

COMMITTEE ON LAND, AGRICULTURE & RURAL AFFAIRS
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2094
(Reference to printed bill)

Amendment instruction key:

[GREEN UNDERLINING IN BRACKETS] indicates text added to statute or previously enacted session law.

[Green underlining in brackets] indicates text added to new session law or text restoring existing law.

~~[GREEN STRIKEOUT IN BRACKETS]~~ indicates new text removed from statute or previously enacted session law.

~~[Green strikeout in brackets]~~ indicates text removed from existing statute, previously enacted session law or new session law.

<<Green carets>> indicate a section added to the bill.

~~<<Green strikeout in carets>>~~ indicates a section removed from the bill.

1 The bill as proposed to be amended is reprinted as follows:

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

4 32-2101. Definitions

5 In this chapter, unless the context otherwise requires:

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

8 2. "Address of record" means any of the following:

9 (a) The address where a licensee practices or is otherwise
10 employed.

11 (b) A licensee's residential address.

12 (c) The address of a licensee's statutory agency who is registered
13 as the licensee's statutory agent with the corporation commission. This
14 subdivision applies only if notice of the statutory agent is given to the
15 department pursuant to section 32-2126.

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

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

28 (b) Communications to stockholders as follows:

- 1 (i) Annual reports and interim financial reports.
- 2 (ii) Proxy materials.
- 3 (iii) Registration statements.
- 4 (iv) Securities prospectuses.
- 5 (v) Applications for listing of securities on stock exchanges.
- 6 (vi) Prospectuses.
- 7 (vii) Property reports.
- 8 (viii) Offering statements.
- 9 4. "Affiliate" means a person who, directly or indirectly through
- 10 one or more intermediaries, controls, is controlled by or is under common
- 11 control with the person specified.
- 12 5. "Associate broker" means a licensed broker who is employed by
- 13 another broker. Unless otherwise specifically provided, an associate
- 14 broker has the same license privileges as a salesperson.
- 15 6. "Barrier" means a natural or man-made geographic feature that
- 16 prevents parcels of land from being practicably, reasonably and
- 17 economically united or reunited and that was not caused or created by the
- 18 owner of the parcels.
- 19 7. "Blanket encumbrance":
- 20 (a) Means either:
- 21 (i) Any mortgage, any deed of trust or any other encumbrance or
- 22 lien that secures or evidences the payment of monies and that affects more
- 23 than one lot or parcel of subdivided land.
- 24 (ii) An agreement that affects more than one lot or parcel by which
- 25 the subdivider holds the subdivision under an option, contract to sell or
- 26 trust agreement.
- 27 (b) Does not include taxes and assessments that are levied by
- 28 public authority.
- 29 8. "Board" means the real estate advisory board.
- 30 9. "Broker", when used without modification, means a person who is
- 31 licensed as a broker under this chapter or who is required to be licensed
- 32 as a broker under this chapter.
- 33 10. "Business broker" means a real estate broker who acts as an
- 34 intermediary or agent between sellers or buyers, or both, in the sale or
- 35 purchase, or both, of businesses or business opportunities where a lease
- 36 or sale of real property is either a direct or incidental part of the
- 37 transaction.
- 38 11. "Camping site" means a space that is designed and promoted for
- 39 the purpose of locating any trailer, tent, tent trailer, pickup camper or
- 40 other similar device used for camping.
- 41 12. "Cemetery" or "cemetery property" means any one, or a
- 42 combination of more than one, of the following in a place that is used, or
- 43 intended to be used, and dedicated for cemetery purposes:
- 44 (a) A burial park, for earth interments.
- 45 (b) A mausoleum, for crypt or vault entombments.
- 46 (c) A crematory, or a crematory and columbarium, for cinerary
- 47 interments.

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

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

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

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

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

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

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

21 15. "Commissioner" means the state real estate commissioner.

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

32 17. "Compensation" means any fee, commission, salary, monies or
33 other valuable consideration for services rendered or to be rendered as
34 well as the promise of consideration whether contingent or not.

35 18. "Contiguous":

36 (a) Means lots, parcels or fractional interests that share a common
37 boundary or point.

38 (b) INCLUDES LOTS, PARCELS OR FRACTIONAL INTERESTS THAT ARE
39 SEPARATED BY A PRIVATE ROAD OR STREET.

40 ~~(b)~~ (c) Does not include lots, parcels or fractional interests
41 that are separated by either of the following:

42 (i) A barrier.

43 (ii) A PUBLIC road, street or highway that has been established by
44 this state or by any agency or political subdivision of this state, THAT
45 HAS BEEN DEDICATED TO AND ACCEPTED BY THIS STATE OR BY ANY POLITICAL
46 SUBDIVISION OF THIS STATE, that has been designated by the federal
47 government as an interstate highway or that has been regularly maintained

1 by this state or by any agency or political subdivision of this state [and
2 has been used continuously by the public for at least the last five
3 years].

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

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

12 21. "Department" means the state real estate department.

13 22. "Designated broker" means a natural person who is licensed as a
14 broker under this chapter and who is either:

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

17 (b) Doing business as a sole proprietor.

18 23. "Developer":

19 (a) Means a person who offers real property in a development for
20 sale, lease or use, either immediately or in the future, on the person's
21 own behalf or on behalf of another person, under this chapter.

22 (b) Does not include a person whose involvement with a development
23 is limited to listing property within the development for sale, lease or
24 use.

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

29 25. "Distance learning" means continuing education or prelicensure
30 education that is an online, planned learning experience with a geographic
31 separation that may be synchronous or asynchronous, that does not require
32 real-time interaction between a student and an instructor and that uses a
33 platform with self-paced or prerecorded lessons and materials that a
34 student can access via the internet to proceed at the student's own pace.

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

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

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

40 27. "Fractional interest" means an undivided interest in improved
41 or unimproved land, lots or parcels of any size created for the purpose of
42 sale or lease and evidenced by any receipt, certificate, deed or other
43 document conveying the interest. Undivided interests in land, lots or
44 parcels created in the names of a husband and wife as community property,
45 joint tenants or tenants in common, or in the names of other persons who,
46 acting together as part of a single transaction, acquire the interests

1 without a purpose to divide the interests for present or future sale or
2 lease shall be deemed to constitute only one fractional interest.

3 28. "Improved lot or parcel" means a lot or parcel of a subdivision
4 on which there is a residential, commercial or industrial building or
5 concerning which a contract has been entered into between a subdivider and
6 a purchaser that obligates the subdivider directly, or indirectly through
7 a building contractor, to completely construct a residential, commercial
8 or industrial building on the lot or parcel within two years after the
9 date on which the contract of sale for the lot is entered into, or for a
10 condominium as defined in section 33-1202, within four years after the
11 date on which the contract for sale is entered into.

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

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

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

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

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

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

32 35. "Live classroom course" means a course or instructional segment
33 delivered in either an in-person classroom instructional format or a
34 synchronous remote instructional format that allows students to observe
35 and participate remotely in an instructional segment via livestreaming.

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

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

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

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

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

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

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

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

13 (e) Assists or directs in procuring prospects calculated or
14 intended to result in the sale, purchase, listing, exchange or lease of
15 membership camping contracts.

16 (f) Performs any of the foregoing acts as an employee or on behalf
17 of a membership camping operator or membership contract owner.

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

22 41. "Membership camping operator":

23 (a) Means an enterprise, other than one that is tax exempt under
24 section 501(c)(3) of the internal revenue code of 1986, as amended, that
25 solicits membership paid for by a fee or periodic payments and has as one
26 of its purposes camping or outdoor recreation, including the use of
27 camping sites primarily by members.

28 (b) Does not include camping or recreational trailer parks that are
29 open to the general public and that contain camping sites rented for a per
30 use fee or a mobile home park.

31 42. "Membership camping salesperson" means a natural person who
32 acts on the person's own behalf or through and on behalf of a professional
33 limited liability company or a professional corporation engaged by or on
34 behalf of a licensed membership camping or real estate broker, or by or on
35 behalf of a corporation, partnership or limited liability company that is
36 licensed as a membership camping or real estate broker, to perform any act
37 or participate in any transaction in a manner included in the definition
38 of membership camping broker.

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

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

45 45. "Perpetual care" or "endowed care":

46 (a) Means maintaining and caring, in all places where interments
47 have been made, for the trees, shrubs, roads, streets and other

1 improvements and embellishments contained within or forming a part of the
2 cemetery.

3 (b) Does not include maintaining or repairing monuments, tombs,
4 copings or other man-made ornaments as associated with individual burial
5 spaces.

6 46. "Perpetual or endowed-care cemetery" means a cemetery in which
7 lots or other burial spaces are sold or transferred under the
8 representation that the cemetery will receive perpetual care or endowed
9 care free of further cost to the purchaser after payment of the original
10 purchase price for the lot, burial space or interment right.

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

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

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

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

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

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

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

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

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

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

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

1 (g) Collects or offers, attempts or agrees to collect rent for the
2 use of real estate, businesses and business opportunities or timeshare
3 interests. This subdivision does not apply to a person who is not a
4 licensee, who works for a real estate broker or a real estate salesperson,
5 who collects in-person rent and related fees on behalf of the real estate
6 broker or real estate salesperson for the use of real estate as part of
7 the person's clerical duties and who provides a receipt when rent is paid.

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

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

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

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

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

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

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

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

1 (p) Acts as a business broker.

2 52. "Real estate sales contract" means an agreement in which one
3 party agrees to convey title to real estate to another party on the
4 satisfaction of specified conditions set forth in the contract.

5 53. "Real estate salesperson" means a natural person who acts on
6 the person's own behalf or through and on behalf of a professional limited
7 liability company or a professional corporation engaged by or on behalf of
8 a licensed real estate broker, or by or on behalf of a limited liability
9 company, partnership or corporation that is licensed as a real estate
10 broker, to perform any act or participate in any transaction in a manner
11 included in the definition of real estate broker subject to section
12 32-2155.

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

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

23 56. "School" means a person or entity that offers a course of study
24 toward completion of the education requirements leading to licensure or
25 renewal of licensure under this chapter.

26 57. "Stock cooperative" means a corporation to which all of the
27 following apply:

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

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

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

36 58. "Subdivider":

37 (a) Means any person who offers for sale or lease six or more lots,
38 parcels or fractional interests in a subdivision or who causes land to be
39 subdivided into a subdivision for the subdivider or for others, or who
40 undertakes to develop a subdivision.

41 (b) Does not include a public agency or officer authorized by law
42 to create subdivisions.

43 59. "Subdivision" or "subdivided lands":

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

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

4 (c) Does not include:

5 (i) Leasehold offerings of one year or less.

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

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

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

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

24 60. "Timeshare" or "timeshare property" means real property
25 ownership or right of occupancy in real property pursuant to article 9 of
26 this chapter. For the purposes of this chapter, a timeshare is not a
27 security unless it meets the definition of a security under section
28 44-1801.

29 61. "Trustee":

30 (a) Means a person who either:

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

33 (ii) Holds bare legal title to real property under a subdivision
34 trust.

35 (b) Does not include a developer, subdivider, broker or salesperson
36 within this chapter.

37 62. "Unimproved lot or parcel" means a lot or parcel of a
38 subdivision that is not an improved lot or parcel.

39 63. "Unsubdivided lands":

40 (a) Means land or lands divided or proposed to be divided for the
41 purpose of sale or lease, whether immediate or future, into six or more
42 lots, parcels or fractional interests and the lots or parcels are
43 thirty-six acres or more each but less than one hundred sixty acres each,
44 or that are offered, known or advertised under a common promotional plan
45 for sale or lease, except that agricultural leases shall not be included
46 in this definition.

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

7 Enroll and engross to conform

8 Amend title to conform

And, as so amended, it do pass

LUPE DIAZ
CHAIRMAN

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