



ARIZONA STATE SENATE
Fifty-Sixth Legislature, Second Regular Session

FACT SHEET FOR S.B. 1171

real estate department; licensing; administration

Purpose

Makes various administrative changes relating to the Arizona Department of Real Estate (ADRE).

Background

Established in 1921, ADRE protects the public interest through licensure and regulation of the real estate profession in Arizona. ADRE, under direction of the Real Estate Commissioner (Commissioner), is responsible for: 1) licensing and regulating real estate, cemetery and membership camping salespersons and brokers; 2) investigating complaints from the public and licensees regarding real estate transactions; 3) ensuring enforcement of real estate statutes and rules; 4) providing proper educational material to guide and assist the public and licensees; 5) issues public reports for timeshares, subdivisions and unsubdivided land; and 6) inspects brokers' records and transactions to ensure compliance with statutory requirements.

In addition, ADRE is responsible for the oversight and regulation of all Arizona real estate schools and instructors. Real estate license applicants may complete the required licensure course either online or in-person. The applicant must complete the state examination in person. Currently, the Commissioner may waive all or a portion of the prelicensure course requirement, other than the 27-hour, Arizona-specific course, for applicants who hold a current real estate license in another state.

The Arizona Real Estate Advisory Board (Board) provides the Commissioner recommendations as it deems necessary and beneficial to the best interests of the public. The Board must annually present to the Governor a performance evaluation of the Commissioner and ADRE. The Board is composed of 10 members, appointed by the Governor, who serve six-year terms. The membership of the Board consists of: 1) two members from different counties, each of whom is a real estate broker with at least five years of brokerage experience in Arizona; 2) two members who have been engaged in residential real estate brokerage for the five years immediately preceding appointment; 3) one member who has been engaged in multifamily residential rental property management with a real estate broker license for the five years immediately preceding appointment; 4) two members who are primarily engaged in subdividing real property; and 5) three public members who are not related within the third degree of consanguinity or affinity to any person holding a broker's or salesperson's license from Arizona ([A.R.S. Title 32, Chapter 20](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Broker Responsibilities

1. Requires each employing broker to have and maintain on file with the Arizona Corporation Commission an active and valid statutory agent in lieu of a definite place of business and requires the employing broker to notify ADRE of the definite place of business or valid statutory agent.
2. Allow a broker to electronically retain a complete record of all real estate transaction monies.
3. Replaces the requirement for a broker to maintain a trust fund account bank reconciliation and client ledger balance with the requirement for the broker to monthly complete a three-way reconciliation between trust fund account bank statements, client ledgers and trust fund account ledgers and provide an explanation for any variation.
4. Classifies, as a statutory violation, a variation caused by:
 - a) failing to remove any interest earned on a trust fund account once every year;
 - b) allowing advance payment of monies belonging to others to be deposited in the broker's personal account or to be commingled with personal monies;
 - c) failing to identify monies as nonowner tenant monies in descriptive receipts;
 - d) failing to maintain separate ledgers for each property;
 - e) failing to regularly complete the required three-way reconciliation;
 - f) transferring monies between accounts owned by different persons unless each person consents in writing;
 - g) failing to create checks and balances; or
 - h) failing to follow state and federal requirements.
5. Increases, from \$3,000 to \$5,000, the maximum amount of broker personal monies allowed to be deposited in a trust fund account to avoid a violation of commingling.
6. Requires a broker who engages in property management activities to complete a broker management clinic designed to teach property management proficiency.
7. Specifies that all property management accounts must be designated as trust accounts on the broker's records and removes the requirement that the accounts must include descriptive wording in the trust account title.
8. Allows any remaining individuals authorized as an officer and shareholder after the termination of a limited liability company (LLC) or corporation real estate broker license due to death to continue business under the corporation's or LLC's license for up to an additional 90 days pending the installation of a new designated broker.
9. Prohibits a corporation or LLC from assuming representation for new clients while a new license is pending or until a new designated broker is added to the entity's license.

10. Prohibits a licensed entity from having a person named as the designated broker on the license, if the person is or was named as a designated broker or its equivalent on any other license in Arizona or another state and if:
 - a) the person is under an order to cease and desist from engaging in real estate activity;
 - b) the person's license is under suspension; or
 - c) the person had their license revoked in the last two years for an act or omission that occurred while the person is or was named on the license.
11. Allows a nonresident broker to use online transaction and employment recordkeeping if the data is backed up and the broker notifies ADRE of the online recordkeeping provider name and contact information.

Board

12. Modifies Board membership composition by:
 - a) requiring one of the two members who must have five years of Arizona brokerage experience to be a real estate salesperson and specifies that the experience must be residential brokerage experience;
 - b) requiring one member to be engaged in commercial, rather than residential, real estate brokerage for five years prior to appointment;
 - c) requiring one member, rather than two members, who primarily engages in subdividing real property and specifies that the member must be engaged in subdivision for five years prior to appointment; and
 - d) adding one member who has been engaged in timeshare, campground or cemetery sales for five years immediately prior to appointment and one member who has been an active school administrator or approved instructor for five years immediately prior to appointment.
13. Authorizes all Board members to continue serving until the expiration of their terms and directs the Governor to make subsequent appointments as prescribed.

Commissioner Duties

14. Specifies that the Commissioner may suspend, revoke or deny a person's license if the person within the last five years acted without written consent from all parties for multi-party transactions.
15. Removes the Commissioner's requirement to issue a new license for the unexpired license period after receiving an employing broker's notice of a change of business location or statutory agent.
16. Allows the Commissioner to exempt a real estate school from the requirement to provide a 14-day notice before holding a course of study to allow ADRE to monitor the course.
17. Removes, from the candidacy qualifications for the position of the Commissioner, the exception for the candidate to have a financial interest in a trust over which the applicant has no control.

Fingerprint Clearance Card

18. Removes the requirement that ADRE must suspend a license if the licensee's fingerprint clearance card (FPCC) is determined to be invalid and the person fails to submit a new valid FPCC within 10 days after ADRE notification, and instead allows ADRE to suspend a person's license whose FPCC is suspended and either:
 - a) the person was convicted of an alleged crime causing the suspension of the FPCC; or
 - b) the person fails to submit sufficient evidence to prove the person applied for a good cause exception within five business days after ADRE notification.
19. Allows the Commissioner to use an individual's conviction of an alleged crime causing FPCC suspension as reason for denial of the individual's license application.

License Application, Real Estate School and Examination Requirements

20. Specifies that a real estate salesperson or broker license applicant's in-person course examination must be proctored.
21. Removes, from the broker or salesperson license application requirements, the requirement to include the applicant's employment history for the last 10 years and any experience in real estate sales, appraisals, transfers or similar business deemed necessary by the Commissioner.
22. Clarifies that a salesperson or broker license application must include the applicant's address of record.
23. Specifies that the requirement for a real estate salesperson or broker license applicant to complete a 27-hour Arizona-specific course does not apply to a military spouse applicant who holds a current real estate license in another state and qualifies for licensure reciprocity.
24. Removes the requirement for a real estate salesperson or broker license applicant who holds an equivalent license in another state to demonstrate that the applicant has passed a national real estate examination within the past five years to qualify for the exemption from taking the national portion of the real estate examination.
25. Requires an out-of-state broker or salesperson license applicant to pass the portion of the examination that is specific to Arizona's real estate practice and laws.
26. Requires a live classroom course outline to state how the course is intended to protect the public, rather than the course's desired instructional outcome.
27. Replaces the term *online course* with the term *distance learning* and modifies the definition to include online continuing education, rather than only prelicensure education.

Timeshares

28. Specifies that the public report of a timeshare plan must be made available to each prospective purchaser in written format either by electronic means or in hard copy and removes the public report availability by CD-ROM.

29. Removes the option for a prospective timeshare seller to provide notice by CD-ROM format to ADRE of the seller's intention to accept timeshare interest reservations and specifies that the notice must be in a hard copy or electronic form approved by the Commissioner.

Miscellaneous

30. Removes the requirement that a licensed salesperson or broker must have available a current copy of ADRE statutes, rules and annotations.
31. Removes the annual requirement for ADRE to contact the chairperson of the Arizona military airspace working group and request the chairperson's name, address and telephone number.
32. Defines *address of record*.
33. Makes technical and conforming changes.
34. Becomes effective on the general effective date.

Prepared by Senate Research

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