

Information that is Identical Within Groups of Rules

This section of the Department of Real Estate's five-year rule report summarizes the review of A.A.C. Title 4, Chapter 28, Articles 1, 3, 5, 11 and 13. The following information is identical for each group of rules listed. Because this information is the same for each rule it is not included in the analysis of each individual rule within the group.

Article 1. General Provisions

- R4-28-101. Definitions
- R4-28-102. Document Filing; Computation of Time
- R4-28-103. Licensing Time-frames
- R4-28-104. Development Inspection Fee
- R4-28-105. Educator Fees
- Table 1. Time-frames

Article 3. Licensure

- R4-28-301. General License Requirements; Non-resident License
- R4-28-302. Employing Broker's License; Non-resident Broker
- R4-28-303. License Renewal; Reinstatement; Changes of Personal Information, License, or License Status; Professional Corporation or Professional Limited Liability Company Licensure; Administrative Severance
- R4-28-304. Branch Office; Branch Office Manager
- R4-28-305. Temporary License; Certificate of Convenience
- R4-28-306. Unlawful License Activity

Article 5. Advertising

- R4-28-502. Advertising by a Licensee
- R4-28-503. Promotional Activities
- R4-28-504. Development Advertising

Article 11. Professional Conduct

- R4-28-1101. Duties to Client
- R4-28-1102. Property Negotiations
- R4-28-1103. Broker Supervision and Control

Article 13. Administrative Procedures

- R4-28-1302. Service of Pleadings Subsequent to Complaint and Notice
- R4-28-1303. Information Obtained in an Investigation
- R4-28-1304. Response; Default
- R4-28-1305. Notice of Appearance of Counsel
- R4-28-1310. Rehearing or Review of Decision; Response; Decision
- R4-28-1313. Correction of Clerical Mistakes

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F), which provides general authority to the Commissioner to make rules.

C. Effectiveness: The objectives of the following rules are effectively met. Effectiveness was determined by analyzing the rules contained in this report against the applicable Department governing statutes. There have been no changes to the rules in this report since the previous five year rule review was submitted in 2009 with the exception of the addition of R4-28-105. The educator fees in R4-28-105 were implemented as a result of Laws 2012, Ch. 297, § 29 eff. August 2, 2012 which provided the Department with exempt rulemaking privileges until July 1, 2013. The Department has charged educator fees as prescribed on the Department's website since February 2013. The Department has determined through analysis and practice that the rules achieve their regulatory purpose and are effective. With the exceptions noted for certain rules in Articles 1, 3 and 5 and discussed in the analysis of individual rules, the rules in Articles 1, 3, 5, 11 and 13 are effective.

D. Consistency: The rules in Articles 1, 3, 5, 11 and 13 are generally consistent as written, with the exceptions noted for certain rules discussed in the analysis of individual rules. Analysis of A.A.C. Title 4, Chapter 28, applicable real estate advisories published by the Arizona Association of REALTORS® and the State's governing statutes under Title 32 was conducted. The Department consulted with its staff to identify areas in rules that require amendment to ensure consistency with legislative changes.

E. Enforcement: The following rules are enforced through established policies and procedures as prescribed by the rules and statutes. All rules are consistently and fairly enforced. There have been no substantive problems with enforcing the rules as written. The Department spends considerable time in enforcing and ensuring compliance with public report requirements and approving licenses in general - including approving educational courses, instructors and schools that share the same objective of protecting the public by licensing professional and reputable real estate brokers, salespersons, land developers, and others under the Commissioner's jurisdiction. Evolving web based applications and services continue to create challenges for the Department's enforcement of the rules. The technology evolution in the real estate industry will require further definition and guidance in rule. To date, the Department has been able to address these issues with the current rules, through substantive policy statements, Commissioner's advisory statements, and through Standards of Practice published by the National Association of REALTORS®.

F. Clarity, Conciseness, and Understandability: With the exception of suggested modifications to rules in Articles 1, 5 and 11 to create greater clarity, the rules in this report are clear, concise, and understandable. The actions proposed in the *Course of Action* section will enhance the clarity, conciseness and understandability of these rules.

G. Criticisms Received within the Last Five Years: The Department has not received any written criticisms of these rules during the past five years. However the Department has had consistent dialogue amongst industry leaders about the need for the rules that govern the Department to be amended to provide greater clarity to the industry and public. A series of workgroups commenced at the time of the last five year rule review that provided suggested

amendments and feedback that is still relevant today. If an exception from the rule making moratorium is granted, the Department will pursue engaging industry leaders and stakeholder groups at the conclusion of the legislative session to further consider amending terms and definitions, review opportunities to reduce unnecessary regulatory burden, and create greater consistency with statute.

H. Estimated Economic, Small Business and Consumer Impact:

Article 1.

The rules generally have minimal economic impact upon the performance of licensed activity by real estate, cemetery, membership campground, and timeshare. The rules are primarily designed to implement statutory mandates. No substantive change in the economic impact of the following group of rules on small business or consumers has occurred since the rule was last amended or newly made. Because of the need to promote understanding of the regulations designed to protect individuals and entities involved in regulated aspects of the real estate industry, the Department contends that small business and consumers will benefit from the addition of terms and definitions in R4-28-101. The real estate educator fees implemented by exempt rulemaking in February 2013 have generated approximately \$30,000 in the first calendar year of their enactment. The fees are deposited into the General Fund. Individuals and small businesses have benefited from receiving Department approval for education approvals before the fees were authorized. The Department has never charged fees for educator approval applications. Each approval application and renewal takes considerable personnel time to review, process, and complete in a timely fashion. The Department and counsel have agreed that the Department could follow the requirements of A.R.S. §§ 32-2103(B) and 32-2132(A)(17), employing the exemption in A.R.S. § 41-1005(A)(16) to make a fee rule on an annual basis consistent with A.R.S. § 41-1008(D) to address R4-28-105. This interpretation would preserve the legislative intent of these exempt fees pursuant to § 41-1005(A)(16), avoiding the need to obtain the extension allowed in A.R.S. § 41-1008(E). Lastly, the impact of reducing timeframes to promote the quick licensure of applicants would be a positive for the industry. Although the Department stays within its statutory and rule timeframes, the Commissioner believes there is always room for greater efficiencies.

Article 3. Licensure

The Department reviewed the Economic, Small Business and Consumer Impact Statement (“EIS”) that was submitted with the last five-year rule review and determined that there have not been significant changes. It can be noted that there has been no adverse economic impact of these rules on the Department, the regulated community or the public with the rules in this Article. The “Licensed Individuals and Entities” count completed for January 2014 stated as follows: total active individuals 49,150; total inactive individuals 13,515; total individuals in grace period 8,674; total individual licensees 71,339. The report also includes information for entities: total active entities 7,909; total inactive entities 608; total entities in grace period 1,323; total entity licensees 9,860. At the time of the 2005 EIS the licensee count totaled 70,843. To date, the total current licensee count is 69,838 including licensees in their one year grace period. The Department was reduced to 57 FTEs in 2005 and was cut further to the current total of 37 FTEs. Authorized General Fund appropriations for the Department have decreased from a high of approximately \$4.6 million in FY2008 and have remained stagnant from FY2011 to FY2014

at approximately \$2.9 million. If the FY2015 budget passes in its current form, the Department will remain at this level. It should be noted that the Department generates a significant portion of its revenue through licensing fees which are contributed to the General Fund. Please see the chart below:

	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14
Authorized Appropriation	\$3,986,700	\$4,614,000	\$3,686,700	\$3,021,400	\$2,987,300	\$2,656,700	\$2,902,200	\$2,988,700
Revenue General Fund Contribution	\$6,378,300	\$6,194,000	\$4,882,900	\$3,185,900	\$2,689,400	5,082,371	\$3,741,825	\$2,639,24*
Avg. Filled FTE	70	62	54	39	31	31	31.5	32.5**

*Includes Civil penalties/Year to date

**Authority to fill up to 37 FTE

Article 5. Advertising

The Department reviewed the Economic, Small Business and Consumer Impact Statement (“EIS”) that was submitted with the last five-year rule review and determined that there have not been significant changes. The rules generally have a minimal economic impact. The rules are primarily designed to implement statutorily mandated areas where the Commissioner must provide guidance. No substantive change in the economic impact of the following group of rules on small business or consumers has occurred since the rule was last amended or newly made. The rules are primarily designed to promote understanding of the regulations designed to protect individuals and entities involved in regulated aspects of the real estate industry. There has been no adverse economic impact of these Rules on the Department, the regulated community or the public. Proposed amendments stated in this report would further this mission of protecting the public in the evolving area of marketing both online and in the field without causing unnecessary regulatory burden. Advertising methods are evolving and continue to be an ongoing discussion with industry and public stakeholders.

Article 11. Professional Conduct

The Department reviewed the Economic, Small Business and Consumer Impact Statement (“EIS”) that was submitted with the last five-year rule review and determined that there have not been significant changes. It should be noted that there has been no adverse economic impact of these Rules on the Department, the regulated community or the public. The rules impact the regulated industry and public by stipulating the responsibilities of the broker and agent. The rules are necessary for the Department to ensure protection of the public through real estate transactions. Proposed amendments stated in this report would further this mission without causing unnecessary regulatory burden.

Article 13.

There has been no substantive change in Economic, Small Business, and Consumer Impact of the Rules contained in Article 13 since the previous report. It should be noted that there has been no adverse economic impact because of these Rules on the Department, the regulated community or the public.

I. Analysis Submitted to the Agency: There has not been any analysis submitted to the Department in the past five years by another person regarding the rules impact on this state's business competitiveness as compared to the business competitiveness in other states regarding this group of rules.

J. Completed Previous Five Year Rule Review: This group of rules was the subject of a normal five-year rule review in 2009 which the Department completed. In the previous report, the Department noted effectiveness problems in R4-28-102, R4-28-104, R4-28-301, R4-28-303, and R4-28-306 as discussed in the individual rules analysis. The Department has requested exceptions from the rulemaking moratorium implemented in June 2010, May and August 2013, and most recently in April 2014 to address the rules noted in the previous report as well as the needs stated in this report. The Department terminated its rulemaking progress in 2010 shortly after opening a docket because of the moratorium. If granted an exception the Department will reconsider its actions from 2010 and open a rule making docket to amend the rules addressed in the previous report, as well as address other needs stated in this report.

K. Probable Benefits of the Rule: The benefits of the rules in Articles 1, 3, 5, 11 and 13 outweigh the probable costs of the rules, and with the changes proposed in this report, will impose the least burden and cost on the persons regulated necessary to achieve the regulatory objective. The rules covering these subject matters are necessary to fulfill the agency's mission of protecting the public.

L. Stringency of the Rule: No rule in Articles 1, 3, 5, 11 and 13 was considered to be more stringent than related federal rules or statutes. This was determined by analyzing Title 32, Arizona Revised Statutes, applicable federal law including the Dodd-Frank Wall Street Reform and Consumer Protection Act, Real Estate Settlement Procedures Act, Fair Housing Act, and neighboring state agencies that are tasked with regulating the real estate industry and protecting the public. However, there are areas identified in the *Course of Action* section that could further reduce regulatory burden.

M. Compliance with A.R.S. § 41-1037: The general permit requirements of A.R.S. § 41-1037 are not applicable to these rules; because all but one of the rules were adopted before July 29, 2010; and the only rule adopted after July 29, 2010, R4-28-105, is a fee rule rather than a rule that establishes a permit or other agency authorization.

N. Course of Action: The Department submitted requests to the Governor's Office in June 2010, May and August 2013, and April 2014 to proceed with opening a rulemaking docket and obtain approval to file final rules from the Governor's Regulatory Review Council. The requests included rules in the Articles covered in this report as well as Articles 4 and 12 with the intent of reducing regulatory burden, addressing legislative changes, and creating greater efficiencies. Though the letters submitted were not identical, the intent of the requests was the same. One of the Department's letters in April 2014 specifically addressed R4-28-105; requesting permission for the Department to submit final rules to the council. Upon further review, this approach may not be taken. If the other request for an exception from the rule making moratorium is granted, the Department will pursue engaging industry leaders and stakeholder groups at the conclusion of this legislative session with the goal of submitting rules to council by January 1, 2016. The

changes made to state law that affect Article 1 can be addressed by amending R4-28-101 to include definitions as mentioned in the individual analysis. These additions would not add stringency to the rule, rather benefit to the business, consumer, and the public by adding clarity, thus greater understanding and better practice. Further, the Department has requested an exception to pursue amending R4-28-301, R4-28-302, R4-28-303, R4-28-304, R4-305, and R4-306 for the reasons specified in the individual rules section of this report, and to amend R4-28-1101 to clarify that licensees who act as principals disclose all income derived from a transaction as a part of their duties to deal fairly with the client and all other parties involved in the various intermediary contracts; R4-28-1103 to redefine *reasonable supervision* so the Department has the ability to examine the licensed agent independently of the employing broker, as well as add rule provisions regarding teams; R4-28-1102 to clarify documentation requirements. The Department stated in the previous report the intent to amend R4-28-102 to clarify timelines and dates; R4-28-104 to clarify authority to require a surety bond and clarify the allocation of statutory inspection fees; Table 1 to extend the time frame for review of educational licenses; and R4-28-504 to require confirmation of an Arizona Public Report having been issued. The Department plans to continue this plan of action.

If granted an exception from the rule making moratorium, the Department will submit rules to council by January 2016 for the following rules: R4-28-101, R4-28-102, R4-28-103, R4-28-104, Table 1, R4-28-301, R4-28-302, R4-28-303, R4-28-304, R4-305, R4-306, R4-28-502, R4-28-504, R4-28-1101, R4-28-1102, and R4-28-1103.

The Department plans to amend R4-28-105 to expressly state the amounts of the educator fees by exempt rulemaking no later than December 2014. Analysis conducted by the Department and counsel have agreed that the Department could follow the requirements of A.R.S. §§ 32-2103(B) and 32-2132(A)(17), employing the exemption in A.R.S. § 41-1005(A)(16) to make a fee rule on an annual basis consistent with A.R.S. § 41-1008(D) to address R4-28-105. This interpretation would preserve the legislative intent of these exempt fees pursuant to § 41-1005(A)(16), avoiding the need to obtain the extension allowed in A.R.S. § 41-1008(E).

Analysis of Individual Rules

R4-28-101. Definitions

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F), which provides general authority to the Commissioner to make rules. Specific administrative authority for the Commissioner is found in A.R.S. §§ 32-2102, 32-2107, 32-2108.

B. Objective: The objective of the rule is to explicitly clarify the scope of Title 4, Chapter 28, Article 1 of the Arizona Administrative Code (hereinafter, the "Code"). The rule clarifies

terms used in the industry by giving definitions and meaning to those terms generally used but not otherwise defined under A.R.S. § 32-2101.

C. Effectiveness: The Department, regulated industry, and public would benefit from the definition of additional terms in R4-28-101. R4-28-101 must be modified to reflect the progression of terminology and development in the real estate industry. Among the definitions the Department will propose to add to the rule are as follows: administrator or school administrator, approved course, approved provider, attendance, classroom, continuing education, course owner school, credit or rebate, credit hour, debit card payments, delegated associate broker, gift, guest speaker, IDW or Instructor Development Workshop, inactive license, prelicensure, premium, primary sponsor school, property management, property manager, reasonable supervision, remote classroom location, relevant repair, school location, secondary sponsor school, and short sale. Department staff and multiple workgroups have met over the past several years to discuss the need for the aforementioned definitions.

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

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F), which provides general authority to the Commissioner to make rules. Specific administrative authority for the Commissioner is found in A.R.S. §§ 32-2102, 32-2107, 32-2108, 32-2124, 32-2153, 32-2175, 32-2181, and 32-2197.13.

B. Objective: The rule is beneficial to the industry and the public because it establishes guidelines for determining timeliness after filing an original or renewal application for review, and should describe whether business or calendar days are to be used in computing periods of time.

C. Effectiveness: The rule is generally effective; however the rule would be made more effective by amending to provide clarity in the computation of time in "business days". Adding clarity to definitions of time would make the rule more effective and possibly increase compliance.

R4-28-103. Licensing Time-frames

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F), which provides general authority to the Commissioner to make rules. Specific administrative authority is found in A.R.S. §§ 32-2102, 32-2107, 32-2123, 32-2124, 32-2125, 32-2130, 32-2131, 32-2134, 32-2134.01, 32-2135, 32-2181 and 32-2183.01.

B. Objective: The rule establishes time-frames for the Department's review of license applications. Licensing is defined by A.R.S. § 41-1001(12). R4-28-103 provides guidance of the time-frame for a license applicant to file an application with the Department and for completing or supplementing the application(s). The rule provides timeframes for completing licensing procedures.

C. Effectiveness: While current practice at the Department is to process the referenced documents in timeframes more efficiently than the rule specifies, the Department contends that the business community and public would benefit from the timeframes in R4-28-103 being

reduced for licensees or prospective licensees waiting on action from the Department. Reducing timeframes would be a benefit to the business community.

R4-28-104. Development Inspection Fees

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F), which provides general authority to the Commissioner to make rules. Application, examination, and licensing fees included in the rule are established under A.R.S. § 32-2132. Development site inspection fees shall be charged pursuant to A.R.S. §§ 32-2182, 32-2194.02, 32-2195.02, 32-2197.07, and 32-2198.04. A.R.S. § 32-2182 states that the fees for inspection shall be borne by the subdivider on the basis of actual cost by the Department. The Section goes on to state that the Commissioner may allow the developer to outsource and pay for the cost of the inspection as long as the developer obtains Department approval.

B. Objective: The objective of the rule is to clarify that developers will be charged a site inspection fee and provides statutory references.

C. Effectiveness: The rule is generally effective in achieving its objective; however, as referenced in the previous five year rule report, the rule would be made more effective by clearly stating the Commissioner's statutory authority to assess fees for government services used by land developers. Moreover, the rule must be amended to more clearly state the Commissioner's authority to require a surety bond in lieu of placing monies in an escrow account pursuant to A.R.S. § 32-2197.05. The Department's review of R4-28-104 concluded that the rule does not adequately convey the requirements set in A.R.S. §32-2182(A). Specifically, the section of § 32-2182 that states that the Commissioner may allow the developer to use a third party for inspections if approved by the Department. Simply referencing the statute as the authority to charge a development site inspection fee may not be as effective as it should be.

R4-28-105. Educator Fees

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F), which provides general authority to the Commissioner to make rules. Specific fee authority for the rule derives from A.R.S § 32-2132. The fees were implemented as a result of Laws 2012, Ch. 297, § 29 eff. August 2, 2012 which provided the Department with exempt rulemaking privileges until July 1, 2013. Educator fees were implemented in February 2013. Analysis conducted by the Department and counsel have agreed that the Department could follow the requirements of A.R.S. §§ 32-2103(B) and 32-2132(A)(17), employing the exemption in A.R.S. § 41-1005(A)(16) to make a fee rule on an annual basis consistent with A.R.S. § 41-1008(D) to address R4-28-105. This interpretation would preserve the legislative intent of these exempt fees pursuant to § 41-1005(A)(16), avoiding the need to obtain the extension allowed in A.R.S. § 41-1008(E).

B. Objective: The objective of the rule is to fulfill the legislative intent of Laws 2012, Ch. 297, § 29 eff. August 2, 2012 that the Department is to collect fees from any individual applying to the Department for a certificate of approval or renewal to operate a school, instructor or other school official approval or renewal, live classroom prelicensure education course approval or

renewal, live classroom continuing education course approval or renewal, and continuing education distance learning course approval or renewal pursuant to A.R.S. § 32-2132.

F. Clarity, Conciseness, and Understandability: The rule is generally clear, concise and understandable. The regulated community can view the fee schedule on the Department's website. The Department is one of two remaining state agencies that shall revise all fees so they

equal at least ninety-five per cent, but not more than one hundred ten percent of the anticipated appropriated budget for the department in the succeeding fiscal year pursuant to A.R.S. § 32-2103. If an exception from the rule making moratorium is granted and the Department can proceed with final rulemaking, the Department plans to specify the amount of these fees by either setting the amounts or by setting a range to accommodate any potential fee adjustments pursuant to A.R.S. § 32-2103 and provide further clarity in rule.

Table 1. Time-frames

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F), which provides general authority to the Commissioner to make rules. Specific authority is found in the licensing time frames table. This Section implements A.R.S. § 41-1073.

B. Objective: The objective of the rule is to establish the specific periods of time, determined by the type of application, and whether changes have occurred if a renewal, for the Department's review and determination on a license.

R4-28-301. General License Requirements

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F), which provides general authority to the Commissioner to make rules.

B. Objective: The objective of the rule is to inform applicants for licensure as salespersons or brokers of information and documentation required for filing a license application.

C. Effectiveness: To increase effectiveness the Department must adopt rules within R4-28-301 that are consistent with A.R.S. §§ 32-2123(D)(2) and 41-1758.03 which prescribe fingerprint clearance card requirements for broker and salesperson licenses. The previous five year review report stated that the rule would be amended to clarify the due date for background fingerprint checks. This objective will be included in ensuring consistency with statute. A.R.S. § 41-1080 prescribes proof of legal presence required for broker and salesperson licenses and § 32-2124(D) prescribes an age requirement.

F. Clarity, Conciseness, and Understandability: The rule is generally clear, concise and understandable. However, the course of action outlined for the rule would enhance the clarity and understandability by ensuring that the rule accurately reflects the fingerprint clearance card requirements outlined in A.R.S. § 32-2123(D).

N. Course of Action: The Department recommends the rule be amended and anticipates submitting the amended rules to G.R.R.C by January 1, 2016. The Department anticipates amending R4-28-301 to make it consistent with A.R.S. §§ 32-2123(D) (2) and 41-1758.03 which prescribe fingerprint clearance card requirements for broker and salesperson licenses.

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

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F) which provides general authority to the Commissioner to make rules. Specific authority can be found in A.R.S. §§ 32-2101, 32-2121, 32-2122, 32-2125, 32-2125.01, 32-2125.02, 32-2126, 32-2127, 32-2128, 32-2130, 32-2131, 32-2133, 32-2134, 32-2151, 32-2153, 32-2154, 32-2155, 32-2163, 32-2174, and 32-2175.

B. Objective: The objective of the rule is to clarify what licensing information shall be provided to the Department and requirements of an employing broker, partnership, corporation, Limited Liability Company, foreign entity, self-employed broker, and nonresident brokers. The rule also provides guidance to the designated broker that a supplemental statement shall be filed with the Department 10-days after a change to subsections (A) through (F).

C. Effectiveness: The Department believes the documentation required by the rule can be made more effective and less burdensome. To increase effectiveness the Department plans to propose an amendment to modify the "shall" to "may" on some requirements.

N. Course of Action: The Department recommends the rule be amended and anticipates submitting the amended rules to G.R.R.C by January 1, 2016. After completing stakeholder meetings at the conclusion of the legislative session, the Department will submit amendments to the rule that would change some requirements from "shall" to "may" submit certain documents including certified documents. Many requirements of the rule are overly burdensome and should be modified.

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. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F) which provides general authority to the Commissioner to make rules. A.R.S. §§ 32-2126, 32-2128, 32-2130, 32-2131, 32-2132(A) (10), 32-2136 provide specific authority for the Commissioner.

B. Objective: The rule establishes the requirements for filing; (1) for license renewal, whether timely or late; (2) for license reinstatement; and (3) notice of changes in a licensee's information with the Department, the timing of such notice, and whether Department approval is required before the licensee implements the change. It also identifies the information required when a person has conducted activities requiring licensure while that person is not holding a current and active-status license.

C. Effectiveness: The Department must amend R4-28-303 to address the requirements and specifications of an active and inactive real estate licensee pursuant to § 32-2121. Legislation was enacted by Laws 2013, Chapter 61 that enables the Commissioner to cancel an inactive real estate license upon the request of the licensee. Further, R4-28-303(D) can be made more effective by specifying that a salesperson or broker shall notify the Department within ten *business days*. Currently the rule states this notification is needed within ten days. The rule can be made more effective by codifying the fingerprint clearance card requirements in A.R.S. § 32-2108.01 for licensees that submit a criminal conviction disclosure past the 10 day notification period in the rule. The previous five year rule report discussed amending the rule to provide licensees facing possible administrative action with the ability to cancel their license. The Department is evaluating this issue with counsel.

E. Enforcement: The Department experiences some difficulty in enforcing the rule. Licensees fail to notify the Department of a change in personal address or to report changes in qualifications (convictions, judgments, administrative actions taken against professional or occupational licenses held, etc.) within ten days as required.

N. Course of Action: The Department anticipates submitting amended rules to G.R.R.C by January 1, 2016 to amend the rule to address the enacted legislation referenced in the effectiveness section above. Furthermore, after completing stakeholder meetings at the conclusion of the legislative session, the Department will submit amendments to the rule that would change some requirements from “shall” to “may” submit certain documents including certified documents. Many requirements of the rule are overly burdensome and should be modified. Finally, the Department believes that R4-28-303(F) should be modified to more clearly specify the Professional Corporation (“PC”) and Professional Limited Liability Company (“PLLC”) activity in real estate.

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

A. Authorization: The Department of Real Estate’s general authority derives from A.R.S. § 32-2107(F) which provides general authority to the Commissioner to make rules. A.R.S. § 32-2123 requires a broker to identify the sites and mailing address of each place of business; § 32-2127 establishes general requirements for brokers who establish more than one business location, and prescribes the appointment of a branch manager for each such additional location.

B. Objective: The rule provides guidance for how a broker establishes additional places of business, what duties a designated broker can delegate to the branch manager of a branch office, including summarizing limitations on the authority a designated broker can delegate to an associate broker or salesperson who is a branch manager. It also allows the establishment of an on-site sales office at a new subdivision or unsubdivided land development without requiring that it be established as a branch office. The rule also provides guidance on the duties of the designated broker to notify the Department of branch office information and branch office manager appointment.

F. Clarity, Conciseness, and Understandability: The rule is generally clear, concise and understandable. However, the rule can be improved by adding clarity found in A.R.S. § 32-2127.

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

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F) which provides general authority to the Commissioner to make rules. Specific authority can be found in A.R.S. §§ 32-2133, 32-2134 and 32-2134.01.

B. Objective: The objective of the rule is to establish the information to be provided and procedure to be followed by an applicant seeking temporary approval as a broker, or as a cemetery salesperson or membership camping salesperson.

C. Effectiveness: The rule is generally effective; however the rule can be made more effective by amending the mandate of submitting certain documents. Unnecessary regulatory burden can be reduced by amending some of the "shall" requirements to "may".

N. Course of Action: The Department anticipates submitting amended rules to G.R.R.C by January 1, 2016 after completing stakeholder meetings at the conclusion of the legislative session. The Department will submit amendments to the rule that would change some requirements from "shall" to "may" submit certain documents including certified documents. Many requirements of the rule are overly burdensome and should be modified.

R4-28-306. Unlawful License Activity

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F) which provides general authority to the Commissioner to make rules.

B. Objective: The objective of the rule is to clarify the meaning of unlawful license activity and the disciplinary actions that can be taken against an individual engaging in acts that require a license.

C. Effectiveness: The rule is generally effective; however the rule can be made more effective by amending to further reference statutes other than A.R.S. § 32-2153, including A.R.S. § 32-2160.01 and conducting more analysis on how to increase clarity found in statute to improve enforcement. Generally, actions against unlicensed persons are limited to Cease and Desist Orders pursuant to A.R.S. § 32-2154 or a criminal referral pursuant to A.R.S. § 32-2165(B). Any licensee who is subject to the Department and who has violated a provision of this chapter may be assessed a civil penalty pursuant to A.R.S. § 32-2160.01.

E. Enforcement: To enhance the Department's ability to enforce disciplinary action against unlawful real estate activity the Department may propose rules that clarify the Commissioner's disciplinary authority under A.R.S. § 32-2153 such as cancelling a license, converting to a provisional license, requiring additional education, or revoking the license. Further enforcement ability against individuals conducting unlicensed real estate activity, such as out of state individuals, without the intention of ever pursuing a license is needed in § 32-2153. The Department understands that this will most likely be required to be made statutorily before further enforcement can translate to rule, however there would be benefit to the public to include additional definitions of unlawful license activity to include out of state companies and

individuals entering the market in Arizona and completing or facilitating real estate transactions without a license.

R4-28-502. Advertising by a Licensee

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F) which provides general authority to the Commissioner to make rules. A.R.S. §§ 32-2135, 32-2153, 32-2161, and 32-2183.01(E) provide the Commissioner with specific authority.

B. Objective: The objective of the rule is to establish guidelines for advertising of real estate and approved courses by various types of licensees. The rule prohibits false, incomplete, and misleading advertising by license holders regulated by the Department [as defined in A.R.S. § 41-1001(10)].

C. Effectiveness: The rule could be made more effective by improving the Department's and general public's ability to determine the licensing credentials of the party doing the advertising, and to clarify a licensee's advertising responsibilities.

E. Enforcement: The Department believes that the rule would be more effectively enforced after an amendment to require the advertising brokers name to be prominently displayed on their advertisements. Currently, the Department defers to an Arizona Association of REALTORS® Advisory. Further, the Department and industry leaders must work together to place guidelines around advertisements on online platforms to ensure the public is knowledgeable of when they are contacted by or communicate with a real estate licensee and the Broker that the licensee is affiliated with.

F. Clarity, Conciseness, and Understandability: The rule could be made more clear by amending the rule to emphasize that a broker or salesperson shall ensure that all advertising, including online, identify the employing broker's name pursuant to the Commissioner's authority in A.R.S. § 32-2183.01. These amendments would enable the Department to ensure that the public can clearly identify the advertising broker in real estate advertisements.

R4-28-503. Promotional Activities

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F) which provides general authority to the Commissioner to make rules. Specific authority can be found in A.R.S. § 32-2183.01

B. Objective: The rule achieves its objective by establishing that a premium offered at no cost or reduced cost shall not be described as a prize or award. The rule also outlines that the terms and details of a premium must be described before a person participates in the promotional activity. R4-28-503(D) states that only developers may conduct a lottery, contest, or game of chance when offering to sell or lease an interest in a development and the guidelines for doing so. As defined in § 32-2101(22) and (23), 'developers' and 'developments' encompass the various types of land developments regulated by the Department.

D. Consistency: The rule is consistent with the Department's statutes pertaining to advertising and promotional activities by salespersons, brokers, and developers, including A.R.S.

§§ 32-2101, 32-2153, 32-2197, 32-2183.01, 32-2181.03, 32-2194.05, 32-2195.05, 32-2197.17, 32-2198.01 and 32-2198.10.

R4-28-504. Development Advertising

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F) which provides general authority to the Commissioner to make rules. Specific authority can be found in A.R.S. § 32-2183.01

B. Objective: This objective of the rule is to establish guidelines for developers pursuant to § 32-2101(22) and (23) of the various types of developments regulated by the Department with respect to advertising, and prohibit false and misleading advertisements.

F. Clarity, Conciseness, and Understandability: The rule could be made more clear by amending the rule to emphasize that a broker or salesperson shall ensure that all advertising identify the employing broker's name pursuant to the Commissioner's authority in A.R.S. § 32-2183.01. This amendment would enable the Department to ensure that the public can clearly identify the advertising broker in real estate advertisements. R4-28-504 may need further modification to clarify guidelines of current practices and reference to legislation enacted by the 49th Legislature, 2nd Regular Session, Chapter 144 that requires a reference to the Public Report in all subdivision and development advertising.

R4-28-1101. Duties to Client

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F) which provides general authority to the Commissioner to make rules. The authority for the rule is based on the activities that require licensure to act on behalf of another as real estate, cemetery and membership camping salespersons and brokers, found at A.R.S. § 32-2101(12), (13), (36), (39), (48), (50), and the principle of agency law that an agent properly acts in the best interests of his or her principal (client).

B. Objective: The objective of the rule is to describe the manner in which salespersons and brokers are to conduct themselves in their dealings with parties to transactions. It describes when and how they must make certain types of disclosures; prohibits licensees from causing avoidable delays and from allowing controversies with other licensees to affect transactions. The intent of the rule is to provide guidance to licensees about their duties to clients.

E. Enforcement: The Department experiences difficulty enforcing the rule when Brokers distance themselves from their supervisory responsibilities by using branch offices and associate brokers; unlicensed individuals employed by the Designated Broker or Self-Employed Broker acting on behalf of the Broker. These situations take management out of the hands of the Designated Broker.

F. Clarity, Conciseness, and Understandability: Clarity can be enhanced to address licensees who act as principals disclose all income derived from a transaction as a part of their duties to deal fairly with the client and all other parties involved in the various intermediary contracts.

R4-28-1102. Property Negotiations

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F) which provides general authority to the Commissioner to make rules. Specific authority can be found in A.R.S. §§ 32-2151.02, 32-2153, and 32-2155.

B. Objective: The objective of the rule is to prohibit salespersons and brokers from contacting another's principal directly except under certain identified circumstances. This promotes communications concerning a property to be channeled through the principal's broker or broker's representative and reduces the likelihood of a salesperson or broker interfering in a transaction. The rule provides guidance to ensure all offers are presented timely.

F. Clarity, Conciseness, and Understandability: The rule could be made more clear, concise, and understandable by clarifying the necessary documents required in A.R.S. §§ 32-2151.02.

R4-28-1103. Broker Supervision and Control

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F) which provides general authority to the Commissioner to make rules. Specific authority can be found in A.R.S. §§ 32-2151, 32-2151.01, 32-2153 (A)(21), 32-2155, 32-2171, 32-2172, 32-2173, 32-2174 and 32-2175.

B. Objective: The objectives of the rule are to prescribe how a broker exercises reasonable supervision of licensed and unlicensed persons in the broker's employ, including the establishment and enforcement of the broker's policies and procedures, and a system to monitor compliance with those policies and procedures. The rule provides guidance to brokers on electronic records storage and document retention.

E. Enforcement: The Department experiences difficulty enforcing the rule when Brokers distance themselves from their supervisory responsibilities by using branch offices and associate brokers; unlicensed individuals employed by the Designated Broker or Self-Employed Broker acting on behalf of the Broker. These situations take management out of the hands of the Designated Broker.

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

A. Authorization: The Department's rules fall within the Commissioner's general rulemaking authority pursuant to A.R.S. § 32-2107(F). In addition to the Administrative Procedures Act that governs administrative hearings, applicable statutes include A.R.S. §§ 32-2154, 32-2157, 32-2158, and 32-2159.

B. Objective: The objective of the rule is to establish methods for service of documents and pleadings on parties to appealable agency actions and disciplinary actions.

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

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F) which provides general authority to the Commissioner to make rules. 32-2125.03

B. Objective: The objective of the rule is to clearly state that information and documents in open audits and investigations remain confidential. The rule also provides guidance when the Department shall make available audit and investigative files that were closed within five years of the request.

E. Enforcement: The Department experiences no difficulty in enforcing these rules. The rules under Article 13 are necessary to protect confidentiality of information obtained during an audit or investigation, and to provide time periods for administrative actions. However, the Department has experienced situations of late where attorneys have requested open investigation files under review by the Department. The Department plans to discuss seeking legal advice on this issue from the Office of the Attorney General.

R4-28-1304. Response; Default.

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F) which provides general authority to the Commissioner to make rules.

B. Objective: The objective of the rule is to describe how and when parties to disciplinary proceedings are to respond to charges alleged in a notice of hearing.

R4-28-1305. Notice of Appearance of Counsel.

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F) which provides general authority to the Commissioner to make rules. Specific authority and references for the rule are found in A.R.S. §§ 32-2108, 32-2153, 32-2154, 32-2157, 32-2158, 32-2159, 32-2160, 32-2160.01, 32-2183.01, 32-2191, 32-2195.12, and 32-2197.08.

B. Objective: The rule describes the notice required in order to appear as counsel or representative of a party at a hearing on a contested matter or appealable agency action.

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

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F) which provides general authority to the Commissioner to make rules. Specific authority for the rule is specified in A.R.S. §§ 32-2102, 32-2154, 32-2157, 32-2158, 32-2159, 32-2160, 32-2195.07, 32-2195.11, 32-2197.14.

B. Objective: The rule clarifies the conditions for which a rehearing or review of a Commissioner's Order may be requested. It prescribes the form and content for a motion for rehearing or review, and that such motion may be amended.

R4-28-1313. Correction of Clerical Mistakes

A. Authorization: The Department of Real Estate's general authority derives from A.R.S. § 32-2107(F) which provides general authority to the Commissioner to make rules. Specific authority for the rule is specified in A.R.S. §§ 32-2102 and 32-2197.14.

B. Objective: The objective of the rule is to provide for the correction of clerical mistakes, errors, and omissions in any opinion, order, ruling or other Departmental process that is being submitted to an administrative law judge.

ARIZONA DEPARTMENT OF REAL ESTATE

Five-Year-Review Report

4 A.A.C. 28, Articles 4,7,8, &12

February 28, 2015

INTRODUCTION

The Arizona Department of Real Estate (Department) is responsible for execution of the laws of this state to protect the public interest through licensure and regulation of the real estate profession pursuant to A.R.S. § 32-2102.

The Department is statutorily charged with licensing and regulation of real estate salespersons, brokers, entities, licensed real estate educators and schools, and development services including public report disclosures and development inspections. The Department also investigates complaints that are filed by the public against licensees and directs appropriate remedial action if the violations are substantiated.

This five year rule review report covers 44 sections in A.A.C. Title 4, Chapter 28, Article 4 (5 rules relating to Education), Article 7 (1 rule relating to Compensation), Article 8 (4 rules relating to Documents), and Article 12 (34 rules relating to Developments).

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Information That Is Identical Within Groups of Rules

The following information is identical for each group of rules listed. Because this information is the same for each rule in the groups listed, it is not included in the analysis of each individual rule within the group.

A. Authorization: The Department's general authority derives from A.R.S. § 32-2107, which provides general authority to the Commissioner to adopt rules to carry out Title 32, Chapter 20, Arizona Revised Statutes.

C. Effectiveness: With the exception of the rules discussed in the individual rule review, the remaining rules in Article 4, 7, 8, and 12 are generally effective in achieving their stated objectives. There has been no substantive change to these rules or statutes, including the statutes governing the authority of the Commissioner that would diminish the effectiveness of these rules. Effectiveness was determined by analyzing the rules contained in this report against the applicable Department governing statutes. There have been no substantive changes to rule or statute since the previous five year rule review, unless otherwise stipulated in the individual rules analysis. The Department has determined effectiveness through analysis and practice that the rules achieve their regulatory purpose. The rules governing "Development Services" or as titled on rule, "Article 12. Developments" are generally effective in providing procedures for applying for public reports and other land development actions, including expedited processes, exemptions, modifications, subsequent sale of the land, handling earnest money, and maintaining records. However, the rules are not effective in meeting statutory mandates in all cases. Amending these rules to modify and update information requirements for a Public Report Disclosure would benefit developers, land dividers, and the public.

D. Consistency: With the exception of the rules discussed in the individual rule review, the remaining rules in Articles 4, 7, 8, and 12 are consistent with statute and other rules made by the agency. The Department consulted with Department leadership including division managers who provided input that is included within the individual rule review. Additionally, the Department held multiple industry stakeholder meetings to solicit input on all Department rules between July and October 2014 prior to submitting a request for an exception to the rulemaking moratorium on October 16, 2014. The exception request was not granted. Specific to this report, Articles 4, 7, 8, and 12 were discussed during these stakeholder meetings. Two other requests for an exception to the rulemaking moratorium over this set of rules were submitted in August 2013 and April 2014 respectively.

E. Enforcement: With the exception of the rules discussed in the individual rule review, the remaining rules in Articles 4, 7, 8, and 12 are enforced through the established policies and procedures as prescribed by rule and statute. All rules are consistently and fairly enforced. There have been no substantive problems with enforcing the rules as written.

G. Clarity, Conciseness, and Understandability of the Rule: With the exception of the rules discussed in the individual rule review, the remaining rules are clear, concise, and understandable as reported by the Department staff and division managers.

H. Criticisms Received within the Last Five Years: The Department has not received any written criticisms of any of the rules in Articles 4, 7, 8, and 12 within the past five years immediately preceding the five-year review report, as reported from investigation and licensing staff. The Department received input on how the rules in these Articles could be improved during the course of the Department held stakeholder meetings between July and October 2014.

I. Estimated Economic, Small Business and Consumer Impact: No substantive change in the economic impact of the following group of rules on small business or consumers has occurred since their currently effective text was approved by GRRC.

Article 4. Education

The Department was unable to locate the Economic, Small Business and Consumer Impact Statement (“EIS”) that was submitted with the last five-year rule review. However, it should be noted that there has been no adverse economic impact of the rules on the Department, the regulated community, or the public.

The Administrative Rules in Article 4 governing Education inform real estate instructors, administrators, and schools of the specific rules to comply with the statutory laws in A.R.S. Title 32, Chapter 20. The rules generally have minimal economic impact upon small businesses and consumers. The scope of this article applies to 230 real estate schools, 184 schools offering continuing education courses, 2,577 real estate courses, and 840 real estate school instructors.

The Department received 92 Distance Learning Approval applications in FY 2014. There are 1.25 staff members who work on these approvals. Each application requires approximately 4-5 hours completing each course to ensure that the correct information is presented. These results in 520-650 hours logged for these approvals.

From 7/1/13 to 6/30/14, the Department received the following number of applications for each approval type: 603 course approval applications, 92 distance learning approval applications, 70 school approval applications, and 736 instructor approval applications.

Article 7. Compensation

The Department was unable to locate the Economic, Small Business and Consumer Impact Statement (“EIS”) that was submitted with the last five-year rule review. However, it should be noted that there has been no adverse economic impact of the rules on the Department, the regulated community or the public.

The Administrative Rules in Article 7 governing Compensation provide clarity to the public, licensees and clients by stipulating who receives compensation from a transaction. The scope of this article applies to approximately 13,985 real estate brokers as of February 2, 2015.

Article 8. Documents

The Department was unable to locate the Economic, Small Business and Consumer Impact Statement (“EIS”) that was submitted with the last five-year rule review. However, it should be noted that there has been no adverse economic impact of the rules on the Department, the regulated community or the public.

There is a positive economic impact from these rules because the procedures in handling electronic and web-based records have been used under the Commissioner’s advisory authority, and have resulted in an economic savings to all parties. The electronic processes will continue to minimize ADRE staff requirements in auditing and investigations. Furthermore, requiring the public report license number to be included on all applicable sale or lease contracts provides security for the consumer that the transaction is regulated and not fraudulent at no additional cost to the developer. The scope of this article applies to approximately 13,985 brokers and 55,088 salespersons.

Article 12. Developments

The Department was unable to locate the Economic, Small Business and Consumer Impact Statement (“EIS”) that was submitted with the last five-year rule review. However, it should be noted that there has been no adverse economic impact of the rules on the Department, the regulated community or the public.

In FY 2014 the Development Services Division issued 601 Public Report Disclosures (23% increase from FY 2013), received 598 subdivision applications (40% increase from FY 2013), and issued 231 exemption requests (70% increase from FY 2013). Even with the increase in activity and applications, the Department reduced its administrative review timeframe and increased efficiency from 48 days in FY 2013 to 31 days in FY 2014 (An approximate 37% reduction).

J. Analysis Submitted to the Agency: There has not been any analysis submitted to the Department in the past five years by another person regarding the rules impact on this state’s business competitiveness as compared to the business competitiveness in other states regarding this group of rules.

K. Completed Previous Five Year Rule Review: This group of rules was the subject of a normal five-year rule review in 2010 and approved by GRRC in October 2010. The Department proposed changes to six rules in the previous report and cited that rules would be presented to Council by February 2011. The rulemaking was not completed due to the rulemaking moratorium set by Executive Order 2012-03 which expired on December 31, 2014. As previously stated, the Department requested an exception from the rulemaking moratorium set by Executive Order 2012-03 in August 2013, April 2014, and October 2014. The Department will complete a review over these rules as required by Executive Order 2015-01 by September 1, 2015 and will submit these amendments and others as discussed in the Individual Rule Review if an exception to the moratorium on rulemaking is granted.

L. Probable Benefits of the Rule: The benefits of the rules in Articles 4, 7, 8, and 12 outweighs the probable costs of the rules, and imposes the least burden and cost on the persons regulated necessary to achieve the regulatory objective of ensuring safety and

soundness in state chartered institutions. The rules covering the subject matter are necessary to fulfill the agency's mission.

M. Stringency of the Rule: No rule in this report was considered to be more stringent than related federal rules or state statutes. This was determined by analyzing Title 32, Chapter 20, Arizona Revised Statutes, applicable federal laws and rules including regulations set by the Consumer Financial Protection Bureau (CFPB) and the Real Estate Settlement Procedures Act (RESPA). The individual rules section will address areas of rule that do not clarify legislative intent derived from state statute, as well changes in federal law that are not reflected in state statutes.

N. Compliance with A.R.S. § 41-1037: No rule in Articles 4, 7, 8, and 12 was adopted after July 29, 2010, therefore no analysis for compliance is required.

O. Course of Action: The Department of Real Estate has no course of action planned for rulemaking on the articles in this five-year rule review with the exception of the rules that are discussed in the individual rule review. Pursuant to Executive Order 2015-01, the Department will provide the Governor's office, by September 1, 2015, with a review of the administrative rules governing the Department. This review will include any requests for exception to the moratorium on rulemaking to amend and/or repeal the discussed rules. The Department proposes to submit a rulemaking package to council by September 2016 if an exception is granted.

Analysis of Individual Rules

R4-28-401. Prelicensure Education Requirements; Waiver

- A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107. More specifically, A.R.S. § 32-2124 establishes requirements for licensure as real estate salespersons and brokers. A.R.S. § 32-2135 establishes the Commissioner's authority to license and regulate providers of real estate courses, to approve individual courses and instructors, and provides that the Commissioner may withdraw or deny certification or approval of real estate instructors for specified conduct.
- B. Objective:** The objective of this rule is to specify that a real estate candidate must either complete the required prelicensure education or, if granted a waiver of the prelicensure courses, complete a 27-hour Arizona specific course. It also prescribes the information to be provided by a candidate seeking a waiver of the prelicensure course.
- C. Effectiveness:** The stated objectives of the rule are effectively met except the waiver portion of the rule because it provides notice of the educational requirements for real estate license candidates, and demonstrates what information is required in order to request a Commissioner's waiver of the required prelicensure education. The Department has a Substantive Policy Statement in place that disallows waivers for prelicensure education. The real estate industry suggested removing the waiver language during the referenced stakeholder meetings. The process for requesting a waiver is stipulated in A.R.S. § 32-2124.
- D. Consistency:** The rule could be made more consistent with statute by defining "live classroom" pursuant to A.R.S. §§ 32-2124 and 32-2135, by further stating course offerings and exam content pursuant to A.R.S. § 32-2124, and by updating the rule to reflect legislative intent regarding military spouse eligibility for certain exemptions pursuant to A.R.S. § 32-4302.
- E. Enforcement:** The waiver portion of the rule is not enforced because the Substantive Policy Statement disallows waivers.
- G. Clarity, Conciseness, and Understandability of the Rule:** The rule will be more clear, concise, and understandable to the real estate industry and public when the Department submits a proposed rule revision to establish definition and guidelines for "live classroom", clarify course offerings and exam content pursuant to statute, outline the process for course certifications pursuant to A.R.S. §§ 32-2135 and 32-2124(B)(C), and clarify distance learning course requirements established by Substantive Policy Statement. Recent stakeholder meetings also discussed opportunities to expand course offerings and educational content by amending this rule to add subject matter.

L. Probable Benefits of the Rule: The benefits of this rule outweigh the burden or costs to the individuals regulated by the rule. Prelicensure education standards are necessary because of the need to ensure that individuals involved in real estate transactions are knowledgeable on matters related to real estate transactions. With the constant changes in the real estate practice, it is difficult and time consuming to ascertain that a candidate's prior education and/or experience is sufficient to protect the public pursuant to sections 32-2124 (B) and (C). The real estate industry laws and practices are changing so dramatically that there must be current information and instruction delivered to the licensee entering the real estate profession in Arizona. Licensees being granted a waiver for pre-license education may not be current on the practices necessary to protect the public.

O. Course of Action: The Department is proposing to amend this rule in accordance with Executive Order 2015-01 by providing a definition for "live classroom" pursuant to A.R.S. §§ 32-2124 and 32-2135, by further stating course offerings and exam content pursuant to A.R.S. § 32-2124, by updating the rule to reflect legislative intent regarding military spouse eligibility for certain exemptions pursuant to A.R.S. § 32-4302, by outlining the process for course certifications pursuant to A.R.S. §§ 32-2135 and 32-2124(B)(C), clarifying distance learning course requirements established by Substantive Policy Statement, and addressing opportunities to expand course offerings and educational content by amending this rule to add subject matter. The Department plans to submit its request for exception by September 1, 2015.

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

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific authority is established in A.R.S. §§ 32-2130 and 32-2135.

B. Objective: The objective of this rule is to establish that a real estate renewal applicant must take specified hours in various categories of approved courses. The procedure for requesting a waiver of some or all of the continuing education (CE) courses, and the circumstances under which the Commissioner will grant a waiver are specified. It also establishes requirements for submission of a distance learning course for approval as a CE course.

C. Effectiveness: The rule generally achieves its objective by establishing minimum credits required in identified course categories, and by elaborating on the topics that comprise these categories. The language in Subsection (A) does not state that a school seeking approval of a course for real estate CE credit under any of the categories must explain in its application that the majority of the course content corresponds to the topics in (A)(1). Some schools seem to have the mistaken impression that any course a real estate licensee takes should qualify for CE credit. The current distance learning course provisions are inadequate to identify poor quality distance learning courses and excessive Department staff time is expended reviewing distance learning courses, identifying delivery and content problems and labeling deficiencies that the applicant school should have identified before submitting the course application.

E. Enforcement: As stated in the 2010 review, the Department still experiences difficulty in enforcing this rule due to the mandated categories not being current to industry need, and a lack of clear approval criteria. There are also a number of real estate licensees who request a waiver of the CE requirement or credit for courses attended which the Department did not pre-approve. Both of these require staff time to review, evaluate, and respond to and minimize the Department's ability to determine the education and knowledge level of the licensee. Enforcement would be improved if the Department were able to update CE course offerings and requirements.

G. Clarity, Conciseness, and Understandability of the Rule: The rule will be more clear, concise and understandable if descriptions of course categories and the conditions were updated. Some school operators have difficulty complying with the provisions relating to distance learning courses, presumably because they do not understand them. Previously submitted exception requests sought to address these issues. The required categories are not current to industry needs and are not defined in sufficient detail so as to encourage school operators to develop courses for ADRE approval, and for real estate licensees to take courses in the appropriate mandatory categories.

O. Course of Action: The Department is proposing to amend this rule in accordance with Executive Order 2015-01 by amending the rule to update descriptions and add clarity to course categories. The Department plans to submit its request for exception by September 1, 2015.

R4-28-403. License Examinations

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific authority is established in A.R.S. § 32-2130.

B. Objective: The objective of this rule is to establish the minimum frequency with which the state license examination will be administered, advise license candidates that they will be notified only whether they passed the examination (with the notification for an applicant who did not pass the exam showing the score for the examination and the relative score for each content area), and inform them that they must meet statutory qualifications for licensure, even though they may have successfully passed the examination. The Commissioner must ascertain that the applicant has an appropriate knowledge of English, reading, writing, spelling, arithmetic, legal implications, agency, contract law, financial fiduciary obligations, business, ethics, and any other areas the Commissioner deems necessary and proper.

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

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific authority is established in A.R.S. § 32-2135.

B. Objective: The objective of this rule is to establish the information required for school approval (subsection A), for course approval (subsection B), and for instructor approval (subsection C). It establishes what records a school must maintain and for how long (subsection D), what information a school shall make available to students before enrollment (subsection E), and identifies what activities may be considered job placement services that may be offered by a school (subsection F). It concludes with describing circumstances under which the Department may and shall investigate and observe the classes offered at or by any school owner, operator, or instructor (subsection G), and prescribes what changes in school ownership, location, or qualifications of the school owner, operator or director, and instructor qualifications require notice to the Department (subsection H).

E. Enforcement: As stated in the 2010 review, the Department feels that the rule still falls short of promoting the highest caliber of school administrator, instructor and curriculum. The rule lacks definition of a school operator and school administrator. In addition, the rule lacks specific qualifications to operate a real estate school. The rule must be enhanced to clarify the approval criteria for a school, and its administrator, by clearly stating the responsibility of the school. The approval criteria must be clarified to allow the schools to enforce the quality and performance of the instructors affiliated with the schools, and ensure that the course content being taught is accurate and current.

G. Clarity, Conciseness, and Understandability of the Rule: The rule will be more clear, concise and understandable if definitions and further description of school requirements set in statute were clarified and updated in the rule. Some school operators have difficulty complying with the provisions relating to distance learning courses, presumably because they do not understand them. Previously submitted exception requests sought to address these issues.

O. Course of Action: The Department is proposing to amend this rule in accordance with Executive Order 2015-01 by amending the rule to clarify and update real estate school, course, and instructor approval processes. The Department plans to submit its request for exception by September 1, 2015.

R4-28-405. Business Brokerage Specialist Designation

A.A.C. R4-28-405 is being allowed to expire for the reason that the legislature repealed the statutes governing business brokers.

R4-28-701. Compensation Sharing Disclosure

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. § 32-2151.

B. Objective: The objective of this rule is to ensure all parties in a transaction know who is receiving compensation from a licensee.

E. Enforcement: Department investigations and auditing functions verify the enforcement of the rule. As stated in the 2010 report, public complaints are often received concerning undisclosed compensation by undisclosed third -party transactions; i.e. a licensee may represent themselves to be an investor, thereby allowing them to buy and flip property without disclosing who the original owner was or the financial benefits to themselves.

G. Clarity, Conciseness, and Understandability of the Rule: The rule is clear, concise, and understandable, however, there would be clear benefit to the public if there were further disclosure requirements to address the issue presented in the enforcement section.

O. Course of Action: Pursuant to Executive Order 2015-01, the Department will review the rule by September 1, 2015 to access if a proposed amendment will be offered in its exception request.

R4-28-802. Conveyance Documents

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. § 32-2151.

B. Objective: The objective of the rule is to implement procedures to confirm the statutory requirements that all parties have copies of transaction documents, require that all offers must be presented in accordance with a contract, and identify documents that must be maintained in transaction files pursuant to statute. The objective of the recommended amendments would codify the Commissioner's several advisories and substantive policy statements that apply applicable statutes, A.R.S. §§ 32-2151.01, 32-2175, and rules to electronic and web based document preparation, distribution, and storage and transaction management systems.

C. Effectiveness: The rules are generally effective in achieving the objectives to require: licensees to present all offers and convey all documents to all principal parties, and to retain all documents per statute; developers to receive signed acknowledgment of delivery of the public report and disclosure of the disposition of earnest money to a buyer, and sellers of unimproved lots and timeshares to disclose rescission periods for nullifying contracts. The recommended amendments will satisfy the objectives of:

- a. Codifying the Commissioner's existing advisory and substantive policy statements on electronic procedures applicable to the rules (R4-28-802); and
- b. Providing protection to the public by requiring developers to identify the public report license number on all contract documents (R4-28-803).

E. Enforcement: Generally, the rule is sufficient to enforce statutory mandates; however, the recommended amendments will improve enforcement by applying the Substantive Policy Statement which was collaborated on by the industry.

O. Course of Action: The Department is proposing to amend this rule in accordance with Executive Order 2015-01 by codifying the rule with the Department's Substantive Policy Statement. The Department plans to submit its request for exception by September 1, 2015.

R4-28-803. Contract Disclosure

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2107, 32-2183, 32-2197.02, 32-2197.05, 32-2197.08.

B. Objective: The objective of the rule is to establish procedures for transferring interests in land under development.

C. Effectiveness: This rule generally achieves its objective. However, the purchaser would benefit if the rule were amended to require the Public Report License number be included on the purchase documents.

O. Course of Action: The Department is proposing to amend this rule in accordance with Executive Order 2015-01 by recommending the rule improve the protection of the inclusion of the potential purchaser through the availability of the Public Report for the development, including the Public Report license number on the documents. The proposed amendment will ensure that the purchaser of such property has the license number under which the interest is being transferred. The Department plans to submit its request for exception by September 1, 2015.

R4-28-804. Rescission of Contract

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107.

B. Objective: The objective of this rule is to ensure that purchasers of real estate interests in unimproved land, land under development, or timeshares are aware that they have a statutory right to rescind the contract under certain conditions.

R4-28-805. Public Report Receipt

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2183, 32-2195.03, and 32-2197.08.

B. Objective: The objective of this rule is to specify the language developers will use in the public report receipt that prospective purchasers sign before executing a binding contract to purchase or lease an interest in the development.

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

- A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.01, 32-2181.02, 32-2183, 32-2194.01, 32-2194.03, 32-2195, 32-2195.01, 32-2197.02, 32-2197.08, and 32-2198.01.
- B. Objective:** The objective of the rule is to provide procedures for filing applications for a public report, certificate of authority, or special order of exemption.
- C. Effectiveness:** The rules are generally effective in achieving the objective of ensuring persons applying for a Public Report comply with the procedure requirements, however, there is a deficiency in not requiring an email address (if available), and the rule should not require that foreign limited liability companies show proof of being in good standing with the Arizona Corporation Commission.
- O. Course of Action:** The Department is proposing to amend this rule in accordance with Executive Order 2015-01 by recommending the rule require an email address (if available) be provided by the applicant, and removing the requirement that foreign limited liability companies show proof of being in good standing with the Arizona Corporation Commission. The Department plans to submit its request for exception by September 1, 2015.

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

- A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183, 32-2194.01, 32-2195.03, and 32-2197.02.
- B. Objective:** The objective of this rule is to provide procedures for filing a development map.

R4-28-A1203. Flood and Drainage; Land Uses; Adverse Conditions

- A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183, 32-2194.01, and 32-2195.
- B. Objective:** The objective of the rule is to provide procedures for disclosing flood areas and other adverse conditions concerning property.
- G. Clarity, Conciseness, and Understandability of the Rule:** The stated objectives of the rule are effectively met, however additional clarity could be added with additional disclosure requirements to increase disclosure in Public Reports to address earth fissures and pipelines. Recent stakeholder meetings included discussions with the industry to address these points.

O. Course of Action: The Department is proposing to amend this rule in accordance with Executive Order 2015-01 by proposing an amendment to add disclosure requirements in Public Reports to address earth fissures and pipelines. The Department plans to submit its request for exception by September 1, 2015.

R4-28-A1204. Utilities

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183, 32-2194.01, and 32-2195.

B. Objective: The objective of the rule is to provide procedures for disclosing information concerning utility services.

C. Effectiveness: The rule is generally effective in achieving the objective of requiring the disclosure of information about the utilities (i.e. which company served the area). However, it does not always require that the developer disclose through the Public Report whether utilities are available to a property.

O. Course of Action: Pursuant to Executive Order 2015-01, the Department will review the rule by September 1, 2015 to assess if a proposed amendment will be offered in its exception request.

R4-28-A1205. Water Supply

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183, 32-2183.01, 32-2194.01, 32-2195, 32-2197.02 and 32-2197.08.

B. Objective: The objective of the rule is to provide procedures for disclosing water resources.

R4-28-A1206. Sewage Disposal

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183.01, 32-2195 and 32-2197.02.

B. Objective: The objective of the rule is to provide procedures for disclosing sewage disposal.

R4-28-A1207. Streets and Access

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.02, 32-2183, 32-2185.01, 32-2195, 32-2197.02 and 32-2198.01.

B. Objective: The objective of the rule is to provide procedures for disclosing access to property.

R4-28-A1208. Flood Protection and Drainage Improvements

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183, 32-2194.01, and 32-2195.

B. Objective: The objective of the rule is to provide procedures for disclosing flood protection and drainage improvements.

R4-28-A1209. Common, Community, or Recreational Improvements

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183, 32-2194.01, 32-2197.02, 32-2197.08, and 32-2198.01.

B. Objective: The objective of the rule is to provide procedures for disclosing common, community, and recreational facilities.

R4-28-A1210. Master Planned Community

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183 and 32-2194.03.

B. Objective: The objective of the rule is to provide procedures for disclosing offsite improvements in master planned communities.

R4-28-A1211. Assurances for Completion and Maintenance of Improvements

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2183.04, 32-2193.02, 32-3294.01, 32-2194.03, 32-2195.03, 32-2197.02, 32-2197.05, and 32-2198.08.

B. Objective: The rule provides procedures for providing assurance of completion and maintenance of common areas thereafter.

C. Effectiveness: The rule would be made more effective by adding a requirement for the developer to offer assurances of completion for facilities that will be jointly owned in a project (i.e. by an HOA).

O. Course of Action: Pursuant to Executive Order 2015-01, the Department will review the rule by September 1, 2015 to assess if a proposed amendment will be offered in its exception request.

R4-28-A1212. Schools and Services

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority is derived from A.R.S. § 32-2181.

B. Objective: The objective of the rule is to provide procedures for disclosing locations of schools and information about public and emergency services.

R4-28-A1213. Property Owners' Association

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.02, and 32-2198.14.

B. Objective: The objective of the rule is to provide procedures for disclosing information about property owner associations.

R4-28-A1214. Development Use

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.02, 32-2195, and 32-2197.08

B. Objective: The objective of the rule is to provide procedures for disclosing whether lots will be sold or leased, their proposed use, whether they are in an open range area, and whether mineral rights and other material issues exist.

R4-28-A1215. Development Sales

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.02, 32-2181.03, 32-2185, 32-2195, 32-2195.03 and 32-2197.08.

B. Objective: The objective of the rule is to provide procedures for the required information about the manner in which the sale or lease of lots within the development will be conducted, including the following: how title will be conveyed, whether cash sales are permitted and, if so, when buyer takes title, where deposits and earnest monies will be held, whether the developer has access to earnest money and deposits, under what conditions the funds are released, when the purchaser will be permitted to use and occupy the lot; an explanation if title will not be conveyed free and clear of all liens, the estimated average sales price, where transaction records will be stored, and details about the lease if the property is to be leased.

R4-28-A1216. Title Reports and Encumbrances

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.02, 32-2183, 32-2185, 32-2185.01, 32-2194.01, 32-2195, 32-2195.03, 32-2197.08, 32-2197.12, and 32-2198.01.

B. Objective: The objective of the rule is to identify required information about the developer's title to the property, including a current title report, copies of all liens and encumbrances, and recorded and unrecorded documents reflected in the title report or known to applicant such as restrictions, trust agreements, options, and maps pertaining to the development

R4-28-A1217. ADEQ Approval

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority is derived from A.R.S. § 32-2181.

B. Objective: The objective of the rule is to inform developers that approval of their subdivision or timeshare project by the Arizona Department of Environmental Quality is required.

R4-28-A1218. Registrations in Other Jurisdictions

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority derived from A.R.S. § 32-2197.02.

B. Objective: The objective of the rule is to inform the Department of other jurisdictions where the subject development is registered for approval to sell.

R4-28-A1219. Condominium Developments

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183, 33-1215 and 33-1219.

B. Objective: The objective of the rule is to require proof that development of a condominium may legally commence.

R4-28-A1220. Foreign Developments

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.02, 32-2183, 32-2183.01, 32-2183.04, 32-2185.01, 32-2185.06, 32-2194.15, 32-2195, 32-2195.05, 32-2197.02, 32-2197.07, 32-2197.08, 32-2197.17, and 32-2198.14.

B. Objective: The objective of the rule is to inform developers of information that will be required to seek approval to advertise, promote, or sell interests in a development located outside Arizona to residents of this state.

R4-28-A1221. Cemetery Developments

- A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2194.01, 32-2194.03, 32-2194.24, 32-2194.25, 32-2194.26, 32-2194.27, 32-2194.28, 32-2194.29, and 32-2194.30.
- B. Objective:** The objective of the rule is to require financial information concerning management and funding of a cemetery development and its maintenance.

R4-28-A1222. Membership Camping Developments

- A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2198.01, 32-2198.03, 32-2198.08 and 32-2198.14.
- B. Objective:** The objective of the rule is to identify information and documentation that is required from a person (including an entity) that wishes to develop a regulated membership campground.

R4-28-A1223. Affidavit

- A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183, 32-2194.01, 32-2195, 32-2197.02, and 32-2198.01.
- B. Objective:** The objective of the rule is to inform developers that they are required to execute an affidavit attesting to the truth of the information they have provided in their application for a public report or certificate of authority.

R4-28-B1201. Expedited Registration for Improved Subdivision Lots and Unsubdivided Land

- A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.02, 32-2182, 32-2183, 32-2183.04, 32-2184, 32-2185.01, 32-2195.01, 32-2195.03, 32-2195.04 and 32-2195.10.
- B. Objective:** The objective of the rule is to provide procedures to expedite an application for a public report.

R4-28-B1202. Conditional Sales Exemption

- A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.01, 32-2181.02, 32-

2181.03, 32-2182, 32-2183, 32-2183.01, 32-2183.04, 32-2184, 32-2185.01, 32-2185.02, 32-2185.06, 32-2195, 32-2195.01, 32-2195.03, 32-2195.04, 32-2195.05, and 32-2195.10.

B. Objective: The objective of the rule is to provide procedures to allow sale of lots before a public report is issued.

G. Clarity, Conciseness, and Understandability of the Rule: The rule is clear and concise, and understandable, however, there would be clear benefit to the public if the name of this exemption was changed to the industry understood term “Special Order of Exemption,” which will incorporate conditional sales exemptions as well as lot reservations. The amendment would outline what is required in order to apply for these two exemptions. It will also denote the circumstances under which these exemptions will expire, and provide an opportunity for a voluntary suspension of sales by the developer or owner. The title for the rule would also need to be updated.

O. Course of Action: Pursuant to Executive Order 2015-01, the Department will review the rule by September 1, 2015 to assess if a proposed amendment will be offered in its exception request.

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

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2182, 32-2183.04, 32-2184, 32-2194.10, 32-2195.01, 32-2195.03, 32-2195.10, and 32-2197.04.

B. Objective: The objective of the rule is to inform developers of the requirements for providing notice of changes and amending the public report. The rule clearly identifies the required information to notify the Department of the change, and to amend the development's public report when required.

R4-28-B1204. Cemetery Notice; Amendments

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. § 32-2194.01 and 32-2194.10.

B. Objective: The objective of the rule is to inform cemetery owners and operators of their obligation under the statute to notify the Department of changes to the cemetery, its owners, or operator by amending the information previously submitted to the Department.

R4-28-B1205. Contiguous Parcels

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-3181 and 32-2181.02.

B. Objective: The objective of the rule is to clarify that the Department will count all purchases of contiguous lots in a subdivision by the same buyer as a single lot.

R4-28-B1206. Filing with HUD

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181 and 32-2181.02.

B. Objective: The objective of the rule is to clarify that developers must comply with United States Housing and Urban Development Department (HUD) mandates if the development is to be certified by HUD.

D. Consistency: The rule is no longer consistent with federal law. The Consumer Financial Protection Bureau is now tasked with the mandates previously established by HUD.

O. Course of Action: The Department is proposing to amend this rule in accordance with Executive Order 2015-01 by amending the title and rule to “Filing with the Consumer Financial Protection Bureau (CFPB)” to clarify that developers must file and comply with CFPB. The Department plans to submit its request for exception by September 1, 2015.

R4-28-B1207. Subsequent Owner

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-3281, 32-2181.02, 32-2183, 32-2184, 32-2185, 32-2185.01, 32-2185.09, 32-2195, 32-2195.03, 32-2195.04, 32-2195.10, 32-2197.02, 32-2197.04, 32-2197.05, 32-2197.06, 32-2197.08, and 32-2197.09.

B. Objective: The objective of the rule is to require a developer who acquires 6 or more lots in a subdivision/unsubdivided land, or 12 or more shares in a time-share development, to obtain a new public report before reselling the lots or shares.

D. Consistency: Consistency of the rule with statute could be improved by updating the rule to reflect legislation passed by Laws 2014, Chapter 187, regarding unsubdivided land. When counting the number of parcels or fractional interests sold in consideration of real estate subdividing laws, a lot, parcel or fractional interest, as defined by law, that is sold ten or more years after the date of the last lot, parcel or fractional interest does not count toward the sixth sale which triggers subdivision regulations.

O. Course of Action: The Department is proposing to amend this rule in accordance with Executive Order 2015-01 by amending the rule to address legislation enacted in 2014. The Department plans to submit its request for exception by September 1, 2015.

R4-28-B1208. Public Report Correction

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.02, 32-2183, 32-2184, 32-2185, 32-2185.01, 32-2185.09, 32-2195, 32-2195.03, 32-2195.04, 32-2195.10, 32-2197.04, 32-2197.05, 32-2197.06, 32-2197.08, and 32-2197.09.

B. Objective: The objective of the rule is to provide for correction of errors in the public report filed with the Department.

R4-28-B1209. Options; Blanket Encumbrances; Releases.

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.02, 32-2183, 32-2184, 32-2185, 32-2185.01, 32-2185.09, 32-2195, 32-2195.03, 32-2195.04, 32-2195.10, 32-2197.02, 32-2197.04, 32-2197.05, 32-2197.06, 32-2197.08, and 32-2197.09.

B. Objective: The objective of the rule is to establish the Department's position on developments where all or some lots are held under option, are subject to blanket encumbrance, or if conditions are imposed on the release of such encumbrances.

R4-28-B1210. Earnest Money.

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority is includes A.R.S. §§ 32-2181, 32-2181.03, 32-2183, 32-2185, 32-2185.01, 32-2185.06, 32-2195, 32-2195.03, 32-2195.04, 32-2195.10, 32-2197.02, 32-2197.04, 32-2197.05, 32-2197.06, 32-2197.08, 32-2197.09, and 32-2197.10.

B. Objective: The objective of the rule is to set out conditions requiring a developer to deposit earnest money and down payments into a neutral depository.

R4-28-B1211. Recordkeeping.

A. Authorization: General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority is includes A.R.S. §§ 32-2151.01-32-2181, 32-2181.03, 32-2183, 32-2185, 32-2185.01, 32-2185.06, 32-2195, 32-2195.03, 32-2195.04, 32-2195.10, 32-2197.02, 32-2197.04, 32-2197.05, 32-2197.06, 32-2197.08, 32-2197-09, and 32-2197.10.

B. Objective: The objective of the rule is to provide for recordkeeping in the event of sale or lease of property by a developer without a listing broker.