Arizona Department of Real Estate (ADRE)  
Real Estate Advisory board  
Minutes  
May 18, 2011

The Arizona Real Estate Advisory Board met on Wednesday, May 18, 2011, at the Arizona Department of Real Estate (ADRE), 2910 N. 44th. Street, First Floor Conference Room, in Phoenix, Arizona.

I. Call to Order  
Chair Charles Bowles called the meeting to order at 10:07 a.m.

Members present:  
Charles Bowles, Chair, Tucson  
Carla Bowen, Vice-Chair, Navajo County  
Frank Dickens, Member, Phoenix  
Kim Horn, Member, Prescott

Absent:  
Bruce Mosby  
Jo Ann Sabbagh  
Patti Shaw  
Ann White

ADRE Representatives present:  
Judy Lowe, Commissioner  
Mary Utley, Assistant Commissioner-Operations  
Gretchen Conger, Legislative Liaison  
Vicky Rokkos, Business Services Manager

Public:  David Schmid, ADRE licensee

II. Introductions & Welcome  
Chair Bowles welcomed all to the meeting and acknowledged David Schmid, a public participant. After welcoming everyone, Chair Bowles read the following quotes:

"Confidence is contagious. So is lack of confidence" by Michael O’Brien

"It’s not the hours you put in your work that count. It’s the work you put in the hours” Sam Ewing

III. Minutes  
Upon a motion by Carla Bowen, seconded by Kim Horn, the Minutes of March 9, 2011 were unanimously approved.
IV. Facilitator Report
Chair Bowles reported that he had only received one call-the call being from an individual who needed clarification on paperwork regarding cancelling a listing. The other Board members reported that they had not received any inquiries.

V. Automatic Pre-Approval of National Designation Courses-Charlie Bowles, Chair
ADRE Legislative Liaison, Gretchen Conger provided an overview on the “Laws, Rules & Substantive Policy statements for Continuing Education Requirement”. (See attached handout) Ms. Conger made reference to page 4 of the handout, number 7. Which reads “The Department may grant continuing education credit for a course that does not have a certificate of approval under R4-28-404 if the applicant demonstrates to the satisfaction of the Commissioner that the course meets the requirements prescribed in R4-28-404 and the courses content requirements of this Section”. Commissioner Lowe reported that in the past years, the Department had approved inappropriate courses, which lead to reviewing and modifying the Course Approval Application. The Course Approval Application has been revised so that when an approved ADRE school is completing the application, it must ensure that the courses conform to applicable statues or rules.

Commissioner Lowe reported that she reviews every request for a waiver and has not approved the waivers. She expressed a strong belief that the industry is constantly changing and licensees need to be knowledgeable of all changes affecting their license and industry.

There was a brief discussion on Broker Price Opinions (BPO) and various examples were provided by Commissioner Lowe. Commissioner Lowe stated that only a Broker can do and/or authorize a salesperson to do a BPO.

VI. Real Estate Advertising Regulations-Gretchen Conger
Ms. Conger stated there has been much discussion and confusion in regard to R4-28-502. Advertising by a Licensee, specifically “J” which states “The provisions of subsections (E) and (G) do not apply to advertising that does not refer to specific property” and was incorrectly added to the rule in 2006. Discussion ensued regarding how this section of the rule is being interpreted.

A motion was made by Vice-Chair Carla Bowen that R4-28-502 (J) be repealed, seconded by Kim Horn. Motion passed unanimously.

VII. Legislative Overview 2011-Gretchen Conger
ADRE Legislative Liaison, Gretchen Conger reported on the Legislative Overview 2011 handout. (See attached). She stated that an Informational Alert had been sent last week providing licensees with the legislative overview. She stated that an article in the Arizona Republic which reported that a bill had passed regarding HOAs and a ban on parking on a public street. Ms Conger reported that no such bill passed and the Arizona Republic had published a retraction.

She provided a more thorough explanation of the following: SB 1292, SB1458, and HB 2005 and discussion ensued. There was discussion on rule changes and the on-going Rule Moratorium. Ms. Conger stated that SB 1458 was specific to a spouse of an individual in the military and not intended for the purposes of “reciprocity”.

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VIII. **Substantive Policy Statement Review-Judy Lowe, Commissioner**
Commissioner Lowe reported that ADRE is reviewing all past Substantive Policy Statements (SPS) and ensuring that the SPS is still pertinent, legal and necessary. An SPS can only clarify statute and/or rule. Commissioner Lowe stated that as the review is being conducted and modifications are being completed, word will need to get out to all licensees of these changes/modifications. She reported that a revised edition of the Arizona Real Estate Law Book is scheduled for printing in March 2012. The printing of the Law Book will be paid for by the Education Fund. Commissioner Lowe stated that there is currently $27,000 in the Education Fund and with a 2012 mandated sweep of $4,000. The “Buying Real Estate in Mexico, A Consumer Guide” is being reprinted and 3,000 copies will be made available. The $3,000 for the Consumer Guide will be paid by the Education Fund and all sales of the Guide will reimburse the Fund.

IX. **Update on Recovery Fund-Carla Bowen (Research)**
Member Carla Bowen reported that she continues to do research on Recovery Funds. She reported that she is looking into what each state does regarding their Recovery Fund and will have a report for the Real Estate Advisory Board at the next scheduled meeting.

Ms. Conger stated that the Legislation eliminating the Escrow Fund had been an exception since there had only been one claim over the past 16 years. Member Bowen requested that Ms Rokkos provide information on pay outs from the Recovery for the past ten years.

Business Services Manager Rokkos reported that currently the Recovery Fund is not faring well. (See attached report). To date, there are twelve (12) applications pending; none pending from 2010; with four (4) payouts in 2010 totaling close to $100,000. In 2011, so far, there has been one payout of $12,180. Although the Department does pursue repayment from the licensee; many factors, such as the licensee being incarcerated; filing bankruptcy; or dying, this has prevented the Department from successfully collecting repayment.

Ms. Rokkos reported currently there are five (5) claims which include one for the Condo Fund. (Discussion occurred on requiring bonds of developers and/or brokers.

X. **Broker Policy and Procedure Manual-Commissioner Lowe**
Commissioner Lowe reported that with the feedback and assistance from various stakeholders, the newly revised Broker Policy Manual will be posted by June 1st.

XI. **Strategic Planning-Judy Lowe, Commissioner**
Commissioner Lowe stated that ADRE is in the process of developing a Strategic Plan. ADRE managers are being asked, “What can they do with the staff they have or one less staff person?” Currently, ADRE has twenty-nine (29) employees who are being asked to deliver the same service package as has been delivered in the past with many more employees. Commissioner
Lowe stated that clearly staffing is a challenge. Staff continues to review processes and procedures. The Department’s Information and Technology Division is also being challenged to take ADRE’s technology to the “next level”.

XII. Commissioner’s Report-Judy Lowe, Commissioner

Commissioner Lowe provided statistics and updates on the various divisions.

- Licensing Division-issued three hundred forty-seven licenses in April.
  - 270 Salesperson
  - 42 Broker
  - 35 Entity

- Education Division-consists of two line staff and Division Manager Carla Randolph
  - 117 Applications approved in April
  - 37 pending (working at getting this number under 25)
  - Total number of schools- 236
    - Number of active status courses-3,544
    - Number of Instructors-1,275

- Volunteer Monitor Assignments- 6  (These are completed by licensees acting as volunteer monitors. They receive credit for the monitored course.)

- Exams administered-491

- Pass/Fail rate has improved- Subject Matter Experts (SME) have reviewed the test questions ensuring that the questions are pertinent to what’s being taught at the schools.

- Development Services-Includes one Development Service Representative
  - 15 applications processed
  - A temporary employee has been hired to complete inspections and is being very successful in getting many completed.

- Development Investigations-
  - No new cases opened; can’t explain why complaints aren’t coming in on subdivisions.
  - 29 pending (a year ago had 189 pending)
  - Focused on pending log- by beginning of FY 2012 (July 1, 2011) want to have a zero balance.

- Auditing/RE Investigations-
  - Complaints come to ADRE by various methods which include phone calls
  - 68 new complaints received
  - 270 pending – goal is to have a zero balance by July 1st
  - Completed 27 in April

- Enforcement and Compliance (E&C) - Commissioner Lowe stated that when an investigation is completed, the file is then sent to E&C who generally will interact with the licensee as to imposing any type of disciplinary action.
  - 243 cases pending (of the 243 pending 201 have been to the Attorney General’s Office) and are awaiting a hearing.
• Business Services Division-
  o Many calls (3,201 in one month on one line) coming in; licensees must be encouraged to utilize ADRE’s website. It was also suggested that callers contact their advisory board representative.
• Tucson Office closure- The Tucson office is scheduled to close on May 31, 2011. The assigned staff person will continue to be with ADRE through June 10 as she will be conducting inspections in Southern Arizona.
  o ADRE is still responsible to pay the square footage for the Tucson office.
• ADRE did not get the requested funding in the approved 2012 Appropriation. As a result, ADRE must make some modifications which include the right to take back the unpaid furlough days. The Department must find the funds to pay staff for the day which would have been an unpaid furlough day. Modifications will be brought back to the Advisory Board.
• Commissioner Lowe stated that the Real Estate Advisory Board 2010 Annual Report completed by Chair Ann White will be provided at the next scheduled meeting.
• **ADRE Financial Report**
  o Ms Rokkos reported:
    - Recovery and Condo Fund current financial status-YTD 2011
    - General Fund- in good shape; cautious in spending-YTD 2011
    - Education Revolving Fund-
      - Will be swept $4,000 in FY 2012
      - Minimum amount in fund: $21,000 (after sweep)
    - Money that was saved by not replacing a vacant Assistant Commissioner position, has enabled the Department to use those funds on:
      - Hiring temporary employees to complete investigations/audits with the goal of having no pending investigations/down to zero by July 1st.

XIII. **Other Matters**- Chair Bowles stated that he had been in contact with an advisory board member regarding their absence from Advisory Board Meetings. He reported that the Board Member will be resigning and sending his resignation to Linda Stiles, Governor’s Office, Boards and Commissions. The vacant position will be available to be filled.

Assistant Commissioner Utley reported that the Arizona-Mexico Commission is having its Plenary Session in June with the Real Estate Committee meeting on June 3rd. The event will be held at the Wigwam Resort in Litchfield Park. Advisory Board members were invited to attend.

Chair Bowles stated that the Broker Connection is scheduled for May 23, 2011 in Tucson at the Tucson Association of REALTORS®

XIV. **Call to the Public**-
Chair Bowles recognized the member of the public, David Schmid. Mr. Schmid stated that he found the Advisory Board meeting to be very informative and interesting.
One of the reasons for his attending the Advisory Board meeting was to bring forth the issue of classes being offered for Association Designations in Arizona should be allowed to obtain ADRE CE credit. These classes are being taught many times by the same instructor in other parts of the country and Arizona Continuing Education (CE) is not being given credit. Commissioner Lowe stated that perhaps the solution is that ADRE Education Division work with the different associations on a national basis in educating them on how to get their courses approved by ADRE. They could then market the course with the benefit that it is ADRE approved and qualifies for Arizona CE credit.

Member Bowen suggested that a letter be sent to those associations explaining the process for approval of classes by ADRE. Mr. Schmid offered to help.

XV. Adjournment
A motion to adjourn by Member Bowen; motion seconded by Member Horn. The motion passed unanimously. Meeting was adjourned at 12:15 p.m.

DATED THIS 13TH DAY OF JULY, 2011
ARIZONA DEPARTMENT OF REAL ESTATE
BY: Charles Bowles
Arizona Revised Statutes

32-2101. Definitions
29. "License" means the whole or part of any agency permit, certificate, approval, registration, public report, charter or similar form of permission required by this chapter.

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

32-2135. Real estate schools; courses of study; instructors; certification
A. Except as provided in section 32-4301, before offering a course of study towards completion of the education requirement for real estate licensure or renewal of licensure, a school shall obtain from the commissioner a certificate of approval or renewal to operate a school for a period of at least four years. A school shall also obtain a certificate of course approval for each course offered for credit that is not currently approved for another school. ...Live classroom prelicensure education, live classroom continuing education and distance learning continuing education courses are subject to approval pursuant to this section.

D. A real estate school, through any owner, director, administrator, instructor or other agent, shall not:
   1. Offer a course of study for credit that is not approved by the department, except that the school may advertise a course as pending approval before its approval.

F. At least thirty days before holding a course of study for completion of the education requirements leading to licensure of real estate applicants or for license renewal requirements, an application for a certificate of course approval or renewal must be filed with the department. For a live classroom course, the application shall include a course outline with sufficient detail to clearly identify the scope and content of the course. The outline shall state a desired instructional outcome for the course.

G. For a currently approved course:
   1. The school shall submit notice to the department at least fourteen days before holding the course to permit department employees to monitor the course. The notice is not otherwise subject to review and approval by the department.
   2. With the permission of the school that received original approval for the course, another school that desires to offer the course is subject only to the fourteen day notice requirement before holding the same course. No additional review and approval by the department is required.

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

I. The department may approve for continuing education credit any course of study proposed by a real estate school if the course satisfies the commissioner's requirements and is held outside this state. Upon the commissioner's request, the school shall either:
   1. Provide the department with a videotape or videotapes of the course.
   2. Make arrangements that are approved by the department for monitoring the course.
Laws, Rules & Substantive Policy Statements for Continuing Education Requirements

Arizona Administrative Code

R4-28-101. Definitions
"Credit hour" means 50 minutes of instruction. "Course" means a class, seminar, or presentation. "Distance learning course" means a course of instruction outside a traditional classroom situation consisting of computer-based interactive instructional material, requiring completion in the credit hours specified. A course that requires a student to read text, listen to audio tapes, or view video material without student participation, feedback, and remedial instruction is not a distance learning course.

R4-28-103. Licensing Time-frames

Table 1. Time-frames (Calendar Days)

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<th>Administrative Completeness Review</th>
<th>Response to Completion Request</th>
<th>Substantive Review</th>
<th>Response to Additional Information</th>
<th>Overall Time-frame</th>
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<tr>
<td>School Approval</td>
<td>A.R.S. § 32-2135(A) A.A.C. R4-28-404</td>
<td>10 15</td>
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<td>15 30</td>
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<td>Course Approval:</td>
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<td>A.A.C. R4-28-402, R4-28-404</td>
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<td>New (Distance Learning)</td>
<td>A.A.C. R4-28-404</td>
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<td>Instructor Approval</td>
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ARTICLE 4. EDUCATION

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

A. Continuing education requirements.
   1. To be eligible for license renewal, a real estate salesperson or broker shall complete continuing education courses approved by the Department under R4-28-404, presented by a real estate school approved under R4-28-404, and taken since the salesperson's or broker's original licensure or effective date of the preceding license, whichever is later.
   2. A real estate salesperson or associate broker applying for renewal shall submit proof of satisfactory completion of 24 credit hours of continuing education courses in the categories specified in subsection (A)(5). The renewal applicant shall complete a minimum of three hours in each of the mandatory categories under subsections (A)(5)(a) through (A)(5)(f). The renewal applicant shall take additional courses in the mandatory categories, or shall take courses in the business brokerage or general real estate categories described in subsection (A)(5)(g) and (A)(5)(h) to fulfill the required 24 credit hours.
   3. A real estate designated broker applying for renewal shall submit proof of satisfactory completion of 24 credit hours of continuing education courses. The renewal applicant shall complete a minimum of three hours in each of the mandatory categories under subsections (A)(5)(a) through (A)(5)(f) and shall complete a Broker Management Clinic under A.R.S. 32-2136 approved in the Commissioner's Standards category under subsection (A)(5)(c). The renewal applicant shall take additional courses in the mandatory categories, or shall take courses in the business brokerage or general real estate categories described in subsection (A)(5)(g) and (A)(5)(h) to fulfill the required 24 credit hours.
   4. A salesperson renewing for the first time may include credit for attendance at the Contract Writing class taken under A.R.S. § 32-2124(L) if taken within one year before the date of the salesperson's original licensure. A broker renewing for the first time may include credit for attendance at the Broker Management Clinic under A.R.S. § 32-2136 taken before the broker's original licensure date.
   5. The categories for real estate continuing education courses are:
      a. Agency law. The majority of class material concerns agency relationships and disclosure.
      b. Contract law. The majority of class material concerns the contract formation and implementation, or the results of contract use, including:
Laws, Rules & Substantive Policy Statements for
Continuing Education Requirements

i. Various contract forms and clauses, fundamentals, updates, options, offers, counter offers, first right of refusal, and exchanges;
ii. Contract writing;
iii. Required disclosures, problem-solving, and law and rule requirements;
iv. Recent court decisions and case law studies;
v. Breach of contract issues;
vi. Legal, ethical and agency considerations, procedures, and disclosures;
vii. Accommodating current financing procedures, requirements, and options.
c. Commissioner's standards. The majority of class material relates to license laws, including:
i. Article 26 of the Arizona Constitution;
ii. A.R.S. Title 32, Chapter 20, and A.A.C. Title 4, Chapter 28, which includes trust accounts, recordkeeping, license requirements, exemptions to licensure, commission payments, recovery fund provisions, development requirements, processes for public reports for and sale of subdivided and unsubdivided land, membership campgrounds and time-shares, cemetery regulations, and grounds for disciplinary action and hearings.
iii. A.R.S. Title 44, Chapter 10, Article 3.1, Trade Names and Business Practices.
d. Real estate legal issues. The majority of class material concerns existing real estate law, including:
i. Sources of real estate law (constitutions, statutes, zoning, common), and the legal system;
ii. Land and its elements (air, mineral rights, real and personal property);
iii. Land, title, and interests in land, homestead, encumbrances, and the Landlord and Tenant Act;
v. Escrow procedures, financing documents, and lending laws and regulations, including Regulation Z;
vi. Wills and estates, taxes, bankruptcy law, securities laws, title insurance, and appraisal law;
vii. Case law studies, real estate fraud, disclosure law, interstate and international real estate;
viii. Commission issues and forms of business ownership;
ix. Homeowners Association regulations;
x. Real Estate Settlement Procedures Act (RESPA); and
xi. Environmental issues.
e. Fair housing. The majority of class material concerns equal opportunities in housing, including:
i. Americans with Disabilities Act, ADA architectural designs (construction and development), and pertinent court cases;
ii. Arizona and federal fair housing laws, including advertising, marketing, information, and enforcement;
iii. Housing developments, deed restrictions, affordable housing, elder housing, zoning, local ordinances, and disclosures;
v. Commercial and residential concerns; and
v. Administrative procedures and business practices.
f. Disclosure. The majority of class material concerns the following:
i. Licensee's disclosure obligations to client and others;
ii. Seller's and buyer's disclosure obligations to each other;
iii. Common material facts warranting disclosure, and liability for failure to disclose;
v. Avoiding inadvertent non-disclosures;
v. Transaction documents that should be reviewed;
vi. Common "red flags" in a real estate transaction;
vii. Homeowner associations and buyers' obligations to homeowner associations; and
viii. Advising buyers and sellers of common "red flags."
g. Business brokerage. The majority of class material concerns business brokerage including:
i. Business brokerage basics including introducing licensees to business brokerage, associated terminology, marketing, prospecting, listing, pricing, closing practices, the use of contracts related to and unique to business brokerage, and the application of business brokerage contracts;
ii. Business valuations and appraisals, and establishing an in-depth review of proper business valuation techniques for small, medium, and large businesses;
iii. Tax structure and considerations, tax law, and policy including subjects such as financing tools available, options available, and tax implications;
iv. Accounting for business brokers;
v. Agency in business brokerages, the use of contracts related to and unique to business brokerage, and the application of business brokerage contracts; and
vi. Disclosure issues in business brokerage, including common "red flags" in a business opportunity transaction, and advising buyers and sellers of common "red flags."
h. General real estate. The majority of class material concerns real estate, but does not fall within any of the categories listed in subsections (A)(5)(a) through (A)(5)(g), including:
i. Appraisal methodology;
ii. General finance, use of financial calculators, mathematics, and managing cash flow;
iii. History of development in metropolitan areas; and
iv. Introduction to property management.

6. The Department may require an individual applying for renewal to obtain credit hours based upon significant current issues in the real estate community. The Department shall notify licensees of a new requirement by written notice published in printed or electronic format.

7. The Department may grant continuing education credit for a course that does not have a certificate of approval under R4-28-404 if the applicant demonstrates to the satisfaction of the Commissioner that the course meets the requirements prescribed in R4-28-404 and the course content requirements of this Section.

8. An applicant may substitute subject matter hours within a 90-hour broker's prelicensure course that meet the criteria for credit under subsections (A)(5)(a) through (A)(5)(h), if taken since the last license renewal, for the continuing education credit required in subsection (A)(2) or (3).

9. If any change in the continuing education course requirements occurs during a renewal applicant's license period and the applicant has fully complied with the continuing education requirement in effect before the change occurs, the Department shall consider the renewal applicant to be in compliance with the continuing education requirements for the license period.

B. Continuing education waiver. Under A.R.S. § 32-2130, the Commissioner may waive all or a portion of the continuing education requirement or grant additional time to complete a continuing education requirement when a salesperson or broker submits a written request to the Commissioner and shows good cause for the waiver or additional time.

1. Good cause may include:
   a. A person employed by the state or political subdivision establishes to the satisfaction of the Commissioner that the person's employment during the prior license period involved real estate-related matters;
   b. Any officer or employee of the state whose license is on an inactive status due to a possible conflict of interest or other employment requirement;
   c. The person demonstrates successful completion of a course on topics specifically related to the person's field of real estate practice;
   d. An approved real estate instructor requests a waiver for a course the instructor has taught;
   e. The salesperson or broker demonstrates other extraordinary circumstances.

2. A salesperson or broker is granted additional time by the Commissioner to complete the continuing education requirement for license renewal shall complete the continuing education hours by the deadline or be subject to disciplinary action.

C. The Department shall not grant a person credit for more than nine hours of continuing education per day.

D. Distance learning.

1. Only a school holding a Certificate of Approval shall offer a distance learning course. The school shall obtain course approval from the Department before advertising the course as approved by the Department for credit hours and before issuing Department credit hours for the course to students.

2. The Department shall not approve a distance learning course unless it contains:
   a. Individual modules of instruction for delivery on a computer or other interactive program;
   b. At least one learning objective for each module of instruction. The learning objective shall ensure that if all the objectives are met, the entire content of the course is understood;
   c. A structured learning method to enable the student to attain each learning objective;
   d. A diagnostic assessment of the student's performance during each module of instruction;
      i. The assessment shall measure what the student learned throughout the module of instruction, and
      ii. Assess the comprehension of each concept covered in the module;
   e. Remediation.
      i. Repetition of a module if a student is deficient in a diagnostic assessment; and
      ii. Continuous repetition of the module until the student understands the content material.

3. An approved instructor shall teach and an approved instructor or the school director shall grade distance learning courses. The instructor or school director shall:
   a. Provide the student with assistance, if required;
   b. Obtain a signed certification statement from the student indicating that the student has completed each assignment of instruction; and
   c. Certify the student as completing a distance learning course only if the student:
      i. Completes all required instructional modules,
      ii. Attends any required hours of live instruction or testing, or both, for a given course; and
      iii. Passes a final examination.

4. As part of its application for approval of a distance learning course, a school shall file a plan with the Department describing how the school will deal with hardware and software failure.
R4-28-404. Real Estate School Requirements, Course and Instructor Approval

A. Certificate of School Approval. Except for a community college or university accredited by the Council on Post Secondary Accreditation or the U.S. Department of Education offering courses in real estate, any school offering a course of study for original or renewal licensure of a real estate applicant shall apply for and possess a Certificate of School Approval from the Department. The school's authorized representative shall provide the following information on or with the Certificate of School Approval form:
1. The name, address, telephone number, and fax number, if any, of the school;
2. The name of the owner and d.b.a. name, if any;
3. Whether the owner is a sole proprietorship, partnership, trust, limited liability company, or corporation;
4. The name, address, telephone number, and percentage ownership of each person, entity, or beneficiary holding or controlling 10% or more financial interest in the school;
5. The name of each individual authorized to act on behalf of the school and sign continuing education certificates or prelicensure verifications, or both;
6. The name, business address, and telephone number of all current and prospective administrators, directors, and instructors;
7. In addition to the information required in R4-28-301(A), each school owner, administrator, director, and instructor shall provide a statement of the individual's:
   a. Education,
   b. Teaching experience, and
c. Employment history.
8. If the owner is a partnership, a copy of the partnership agreement naming the partner authorized to act on its behalf;
9. If the owner is a corporation or limited liability company, a copy of:
   a. A corporate or company resolution or operating agreement naming the officer, member, or manager authorized to execute the Certificate of Approval form;
   b. A current Certificate of Good Standing from the Arizona Corporation Commission;
   c. The latest annual report on file with the Arizona Corporation Commission;
d. The Articles of Incorporation or Organization, as amended.
10. The location of school registration and licensing certification records.

B. Certificate of Course Approval. Any school offering a course of study for original or renewal licensure of a real estate applicant shall apply for and possess a Certificate of Course Approval for each course offered by the school. The school's authorized representative shall submit the following information:
1. The school name, address, telephone number, and fax number, if any;
2. The authorized representative's name, title, and signature;
3. The title of the course;
4. A detailed outline of course material content that clearly lists the subject matter to be covered;
5. The date, time, and location of the anticipated presentation, if known;
6. The number of credit hours requested. The time allocated by a school for examination shall not be included in calculating credit hours if the examination is used for overall evaluation.
7. The category of approval requested;
8. A definition of segments if the course is to be offered in part and in its entirety;
9. If video or audio tapes will be used as instructional aids, the percentage of the class they will comprise;
10. The name of every instructor who will teach the course; and
11. The date of the application.

D. The school shall maintain a record for five years of each student attending the school. The record shall include:
1. The name of each student;
2. The dates of attendance;
3. The title of each course taken;
4. The course number, category, and credit hours awarded;
5. The final grade or score in each prelicensure course; and
6. The original signature roster for each course or course segment taught.

G. Complaints. The Commissioner may, and upon a verified complaint in writing shall, investigate and observe the classes of any school, owner, administrator, director, or instructor acting on behalf of the school and may examine the books and records of the school in connection with the offering of approved courses.

H. Change in school, course, or instructor. Each school owner, operator, director, and instructor shall:
1. Provide a written notice and supporting documentation within 10 days of any:
   a. Change of personal name or address,
   b. Change of business address,
c. Change of business mailing address,
d. School closing, or
e. Disclosure of certification information pursuant to R4-28-301(A),
2. Provide a written notice and supporting documentation within 30 days after any change in structure of a licensed entity, including any change of a:
   a. Director, officer, or person holding or controlling 10% or more of the shares, if a corporation;
   b. Partner, if a partnership;
   c. Member or manager, if a limited liability company.
3. Obtain approval from the Commissioner before conducting business when:
   a. Changing a business name,
   b. Establishing a school location,
   c. Changing the course content,
   d. Changing the course length, or
   e. Offering a new course.
4. Provide written notice as soon as practical of a last minute change of instructor due to illness or emergency.
Arizona Department of Real Estate SUBSTANTIVE POLICY STATEMENT No. 2010.02
Short Title: Distance Learning Guidelines

Description of Practice/Procedure:

STATEMENT OF PURPOSE AND SCOPE
This Substantive Policy Statement is intended to inform the regulated real estate education industry of the Department’s current approach to and opinion of the requirements of education statutes and rules under the Department’s original jurisdiction, by establishing sensible distance learning standards, guidelines and parameters that are based on the Department’s interpretation and application of the education statutes and rules. “Distance Learning” applies solely to the delivery of Continuing Education courses.

DISTANCE LEARNING GUIDELINES AND STANDARDS

Course Approval: In facilitating the original approval and renewal of courses:
1. Prior to Department approval of a course, the real estate school shall provide access to the Department to view and evaluate the proposed course, in the manner that the course is proposed by the school to be delivered. The school shall additionally permit access to the Department to view and evaluate a currently-approved course, as required.
2. All real estate course content, including laws, administrative code, practices, policies, codes of ethics, customs and standards of care, shall be applicable to Arizona real estate practice. No course shall include content based on laws, practices, policies, codes of ethics or standards of care that have no practical or meaningful application to Arizona real estate.
3. For each original course approval submission to the Department, the school shall identify the Department-approved instructor who has authored the course and that the course meets all Department requirements. The approved instructor must meet applicable instructor qualifications established for instructors of live classroom course delivery, including course content competence.
4. Each Distance Learning Course must meet the requirements for the applicable course credit category before being approved for continuing education credit in that category.
5. A continuing education distance learning course approval shall not be issued later than 90 days after filing with the Department. If approval is not granted within 90 days, the course shall be automatically approved on a provisional basis for 180 days, unless the Department otherwise notifies the school of specific deficiencies or unfulfilled requirements for the course submission.

Course Administration: The following are required in the school administration of distance learning courses:

Course Timing Requirements
1. The 50-minute-per-credit-hour rule shall be enforced for each course. For example, a 3-credit-hour course must incorporate a requirement that the student log a total of at least 150 minutes to complete the course. Each school must have the ability to measure the amount of time spent by the student in the school’s course, and enforcement of the 50-minute-per-credit-hour requirement shall be subject to Department audit.
2. A course completion certificate may be issued only after student satisfaction of the 50-minute-per-credit-hour requirement for the course.
3. Each 3-hour segment of a course shall be divided into five or more timed divisions (i.e., “modules”) for the purpose of course delivery. Each module shall be timed such that the student may not proceed in the course until the minimum time for the module has elapsed. The sum of the minimum times of the modules for a 3-hour course, for example, will equal 150 minutes

Course Quizzes and Exam
1. Course delivery must include interactivity, and course performance shall be measured by a diagnostic assessment in the form of quizzes and exams.
a. Each course module shall include a quiz. The student shall achieve a minimum passing score of 80% before proceeding in the course. The difficulty of the quiz shall be reflective of the content presented in that module.

b. Each course shall include a final exam. The student shall achieve a passing score of at least 80% on the final exam before completing the course and being awarded a course completion certificate. The difficulty of the exam shall be reflective of the content presented in the course.

1. Each module shall contain a minimum of 5 instances of interactivity, which may be achieved via multiple choice, true-false, fill-in-the-blank, matching, prioritizing, etc., at the discretion of the author. In addition, each module shall contain a minimum of 5 unique end-of-module multiple choice quiz questions with only one correct/best answer.

2. The course final exam shall have a minimum of 25 multiple-choice questions with only one correct/best answer. If an end-of-module quiz question is repeated in a final exam retake, the order of the exam questions shall be randomly reselected and/or any repeated questions shall have the answers reordered.

Miscellaneous

1. Each course shall include the means for the student to attest to the identity of the student and to provide the student’s Arizona real estate license number, before issuance of the course completion certificate.

2. Each school shall include with each course approval filing the school’s plan for dealing with possible hardware and software failure. The plan shall include appropriate contact information on the school’s website and/or within the course.

3. The school administrator shall insure that any instructor who is represented as the course author is a Department-approved instructor in the applicable category and is competent to field content questions regarding the course.

4. The business hours for contacting the school shall be easily available through the school’s website and/or within the course.

Application of Provisions: The above provisions apply to every original and renewal application for course approval.


Policy Program: Education/Regulation

Effective Dates: 11/1/2010 for original course approval applications; Revised 11/2/2010
The Arizona State Legislature adjourned *sine die* on April 20, 2011. The following bills were passed and signed into law by the Governor and affect the Department of Real Estate and related industries. Please be advised of all of the following. The general effective date of the bills is July 20, 2011, unless otherwise stated.

*Please be advised that this list is not comprehensive and therefore may not include all bills that directly or indirectly affect ADRE licensees. Please visit the state legislature’s website at [www.azleg.gov](http://www.azleg.gov) for more information.*

**General:**

**SB1292 real estate; education; broker requirements (General effective date, however please note that the provision that requires instructors to attend a three hour workshop is applicable beginning Jan. 1, 2012)** – requires that the real estate exam demonstrate that the applicant has an appropriate knowledge of other real estate practices and principles as determined by the Commissioner; allows the Commissioner to withdraw or deny instructor certification for instructors teaching course content that is not current or has been substantially changed from the course as approved; starting January 1, 2012, requires that instructors take a three hour department-approved seminar or workshop emphasizing instruction methods, techniques and skills in the 24 months prior to application or renewal; allows for the instructor seminar provision to be waived based on individual request review; finally the bill changes the number of days that brokers have to review listing agreements, purchase or nonresidential lease agreements or similar instruments from five to ten business days and defines business day as “a day that is not a Saturday, a Sunday or any other legal holiday in this state.”

*Please note that the continuing education provisions originally included in SB1292 relating to post-licensing education for salespersons and broker supervision are not included in the final version of the bill that was passed and signed by the Governor.*

**HB2102 license eligibility; authorized presence** – makes changes to the lawful presence requirements that licensees have to abide by; exempts an applicant if all of the following apply: (a) they are a resident of another state, (b) they hold the equivalent license in that state that they are seeking in this state, and (c) they seek the Arizona license to comply with this state’s licensing laws and not to establish residence in this state; clarifies that if the document the applicant uses to prove lawful presence does not have a photograph, they must also present a government issued document that contains a photograph.

**SB1105 real estate transfer affidavit; transmission** – requires the county recorder, rather than the Department of Revenue, to scan and transmit an electronic copy of affidavits that are received in regard to real estate transfer to the Department of Revenue and the Arizona State Library, Archives and Public Records.

**HB2153 municipalities; counties; fire sprinklers; code** – prohibits a city, town or county from adopting an ordinance that mandates the installation of fire sprinklers in single family homes.
SB1458 professional licensure; out-of-state applicants – requires a license be issued without an exam to a person who is married to an active duty member of the Armed Forces and who is accompanying the member to an official permanent change of station to a military installation located in Arizona if certain provisions are met (currently holds equivalent license in good standing in another state, previously passed an exam required for the license, has not had their license revoked or voluntarily surrendered for unprofessional conduct, etc.)

SB1609 retirement systems; plans; plan design (Certain sections become effective June 30, 2011) – makes changes to the existing contribution and benefit structures for the Arizona State Retirement System (ASRS), the Public Safety Personnel Retirement System (PSPRS), the Elected Officials Retirement Plan (EORP) and the Corrections Officers Retirement Plan (CORP); for ASRS, removes the 85 points system for all members, retains the 80 points system for members hired before July 1, 2011; changes age plus service requirements for members hired after the effective date of the bill to: age 55 and 30 years of service, age 60 and 25 years of service, age 62 and 10 years of service, age 65; makes numerous changes to the Alternate Contribution Rate.

Developers:

HB2005 subdivisions; acting in concert – states that either the county where a division occurred, or ADRE, but not both may enforce “acting in concert” statutes; asserts that a familial relationship alone is not sufficient to constitute unlawful acting in concert; permits the county to waive the requirement to prepare, submit and receive approval of a preliminary plat as a condition precedent to submitting a final plate, as well as waive or reduce infrastructure standards or requirements; states that a creation of six or more lots, parcels or fractional interest is not subject to public report requirements when the sale or lease of a lot, parcel or fractional interest occurs ten or more years after the sale or lease of another lot, parcel or fractional interest and the other lot, parcel or fractional interest is not subject to public report requirements and is treated as an independent parcel, unless upon investigation by the Commissioner, it is found that there was evidence of intent to circumvent the subdivision laws; removes the provision that states that the commissioner may “take whatever other action he deems necessary to ensure compliance with the subdivision laws of this state”; states that the Commissioner has no longer than five years after an initial complaint is received or the commissioner initiates an investigation to determine if there was a violation of the subdivision statutes; finally, the bill limits the liability for developers when an untrue statement of material fact or omission of material fact on a public report is made by limiting the amount in damages that have to be paid.

SB1525 city; town; development fees (Section 9-463.05 becomes effective Dec. 31, 2011) – makes numerous changes to the statutes governing municipal development fees and infrastructure improvement plans.
Homeowners’ Associations:

HB2245 homeowners associations; open meetings; recordings – allows persons attending HOA meetings to tape record or videotape portions of the meeting. The Board of Directors of an HOA is allowed to adopt reasonable rules governing the taping of open meetings, but may not preclude the tape recording or videotaping.

HB2609 homeowners associations; signs; political; leasing – makes various changes to laws governing HOAs; prohibits HOAs from charging fees for the use or placement of an indoor or outdoor display of for rent or lease signs by a property owner on their own property; allows HOAs to prohibit signs that are not commercially produced; permits the HOA to prohibit the number of political signs earlier than 71 days, rather than 45 days before an election through 3 days after, rather than 7 days after an election and states that an HOA cannot prohibit the number of political signs that are displayed, except that maximum aggregate total dimensions of all political signs may not exceed nine square feet.

HB2717 homeowners’ associations; penalties; attorney fees – prevents an HOA from charging a fee for the use or placement of indoor or outdoor display of a for sale or lease sign by a unit owner on their property; clarifies that an HOA shall not prohibit in any other way than as specifically authorized in statute the use of temporary open house signs, a unit owner’s or their agent’s for sale sign and open house hours for property that is available for sale or lease; states that an HOA or managing agent that violates certain statutes governing the use of indoor, outdoor or political signs by a property owner on their property forfeits and extinguishes the lien rights authorized by statute against that unit or property for a period of six consecutive months from the date of the violation.

SB1148 homeowners associations; disputes; administrative hearings – asserts that the Department of Fire, Building and Life Safety applies and enforces the statutes regulating HOAs through its hearing officer function, as well as the interpretation and enforcement of the otherwise private contracts and rules that govern those communities.

SB1149 planned communities; condominiums; document fees (Effective Dec. 31, 2011) – limits the fee that a planned community and condominium association can charge a unit owner for the preparation of required documents associated with the resale of a unit to an aggregate of $400.

SB1326 flag display; homeowners associations – prevents an HOA from prohibiting the display of the Gadsden Flag; prevents an HOA from prohibiting the front or backyard display of flags allowed by statute; allowed HOAs to limit the quantity of flags displayed at one time to no more than two; allowed HOAs to limit the height of the flagpole to no more than the member’s rooftop.

SB1540 political flyers; petitions; homeowners associations – allows HOAs to restrict door to door political activity regarding a candidate or ballot issue from sunset to sunrise; prohibits HOAs from regulating the number of candidates, public officers or propositions supported or opposed on a political sign; states that HOAs may not prohibit door to door political activity or the circulation of political petitions on property normally open to visitors with an HOA.
Property Managers:

HB2193 municipal water charges; responsibility – prohibits municipalities from requiring payment for unpaid water and wastewater rates from anyone other than the person who made the contract, resided at the property and received the service; prohibits municipalities from refusing service on the basis of unpaid water and wastewater rates to anyone but the person who resided at the property, and received the service; allows property owners and immediate family members to voluntarily contract with a city for water and wastewater services and provide payment for these services

SB1474 landlord; tenant; fit and habitable – requires a tenant to promptly notify the landlord in writing when there is any situation that requires the landlord to take action and provide maintenance or repair; under the “self-help for minor defects” provisions of current law, prohibits the tenant from repairing the premises at the landlord’s expense if the repair does not constitute a breach of the fit and habitable condition of the premises.

SB1160 city sales tax; residential rental (retroactive effective date of Dec. 31, 2010) – prevents a city or town from imposing or increasing sales tax on residential renters unless approved by municipal voters.

SB1306 landlords; tenants; bedbug control – stipulates that the landlord cannot knowingly lease a bedbug infested dwelling unit and is obligated to provide existing and new tenants with educational materials on bedbugs; stipulates that in regard to bedbug infestation control, a tenant is obligated to do all of the following: refrain from knowingly moving bedbug infested materials into a dwelling unit, and notify the landlord by written or electronic document; specifically excludes the landlord and tenants of a single family home from provisions of the bill; also prohibits a city, town or county board of supervisors from establishing ordinances or any other landlord or tenant requirements relating to bedbug control.

SB1166 municipal tax exemption; commercial lease – prevents cities or towns from levying transaction privilege tax, sales tax, use tax, or any similar tax on the gross proceeds of sales or gross income derived from commercial lease between affiliated corporations, if at least 80% of the voting shares of each corporation are owned by the same shareholders.

Mortgage/Escrow/Appraisal-Related:

HB2004 commercial mortgage brokers; license conversion (Effective retroactive to September 30, 2009) – allows a licensed mortgage broker to convert their license to a commercial mortgage broker and allows the Superintendent of the Department of Financial Institutions to write rules outlining the process for conversion.

HB2296 national banks; mortgage loan originators – allows federally chartered savings and loans to apply with the Department of Financial Institutions for certificates of exemption in order to supervise contracted agents as loan originators.

HB2297 escrow agents; recovery fund; repeal – repeals the Escrow Recovery Fund administered by the Department of Financial Institutions and reverts all remaining monies to the General Fund.
SB1180 board of appraisal; disciplinary proceedings – allows the Board of Appraisal to continue a disciplinary investigation even if the person under investigation surrenders their license or lets it lapse or expire; permits investigations to continue up to 24 months after the license or certificate has expired.
**44-1481. Fraudulent advertising practices defined; violation; classification**

A. A person is guilty of a class 3 misdemeanor who:

1. Knowingly and with the intent to sell to the public real or personal property or services, or to induce the public to acquire an interest therein, makes and publishes an advertisement, either printed or by public outcry or proclamation, or otherwise, containing any false, fraudulent, deceptive or misleading representations in respect to such property or services, or the manner of its sale or distribution.

2. Publishes, circulates or disseminates any statement or assertion of fact concerning real estate which is known by him to be untrue, and which is made or disseminated with the intention of misleading.

B. A merchant is guilty of a class 3 misdemeanor who advertises or displays any brand of goods known to the general public and quotes prices in connection therewith as an inducement to attract purchasers to the place of business so advertised, and makes false statements regarding the quality or merits of the goods advertised.

**32-2101. Definitions**

2. "Advertising" means the attempt by publication, dissemination, exhibition, solicitation or circulation, oral or written, or for broadcast on radio or television to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in lands subject to this chapter including the land sales contract to be used and any photographs, drawings or artist's presentations of physical conditions or facilities existing or to exist on the property...

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

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

**R4-28-502. Advertising by a Licensee**

A. A salesperson or broker acting as an agent shall not advertise property in a manner that implies that no salesperson or broker is taking part in the offer for sale, lease, or exchange.

B. Any salesperson or broker advertising the salesperson’s or broker’s own property for sale, lease, or exchange shall disclose the salesperson’s or broker’s status as a salesperson or broker, and as the property owner by placing the words “owner/agent” in the advertisement.

C. A salesperson or broker shall ensure that all advertising contains accurate claims and representations, and fully states factual material relating to the information advertised. A salesperson or broker shall not misrepresent the facts or create misleading impressions.

D. A school shall include its name, address and telephone number in all advertising of Department-approved courses. The school owner, director, or administrator shall supervise all advertising. The school owner shall ensure that the school’s advertising is accurate.

E. A salesperson or broker shall ensure that all advertising identifies in a clear and prominent manner the employing broker’s legal name or the dba name contained on the employing broker's license certificate.

F. A licensee who advertises property that is the subject of another person’s real estate employment agreement shall display the name of the listing broker in a clear and prominent manner.
G. The designated broker shall supervise all advertising, for real estate, cemetery, or membership camping brokerage services.

H. A licensee shall not use the term “acre,” either alone or modified, unless referring to an area of land representing 43,560 square feet.

I. Before placing or erecting a sign giving notice that specific property is being offered for sale, lease, rent, or exchange, a salesperson or broker shall secure the written consent of the property owner, and the sign shall be promptly removed upon request of the property owner.

J. The provisions of subsections (E) and (G) do not apply to advertising that does not refer to specific property.

K. Trade Names.
   1. Any broker using a trade name owned by another person on signs displayed at the place of business shall place the broker’s name, as licensed by the Department on the signs;
   2. The broker shall include the following legend, “Each (TRADE NAME or FRANCHISE) office is independently owned and operated,” or a similar legend approved by the Commissioner, in a manner to attract the attention of the public.

L. The use of an electronic medium, such as the Internet or web site technology, that targets residents of this state with the offering of a property interest or real estate brokerage services pertaining to property located in this state constitutes the dissemination of advertising as defined in A.R.S. § 32-2101(2).

National Association of Realtors Code of Ethics & Standards of Practice
(effective Jan. 1, 2011)

Article 12

REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional.

• Standard of Practice 12-5

REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise real estate services or listed property in any medium (e.g., electronically, print, radio, television, etc.) without disclosing the name of that REALTOR®’s firm in a reasonable and readily apparent manner. This Standard of Practice acknowledges that disclosing the name of the firm may not be practical in electronic displays of limited information (e.g., thumbnails”, text messages, “tweets”, etc.). Such displays are exempt from the disclosure requirement established in the Standard of Practice, but only when linked to a display that includes all required disclosures. (Adopted 11/86, Amended 1/11)