Call and notice of meetings
A. Unless the articles of incorporation, bylaws or subsection C of this section provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place or purpose of the meeting.
B. Unless the articles of incorporation, bylaws or subsection C of this section provide otherwise, special meetings of the board of directors shall be preceded by at least two days' notice of the date, time and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.
C. In corporations without members any board action to remove a director or to approve a matter that would require approval by the members if the corporation had members is not valid unless each director is given at least two days' written notice that the matter will be voted on at a directors' meeting or unless notice is waived pursuant to section 10-3823.
D. Unless the articles of incorporation or bylaws provide otherwise, the presiding officer of the board of directors, the president or twenty per cent of the directors then in office may call and give notice of a meeting of the board.

10-3823. Waiver of notice

A. A director may waive any notice required by chapters 24 through 40 of this title, the articles of incorporation or bylaws before or after the date and time stated in the notice. Except as provided in subsection B of this section, the waiver shall be in writing and signed by the director entitled to the notice, or by electronic mail and filed with the minutes or corporate records.

B. A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting or promptly on the director's arrival at the meeting objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

C. For the purposes of this section, a waiver may be signed using an electronic signature as defined in section 44-7002.

10-3824. Quorum and voting

A. Unless the articles of incorporation or bylaws require a different number, a quorum of a board of directors consists of either:

1. A majority of the fixed number of directors if the corporation has a fixed board size.
2. A majority of the number of directors prescribed, or if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable range size board.

B. The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of at least one-third of the fixed or prescribed number of directors determined under subsection A.

C. The articles of incorporation or bylaws may specify that, if a quorum is present when a meeting is convened, the quorum shall be deemed to exist until the meeting is adjourned, notwithstanding the departure of one or more directors.

D. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

E. A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless either:

1. The director objects at the beginning of the meeting or promptly on the director's arrival to holding it or transacting business at the meeting.
2. The director's dissent or abstention from the action taken is entered in the minutes of the meeting.
3. The director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation before 5:00 p.m. on the next business day after the meeting.

F. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

G. The articles of incorporation or bylaws may authorize a director to vote in person or by proxy. The following provisions apply to voting by proxy:

1. A director may appoint a proxy to vote or otherwise act for the director by signing an appointment form, either personally or by the director's attorney-in-fact. The appointment does not relieve the director of liability for acts or omissions imposed by law on directors.
2. An appointment of a proxy is effective when received by the secretary. An appointment is valid for one month unless a different period is expressly provided in the appointment form.
3. An appointment of a proxy is revocable by the director.
4. The death or incapacity of the director appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless written notice of the death or incapacity is received by the secretary before the proxy exercises its authority under the appointment.
5. Subject to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as of the shareholder making the appointment.

10-3825. Committees of the board

A. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee shall have one or more members, and each member of a committee shall serve at the pleasure of the board of directors.

B. The creation of a committee and appointment of members of the board of directors to it must be approved by the greater of:

1. A majority of all the directors in office when the action is taken.
2. The number of directors required by the articles of incorporation or bylaws to take action under section 10-3824.

C. Sections 10-3820 through 10-3824 governing meetings, action without meetings and notice, waiver of notice, quorum and voting requirements of the board of directors also apply to committees and their members.

D. Subject to the limitations set forth in subsection E of this section, each committee of the board may exercise the authority of the board of directors under section 10-3801 to the extent specified by the board of directors or in the articles of incorporation or bylaws.

E. A committee shall not take any of the following actions:

1. Authorize distributions.
2. Approve or recommend to members any action that requires the members' approval under this chapter.
3. Fill vacancies on the board of directors or on any of its committees.
4. Adopt, amend or repeal bylaws.
5. Fix the compensation of directors for serving on the board of directors or any committee of the board of directors.

F. The creation of, delegation of authority to or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 10-3830.

G. The board of directors may designate one or more directors as alternate members of any committee who may replace any absent member at any meeting of the committee.

Article 3 Standards of Conduct

10-3830. General standards for directors

A. A director's duties, including duties as a member of a committee, shall be discharged:

1. In good faith.
2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances.
3. In a manner the director reasonably believes to be in the best interests of the corporation.

B. In discharging duties, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by any of the following:

1. One or more officers or employees of the corporation whom the director reasonably believes are reliable and competent in the matters presented.
2. Legal counsel, public accountants or other person as to matters the director reasonably believes are within the person's professional or expert competence.
3. A committee of or appointed by the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.
4. In the case of corporations organized for religious purposes, religious authorities and ministers, priests, rabbis or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

C. A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection B unwarranted.

D. A director is not liable for any action taken as a director or any failure to take any action if the director's duties were performed in compliance with this section. In any proceeding commenced under this section or any other provision of this chapter, a director has all of the defenses and presumptions ordinarily available to a director. A director is presumed in all cases to have acted, failed to act or otherwise discharged such director's duties in accordance with subsection A. The burden is on the party challenging a director's action, failure to act or other discharge of duties to establish by clear and convincing evidence facts rebutting the presumption.

E. A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including property that may be subject to restrictions imposed by the donor or transferor of that property.

10-3833. Liability for unlawful distributions

A. A director who votes for or assents to a distribution made in violation of sections 10-11301 and 10-11302 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating sections 10-11301 and 10-11302 or the articles of incorporation if it is established that the director's duties were not performed in compliance with section 10-3830.

B. A director of a corporation who is present at a meeting of its board of directors at which action on any distribution in violation of section 10-11301 is taken is presumed to have assented to the action taken unless his dissent is entered in the minutes of the meeting or unless he files his written dissent to the action with the secretary of the meeting before the adjournment of the meeting or forwards the dissent by registered or certified mail to the secretary of the corporation before 5:00 p.m. of the next business day after the adjournment of the meeting. The right to dissent does not apply to a director who voted in favor of the action.

C. A director who is held liable under subsection A of this section for an unlawful distribution is entitled to contribution from:

1. Every other director who could be held liable under subsection A of this section for the unlawful distribution.
2. Each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of sections 10-11301 and 10-11302 or the articles of incorporation.

D. A proceeding under this section is barred unless it is commenced within two years after the date on which the distribution is made.

Article 4 Officers

10-3840. Officers

A. A corporation shall have the officers described in its articles of incorporation or bylaws or appointed by the board of directors in accordance with the articles of incorporation or bylaws.

B. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

C. The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

D. The same individual may simultaneously hold more than one office in a corporation.

10-3841. Duties and authority of officers

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties and authority of other officers.

10-3842. Standards of conduct for officers

A. If an officer has discretionary authority with respect to any duties, an officer's duties shall be discharged under that authority:

1. In good faith.
2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances.
3. In a manner the officer reasonably believes to be in the best interests of the corporation.

B. In discharging duties, an officer is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by either:

1. One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented.

2. Legal counsel, public accountants or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.
3. In the case of corporations organized for religious purposes, religious authorities and ministers, priests, rabbis or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and who the officer believes to be reliable and competent in the matters presented.

C. An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection B unwarranted.

D. An officer is not liable for any action taken as an officer or any failure to take any action if the officer's duties were performed in compliance with this section. In any proceeding commenced under this section or any other provision of this chapter, an officer has all of the defenses and presumptions ordinarily available to an officer. An officer is presumed in all cases to have acted, failed to act or otherwise discharged such officer's duties in accordance with subsection A. The burden is on the party challenging an officer's action, failure to act or other discharge of duties to establish by clear and convincing evidence facts rebutting the presumption.

10-3843. Resignation and removal of officers

A. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date or event. If a resignation is made effective at a later date or event and the corporation accepts the later effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

B. A board of directors may remove any officer at any time with or without cause.

10-3844. Contract rights of officers

A. The appointment of an officer does not itself create contract rights.

B. An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

10-3845. Officers’ authority to execute documents

Any contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the contract or other instrument if it is signed by two individuals who are either:

1. Both the presiding officer of the board of directors and the president.
2. Either the presiding officer of the board of directors or the president, and one of the following:
   (a) A vice-president.
   (b) The secretary.
   (c) The treasurer.
   (d) The executive director.

Article 5 Indemnification

10-3850. Definitions

In this article, unless the context otherwise requires:

1. "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
2. "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other entity. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on or otherwise involve services by the director to the plan or to participants in or beneficiaries of the plan. Director includes the estate or personal representative of a director and includes ex officio members of the board.

3. "Expenses" include attorney fees and other costs and expenses reasonably related to a proceeding.
4. "Liability" means the obligation to pay a judgment, settlement, penalty or fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses actually incurred with respect to a proceeding and includes obligations and expenses that have not yet been paid by the indemnified persons but that have been or may be incurred.
5. "Officer" means an individual who is or was an officer of a corporation or an individual who, while an officer of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other entity. An officer is considered to be serving an employee benefit plan at the corporation's request if the officer's duties to the corporation also impose duties on or otherwise involve services by the officer to the plan or to participants in or beneficiaries of the plan. Officer includes the estate or personal representative of an officer.
6. "Official capacity" means if used with respect to a director, the office of director in a corporation and, if used with respect to an officer as contemplated in section 10-3856, the office in a corporation held by the officer. Official capacity does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.
7. "Outside director" means a director who, when serving as a director, is not or was not a compensated officer, employee or member holding more than ten per cent of the voting power of the corporation or any affiliate of the corporation or an officer, employee or holder of more than ten per cent of the voting power of such a member or any affiliate of that member.
8. "Party" includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding.
9. "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal.

10-3851. Authority to indemnify

A. Except as provided in subsection D of this section, a corporation may indemnify an individual made a party to a proceeding because either:
1. The individual is or was a director against liability incurred in the proceeding if all of the following conditions exist:
(a) The individual's conduct was in good faith.
(b) The individual reasonably believed:
(i) In the case of conduct in an official capacity with the corporation, that the conduct was in its best interests.
(ii) In all other cases, that the conduct was at least not opposed to its best interests.
(c) In the case of any criminal proceedings, the individual had no reasonable cause to believe the conduct was unlawful.
2. The director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation pursuant to section 10-3202, subsection B, paragraph 2.

B. A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection A, paragraph 1, subdivision (a) of this section.

C. The termination of a proceeding by judgment, order, settlement or conviction or on a plea of no contest or its equivalent is not of itself determinative that the director did not meet the standard of conduct described in this section.

D. A corporation may not indemnify a director under this section either:
1. In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation.
2. In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

E. Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

10-3852. Mandatory indemnification

A. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was the prevailing party, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding.

B. Unless limited by its articles of incorporation, section 10-851, subsection D or subsection C of this section, a corporation shall indemnify an outside director against liability. Unless limited by its articles of incorporation or subsection C of this section, a corporation shall pay an outside director's expenses in advance of a final disposition of a proceeding, if the director furnishes the corporation with a written affirmation of the director's good faith belief that the director has met the standard of conduct described in section 10-851, subsection A and the director furnishes the corporation with a written undertaking executed personally, or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct. The undertaking required by this subsection is an unlimited general obligation of the director but need not be secured and shall be accepted without reference to the director's financial ability to make repayment.

C. A corporation shall not provide the indemnification or advancement of expenses described in subsection B of this section if a court of competent jurisdiction has determined before payment that the outside director failed to meet the standards described in section 10-851, subsection A, and a court of competent jurisdiction does not otherwise authorize payment under section 10-854. A corporation shall not delay payment of indemnification or expenses under subsection B of this section for more than sixty days after a request is made unless ordered to do so by a court of competent jurisdiction.

10-3853. Advance for expenses

A. A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if both of the following conditions exist:

1. The director furnishes to the corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in section 10-3851 or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation pursuant to section 10-3202, subsection B, paragraph 1.
2. The director furnishes the corporation with a written undertaking, executed personally or on the director's behalf, to repay the advance if the director is not entitled to mandatory indemnification under section 10-3852 and it is ultimately determined that the director did not meet the standard of conduct.

B. The undertaking required by subsection A, paragraph 2 of this section is an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

C. Authorizations of payments under this section shall be made in a manner consistent with section 10-3830 or 10-3842.

D. This section does not apply to advancement of expenses to or for the benefit of an outside director. Advances to outside directors shall be made pursuant to section 10-3852.

10-3854. Court ordered indemnification

Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification advances for expenses if it determines either:

1. The director is entitled to mandatory indemnification under section 10-3852, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court ordered indemnification.
2. The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 10-3851 or was adjudged liable as described in section 10-3851, subsection D, but if the director was adjudged liable under section 10-3851, subsection D, indemnification is limited to reasonable expenses incurred.

10-3855. Determination and authorization of indemnification

A. A corporation may not indemnify a director under section 10-3851 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in section 10-3851.

B. The determination shall be made either:

1. By the board of directors by a majority vote of the directors not at the time parties to the proceeding.
2. By special legal counsel:
   (a) Selected by majority vote of the disinterested directors.
   (b) If there are no disinterested directors, selected by majority vote of the board of directors.
3. By the members, but directors who are at the time parties to the proceeding may not vote on the determination.

C. Neither special legal counsel nor any member has any liability whatsoever for a determination made pursuant to this section. In voting pursuant to subsection B of this section, directors shall discharge their duty in accordance with section 10-3830.

D. Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection B, paragraph 2 of this section to select counsel.

10-3856. Indemnification of officers

A. A corporation may indemnify and advance expenses under this article to an officer of the corporation who is a party to a proceeding because the individual is or was an officer of the corporation as follows:

1. To the same extent as a director.
2. If the individual is an officer but not a director, to the further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract except for:
   (a) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding.
   (b) Liability arising out of conduct that constitutes:
      (i) Receipt by the officer of a financial benefit to which the officer is not entitled.
      (ii) An intentional infliction of harm on the corporation or the members.
      (iii) An intentional violation of criminal law.

B. Subsection A, paragraph 2 of this section applies to an officer who is also director if the basis on which the officer is made a party to the proceeding is an act or omission solely as an officer.

C. An officer of a corporation who is not a director is entitled to mandatory indemnification under section 10-3852, subsection A and may apply to a court under section 10-3854 for indemnification or an advance for expenses, in each case to the same extent to which a director is entitled to indemnification or advance for expenses under those sections.

10-3857. Insurance

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director or officer of the corporation or who, while a director or officer of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other entity, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to the person against the same liability under this article.

10-3858. Application of article

A. A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its members or board of directors or a contract or otherwise is valid only if and to the extent the provision is consistent with this article. If the articles of incorporation limit indemnification or advances for expenses, indemnification and advances for expenses are valid only to the extent consistent with the articles of incorporation.

B. This article does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.
C. This article does not limit a corporation's power to indemnify, advance expenses or maintain insurance on behalf of an employee or agent.

Article 6 Director’s Conflicting Interest Transactions

10-3860. Definitions
In this article, unless the context otherwise requires:
1. "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation, by a subsidiary of the corporation or by any other entity in which the corporation has a controlling interest if either:
(a) Whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that the director or a related person either:
(i) Is a party to the transaction.
(ii) Has a beneficial financial interest in or is so closely linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if he were called on to vote on the transaction.
(b) The transaction is brought or is of such character and significance to the corporation that it would in the normal course be brought before the board of directors of the corporation for action, and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called on to vote on the transaction:
(i) An entity, other than the corporation, of which the director is a director, general partner, agent or employee.
(ii) A person that controls one or more of the entities specified in item (i) of this subdivision or an entity that is controlled by or is under common control with one or more of the entities specified in item (i) of this subdivision.
(iii) An individual who is a general partner, principal or employer of the director.
2. "Director's conflicting interest transaction" with respect to a corporation means a transaction effected or proposed to be effected by the corporation, by a subsidiary of the corporation or by any other entity in which the corporation has a controlling interest respecting which a director of the corporation has a conflicting interest.
3. "Related person" of a director means either:
(a) The spouse, or a parent or sibling of the spouse, of the director, a child, grandchild, sibling, parent or spouse of a child, grandchild, sibling or parent, of the director, an individual having the same home as the director or a trust or estate of which an individual specified in this subdivision is a substantial beneficiary.
(b) A trust, estate, incompetent, conservatee or minor of which the director is a fiduciary.
4. "Required disclosure" means disclosure by the director who has a conflicting interest of both:
(a) The existence and nature of the conflicting interest.
(b) All facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.
5. "Time of commitment" respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation, or its subsidiary or the entity in which it has a controlling interest, becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability or other damage.

10-3861. Judicial action
A. A transaction that is effected or proposed to be effected by a corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, and that is not a

director's conflicting interest transaction shall not be enjoined, be set aside or give rise to an award of damages or other sanctions in a proceeding by a member or by or in the right of the corporation, because a director of the corporation, or any person with whom or with which the director has a personal, economic or other association, has an interest in the transaction.

B. A director's conflicting interest transaction shall not be enjoined, be set aside or give rise to an award of damages or other sanctions in a proceeding by a member by or in the right of the corporation, because the director, or any person with whom or with which the director has a personal, economic or other association, has an interest in the transaction, if either:

1. Directors' action respecting the transaction was taken at any time in compliance with section 10-3862.
2. Members' action respecting the transaction was taken at any time in compliance with section 10-3863.
3. The transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

C. Any person seeking to have a director's conflicting interest transaction enjoined, set aside or give rise to an award of damages or other sanctions shall first prove by clear and convincing evidence that subsection B of this section is not applicable.

10-3862. Directors' action; definition

A. Directors' action respecting a transaction is effective for purposes of section 10-3861, subsection B, paragraph 1 if the transaction received the affirmative vote of a majority, but at least two, of those qualified directors on the board of directors or on a duly empowered committee of the board who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with subsection B of this section. Action by a committee is effective under this section only if both:

1. All of its members are qualified directors.
2. Members are either all of the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors or the board.

B. If a director has a conflicting interest regarding a transaction but neither the director nor a related person of the director specified in section 10-3860, paragraph 3, subdivision (a) is a party to the transaction and if the director has a duty under law or professional canon or a duty of confidentiality to another person, respecting information relating to the transaction such that the director may not make the disclosure described in section 10-3860, paragraph 4, subdivision (b), disclosure is sufficient for purposes of subsection A of this section if the director both:

1. Discloses to the directors voting on the transaction the existence and nature of the conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction.
2. Plays no part, directly or indirectly, in their deliberations or vote.

C. A majority, but at least two, of all of the qualified directors on the board of directors or on the committee is a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director.

D. For purposes of this section, "qualified director" means, with respect to a director's conflicting transaction, any director who does not have either:

1. A conflicting interest respecting the transaction.
2. A familial, financial, professional or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.

10-3863. Members' action; definition

A. Members' action respecting a transaction is effective for purposes of section 10-3861, subsection B, paragraph 2 if a majority of the votes entitled to be cast by the holders of all qualified membership interests was cast in favor of the transaction after all of the following:

1. Notice to members describing the director's conflicting interest transaction.
2. Provision of the information referred to in subsection C of this section.

3. Required disclosure to the members who voted on the transaction, to the extent the information was not known by them.

B. A majority of the votes entitled to be cast by the holders of all qualified membership interests is a quorum for the purposes of action that complies with this section. Subject to subsections C and D of this section, members' action that otherwise complies with this section is not affected by the presence of members or the voting of membership interests that are not qualified membership interests.

C. For purposes of compliance with subsection A of this section, a director who has a conflicting interest respecting the transaction shall inform, before the members' vote, the secretary, or other officer or agent of the corporation authorized to tabulate votes, of the number and the identity of persons holding or controlling the vote of all membership interests that the director knows are beneficially owned, or the voting of which is controlled, by the director or by a related person of the director, or both.

D. If a member's vote does not comply with subsection A of this section solely because of a failure of a director to comply with subsection C of this section and if the director establishes that his failure did not determine and was not intended by him to influence the outcome of the vote, the court, with or without further proceedings respecting section 10-3861, subsection B, paragraph 3, may take such action, respecting the transaction and the director and give such effect, if any, to the members' vote, as it considers appropriate in the circumstances.

E. For purposes of this section, "qualified membership interests" means any membership interests entitled to vote with respect to the director's conflicting interest transaction except membership interests that, to the knowledge, before the vote, of the secretary or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned, or the voting of which is controlled, by a director who has a conflicting interest respecting the transaction or by a related person of the director, or both.

10-3864. Conflict of interest policy; exceptions

A. The board of directors of a corporation shall adopt a policy regarding transactions between the corporation and interested persons, including the sale, lease or exchange of property to or from interested persons and the corporation, the lending or borrowing of monies to or from interested persons by the corporation or the payment of compensation by the corporation for services provided by interested persons. For the purposes of this subsection, "interested person" means an officer or director of a corporation or any other corporation, firm, association or entity in which an officer or director of a corporation is a member, officer or director or has a financial interest.

B. The requirements of this section do not apply to any of the following:

1. A corporation that had assets at the end of its last fiscal year with a book value of less than ten million dollars, net of accumulated depreciation, or had gross receipts or revenues of less than two million dollars in its last fiscal year.
2. A corporation that offers goods or services only to members who are entitled to vote for its board of directors.
3. A corporation organized for religious purposes that does not have, as a substantial portion of its business, the offering of goods or services on a regular basis to the public for remuneration.
4. A corporation organized by or on behalf of the United States, this state, a political subdivision of this state or an agency or instrumentality of such a governmental entity.
5. A hospital, medical, dental or optometric service corporation licensed pursuant to title 20, chapter 4, article 3.

C. For the purposes of subsection B, paragraph 3:

1. Goods and services include medical, hospital, dental or counseling or social services offered on a regular basis to the public for remuneration.
2. A corporation organized for religious purposes includes a corporation or foreign corporation that controls or is controlled directly or indirectly by a corporation or foreign corporation organized for religious purposes.

D. The exemption provided by subsection B, paragraph 4 does not apply to a corporation that provides services to or operates assets of the governmental entity pursuant to a lease or contract.

Title 10, Chapter 33 AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS-NONPROFIT CORPORATIONS

Article 1 Articles of Incorporation

10-11001. Authority to amend

A. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision that is not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

B. A member of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control or purpose of duration of the corporation.

10-11002. Amendment by board of directors

A. If a corporation has members who are otherwise entitled to vote on amendments to the corporation's articles, then unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles without member approval to either:

1. Extend the duration of the corporation if it was incorporated at a time when limited duration was required by law.
2. Delete the names and addresses of the initial directors.
3. Delete the name and address of the initial statutory agent or known place of business, if a statement of change is on file with the commission.
4. Change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", "association", "society", or the abbreviation "corp.", "inc.", "co.", "ltd.", "assn." or "socy." for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution to the name.
5. Make any other change expressly permitted by chapters 24 through 40 of this title or the articles of incorporation to be made by director action.

B. If a corporation has no members or if no members are entitled to vote on the proposed amendment, the board of directors may adopt one or more amendments to the corporation's articles of incorporation.

C. Adoption of an amendment pursuant to this section requires the approval in writing by any person or persons whose approval is required pursuant to section 10-11030 for an amendment to the articles of incorporation or bylaws.

10-11003. Amendment by board of directors and members

A. The following apply to amendments to the articles of incorporation by the board of directors and the members, if there are members entitled to vote on the amendment:

1. A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the members.
2. For the amendment to be adopted all of the following shall have occurred:
   (a) The board of directors shall recommend the amendment to the members unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for that determination to the members with the amendment.
   (b) The members entitled to vote on the amendment shall approve the amendment as provided by paragraph 5 of this subsection.
   (c) Each person whose approval is required by the articles of incorporation as authorized by section 10-11030 for an amendment to the articles of incorporation or bylaws shall approve the amendment in writing.
3. The board of directors may condition its submission of the proposed amendment on any basis.
4. The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with section 10-3705. The notice of meeting shall also state that the purpose or one of the purposes of the meeting is to consider the proposed amendment and shall contain or be accompanied by a copy or summary of the amendment.
5. Unless chapters 24 through 40 of this title, the articles of incorporation or the board of directors acting pursuant to paragraph 3 of this subsection requires a greater vote or voting by class, the

amendment to be adopted shall be approved by two-thirds of the votes cast or a majority of the voting power, whichever is less.

B. The following apply to amendments to the articles of incorporation by the members, if there are members:

1. If the articles of incorporation expressly permit, the members may propose amendments to the articles of incorporation. If so permitted, the articles of incorporation shall set forth procedures for adopting member initiated amendments, including the percentage of voting power and method of notice required to propose an amendment and the responsibility for calling a member meeting to consider the amendment.
2. For the amendment to be adopted, all of the following shall have occurred:
   (a) The members entitled to vote on the amendment shall approve the amendment as provided in paragraph 4 of this subsection.
   (b) The corporation shall notify each member in accordance with subsection A, paragraph 4 of this section.
   (c) Each person whose approval is required by the articles of incorporation as authorized by section 10-11030 for an amendment to the articles of incorporation or bylaws shall approve the amendment in writing.
3. The members may condition adoption of the proposed amendment on any basis.
4. Unless chapters 24 through 40 of this title, the articles of incorporation or the members acting pursuant to paragraph 3 of this subsection require a greater vote or voting by class, the amendment to be adopted shall be approved by two-thirds of the votes cast or a majority of the voting power, whichever is less.

10-11004. Class voting by members on amendments

The members of a class of a corporation are entitled to vote as a class on a proposed amendment to the articles of incorporation only if a class vote is provided for in the articles of incorporation or bylaws.

10-11006. Articles of amendment

A. A corporation amending its articles of incorporation shall deliver to the commission for filing articles of amendment setting forth:

1. The name of the corporation.
2. The text of each amendment adopted.
3. The date of each amendment's adoption.
4. A statement that the amendment was duly adopted by act of the members or act of the board of directors and, if applicable, with the approval required pursuant to section 10-11030.

B. Within sixty days after the commission approves the filing, either of the following must occur:

1. A copy of the articles of amendment shall be published. An affidavit evidencing the publication may be filed with the commission.
2. The commission shall input the information regarding the approval into the database as prescribed by section 10-130.

10-11007. Restated articles of incorporation

A. A corporation's board of directors may restate its articles of incorporation at any time with or without approval by the members or any other person.

B. The restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment requiring approval by the members or any other person, it shall be adopted as provided in section 10-11003.

C. If the board of directors submits a restatement for member action, the corporation shall notify each member entitled to vote of the proposed membership meeting in writing in accordance with section 10-3705. The notice shall also state that the purpose or one of the purposes of the meeting is to consider the proposed restatement and shall contain or be accompanied by a copy or summary of the restatement that identifies any amendment or other change it would make in the articles.

D. If the board of directors submits a restatement for member action by written ballot or written consent, the material that solicits the approval shall contain or be accompanied by a copy or summary of the restatement that also identifies any amendment or other change it would make in the articles of incorporation.

E. A corporation restating its articles of incorporation shall deliver to the commission for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

1. Whether the restatement contains an amendment to the articles requiring approval by any other person other than the board of directors and, if it does not, that the board of directors adopted the restatement.
2. If the restatement contains an amendment to the articles requiring approval by the members, a statement that such approval was obtained.
3. If the restatement contains an amendment to the articles requiring approval by a person whose approval is required pursuant to section 10-11030, a statement that such approval was obtained.

F. Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

G. The commission may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection E of this section.

H. Within sixty days after the commission approves the filing, either of the following must occur:

1. A copy of the articles of restatement shall be published. An affidavit evidencing the publication may be filed with the commission.
2. The commission shall input the information regarding the approval into the database as prescribed by section 10-130.

10-11008. Amendment pursuant to reorganization

A. A corporation's articles may be amended pursuant to this section without action by the board of directors or members or approval required pursuant to section 10-11030 to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under a federal statute or a statute of this state if the articles of incorporation after amendment contain only provisions required or permitted by section 10-3202.

B. Before the date of entry of a final decree in the reorganization proceeding, the individual or individuals designated by the court plan shall deliver to the commission articles of amendment setting forth all of the following:

1. The name of the corporation.
2. The text of each amendment contained in the plan of reorganization.
3. The date of the court's order or decree confirming the plan of reorganization containing the articles of amendment.
4. The title of the reorganization proceeding in which the order or decree was entered.
5. A statement that the court had jurisdiction of the proceeding under federal or state statute.

C. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

D. Within sixty days after the commission approves the filing, either of the following must occur:

1. A copy of the articles of amendment shall be published. An affidavit evidencing the publication may be filed with the commission.
2. The commission shall input the information regarding the approval into the database as prescribed by section 10-130.

10-11009. Effect of amendment and restatement

An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed on the corporation or any property held by it by virtue of any trust on which that property is held by the corporation or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

Article 2 Bylaws

10-11020. Amendment by board of directors
A. If a corporation has no members, its board of directors may adopt one or more amendments to the corporation's bylaws.
B. The adoption of an amendment pursuant to this section shall require the approval in writing by any person or persons whose approval is required pursuant to section 10-11030.

10-11021. Amendment by board of directors or members
If the articles of incorporation or the bylaws require that an amendment to or repeal of the corporation's bylaws be submitted to the members, the procedures set forth in section 10-11003 shall apply.

10-11022. Class voting by members on amendments
The members of a class of a corporation are entitled to vote as a class on a proposed amendment to the bylaws only if a class vote is provided for in the articles of incorporation or bylaws.

10-11023. Bylaw increasing quorum or voting requirement for members
A. If authorized by the articles of incorporation, members may adopt or amend a bylaw that fixes a greater quorum or voting requirement for members, or of classes of members, than is required by chapters 24 through 40 of this title. The adoption or amendment of a bylaw that adds, changes or deletes a greater quorum or voting requirement for members shall meet the same quorum requirement and shall be adopted by the same vote and classes of members required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.
B. A bylaw that fixes a greater quorum or voting requirement for members under subsection A shall not be adopted, amended or repealed by the board of directors.

10-11024. Bylaw increasing quorum or voting requirement for directors
A. A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed as follows:
1. If originally adopted by the members, only by the members.
2. If originally adopted by the board of directors, either by the members or by the board of directors.

B. A bylaw that is adopted or amended by the members and that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the members or the board of directors.
C. Action by the board of directors under subsection A, paragraph 2 to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors shall meet the same quorum requirement and shall be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

Article 3 Articles of Incorporation and Bylaws

10-11030. Approval by third persons
The articles of incorporation may require a specified person or persons other than the board of directors to approve in writing any amendment to the articles of incorporation or bylaws and, unless the articles of incorporation or bylaws otherwise provide, that article provision may only be amended with the approval in writing of the specified person or persons.

10-11031. Amendment terminating members or redeeming or canceling memberships
A. Any amendment to the articles of incorporation or bylaws of a corporation that terminates all members or any class of members or redeems or cancels all memberships or any class of memberships shall be adopted in accordance with section 10-11002, 10-11003, 10-11020 or 10-11021, as applicable, and this section.
B. The members shall approve any amendment described in subsection A of this section by two-thirds of the votes cast by each class.
C. The provisions of section 10-3621 do not apply to any amendment described in subsection A of this section.

Title 10, Chapter 34 MERGERS AND OTHER RESTRUCTURING TRANSACTIONS-NONPROFIT CORPORATIONS

Article 1 General Provisions

10-11101. Definitions

A. In this article, unless the context otherwise requires:

1. "Plan" means a plan of merger, interest exchange, conversion, domestication or division, as applicable.
2. "Transaction" means a merger, an interest exchange, a conversion, a domestication or a division, as applicable.

B. Except for terms defined in chapters 24 through 40 of this title or unless the context otherwise requires, terms used in this article have the same meanings prescribed in section 29-2102.

10-11102. Entity restructuring transactions

A. If its board of directors adopts and, if required by section 10-11103, its members and other persons approve a plan, a domestic corporation may be a party to or otherwise undertake a transaction by adopting a plan and otherwise complying with this article and:

1. Title 29, chapter 6, article 2 for a merger.
2. Title 29, chapter 6, article 3 for an interest exchange.
3. Title 29, chapter 6, article 4 for a conversion.
4. Title 29, chapter 6, article 5 for a domestication.
5. Title 29, chapter 6, article 6 for a division.

B. The effective time and date of the transaction are as provided in title 29, chapter 6. Except as expressly set forth in this article, the procedures regarding the effect of and all other aspects of the transaction are governed by title 29, chapter 6.

C. This section does not limit the power of a corporation to acquire all or part of the interests of another entity through a voluntary exchange or otherwise.

10-11103. Action on plan

A. If the members of a domestic corporation or other persons are entitled to vote on or approve the plan, except as provided in subsection G of this section, after adopting a plan, the board of directors of the corporation shall submit the plan for approval by its members and the other persons.

B. For a plan to be approved all of the following must occur:

1. The board of directors recommends the plan to the members, unless the board of directors determines that because of a conflict of interest or other special circumstances it should not make a recommendation and communicates the basis for its determination to the members with the plan.
2. The members entitled to vote on the plan approve the plan.
3. Each person whose approval is required by the articles of incorporation for a transaction of the kind contemplated by the plan approves the plan in writing.

C. The board of directors may condition its submission of the plan on any basis.

D. If the corporation submits the transaction for member action at a membership meeting, the corporation shall notify each member of the proposed membership meeting at which the plan is to be submitted for approval in accordance with section 10-3705. The notice shall state that the purpose or one of the purposes of the meeting is to consider the plan and shall contain or be accompanied by a copy or summary of the plan.

E. Unless chapters 24 through 40 of this title, the articles of incorporation or the board of directors acting pursuant to subsection C of this section requires a greater vote or voting by class, the plan to be authorized shall be approved by a majority of the votes cast or a majority of the voting power of the class, whichever is less.

F. Voting by a class of members is required on a plan if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under section 10-11004 or 10-11022. The plan is approved by a

class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.
G. Unless the articles of incorporation otherwise require, action by the members of a domestic corporation that is the surviving corporation on a plan of merger is not required if all of the following conditions exist:
1. The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in section 10-11002, from its articles of incorporation before the merger.
2. Each member of the surviving corporation who was a member immediately before the effective date of merger will hold the same number of memberships with identical designations, preferences, limitations and relative rights immediately after the effective date of merger.
3. The number of voting members existing immediately after the merger, plus the number of voting memberships issuable as a result of the merger, will not exceed more than twenty per cent the total number of voting memberships of the surviving corporation existing immediately before the merger.
4. The number of memberships, if any, that entitle the holders of the memberships to participate without limitation in distributions existing immediately after the merger, plus the number of participating memberships issuable as a result of the merger, will not exceed the total number of participating memberships existing immediately before the merger by more than ninety per cent.

10-11105. Statement of merger or interest exchange; publication
Within sixty days after the commission approves the filing, either of the following must occur:
1. A copy of the statement of merger or interest exchange shall be published. An affidavit evidencing the publication may be filed with the commission.
2. The commission shall input the information regarding the approval into the database as prescribed by section 10-130.

10-11108. Requests, devises and gifts
Unless the will or other instrument otherwise specifically provides, any bequest, devise, gift, grant or promise that is contained in a will or other instrument of donation, subscription or conveyance, that is made to a domestic nonprofit corporation and that takes effect or remains payable after the transaction inures, as applicable, to the surviving entity in a merger, the acquiring entity in an interest exchange, the converted entity in a conversion, the domesticated entity in a domestication and, as specified in the statement of division, one or more of the resulting entities in a division.

Title 10, Chapter 35 SALE OF ASSETS-NONPROFIT CORPORATIONS

Article 1 General Provisions

10-11201. Sale of assets in regular course of activities and mortgage of assets
A. On the terms and conditions and for the consideration determined by the board of directors, a corporation may:
1. Sell, lease, exchange or otherwise dispose of all or substantially all of its property in the usual and regular course of its activities.
2. Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of its activities.
3. Transfer any or all of its property to a corporation all the shares of memberships of which are owned by the corporation.
B. Unless the articles of incorporation require it, approval by the members or any other person of a transaction described in subsection A is not required.

10-11202. Sale of assets other than in regular course of activities
A. On the terms and conditions and for the consideration determined by the corporation's board of directors, a corporation may sell, lease, exchange or otherwise dispose of all or substantially all of its property, with or without the goodwill, other than in the usual and regular course of its activities.
B. For a proposed transaction to be approved all of the following shall have occurred:

1. The board of directors shall approve the transaction. If the members of the corporation are entitled to vote on the proposed transaction, the board of directors shall submit the proposed transaction for approval by its members and shall recommend the proposed transaction to the members, unless the board of directors determines that because of a conflict of interest or other special circumstances it should not make a recommendation and communicates the basis for its determination to the members with the plan.
2. If the members of the corporation are entitled to vote on the proposed transaction, the members entitled to vote on the proposed transaction shall approve the proposed transaction.
3. Each person whose approval is required by the articles of incorporation for the sale, lease, exchange or other disposal shall approve the proposed transaction in writing.

C. The board of directors may condition its submission of the proposed transaction on any basis.
D. If the corporation submits the transaction for member action at a membership meeting, the corporation shall notify each member to which the proposed transaction is to be submitted for approval of the proposed membership meeting in accordance with section 10-3705. The notice shall state that the purpose or one of the purposes of the meeting is to consider the proposed transaction and shall contain or be accompanied by a copy or summary of a description of the transaction.
E. Unless chapters 24 through 40 of this title, the articles of incorporation or the board of directors acting pursuant to subsection C of this section, requires a greater vote or voting by class, a majority of the votes cast or a majority of the voting power of the class, whichever is less, shall approve the proposed transaction to be authorized.
F. At any time before consummation of the sale, lease, exchange or other disposition of property, the transaction may be abandoned, subject to any contractual rights, without further action by the members or any other person who approved the transaction, in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.
G. A transaction that constitutes a distribution is governed by sections 10-11301 and 10-11302 and not by this section.
H. Except as provided in subsection K of this section and chapter 35.1 of this title, any person who intends to purchase, lease or otherwise acquire all or substantially all of the assets of a tax exempt corporation described in section 43-1201, paragraph 4, or all or substantially all of the assets located in this state of a tax exempt foreign corporation described in section 501(c)(3) of the internal revenue code of 1986 and is conducting affairs in this state, shall comply with subsection B of this section before such purchase, lease or acquisition if either:
1. The person is a tax exempt organization described in section 43-1201, paragraph 4 or section 501(c)(3) of the internal revenue code of 1986 but intends to use in an unrelated trade or business, determined by applying section 43-1201, paragraph 4 or section 513(a) of the internal revenue code of 1986 to such organization, any substantial portion of the assets to be acquired which were not being used in an unrelated trade or business of the corporation or foreign corporation conveying the assets immediately before the proposed purchase, lease or acquisition.
2. The person is not a tax exempt organization described in section 43-1201, paragraph 4 or section 501(c)(3) of the internal revenue code of 1986.

I. A person subject to the requirements of subsection H of this section shall give public notice of the intended transaction in accordance with subsection J of this section and shall hold a public hearing on the intended transaction no less than ten days after the first publication of the notice and no less than ten days before the intended purchase, lease or acquisition occurs. The sole purpose of the public hearing is to receive public comment regarding the proposed transaction. The public hearing shall be held before at least two representatives of the person intending to purchase, lease or otherwise acquire the assets of the corporation or foreign corporation and at least two representatives of the corporation or foreign corporation.
J. Notice of the intended transaction shall include the time, date and place of the public hearing, the names of the parties to the transaction, a general summary of the intended transaction, a general description of the assets to be purchased, leased or otherwise acquired and a general description of the intended use of the assets after the completion of the transaction. The notice shall be published three consecutive times in a newspaper of general circulation in the county of the known place of business of the corporation or foreign corporation from which the assets are intended to be purchased, leased or

otherwise acquired. The first notice shall be published no less than twenty days before the intended purchase, lease or acquisition occurs.

K. The requirements of subsections I and J of this section do not apply to the purchase, lease or other acquisition of assets under this section from a domestic or foreign corporation as provided in this section if any of the following applies:

1. The transaction involves assets having a book value at the time of the transaction, net of accumulated depreciation, of less than two million dollars.
2. The transaction is in the usual course of business of the transferor or in connection with the mortgage or pledge of any or all property and assets of the corporation or foreign corporation whether or not in its usual and regular course of business.
3. The transferor has assets immediately prior to such transaction, with a book value of more than ten million dollars, net of accumulated depreciation.
4. The transaction is to enable the transferor to finance the purchase of assets or to refinance assets already owned by it, or if, after the transaction has been completed, the transferor continues to have possession of the assets purchased, leased or otherwise acquired or used in the usual and regular course of its business.
5. The transferor offers goods or services only to members who are entitled to vote for its board of directors.
6. The transferor is organized for religious purposes and does not have, as a substantial portion of its business, the offering of goods or services on a regular basis to the public for remuneration.
7. The purchase, lease or sale of assets as described in subsection A of this section by the United States, this state, a political subdivision of this state or an agency or instrumentality of such a governmental entity.
8. The purchase, lease or sale of assets as described in subsection A of this section by a hospital, medical, dental or optometric service corporation licensed pursuant to title 20, chapter 4, article 3.

L. For the purposes of subsection K, paragraph 6 of this section:

1. Goods and services shall include, but are not limited to, medical, hospital, dental or counseling or social services offered on a regular basis to the public for remuneration.
2. A transferor organized for religious purposes includes a corporation or foreign corporation that controls or is controlled directly or indirectly by a corporation or foreign corporation organized for religious purposes.

M. The exemption provided by subsection K, paragraph 7 of this section does not apply to a corporation or foreign corporation that provides services to or operates assets of such a governmental entity pursuant to a lease or contract.

Title 10, Chapter 35.1 HOSPITAL AND COMMUNITY HEALTH CENTER MERGERS AND OTHER TRANSACTIONS

Article 1 General Provisions

10-11251. Definitions

In this chapter, unless the context otherwise requires:

1. "Assets" means all real, personal, tangible and intangible property and rights in property, including cash, buildings, equipment, investments and contracts with other entities.
2. "Community benefit activity" means any activity furthering community benefit purposes including any health care activity that includes education, prevention, promotion of community health, indigent care or any other charitable purpose.
3. "Community benefit assets" means every asset that has been used in connection with community benefit activity during the previous year.
4. "Community benefit organization" means a nonprofit charitable organization that is tax exempt under section 501(c)(3) of the internal revenue code and whose mission is solely to engage in community benefit activities.

5. "Community benefit purposes" means those purposes for which an entity may qualify for exemption pursuant to section 43-1201, paragraph 4 or section 501(c)(3) of the internal revenue code, or for similar activity engaged in by a for profit organization.
6. "Community health center" means a primary care facility that provides medical care in medically underserved areas as designated in section 36-2352 or in medically underserved areas or medically underserved populations as designated by the United States department of health and human services.
7. "Nonprofit health care entity" means a licensed hospital or community health center that holds tax exempt status pursuant to section 43-1201, paragraph 4 or section 501(c)(3) of the internal revenue code.
8. "Notice of completion" means the written notice that is sent by the hearing officer to the chairman of the corporation commission after the hearing officer holds a public hearing and files a summary report pursuant to section 10-11253.

10-11252. Scope; included transactions; excluded transactions

A. Except as provided in subsections B and C of this section, this chapter applies to any nonprofit health care entity that intends to sell, transfer, lease, exchange, option, convey, convert, give, merge or otherwise dispose of all or substantially all of its assets to or with another nonprofit health care entity or a for profit entity, including entering into a joint venture involving all or substantially all of its assets. The requirements of section 10-11202 do not apply to a nonprofit health care entity.

B. This chapter does not apply to any physician or licensed health care provider contract with a hospital or community health center. This chapter shall not affect any contract entered into between a physician or licensed health care provider or group of physicians or licensed health care providers and a licensed hospital.

C. This chapter does not apply to transactions:

1. Involving a transfer of community benefit assets of a licensed hospital or community health center with a book value of less than one million dollars, net of accumulated depreciation as of the date of the closing date of the intended transaction.
2. Enabling a party to finance the purchase of assets, refinance assets or mortgage or pledge assets already owned by the party, whether or not in its usual course of business.
3. Between or among a nonprofit health care entity and affiliated nonprofit entities that are part of a common line of ownership or control.

10-11253. Public hearing; notice; requirements; summary report

A. No later than ninety days before the anticipated closing of the intended transaction, any nonprofit health care entity that intends to engage in any of the transactions described in section 10-11252, subsection A shall give written notice to the director of the department of health services and the attorney general. The written notice shall include all of the following information:

1. The names, addresses and telephone numbers of the parties to the intended transaction.
2. The names, addresses and telephone numbers of the attorneys or other persons who represent the parties in connection with the intended transaction.
3. A general summary of the intended transaction.
4. A general description of the assets involved in the intended transaction and the intended use of the assets after the closing of the intended transaction.
5. A general summary of all collateral transactions that relate to the intended transaction, including the names, addresses and telephone numbers of the parties involved in the collateral transactions.
6. The anticipated date of completion of the intended transaction.

B. The notice and information required pursuant to subsection A of this section and information submitted pursuant to subsection H of this section are public records.

C. Within thirty days after the nonprofit health care entity sends the written notice prescribed in subsection A of this section, the parties to the intended transaction shall:

1. Select a hearing officer to conduct the public hearing required by this section and determine a time and place within this state for the public hearing with the agreement of the director of the department of health services.
2. Publish a notice of the time and place for the public hearing at least three consecutive times in at least one newspaper of general circulation in the county in which the nonprofit health care entity has its principal place of business.

D. The hearing officer shall hold the public hearing within ten days after the last publication of the public notice.
E. The purpose of the public hearing is to provide the information described in subsection F of this section and to receive comments from the public and other interested parties.
F. The parties shall present written summary information at the public hearing that sets forth all of the following:
1. The extent to which the intended transaction impacts community benefit activities and is consistent with community benefit purposes, including a description of the resources that will be committed to community benefit purposes following the intended transaction.
2. Whether the intended transaction creates or has the likelihood of creating an adverse effect on the access to or availability or cost of health care services.
3. Whether any director, officer, agent or employee of the entity will receive any community benefit asset or will benefit directly or indirectly from the intended transaction, except for the receipt of compensation for professional services relating to the intended transaction for normal compensation for services rendered.
4. The extent to which the nonprofit health care entity used due diligence in the selection of the entity that will receive any community benefit asset and in the negotiation of the price and other terms and conditions of the transaction.
5. The extent to which the parties will continue to use the nonprofit health care entity's community benefit assets for community benefit purposes following the intended transaction, or, if applicable, the proceeds of the disposition of the assets will be deposited in a community benefit organization for community benefit purposes.
6. Whether any initial board of directors members of any entity changed or created by the intended transaction will reside in or near the communities affected by the intended transaction.
7. That any community benefit organization established to hold the proceeds of the disposition of assets is organized for community benefit purposes as required under federal and state law.
G. The attorney general may present information at the public hearing.
H. The hearing officer conducting the public hearing shall compile a summary report of the public hearing proceedings and shall transmit the summary report, a notice of completion and copies of all written information presented at the hearing to the director of the department of health services and the attorney general.
I. The parties to the intended transaction shall pay for all costs associated with the hearing officer, notice, publication of notice, public hearing and summary report.

10-11254. Applicability
A. Nothing in this chapter:
1. Affects the provisions of chapters 24 through 35 and chapters 36 through 40 of this title regarding the corporation commission's acceptance or denial of new, restated or amended articles of incorporation.
2. Affects the operation of state or federal antitrust laws or the attorney general's enforcement of those laws.
3. Is intended to create any private or governmental right or cause of action relating to the transaction or related parties.
B. This chapter does not apply to any transactions for which a letter of intent or memorandum of understanding or similar documentation was executed on or before December 31, 1996.

Title 10, Chapter 36 DISTRIBUTIONS-NONPROFIT CORPORATIONS

Article 1 General Provisions

10-11301. Prohibited distributions
Except as authorized by section 10-11302, a corporation shall not make any distributions.

10-11302. Authorized distributions
A. A corporation may purchase its memberships if after the purchase is completed both:

1. The corporation would be able to pay its debts as the debts become due in the usual course of its activities.
2. The corporation's total assets would at least equal the sum of its total liabilities.

B. A corporation may make distributions on dissolution that conform to chapter 37 of this title.

C. A corporation may make distributions to members who are domestic or foreign nonprofit corporations if after the distribution is made both:

1. The corporation would be able to pay its debts as the debts become due in the usual course of its activities.
2. The corporation's total assets would at least equal the sum of its total liabilities.

Title 10, Chapter 37 DISSOLUTION-NONPROFIT CORPORATIONS

Article 1 Voluntary Dissolution

10-11401. Dissolution by incorporators or directors and third persons

A. A majority of the incorporators or initial directors of a corporation that has not commenced activities or the board of directors of a corporation that has no members or has no members entitled to vote on dissolution or that has not commenced activities may dissolve the corporation by delivering to the commission for filing articles of dissolution. An incorporator or a director, whose signature shall be acknowledged, shall execute the articles of dissolution, and the articles shall set forth all of the following:

1. The name of the corporation.
2. The date of its incorporation.
3. Either:
   (a) That the corporation has no members.
   (b) That the corporation has no members entitled to vote on dissolution.
   (c) That the corporation has not commenced activities.
4. That the dissolution was duly authorized by act of the board of directors or a majority of the incorporators or initial directors and, if required by section 10-11030, act of any other persons.

B. The board of directors, incorporators or initial directors in approving the dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

C. Authorization of dissolution pursuant to this section shall require the approval in writing by any person or persons whose approval is required for dissolution.

10-11402. Dissolution by directors and third persons

A. If the members of the corporation are entitled to vote on dissolution, a corporation's board of directors may propose dissolution for submission to the members.

B. For a proposal to dissolve to be adopted all of the following shall have occurred:

1. The board of directors shall recommend dissolution to the members, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members.
2. The members entitled to vote shall approve the proposal to dissolve as provided in subsection E or F of this section.
3. Each person whose approval is required by the articles of incorporation for dissolution shall approve the plan in writing.

C. The board of directors may condition its submission of the proposal for dissolution on any basis.

D. The corporation shall notify each member of the proposed membership meeting in accordance with section 10-3705. The notice shall also state that the purpose or one of the purposes of the meeting is to consider dissolving the corporation and shall contain or be accompanied by a copy or summary of the plan of dissolution.

E. Unless the articles of incorporation or the board of directors acting pursuant to subsection C of this section requires a greater vote or voting by class, in order to adopt the proposal to dissolve a majority of the votes cast or a majority of the voting power, whichever is less, shall approve the proposal to dissolve.

F. If the board of directors submits the dissolution for member action by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.
G. The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

10-11403. Articles of dissolution
A. At any time after dissolution is authorized, the corporation may dissolve by delivering to the commission articles of dissolution setting forth all of the following:
1. The name of the corporation.
2. The date dissolution was authorized.
3. A statement that the dissolution was duly authorized by an act of the members or an act of the board of directors and, if applicable, with the approval required pursuant to section 10-11402.
B. A corporation is dissolved on the effective date of its articles of dissolution.
C. The articles of dissolution shall not be considered complete until all fees, penalties and costs required to be paid under this title have been paid.
D. Within sixty days after the commission approves the filing, either of the following must occur:
1. A copy of the articles of dissolution shall be published. An affidavit evidencing the publication may be filed with the commission.
2. The commission shall input the information regarding the approval into the database as prescribed by section 10-130.
E. The articles of dissolution are not complete until the commission has received a notice from the department of revenue that the tax levied under title 42, chapter 5, article 1 against the corporation has been paid, or until the department of revenue notifies the commission that the corporation is not subject to the tax and the commission has received from the department of revenue a certificate issued by the department of revenue pursuant to section 43-1151.

10-11404. Revocation of dissolution
A. A corporation may revoke its dissolution within one hundred twenty days of its effective date.
B. Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.
C. After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the commission for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth all of the following:
1. The name of the corporation.
2. The effective date of the dissolution that was revoked.
3. The date that the revocation of dissolution was authorized.
4. If the corporation's board of directors, or its incorporators or initial directors, revoked the dissolution a statement to that effect.
5. If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization.
6. If member or third person action was required to revoke the dissolution, a statement that revocation was permitted by act of the members and act of each third person, as applicable.
D. Revocation of dissolution is effective on the effective date of the articles of revocation of dissolution.
E. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its activities as if dissolution had never occurred.

10-11405. Effect of dissolution
A. A dissolved corporation continues its corporate existence but shall not carry on any activities except that activity appropriate to wind up and liquidate its affairs, including:
1. Preserving and protecting its assets and minimizing its liabilities.
2. Discharging or making provision for discharging its liabilities and obligations.
3. Disposing of its properties that will not be distributed in kind.

4. Returning, transferring or conveying assets held by the corporation on a condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition.
5. Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws.
6. If no provision has been made in its articles of incorporation or bylaws for distribution of assets on dissolution and the corporation is organized for charitable, religious, eleemosynary, benevolent, educational or similar purposes, to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation.
7. If no provision has been made in its articles of incorporation or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, to those persons whom the corporation holds itself out as benefitting or serving.
8. Doing every other act necessary to wind up and liquidate its assets and affairs.

B. Dissolution of a corporation does not:
1. Transfer title to the corporation's property, except as provided in section 10-11421.
2. Subject its directors or officers to standards of conduct that are different from those prescribed in chapter 31 of this title.
3. Change quorum or voting requirements for its board of directors or members, change provisions for selection, resignation or removal of its directors or officers, or both, or change provisions for amending its bylaws.
4. Prevent commencement of a proceeding by or against the corporation in its corporate name or any officers, directors or members or affect applicable statutes of limitations.
5. Abate or suspend a proceeding pending by or against the corporation or any officers, directors or members on the effective date of dissolution.
6. Terminate the authority of the statutory agent of the corporation.

10-11406. Known claims against dissolved corporation

A. A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

B. The dissolved corporation shall notify its known claimants in writing of the dissolution at any time and from time to time after its effective date. The written notice shall:
1. Describe information that shall be included in a claim.
2. Provide a mailing address where a claim may be sent.
3. State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim.
4. State that the claim will be barred if not received by the deadline.

C. A claim against the dissolved corporation is barred either:
1. If a claimant who was given written notice under subsection B of this section does not deliver the claim to the dissolved corporation by the deadline.
2. If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

D. For purposes of this section, claim does not include a contingent claim. Notwithstanding the foregoing, a claim that is contingent as of the effective date of dissolution but later ripens into a known claim or a claim based on an event occurring after the effective date of dissolution may be disposed of at such later time by the dissolved corporation by following the procedures described in subsections B and C.

10-11407. Unknown claims against dissolved corporation

A. A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

B. The notice shall:
1. Be published one time in a newspaper of general circulation in the county where the dissolved corporation's known place of business is or was last located.
2. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.
3. State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

C. If the dissolved corporation publishes a newspaper notice in accordance with subsection B of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

1. A claimant who did not receive written notice under section 10-11406.
2. A claimant whose claim was timely sent to the dissolved corporation but not acted on.
3. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution and is not disposed of in accordance with section 10-11406, subsection D.

D. If a claim, including a contingent claim or a claim based on an event occurring after the effective date of dissolution, is not barred by section 10-11406 or this section, the claim may be enforced either:

1. Against the dissolved corporation to the extent of its undistributed assets.
2. If the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to that person in liquidation, whichever is less, but the distributee's total liability for all claims under this section shall not exceed the total amount of assets distributed to the distributee.

Article 2 Administrative Dissolution

10-11420. Grounds for administrative dissolution

The commission may commence a proceeding under section 10-11421 to administratively dissolve a corporation if either:

1. The corporation does not pay within sixty days after they are due any fees or penalties imposed by chapters 24 through 40 of this title.
2. The corporation does not deliver its annual report to the commission within sixty days after it is due.
3. The corporation is without a statutory agent or known place of business in this state.
4. The corporation does not notify the commission within sixty days that its statutory agent or known place of business has been changed, that its statutory agent has resigned or that its known place of business has been discontinued.
5. The corporation has failed to make any publication required by this title, provided the commission has notified the corporation of the intent of the commission to commence a dissolution proceeding for that reason and the corporation has failed to file an affidavit or other appropriate evidence of publication within sixty days after that notice.
6. The corporation's period of duration stated in its articles of incorporation expires.
7. The corporation has failed to comply with section 10-3202, subsection F.
8. Any officer or other representative of the corporation has made any misrepresentation of a material matter in any application, report or other document submitted by the corporation pursuant to chapters 24 through 40 of this title.
9. The commission has not received the notice required by section 10-11403, subsection E within six months after filing articles of dissolution.
10. The corporation has failed to file a certificate of disclosure or answer interrogatories as prescribed in chapters 24 through 40 of this title.
11. The corporation failed to comply with section 10-11623, subsection A.

10-11421. Procedure for and effect of administrative dissolution

A. If the commission determines that one or more grounds exist under section 10-11420 for dissolving a corporation, it shall serve the corporation with written notice of its determination under section 10-3504.

B. If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the commission that each ground determined by the commission does not exist within sixty days after service of the notice is perfected under section 10-3504, the commission shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The commission shall file the original of the certificate and serve a copy on the corporation under section 10-3504. If the corporation that has been dissolved is a utility providing domestic water services or domestic wastewater services and the corporation has been dissolved for at least three years, after notice to interested parties, opportunity for objection and hearing before the

commission, the assets of the corporation may be transferred by the commission to a domestic water improvement district or a domestic wastewater improvement district established pursuant to title 48, chapter 6 or to a municipality incorporated pursuant to title 9, chapter 1, on receipt by the commission of a written request from the governing body of the district or municipality.
C. Subject to the provisions of section 10-11422 regarding reinstatement, a corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under section 10-11405 and notify its claimants under sections 10-11406 and 10-11407. If the corporation has not applied for reinstatement within six months after the effective date of the dissolution, the commission shall release the corporate name for use in accordance with chapters 24 through 40 of this title or by a person intending to register the name as a trade name pursuant to title 44, chapter 10, article 3.1.
D. The administrative dissolution of a corporation does not terminate the authority of its statutory agent.

10-11422. Reinstatement following administrative dissolution
A. A corporation administratively dissolved under section 10-11421 may apply to the commission for reinstatement within six years after the effective date of dissolution unless the corporation is a utility providing domestic water services or domestic wastewater services and the assets of the corporation have been transferred to a domestic water improvement district or a domestic wastewater improvement district established pursuant to title 48, chapter 6 or to a municipality incorporated pursuant to title 9, chapter 1. The application shall both:
1. Recite the name of the corporation and the effective date of its administrative dissolution.
2. State that the ground or grounds for dissolution either did not exist or have been eliminated.
B. If the commission determines that the application contains the information required by subsection A of this section and that the information is correct, the commission shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation under section 10-3504.
C. When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.
D. If another corporation has adopted the name of the corporation or another person has adopted the name of the corporation as a trade name, the application shall be accompanied by articles of amendment that are in accordance with chapter 33, article 1 of this title and that adopt a new name for the corporation that complies with chapter 27, article 1 of this title.

Article 3 Judicial Dissolution

10-11430. Grounds for judicial dissolution
A. The court may dissolve a corporation in a proceeding by the attorney general if it is established that either:
1. The corporation obtained its articles of incorporation through fraud.
2. The corporation has continued to exceed or abuse the authority conferred upon it by law.
B. Except as provided in the articles of incorporation or bylaws of a corporation organized primarily for religious purposes, the court may dissolve a corporation in a proceeding by fifty members or by members holding twenty-five per cent of the voting power, whichever is less, or by a director or any person specified in the articles of incorporation, if any of the following is established:
1. The directors are deadlocked in the management of the corporate affairs, the members, if any, are unable to breach the deadlock and irreparable injury to the corporation is threatened or being suffered or the affairs of the corporation cannot be conducted generally because of the deadlock.
2. The directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent.
3. The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates to elect successors to directors whose terms have or would otherwise have expired.
4. The corporate assets are being wasted, misapplied or diverted for noncorporate purposes.

C. The court may dissolve a corporation in a proceeding by a creditor if it is established that either:
1. The creditor's claim has been reduced to a judgment, the execution on the judgment has been returned unsatisfied and the corporation is insolvent.
2. The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

D. The court may dissolve a corporation in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

10-11431. Procedure for judicial dissolution

A. Venue for a proceeding by the attorney general to dissolve a corporation or for a proceeding brought by any other party named in section 10-11430 is in the county where a corporation's known place of business is or was last located.

B. It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them personally.

C. A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located and carry on the activities of the corporation until a full hearing can be held.

10-11432. Receivership

A. A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate or manage the affairs of the corporation. After notifying all parties to the proceeding and any interested persons designated by the court, the court shall hold a hearing before appointing a receiver. The court appointing a receiver has exclusive jurisdiction over the corporation and all of its property wherever located.

B. The court may appoint an individual or a domestic or foreign business or nonprofit corporation authorized to transact business in this state as a receiver. The court may require the receiver to post bond, with or without sureties in an amount the court directs.

C. The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. Among other powers, the receiver may exercise all of the powers of the corporation, through or in place of its board of directors, executive committee or officers, to the extent necessary to carry on the ordinary and necessary activities of the corporation and to manage the affairs of the corporation in the best interests of its members and creditors.

D. The court from time to time during the receivership may order compensation paid and expense disbursements or reimbursements made to the receiver and its counsel from the assets of the corporation or proceeds from the sale of the assets.

E. A receiver of a corporation may sue and defend in all courts in his own name as receiver of such corporation.

10-11433. Decree of dissolution

A. If after a hearing the court determines that one or more of the grounds for judicial dissolution described in section 10-11430 exist, it may enter a decree that dissolves the corporation and specifies the effective date. The clerk of the court shall deliver a certified copy of the dissolution decree to the commission which shall file it.

B. After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with section 10-11405 and the notification of claimants in accordance with sections 10-11406 and 10-11407.

Article 4 Miscellaneous

10-11440. Deposit with department of revenue

A. Assets of a dissolved corporation that should be transferred to a creditor, claimant or member of the corporation who cannot be found or who is not competent to receive them and does not have a legal representative who is legally competent to receive them shall be reduced to cash subject to known trust restrictions and deposited with the unclaimed property division of the department of revenue for safekeeping.

B. Notwithstanding subsection A, in the discretion of the unclaimed property division of the department of revenue property may be received and held in kind.
C. If the creditor, claimant, member or legal representative who is legally competent to receive the distributive portion furnishes satisfactory proof of entitlement to the amount deposited or property held in kind, the unclaimed property division of the department of revenue shall pay the creditor, member or legal representative that amount or property.

Title 10, Chapter 38 FOREIGN CORPORATIONS-NONPROFIT CORPORATIONS

Article 1 Grant of Authority

10-11501. Authority to conduct affairs required
A. A foreign corporation shall not conduct affairs in this state until it is granted authority to transact business in this state as provided in this chapter from the commission.
B. The following activities, among others, do not constitute conducting affairs within the meaning of subsection A:
1. Maintaining, defending or settling any proceeding.
2. Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs.
3. Maintaining bank accounts.
4. Maintaining offices or agencies for the transfer, exchange and registration of memberships or securities or maintaining trustees or depositaries with respect to those securities.
5. Selling through independent contractors.
6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.
7. Creating or acquiring indebtedness, mortgages and security interests in real or personal property.
8. Securing or collecting debts or enforcing mortgages and security interests in property securing the same.
9. Owning, without more, real or personal property.
10. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature.
11. Conducting affairs in interstate commerce.
12. Being a limited partner of a limited partnership or a member of a limited liability company.
C. The list of activities in subsection B is not exhaustive.

10-11502. Consequences for conducting affairs without authority
A. A foreign corporation conducting affairs in this state without a grant of authority shall not be permitted to maintain a proceeding in any court in this state until it is authorized to transact business.
B. The successor to a foreign corporation that transacted business in this state without a grant of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding on that cause of action in any court in this state until the foreign corporation or its successor obtains authority to transact business.
C. A court may stay a proceeding commenced by a foreign corporation, its successor or its assignee until it determines whether the foreign corporation, its successor or its assignee requires authority to transact business in this state. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains authority to transact business in this state.
D. A foreign corporation that conducts affairs in this state without authority is liable to this state, for the years or portions of years during which it transacted business in this state without authority, in an amount equal to all fees that would have been imposed by chapters 24 through 40 of this title on the corporation if it had duly applied for and received authority to conduct business in this state as required by chapters 24 through 40 of this title and thereafter filed all reports required by chapters 24 through 40 of this title. In addition to all penalties imposed by chapters 24 through 40 of this title for failure to pay the fees, the

corporation shall pay a penalty of up to one thousand dollars to this state for violating this section. The attorney general may bring proceedings to recover all amounts due this state under this section.
E. Notwithstanding subsections A and B of this section, the failure of a foreign corporation to obtain authority to transact business in this state does not impair the validity of its corporate acts or prevent it from defending any proceedings in this state.
F. The attorney general or any other person may bring and maintain an action to enjoin any foreign corporation from transacting business in this state without authority. On a foreign corporation obtaining authority, the action shall be dismissed, but the plaintiff shall recover its costs and reasonable attorney fees. A determination by a court of competent jurisdiction in this state that a party to the action is a foreign corporation that was required but failed to qualify as a foreign corporation under chapters 24 through 40 of this title is a prima facie evidence against the foreign corporation in any other action brought by or against it by any other person of the requirement to and failure to qualify.

10-11503. Application for certificate of authority
A. A foreign corporation may apply for authority to conduct affairs in this state by delivering an application and a certificate of disclosure to the commission for filing. The certificate of disclosure shall contain the information set forth in section 10-3202, subsection D and is subject to the requirements of section 10-3202, subsection F. The application shall be executed by the corporation and shall set forth:
1. The name of the foreign corporation and, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 10-11506.
2. The name of the state or country under whose law it is incorporated.
3. Its date of incorporation and period of duration.
4. The street address of its principal office in its state or country of incorporation.
5. The street address of the proposed known place of business of the corporation in this state and the name and street address of its proposed statutory agent in this state.
6. If its purpose or purposes are narrower than the transaction of any or all lawful affairs in which corporations may engage in the state or country under whose law it is incorporated, a statement of the limitations on its purpose.
7. The names and usual business addresses of its current directors and officers.
8. Whether the foreign corporation has members.
9. A brief statement of the character of business that the corporation initially intends actually to conduct in this state. This statement does not limit the character of business that the corporation ultimately conducts.
B. The foreign corporation shall deliver the application and the certificate of disclosure to the commission, together with a copy of its articles of incorporation, any amendments to the articles of incorporation and a certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated, and the nonrefundable fees required by law.
C. After determining that the application sets forth the information required by this section, does not use as the name of the corporation in this state a name that is in violation of section 10-11506 and appears in all other respects to conform to the requirements of this article, the commission shall file the application. The date of filing shall be the date on which the corporation is granted authority to transact business in this state.
D. Within sixty days after the commission approves the filing, either of the following must occur:
1. A copy of the application shall be published. An affidavit evidencing the publication may be filed with the commission.
2. The commission shall input the information regarding the approval into the database as prescribed by section 10-130.
E. A foreign corporation authorized to transact business in this state is subject to section 10-11623.

10-11504. Changes requiring new authority
A. Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in this state are amended or restated by merger or otherwise, within sixty days after the amendment or restatement becomes effective, the foreign corporation shall deliver to the commission a copy of the amendment or restatement duly authenticated by the secretary of state or other official having custody of corporate records in the state or country where the foreign corporation is incorporated.

B. A foreign corporation authorized to conduct affairs in this state shall obtain new authority from the commission by complying with section 10-11503 if it changes any of the following:

1. Its actual corporate name under which it has obtained authority to conduct affairs in this state pursuant to section 10-11503, subsection A, paragraph 1.
2. The period of its duration.
3. The state or country of its incorporation.

10-11505. Effect of grant of authority

A. A grant of authority to conduct affairs authorizes the foreign corporation to conduct affairs in this state subject to the right of the state to revoke the grant of authority as provided in chapters 24 through 40 of this title.

B. A foreign corporation with a valid grant of authority has the same but no greater rights and enjoys the same but no greater privileges as and except as otherwise provided by chapters 24 through 40 of this title and is subject to the same duties, restrictions, penalties and liabilities now or later imposed on a domestic corporation of like character.

C. Chapters 24 through 40 of this title do not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to conduct affairs in this state.

10-11506. Corporate name of foreign corporation

A. If the corporate name of a foreign corporation does not satisfy the requirements of section 10-3401, to obtain or maintain a grant of authority to conduct affairs in this state the foreign corporation shall use a fictitious name that satisfies the requirements of section 10-3401 to conduct affairs in this state if its real name is unavailable and it delivers to the commission for filing a copy of the resolution of its board of directors, certified by a duly authorized officer, adopting the fictitious name. The foreign corporation shall not include language in its corporate name stating or implying that the foreign corporation is organized for a purpose other than that permitted by section 10-3301 and its articles of incorporation.

B. Except as authorized by subsection C of this section, the corporate name, including a fictitious name, of a foreign corporation shall be distinguishable from:

1. The corporate name of a corporation incorporated under this title or a foreign nonprofit, not for profit, business or close corporation authorized to transact business or conduct affairs in this state.
2. A corporate name reserved under section 10-402 or 10-3402 or registered under section 10-403 or 10-3403.
3. The fictitious name of another foreign business or nonprofit corporation.
4. The partnership name of a limited partnership organized and registered under the laws of this state or of a foreign limited partnership authorized to transact business in this state.
5. The name of a limited liability company organized under title 29, chapter 4 or a foreign limited liability company authorized to transact business in this state.
6. The name of a registered limited liability partnership registered under title 29, chapter 5, article 10 or a foreign registered limited liability partnership authorized to transact business in this state.
7. A trade name registered pursuant to title 44, chapter 10, article 3.1.

C. A corporation may apply to the commission for authorization to use a name that is not distinguishable from one or more of the names described in subsection B of this section. The commission shall authorize use of the name applied for if either:

1. The other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the commission to change its name to a name that is distinguishable from the name of the applying corporation.
2. The applicant delivers to the commission a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

D. A corporation may use the name, including a fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business or conduct affairs in this state and the proposed user corporation either has:

1. Merged with the other corporation.
2. Been formed by reorganization of the other corporation.
3. Acquired all or substantially all of the assets, including the corporate name, of the other corporation.

E. Chapters 24 through 42 of this title do not control the use of fictitious names.

F. If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 10-3401, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 10-3401 and obtains new authority under section 10-11504.

10-11507. Known place of business and statutory agent of foreign corporation

Each foreign corporation authorized to conduct affairs in this state shall continuously maintain in this state both:

1. A known place of business that may be the address of its statutory agent.
2. A statutory agent who may be either:
   (a) An individual who resides in this state.
   (b) A domestic business or nonprofit corporation.
   (c) A foreign business or nonprofit corporation authorized to conduct affairs in this state.
   (d) A limited liability company formed under title 29.
   (e) A limited liability company authorized to transact business in this state

10-11508. Change of known place of business or statutory agent of foreign corporation

A. A foreign corporation authorized to conduct affairs in this state may change its known place of business or statutory agent by delivering to the commission for filing a statement of change, which may be the annual report, that sets forth:

1. The name of the foreign corporation.
2. The street address of its current known place of business.
3. If the current known place of business is to be changed, the street address of the new known place of business.
4. The name and street address of its current statutory agent.
5. If the current statutory agent is to be changed, the name of its new statutory agent and the new agent's written consent to the appointment.

B. The statement of change shall be executed by the foreign corporation by an officer and delivered to the commission. The change or changes set forth in the statement of change are effective on delivery to the commission for filing.

C. If a statutory agent changes its street address it shall give written notice to the foreign corporation of the change and shall sign, either manually or in facsimile, and deliver to the commission for filing a statement that complies with the requirements of subsection A and recites that the foreign corporation has been given written notice of the change. The change or changes are effective on delivery to the commission for filing.

10-11509. Resignation of statutory agent of foreign corporation

A. The statutory agent of a foreign corporation may resign the agency appointment by delivering to the commission for filing an original signed statement of resignation. The statement of resignation may include a disclosure that the known place of business of the foreign corporation has changed or has been discontinued. The statutory agent shall give written notification of the resignation of the foreign corporation at its last known address, other than that of the resigning statutory agent.

B. After the receipt and filing of the statement of resignation, the commission shall mail one copy to the foreign corporation at its known place of business within the state, if not discontinued. The commission shall mail another copy of the statement of resignation to the foreign corporation at its last known office in the jurisdiction of incorporation.

C. The agency appointment is deemed terminated and the known place of business is discontinued, if so provided, on the thirty-first day after the date on which the statement was delivered to the commission for filing.

10-11510. Service on foreign corporation

A. The statutory agent appointed by a foreign corporation is an agent of the foreign corporation on whom process, notice or demand that is required or permitted by law to be served on the foreign corporation may be served and that, when so served, is lawful personal service on the foreign corporation.

B. If a foreign corporation fails to appoint or maintain a statutory agent at the address shown on the records of the commission, the commission is an agent of the foreign corporation on whom any process,

notice or demand may be served. Pursuant to the Arizona rules of civil procedure, service on the commission of any process, notice or demand for an entity that is registered pursuant to this title shall be made by delivering to and leaving with the commission duplicate copies of the process, notice or demand, and the commission shall immediately cause one of the copies of the process, notice or demand to be forwarded by mail, addressed to the foreign corporation at its known place of business. Service made on the commission is returnable pursuant to applicable law relative to personal service on the foreign corporation. If service is made on the commission, whether under this chapter or a rule of court, the foreign corporation has thirty days to respond in addition to the time otherwise provided by law.
C. The commission shall keep a permanent record of all processes, notices and demands served on it under this section and shall record in the record the time of the service and its action with reference to the service.
D. Notice required to be served on a foreign corporation pursuant to section 10-11531 may be served:
1. By mail addressed to the statutory agent of the foreign corporation or, if the foreign corporation fails to appoint and maintain a statutory agent, addressed to its known place of business in this state or its principal place of business in its state or country of incorporation.
2. Pursuant to the rules for service of process authorized by the Arizona rules of civil procedure.

Article 2 Withdrawal

10-11520. Withdrawal of foreign corporation
A. A foreign corporation authorized to conduct affairs in this state shall not withdraw from this state until the commission files its application for withdrawal.
B. A foreign corporation authorized to conduct affairs in this state may apply to surrender the authority by delivering an application to the commission for filing. The application shall set forth:
1. The name of the foreign corporation and the name of the state or country under whose law it is incorporated.
2. That it is not conducting affairs in this state and that it surrenders its authority to conduct affairs in this state.
3. That the foreign corporation revokes the authority of its statutory agent to accept service on its behalf and appoints the commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to conduct affairs in this state.
4. A mailing address to which the commission may mail a copy of any process served on the commission pursuant to its appointment as the foreign corporation's agent for service of process.
5. A commitment to notify the commission in the future of any change in the foreign corporation's mailing address.
C. The application for withdrawal is not considered complete until the commission has received a notice from the department of revenue to the effect that the tax levied under title 42, chapter 5, article 1 against the foreign corporation has been paid or until it is notified by the department of revenue that the applicant is not subject to the tax and further has received from the department of revenue its certificate issued pursuant to section 43-1151.
D. The application for withdrawal is not considered complete until all fees, penalties and costs required to be paid under this chapter have been paid.
E. After determining that the application appears in all respects to conform to the requirements of this chapter and when all fees have been paid as are prescribed in this chapter, the commission shall file the application in the manner provided in section 10-3120. On the filing of the application for withdrawal, the authority of the foreign corporation to transact business in this state ceases.
F. Within sixty days after the commission approves the filing, either of the following must occur:
1. A copy of the application for withdrawal shall be published. An affidavit evidencing the publication may be filed with the commission.
2. The commission shall input the information regarding the approval into the database as prescribed by section 10-130.
G. After the withdrawal of the corporation is effective, service of process on the commission under this section is service on the foreign corporation. On receipt of process, the commission shall mail a copy of the process to the foreign corporation at the mailing address set forth in its application for withdrawal.

10-11521. Withdrawal by directors or members; foreign corporations

A. A majority of the directors or members of a foreign corporation that has not commenced conducting affairs in this state may withdraw the foreign corporation by delivering to the commission for filing an application for withdrawal that sets forth all of the following:

1. The name of the foreign corporation and the name of the state or country under whose laws it is incorporated.
2. That the foreign corporation revokes the authority of its statutory agent to accept service on its behalf and appoints the commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to conduct affairs in this state.
3. A mailing address to which the commission may mail a copy of any process served on the commission pursuant to its appointment as the foreign corporation's agent for service of process.
4. A commitment to notify the commission in the future of any change in the foreign corporation's mailing address.
5. That the foreign corporation has not conducted affairs in this state and that it surrenders its authority to conduct affairs in this state.
6. That no debt of the foreign corporation acquired in this state remains unpaid.
7. That a majority of the directors or members authorized the withdrawal.

B. The application for withdrawal filed pursuant to this section must be executed pursuant to section 10-3120, subsection F.

C. After determining that the application appears in all respects to conform to the requirements of this chapter and when all fees have been paid as are prescribed by this chapter, the commission shall file the application in the manner provided in section 10-3120. On the filing of the application for withdrawal, the authority of the foreign corporation to conduct affairs in this state ceases.

Article 3 Revocation of Certificate of Authority

10-11530. Grounds for revocation

The commission may commence a proceeding under section 10-11531 to revoke the authority of a foreign corporation to conduct affairs in this state if any of the following conditions exist:

1. The foreign corporation does not deliver the annual report to the commission within the time required by chapters 24 through 40 of this title.
2. The foreign corporation does not pay any fees or penalties imposed by chapters 24 through 40 of this title when they become due and payable.
3. The foreign corporation is without a statutory agent or known place of business in this state for sixty days or more.
4. The foreign corporation does not inform the commission that its statutory agent or its known place of business has changed or that its statutory agent has resigned within sixty days of the change or resignation.
5. The foreign corporation has failed to make any publication required by this title, provided the commission has notified the foreign corporation of the intent of the commission to commence a revocation proceeding for that reason and the foreign corporation has failed to file an affidavit or other appropriate evidence of publication within sixty days after that notice.
6. An incorporator, director, officer or agent of the foreign corporation signed a document such person knew was false in any material respect with intent that the document be delivered to the commission for filing.
7. The commission receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.
8. The corporation has failed to file a certificate of disclosure or answer interrogatories as prescribed in chapters 24 through 40 of this title.
9. Any officer or other representative of the corporation has made any misrepresentation of a material matter in any application, report or other document submitted by the corporation pursuant to chapters 24 through 40 of this title.

10-11531. Procedure for and effect of revocation; reinstatement

A. If the commission determines that one or more grounds exist under section 10-11530 for revocation of a grant of authority, the commission shall serve the foreign corporation with written notice of the determination under section 10-11510.

B. If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the commission that each ground for revocation determined by the commission does not exist within sixty days after service of the notice is perfected under section 10-11510, the commission may revoke the foreign corporation's grant of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The commission shall file the original of the certificate and serve a copy on the foreign corporation under section 10-11510.

C. The authority of a foreign corporation to conduct affairs in this state ceases on the date shown on the certificate revoking its grant of authority.

D. The commission's revocation of a foreign corporation's grant of authority appoints the commission the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to conduct affairs in this state. Service of process on the commission under this subsection is service on the foreign corporation. On receipt of process, the commission shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the foreign corporation stating the current mailing address of its principal office, or, if none is on file, in its application for authority.

E. Revocation of a foreign corporation's grant of authority does not terminate the authority of the statutory agent of the corporation.

F. A foreign corporation whose authority is revoked pursuant to this section may apply to the commission for reinstatement within six years after the effective date of the revocation. The application shall state both:

1. The name of the foreign corporation and the effective date of the foreign corporation's revocation of authority.
2. That the ground or grounds for the revocation either did not exist or have been eliminated.

G. If the commission determines that the application contains the information prescribed in subsection F of this section and that the information is correct, the commission shall do all of the following:

1. Cancel the certificate of revocation.
2. Prepare a certificate of reinstatement that states the determination and the effective date of the reinstatement.
3. File the original of the certificate of reinstatement.
4. Serve a copy on the foreign corporation pursuant to section 10-11510.

H. After the reinstatement becomes effective, the reinstatement relates back to and takes effect as of the effective date of the revocation, and the foreign corporation shall resume its business as if the revocation had never occurred.

I. If the corporation has not applied for reinstatement within six months after the effective date of the dissolution, the commission shall release the corporation name pursuant to chapters 24 through 40 of this title or for use by a person intending to register the name as a trade name pursuant to title 44, chapter 10, article 3.1. If another corporation has adopted the name of the foreign corporation or another person has adopted the name of the foreign corporation as a trade name, the foreign corporation shall attach to the application for reinstatement an application for new authority and shall adopt a fictitious name for use in this state that satisfies the requirements of sections 10-11504 and 10-11506.

Title 10, Chapter 39 RECORDS AND REPORTS-NONPROFIT CORPORATIONS

Article 1 Records

10-11601. Corporate records

A. A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting and a record of all actions taken by a committee of the board of directors on behalf of the corporation.

B. A corporation shall maintain appropriate accounting records.

C. A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members and in alphabetical order by class of membership showing the number of votes each member is entitled to cast and the class of memberships held by each member.

D. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

E. A corporation shall keep a copy of all of the following records at its principal office, at its known place of business or at the office of its statutory agent:

1. Its articles or restated articles of incorporation and all amendments to them currently in effect.
2. Its bylaws or restated bylaws and all amendments to them currently in effect.
3. Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members or any class or category of members.
4. The minutes of all members' meetings and records of all actions taken by members without a meeting for the past three years.
5. All written communications to members generally within the past three years, including the financial statements furnished for the past three years under section 10-11620.
6. A list of the names and business addresses of its current directors and officers.
7. Its most recent annual report delivered to the commission under section 10-11622.
8. An agreement among members under section 10-3732.

F. Notwithstanding this chapter, a condominium association shall comply with title 33, chapter 9 and a planned community association shall comply with title 33, chapter 16 to the extent that this chapter is inconsistent with title 33, chapters 9 and 16.

10-11602. Inspection of records by members; applicability

A. Subject to subsections E and F of this section, any member who has been a member of record at least six months immediately preceding its demand is entitled to inspect and copy any of the records of the corporation described in section 10-11601, subsection E during regular business hours at the corporation's principal office, if the member gives the corporation written notice of its demand as provided in section 10-3141 at least five business days before the date on which the member wishes to inspect and copy.

B. Subject to subsections E and F of this section, a member who has been a member of record at least six months immediately preceding its demand is entitled to inspect and copy any of the following records of the corporation during regular business hours at a reasonable location specified by the corporation, if the member meets the requirements of subsection C of this section and gives the corporation written notice of its demand as provided in section 10-3141 at least five business days before the date on which the member wishes to inspect and copy the following:

1. Excerpts from any records required to be maintained under section 10-11601, subsection A, to the extent not subject to inspection under subsection A of this section.
2. Accounting records of the corporation.
3. Subject to section 10-11605, the membership list described in section 10-11601, subsection C.
4. The corporation's most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

C. A member may inspect and copy the records identified in subsection B of this section only if the following conditions are met:

1. The member's demand is made in good faith and for a proper purpose.
2. The member describes with reasonable particularity the member's purpose and the records the member desires to inspect.
3. The records are directly connected with the member's purpose.

D. This section does not affect either:

1. The right of a member to inspect records under section 10-3720 or, if the member is in litigation with the corporation, to the same extent as any other litigant.

2. The power of a court, independently of chapters 24 through 40 of this title, to compel the production of corporate records for examination on proof by a member of proper purpose.

E. The articles of incorporation or bylaws of a corporation organized primarily for religious purposes may limit or abolish the right of a member under this section to inspect and copy any corporate record.

F. Unless the board of directors has provided express permission to the member, a member of a corporation that is a rural electric cooperative is not entitled to inspect or copy any records, documents or other materials that are maintained by or in the possession of the corporation and that relate to any of the following:

1. Personnel matters or a person's medical records.
2. Communications between an attorney for the corporation and the corporation.
3. Pending or contemplated litigation.
4. Pending or contemplated matters relating to enforcement of the corporation's documents or rules.

G. This section does not apply to any corporation that is a condominium as defined in section 33-1202 or a planned community as defined in section 33-1802.

H. This section does not apply to timeshare plans or associations that are subject to title 33, chapter 20.

10-11603. Scope of inspection rights; charge

A. A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

B. The right to copy records under section 10-11602 includes, if reasonable, the right to receive copies made by photographic, xerographic or other means.

C. The corporation may impose a reasonable charge covering the costs of labor and material for copies of any documents provided to the member. The charge shall not exceed the estimated cost of production or reproduction of the records.

D. The corporation may comply with a member's demand to inspect the record of members under section 10-11602, subsection B, paragraph 3 by providing the member with a list of the corporation's members that was compiled no earlier than the date of the member's demand.

10-11604. Court ordered inspection

A. If a corporation does not allow a member who complies with section 10-11602, subsection A to inspect and copy any records required by that subsection to be available for inspection, the court in the county where the corporation's known place of business is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

B. If a corporation does not allow within a reasonable time a member to inspect and copy any other record, the member who complies with section 10-11602, subsections B and C may apply to the court in the county where the corporation's known place of business is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

C. If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order, unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded. The court may order a member to pay all or a portion of the corporation's costs, including reasonable attorney fees, if the demand to inspect is denied in whole or in material part.

D. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

10-11605. Limitations on use of membership list; applicability

A. Without the consent of the board of directors, no person may obtain or use a membership list or any part of the membership list for any purpose unrelated to a member's interest as a member.

B. Without the consent of the board of directors, the membership list or any part of the membership list shall not be:

1. Used to solicit money or property, unless the money or property will be used solely to solicit the votes of the members in an election to be held by the corporation.
2. Used for any commercial purpose.
3. Sold to or purchased by any person.

C. This section does not apply to timeshare plans or associations that are subject to title 33, chapter 20.

Article 2 Reports

10-11620. Financial statements for members

A. Except as provided in the articles of incorporation or bylaws of a corporation organized primarily for religious purposes, a corporation on written demand from a member shall furnish that member its latest annual financial statements that may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, and that include a balance sheet as of the end of the fiscal year and statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

B. If the annual financial statements are reported on by a certified public accountant, that report shall accompany them. If not, the statements shall be accompanied by a statement of the president or the person responsible for the corporation's accounting records both:

1. Stating that person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation.
2. Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

10-11621. Report of indemnification to members

If a corporation indemnifies or advances expenses to a director under sections 10-3851 through 10-3854, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members. Failure to report under this section does not invalidate otherwise valid indemnification.

10-11622. Annual report

A. Each domestic corporation and each foreign corporation authorized to conduct affairs in this state shall deliver to the commission for filing an annual report that sets forth all of the following:

1. The name of the corporation and the state or country under whose law it is incorporated.
2. The address of its known place of business and the name and address of its agent in this state.
3. The address of its principal office.
4. The names and business addresses of its directors and principal officers.
5. A brief description of the nature of its activities.
6. Whether or not it has members.
7. A certificate of disclosure containing the information set forth in section 10-3202, subsection D.
8. A statement that all corporate income tax returns required by title 43 have been filed with the department of revenue.

B. A unit owners' association that is subject to title 33, chapter 9 or a planned community association that is subject to title 33, chapter 16 shall attach to and submit with the annual report a separate statement containing the name of the designated agent or management company for the association, the address for the association and the telephone number, e-mail address and website if any and fax number if any of the association or its designated agent or management company. Unit owners' associations and planned community associations shall file an amended statement reflecting changes in designated agent or management company within thirty days of any change.

C. The information in the annual report and the separate statement that is prescribed by subsection B of this section shall be current as of the date the annual report and separate statement are executed on behalf of the corporation.

D. The annual report for all corporations shall be delivered to the commission for filing, and the annual fee shall be paid on or before the date assigned by the commission. The commission may stagger the annual report filing date for all corporations and adjust the annual fee on a pro rata basis. The corporation shall deliver the annual report to the commission for filing each subsequent year in the anniversary month on the date assigned by the commission. If a corporation is unable to file the annual report required by this section on or before the date prescribed by this section, the corporation may file, but only on or before this date, a written request with the commission for an extension of time, not to exceed six months, in

which to file the annual report. The request for an extension of time shall be accompanied by the annual registration fee required by law. After filing the request for an extension of time and on receipt of the annual registration fee, the commission shall grant the request.
E. If an annual report does not contain the information requested by this section, the commission shall promptly notify the reporting domestic or foreign corporation in writing and shall return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the commission within thirty days after the effective date of notice, it is deemed to be timely filed.
F. Any corporation that is exempt from the requirement of filing an annual report shall deliver annually a certificate of disclosure that contains the information set forth in section 10-3202, subsection D and that is executed by any two executive officers or directors of the corporation on or before May 31. If the certificate is not delivered within ninety days after the due date of the annual report or within ninety days after May 31 in the case of any corporation that is exempt from the requirement of filing an annual report, the commission shall initiate administrative dissolution of that corporation or revoke the application for authority of that corporation pursuant to chapters 24 through 40 of this title.

10-11623. Statement of bankruptcy or receivership; interrogatories before subsequent incorporation; violation; classification; definition
A. On the filing of a petition for bankruptcy or the appointment of a receiver for any corporation, the corporation shall deliver a statement to the commission listing:
1. All officers, directors and trustees of the corporation within one year of filing the petition for bankruptcy or the appointment of a receiver.
2. Whether any such person has been an officer, director or trustee of any other corporation within one year of the bankruptcy or receivership of the other corporation.
3. If the answer in paragraph 2 of this subsection is in the affirmative, for each such corporation the following information:
(a) Name and address.
(b) States in which it:
(i) Was incorporated.
(ii) Conducted affairs.
(c) Dates of operation.
B. The commission shall maintain a suitably indexed list of all such persons. The index shall be a public record of the commission for purposes of title 39.
C. On receipt of the articles of incorporation of a new corporation or application for authority to conduct affairs by a foreign corporation, the commission shall determine whether any person, proposed as an officer, director, trustee or incorporator of the new or foreign corporation has been involved two or more times in a corporate bankruptcy, receivership, administrative dissolution, revocation or judicial dissolution commenced by any state. If so, the commission shall direct detailed interrogatories to those persons requiring any additional relevant information deemed necessary by the commission and at the same time provide public notice of the interrogatory procedure. Any person may request additional interrogatories or may provide additional information to the commission. The interrogatories shall be completely answered within thirty days after mailing. With respect to corporations incorporated or seeking authority to conduct affairs, articles of incorporation or application for authority shall not be filed until all outstanding interrogatories have been answered to the satisfaction of the commission.
D. Any applicant for filing articles of incorporation authority to conduct affairs who is dissatisfied with a determination of the commission or any other proceeding under this section may demand and the commission or its designee shall convene a public hearing at the county seat of the county of the corporate headquarters of the proposed corporation. The commission shall give public notice of the hearing at least twenty days before the hearing by publication in a newspaper of general circulation in any county in which a relevant prior bankruptcy or receivership occurred.
E. On a quarterly updated basis the commission shall provide the attorney general with a copy of statements furnished pursuant to subsection A and answers to interrogatories propounded pursuant to subsection C.
F. Any person or corporation failing to comply with the requirements of this section is guilty of a class 1 misdemeanor. Any person making a false statement or giving false information pursuant to this section is guilty of a class 5 felony.

Article 3 Miscellaneous Provisions

10-11630. Certificate of good standing; license and registration renewal
If a state agency can confirm through the commission that an applicant for renewal of a license or registration is entitled to the issuance of a certificate of good standing at the time of the inquiry, the agency shall not require an applicant to obtain a certificate.

10-11631. Civil liability for false statements
A. If any report, certificate or other statement made or public notice given by the officers or directors of a corporation is false in a material representation or if any book, record or account of the corporation is knowingly or wrongfully altered, the officers, directors or agents knowingly or wrongfully authorizing, signing or making the false report, certificate, other statement or notice or authorizing or making the wrongful alteration are jointly and severally personally liable to a person who has become a creditor or member of the corporation on the faith of the false material representation or alteration for all damages resulting.
B. An action for the liability imposed by this section shall be commenced within two years after discovery of the false representation or alteration and within six years after the certificate, report, public notice or other statement or the alteration has been made or given by the officers, directors or agents of the corporation.

10-11632. Interrogatory or signature violations; corporate records; classification
A. A person who knowingly fails or refuses within the time prescribed by this chapter to answer truthfully any interrogatories propounded to that person by the commission in accordance with this chapter or who signs any articles, statement, report, application or other document filed with the commission that is known to the person as false in any material respect is guilty of a class 4 felony.
B. A person who with the intent to defraud or deceive knowingly falsifies, alters, steals, destroys, mutilates, defaces, removes or secretes the books, records or accounts of a corporation is guilty of a class 5 felony.

10-11633. Interrogatories by the commission
The commission may propound to any domestic or foreign corporation subject to chapters 24 through 40 of this title and to any officer or director of the corporation interrogatories as may be reasonably necessary and proper to enable it to ascertain whether the corporation complied with all of the provisions of chapters 24 through 40 of this title applicable to the corporation. The interrogatories shall be answered within thirty days after the mailing of the interrogatories or within an additional time fixed by the commission, and the answers to the interrogatories shall be full and complete and shall be made in writing and under oath. If the interrogatories are directed to an individual they shall be answered by the individual, and if directed to a corporation they shall be answered by the president, vice-president, secretary or assistant secretary of the corporation. The commission need not file any document to which the interrogatories relate until the interrogatories have been answered as provided in this section, and not then if the answers to the interrogatories disclose that the document is not in conformity with the provisions of chapters 24 through 40 of this title. The commission shall certify to the attorney general, for such action as the attorney general deems appropriate, all interrogatories and answers to the interrogatories that disclose a violation of any of the provisions of chapters 24 through 40 of this title.

10-11634. information disclosed by interrogatories
Interrogatories propounded by the commission and the answers to the interrogatories shall not be open to public inspection and the commission shall not disclose any facts or information obtained from the interrogatories and answers except if its official duty requires the facts or information to be made public or if the interrogatories or the answers are required for evidence in any criminal proceeding or in any other action by this state.

10-11635. Certified copies received in evidence
All copies of documents delivered to and filed by the commission in accordance with chapters 24 through 40 of this title when certified by it shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the facts stated in the documents. A certificate by the commission

under seal as to the existence or nonexistence of the facts relating to corporations shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the existence or nonexistence of the facts stated in the certificate.

Title 10, Chapter 40 TRANSITION PROVISIONS-NONPROFIT CORPORATIONS

Article 1 General Provisions

10-11701. Application to existing domestic corporations

A. Except as provided in subsection B, chapters 24 through 40 of this title apply to all Arizona corporations that were incorporated under or that were subject to chapter 22 of this title on December 31, 1998.

B. Any existing corporation that was originally organized under the laws of the territory of Arizona may elect to amend or restate its articles of incorporation and retain any previously valid provisions of its articles of incorporation, even if the previously valid provisions of its articles of incorporation are in conflict with any provisions of chapters 24 through 40 of this title. Upon such amendment or restatement, all of the provisions of chapters 24 through 40 of this title which are not specifically in conflict with the amended or restated articles of incorporation shall be applicable to the existing corporations that were originally organized under the laws of the territory of Arizona. The previously valid provisions of its articles of incorporation that are retained shall apply to the existing corporations originally organized under the laws of the territory of Arizona and to all persons contracting or in any manner dealing with the corporation, including its members, subscribers, affiliates, directors, officers and employees.

10-11702. Application to qualified foreign corporations

A foreign corporation authorized to conduct affairs in this state on January 1, 1999 is subject to chapters 24 through 40 of this title but is not required to obtain a new grant of authority to conduct affairs under chapters 24 through 40 of this title, except as provided in section 10-11504.