

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

(Authority: A.R.S. § 6-101 et seq.)

Editor's Note: The Banking Department's name was changed to the Arizona Department of Financial Institutions under the authority of A.R.S. § 6-110, originally enacted as Laws 2004, Ch. 188, effective January 1, 2006 (Supp. 06-1).

Editor's Note: Title 20, formerly Commerce, Banking, and Insurance, is now Commerce, Financial Institutions, and Insurance. This change became effective when the Banking Department changed its name to the Department of Financial Institutions, effective January 1, 2006 (Supp. 06-1).

20 A.A.C. 4, consisting of R20-4-101 through R20-4-106, R20-4-201 through R20-4-215, R20-4-301 through R20-4-331, R20-4-401 through R20-4-402, R20-4-501 through R20-4-536, R20-4-601 through R20-4-620, R20-4-701 through R20-4-707, R20-4-801 through R20-4-816, R20-4-901 through R20-4-924, R20-4-1001, R20-4-1101 through R20-4-1102, R20-4-1201 through R20-4-1220, R20-4-1401 through R20-4-1410, R20-4-1501 through R20-4-1530, R20-4-1601 through R20-4-1604, and R20-4-1701 through R20-4-1706, recodified from 4 A.A.C. 4, consisting of R4-4-101 through R4-4-106, R4-4-201 through R4-4-215, R4-4-301 through R4-4-331, R4-4-401 through R4-4-402, R4-4-501 through R4-4-536, R4-4-601 through R4-4-620, R4-4-701 through R4-4-707, R4-4-801 through R4-4-816, R4-4-901 through R4-4-924, R4-4-1001, R4-4-1101 through R4-4-1102, R4-4-1201 through R4-4-1220, R4-4-1401 through R4-4-1410, R4-4-1501 through R4-4-1530, R4-4-1601 through R4-4-1604, and R4-4-1701 through R4-4-1706, pursuant to R1-1-102 (Supp. 95-1).

ARTICLE 1. GENERAL

R20-4-101 through R4-4-106 recodified from R4-4-101 through R4-4-106 (Supp. 95-1).

Article 1, consisting of Sections R4-4-101 through R4-4-106 adopted effective August 16, 1991 (Supp. 91-3).

Article 1, consisting of Sections R4-4-101 through R4-4-104, repealed effective August 16, 1991 (Supp. 91-3).

Section

R20-4-101.	Scope of Article
R20-4-102.	Definitions
R20-4-103.	Fingerprints
R20-4-104.	Acceptance of Other Forms
R20-4-105.	Claims Against a Deposit in Place of Bond
R20-4-106.	Bankruptcy
R20-4-107.	Licensing Time-frames
Table A.	Licensing Time-frames

ARTICLE 2. BANK ORGANIZATION AND REGULATION

Section

R20-4-201.	Articles of Incorporation
R20-4-202.	Bylaws
R20-4-203.	Repealed
R20-4-204.	Repealed
R20-4-205.	Repealed
R20-4-206.	Bankers Blanket Bond Coverage -- A.R.S. § 6-188
R20-4-207.	Capital Obligations
R20-4-208.	Repealed
R20-4-209.	Notice of Permanent Closing of Banking Office
R20-4-210.	Repealed
R20-4-211.	Application for a Banking Permit
R20-4-212.	Repealed
R20-4-213.	Repealed
R20-4-214.	Preservation of Records
R20-4-215.	Trust Business

ARTICLE 3. SAVINGS AND LOAN ASSOCIATIONS

Section

R20-4-301.	Fidelity Bond -- A.R.S. § 6-420
R20-4-302.	Repealed
R20-4-303.	Separate Trust Account -- A.R.S. § 6-449(C)(3)
R20-4-304.	Publication of Intent to Organize -- A.R.S. § 6-123
R20-4-305.	Repealed
R20-4-306.	Repealed
R20-4-307.	Repealed
R20-4-308.	Repealed

R20-4-309.	Sale and Servicing of Loans -- A.R.S. §§ 6-451, 6-402
R20-4-310.	Reserved
R20-4-311.	Repealed
R20-4-312.	Repealed
R20-4-313.	Reserved
R20-4-314.	Repealed
R20-4-315.	Repealed
R20-4-316.	Repealed
R20-4-317.	Repealed
R20-4-318.	Service Corporations -- A.R.S. § 6-446(5)
R20-4-319.	Repealed
R20-4-320.	Repealed
R20-4-321.	Repealed
R20-4-322.	Repealed
R20-4-323.	Repealed
R20-4-324.	Give-aways -- A.R.S. § 6-444
R20-4-325.	Appraisal Requirements -- A.R.S. § 6-457
R20-4-326.	Capital Notes and Debentures -- A.R.S. § 6-405.01
R20-4-327.	Application for Permit to Organize a New Association -- A.R.S. § 6-408
R20-4-328.	Application for Approval to Establish a Branch Office -- A.R.S. § 6-475
R20-4-329.	Repealed
R20-4-330.	First Payment Date on Loans -- A.R.S. § 6-449(E)
R20-4-331.	Repealed

ARTICLE 4. CREDIT UNIONS

Section

R20-4-401.	Fidelity Bond Coverage
R20-4-402.	Repealed

ARTICLE 5. SMALL LOANS

Section

R20-4-501.	Repealed
R20-4-502.	Repealed
R20-4-503.	Adjustments in Precomputed Charges
R20-4-504.	Repealed
R20-4-505.	Repealed
R20-4-506.	Repealed
R20-4-507.	Repealed
R20-4-508.	Cut-off Date for Computing Refunds upon Early Repayment in Full
R20-4-509.	Repealed
R20-4-510.	Repealed
R20-4-511.	Repealed
R20-4-512.	Reserved

- R20-4-513. Repealed
- R20-4-514. Repealed
- R20-4-515. Repealed
- R20-4-516. Repealed
- R20-4-517. Repealed
- R20-4-518. Deferral Fee
- R20-4-519. Deferral Statement
- R20-4-520. Repealed
- R20-4-521. Repealed
- R20-4-522. Repealed
- R20-4-523. Repealed
- R20-4-524. Books, Accounts, and Records
- R20-4-525. Repealed
- R20-4-526. Repealed
- R20-4-527. Repealed
- R20-4-528. Repealed
- R20-4-529. Repealed
- R20-4-530. Repealed
- R20-4-531. Repealed
- R20-4-532. Repealed
- R20-4-533. Reserved
- R20-4-534. Insurance
- R20-4-535. Reserved
- R20-4-536. Repealed

ARTICLE 6. DEBT MANAGEMENT COMPANIES

Article 6, consisting of Sections R4-4-601 through R4-4-620, adopted effective October 26, 1978, except that Sections R4-4-603, R4-4-604 and R4-4-607 shall become effective January 1, 1979. R20-4-601 through R20-4-620 recodified from R4-4-601 through R4-4-620 (Supp. 95-1).

Former Article 6, consisting of Section R4-4-601, repealed effective October 26, 1978. R20-4-601 recodified from R4-4-601 (Supp. 95-1).

- Section
- R20-4-601. Repealed
- R20-4-602. Applications
- R20-4-603. Reports
- R20-4-604. Records
- R20-4-605. Reserved
- R20-4-606. Reserved
- R20-4-607. Budget Analysis
- R20-4-608. Reserved
- R20-4-609. Repealed
- R20-4-610. Repealed
- R20-4-611. Advertising
- R20-4-612. Solvency and Minimum Liquid Assets
- R20-4-613. Reserved
- R20-4-614. Reserved
- R20-4-615. Reserved
- R20-4-616. Reserved
- R20-4-617. Reserved
- R20-4-618. Reserved
- R20-4-619. Reserved
- R20-4-620. Repealed

ARTICLE 7. ESCROW AGENTS

- Section
- R20-4-701. Change in Location of Business
- R20-4-702. Account Practices and Records
- R20-4-703. Preservation of Records
- R20-4-704. Subsidiary Account Records
- R20-4-705. Reserved
- R20-4-706. Repealed
- R20-4-707. Expired
- R20-4-708. Financial Condition and Resources

ARTICLE 8. TRUST COMPANIES

- Section
- R20-4-801. Definitions
- R20-4-802. Reserved
- R20-4-803. Reserved
- R20-4-804. Repealed
- R20-4-805. Reports
- R20-4-806. Records
- R20-4-807. Unsafe or Unsound Condition
- R20-4-808. Administration of Fiduciary Powers
- R20-4-809. Fiduciary Duties
- R20-4-810. Funds Awaiting Investment or Distribution
- R20-4-811. Investment of Trust Funds
- R20-4-812. Self-dealing
- R20-4-813. Custody of Investments
- R20-4-814. Compensation
- R20-4-815. Collective Investments
- R20-4-816. Termination of Trust or Fiduciary Powers and Duties
- App. A. Repealed
- App. B. Repealed

ARTICLE 9. MORTGAGE BROKERS

- Section
- R20-4-901. Reserved
- R20-4-902. Reserved
- R20-4-903. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States
- R20-4-904. Reserved
- R20-4-905. Repealed
- R20-4-906. Equivalent and Related Experience
- R20-4-907. Course of Study
- R20-4-908. Reserved
- R20-4-909. Reserved
- R20-4-910. Reserved
- R20-4-911. Qualified Replacement Responsible Individual
- R20-4-912. Restrictions on the Term of a Cash Alternative
- R20-4-913. Reserved
- R20-4-914. Reserved
- R20-4-915. Requirements for a Person Intended to Oversee a Branch Office
- R20-4-916. Notification of Change of Address
- R20-4-917. Recordkeeping Requirements
- R20-4-918. Repealed
- R20-4-919. Deposit of Monies Received by a Mortgage Broker
- R20-4-920. Requirements for the Testing Committee
- R20-4-921. Authorizations to Complete Blank Spaces
- R20-4-922. Determining Loan Amounts
- R20-4-923. Delay or Cause Delay
- R20-4-924. Receipt and Disbursement of Monies
- R20-4-925. Waiver of Examination and Course of Study
- R20-4-926. Acquisition of Additional Interest in Licensee by Majority Owner
- R20-4-927. Conversion to Commercial Mortgage Broker License
- R20-4-928. Certificate of Exemption Application and Renewal

ARTICLE 10. SAFE DEPOSIT AND SAFEKEEPING CODE

- Section
- R20-4-1001. Notice of Change of Location of Safe Deposit Repository

ARTICLE 11. PUBLIC DEPOSITORIES FOR PUBLIC MONIES

- Section
- R20-4-1101. Capital structure of banks; defined

Department of Financial Institutions

R20-4-1102. Capital structure of savings and loan associations; defined

ARTICLE 12. RULES OF PRACTICE AND PROCEDURE BEFORE THE SUPERINTENDENT

Section

R20-4-1201. Scope of Article
 R20-4-1202. Definitions
 R20-4-1203. Repealed
 R20-4-1204. Filing; Service
 R20-4-1205. Repealed
 R20-4-1206. Repealed
 R20-4-1207. Repealed
 R20-4-1208. Commencement of Proceedings; Notice of Hearing
 R20-4-1209. Answer to Notice of Hearing
 R20-4-1210. Stays
 R20-4-1211. Intervention
 R20-4-1212. Repealed
 R20-4-1213. Repealed
 R20-4-1214. Repealed
 R20-4-1215. Repealed
 R20-4-1216. Repealed
 R20-4-1217. Repealed
 R20-4-1218. Repealed
 R20-4-1219. Rehearing
 R20-4-1220. Consent Agreements

ARTICLE 13. LOAN ORIGINATORS

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, emergency expired on April 21, 2011. New Sections R20-4-1301 through R20-4-1305 were made by final rulemaking on effective April 22, 2011. Emergency rules removed from this Chapter for clarity. (Supp. 15-1).

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, emergency rulemaking renewed at 16 A.A.R. 2165, effective October 24, 2010 for an additional 180 days (Supp. 10-4).

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2).

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, emergency expired April 21, 2011; new Article consisting of Sections R20-4-1301 through R20-4-1305, made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4).

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, emergency rulemaking renewed at 16 A.A.R. 2165, effective October 24, 2010 for an additional 180 days (Supp. 10-4).

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2).

Section

R20-4-1301. Scope of Article
 R20-4-1302. Course of Study to Qualify for Licensure
 R20-4-1303. Financial Responsibility
 R20-4-1304. Fees
 R20-4-1305. Practice and Procedure

ARTICLE 14. INVESTIGATIONS

Section

R20-4-1401. Definitions
 R20-4-1402. Repealed
 R20-4-1403. Subpoenas: Service; Amendment; Investigation or Examination not a Condition of the Superintendent's Subpoena Power
 R20-4-1404. Repealed

R20-4-1405. Fingerprints; Background Information
 R20-4-1406. Repealed
 R20-4-1407. Renumbered
 R20-4-1408. Repealed
 R20-4-1409. Renumbered
 R20-4-1410. Repealed

ARTICLE 15. COLLECTION AGENCIES

Section

R20-4-1501. Definitions
 R20-4-1502. Applications
 R20-4-1503. Reports
 R20-4-1504. Records
 R20-4-1505. Trust Account
 R20-4-1506. Articles of Incorporation; Bylaws; Organizing Documents
 R20-4-1507. Representations of Collection Agency's Identity
 R20-4-1508. Representations of the Law
 R20-4-1509. Representations as to Fees, Costs, and Legal Proceedings; Disinterested Counsel Required
 R20-4-1510. Representations as to Rights Waived or Remedies Available
 R20-4-1511. Prohibition of Harassment
 R20-4-1512. Contacts with Debtors and Others
 R20-4-1513. Cessation of Communication with the Debtor
 R20-4-1514. Disclosure of Information to Debtor
 R20-4-1515. Aiding and Abetting
 R20-4-1516. Advertising
 R20-4-1517. Repealed
 R20-4-1518. Agreements with Clients
 R20-4-1519. Licensee Names and Control
 R20-4-1520. Representations of Collection Agency Employees' Identity or Position
 R20-4-1521. Duty of Investigation
 R20-4-1522. Reserved
 R20-4-1523. Reserved
 R20-4-1524. Reserved
 R20-4-1525. Reserved
 R20-4-1526. Reserved
 R20-4-1527. Reserved
 R20-4-1528. Reserved
 R20-4-1529. Reserved
 R20-4-1530. Repealed

ARTICLE 16. ACQUIRING CONTROL OF FINANCIAL INSTITUTIONS

Section

R20-4-1601. Definitions
 R20-4-1602. Application for Approval to Acquire Control of Financial Institution
 R20-4-1603. Repealed
 R20-4-1604. Repealed

ARTICLE 17. ARIZONA INTERSTATE BANK AND SAVINGS AND LOAN ASSOCIATION ACT

Section

R20-4-1701. Definitions
 R20-4-1702. Notice to the Superintendent of Intent to Acquire Control of an In-state Financial Institution; Surrender of an Acquired Financial Institution's Charter
 R20-4-1703. Repealed
 R20-4-1704. Public Notice
 R20-4-1705. Repealed
 R20-4-1706. Repealed

ARTICLE 18. MORTGAGE BANKERS

Article 18, consisting of Sections R20-4-1801 through R20-4-1812, adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

Section

- R20-4-1801. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States
- R20-4-1802. Equivalent and Related Experience
- R20-4-1803. Restrictions on the Term of a Cash Alternative to a Surety Bond
- R20-4-1804. Requirements for a Person Intended to Oversee a Branch Office
- R20-4-1805. Notification of Change of Address
- R20-4-1806. Recordkeeping Requirements
- R20-4-1807. Providing Copies of Records
- R20-4-1808. Authorizations to Complete Blank Spaces
- R20-4-1809. Determining Loan Amounts
- R20-4-1810. Delay or Cause Delay
- R20-4-1811. Impound Account
- R20-4-1812. Acquisition of Additional Interest in Licensee by Majority Owner
- R20-4-1813. Conversion to Mortgage Broker License

ARTICLE 19. COMMERCIAL MORTGAGE BANKERS

Article 19, consisting of Sections R20-4-1901 through R20-4-1911, adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

Section

- R20-4-1901. Exemption for an Institutional Investor
- R20-4-1902. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States
- R20-4-1903. Equivalent and Related Experience
- R20-4-1904. Restrictions on the Term of a Cash Alternative to a Surety Bond
- R20-4-1905. Requirements for a Person Intended to Oversee a Branch Office
- R20-4-1906. Notification of Change of Address
- R20-4-1907. Recordkeeping Requirements
- R20-4-1908. Impound Accounts
- R20-4-1909. Authorization to Complete Blank Spaces
- R20-4-1910. Delay or Cause Delay
- R20-4-1911. Acquisition of Additional Interest in Licensee by Majority Owner

ARTICLE 1. GENERAL**R20-4-101. Scope of Article**

The rules in this Article apply to all activities of the Superintendent and to the interpretation of all Arizona statutes and rules administered by the Superintendent.

Historical Note

Former Rule 1. Former R4-4-101 repealed, new R4-4-101 adopted effective August 16, 1991 (Supp. 91-3).
R20-4-101 recodified from R4-4-101 (Supp. 95-1).

R20-4-102. Definitions

In this Chapter, unless otherwise specified:

1. "Active management" means directing a licensee's activities by a responsible individual, who:
 - a. Is knowledgeable about the licensee's Arizona activities;
 - b. Supervises compliance with:
 - i. The laws enforced by the Department of Financial Institutions as they relate to the licensee, and
 - ii. Other applicable laws and rules; and

- c. Has sufficient authority to ensure compliance.
2. "Affiliate" has the meaning stated at A.R.S. § 6-901.
3. "Attorney General" means the Attorney General or an assistant Attorney General of the state of Arizona.
4. "Branch office" means any location within or outside Arizona, including a personal residence, but not including a licensee's principal place of business in Arizona, where the licensee holds out to the public that the licensee acts as a licensee.
5. "Business of a savings and loan association or savings bank" means receiving money on deposit subject to payment by check or any other form of order or request or on presentation of a certificate of deposit or other evidence of debt.
6. "Compensation" means, in applying that term's definition in A.R.S. §§ 6-901, 6-941, and 6-971, anything received in advance, after repayment, or at any time during a loan's life. This subsection expressly excludes the following items from those definitions of compensation:
 - a. Charges or fees customarily received after a loan's closing including prepayment penalties, termination fees, reinvestment fees, late fees, default interest, transfer fees, impound account interest and fees, extension fees, and modification fees. However, extension fees and modification fees are compensation if the lender advances additional funds or increases the credit limit on an open-end mortgage as part of the extension or modification;
 - b. Out-of-pocket expenses paid to independent third parties including appraisal fees, credit report fees, legal fees, document preparation fees, title insurance premiums, recording, filing, and statutory fees, collection fees, servicing fees, escrow fees, and trustee's fees;
 - c. Insurance commissions;
 - d. Contingent or additional interest, including interest based on net operating income; or
 - e. Equity participation.
7. "Commercial finance transaction," as that term is used in this Section's definitions of the terms "Engaged in the business of making mortgage loans" and "Engaged in the business of making mortgage loans or mortgage banking loans," means a loan made primarily for other than personal, family, or household purposes.
8. "Control of a licensee," as used in A.R.S. §§ 6-903, 6-944, or 6-978, does not include acquiring additional fractional equity interests in a licensee by any person who already has the power to vote 51% or more of the licensee's outstanding voting equity interests.
9. "Correspondent contract," as that term is used in A.R.S. §§ 6-941, 6-943, 6-971, or 6-973, means an agreement between a lender and a funding source under which the funding source may fund, or is required to fund, loans originated by the lender.
10. "Cushion," as that term is used in R20-4-1811 or R20-4-1908, means funds that a servicer or lender may require a borrower to pay into an escrow or impound account before the borrower's periodic payments are available in the account to cover unanticipated disbursements.
11. "Directly or indirectly makes, negotiates, or offers to make or negotiate" and "Directly or indirectly making, negotiating, or offering to make or negotiate," as those phrases are used in A.R.S. §§ 6-901, 6-941, or 6-971, mean:
 - a. Providing consulting or advisory services in connection with a mortgage loan transaction, mortgage

- banking loan transaction, or commercial mortgage loan transaction;
- i. To an investor, concerning the location or identity of potential borrowers, regardless of whether the person providing consulting or advisory services directly contacts any potential borrowers; or
 - ii. To a borrower, concerning the location or identity of potential investors or lenders; or
- b. Providing assistance in preparing an application for a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage banking loan transaction, regardless of whether the person providing assistance directly contacts any potential investor or lender; and
 - c. Processing a loan; but
 - d. “Directly or indirectly makes, negotiates, or offers to make or negotiate” and “Directly or indirectly making, negotiating, or offering to make or negotiate” do not include:
 - i. Providing clerical, mechanical, or word processing services to prepare papers or documents associated with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage banking loan transaction;
 - ii. Purchasing, selling, negotiating to purchase or sell, or offering to purchase or sell a mortgage loan, mortgage banking loan, or commercial mortgage banking loan already funded;
 - iii. Making, negotiating, or offering to make additional advances on an existing open-ended mortgage loan, mortgage banking loan, or commercial mortgage loan including revolving credit lines;
 - iv. Modifying, renewing, or replacing a mortgage loan, a mortgage banking loan, or a commercial mortgage loan already funded, if the parties to and security for the loan are the same as the original loan immediately before the modification, renewal, or replacement, and if no additional funds are advanced and no increase is made in the credit limit on an open-ended loan. Replacing a loan means making a new loan simultaneously with terminating an existing loan.
12. “Electronic record” has the meaning stated at A.R.S. § 44-7002(7).
 13. “Employee” means a natural person who has an employment relationship with a licensee that is acknowledged by both the person and the licensee, and:
 - a. The person is entitled to payment, or is paid, by the licensee;
 - b. The licensee withholds and remits, or is liable for withholding and remitting, payroll deductions for all applicable federal and state payroll taxes;
 - c. The licensee has the right to hire and fire the employee and the employee’s assistants;
 - d. The licensee directs the methods and procedures for performing the employee’s job;
 - e. The licensee supervises the employee’s business conduct and the employee’s compliance with applicable laws and rules; and
 - f. The rights and duties under subsections (13)(a) through (e) belong to the licensee regardless of whether another person also shares those rights and duties.
14. “Engaged in the business of making mortgage loans,” as that phrase is used in A.R.S. § 6-902, and “engaged in the business of making mortgage loans or mortgage banking loans,” as that phrase is used in A.R.S. § 6-942, mean the direct or indirect making of a total of more than five mortgage banking loans or mortgage loans, or both in a calendar year. Each loan counts only once as of its closing date. A person is not “engaged in the business of making mortgage loans or mortgage banking loans” if the person makes loans solely in commercial finance transactions in which no more than 35% of the aggregate value of all security taken by the investor on the closing date is a lien, or liens, on real property.
 15. “Exclusive contract,” as that term is used in A.R.S. §§ 6-912 and 6-991.02, means a written agreement in which a loan originator agrees to perform services as a loan originator subject to supervision and control by a person holding a certificate of exemption issued under A.R.S. § 6-912 on an exclusive basis. The agreement provides that the loan originator is expressly prohibited from performing loan origination or modification services for any other person during the time the agreement is in effect.
 16. “Generally accepted accounting principles” has the meaning used by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants.
 17. “Holds out to the public,” as used in this Section’s definition of “branch office,” means advertising or otherwise informing the public that mortgage banking loans, commercial mortgage loans, or mortgage loans are made or negotiated at a location. “Holds out to the public” includes listing a location on business cards, stationery, brochures, rate lists, or other promotional items. “Holds out to the public” does not include a clearly identified home or mobile telephone number on a business card or stationery.
 18. “Loan,” as that term is used in A.R.S. §§ 6-126(C)(6) and (8), means all loans negotiated or closed, without regard to the location of the real property collateral or type of loan.
 19. “Loan Processing” means obtaining a loan application’s supporting documents for use in underwriting.
 20. “Person” means a natural person or any legal or commercial entity including a corporation, business trust, estate, trust, partnership, limited partnership, joint venture, association, limited liability company, limited liability partnership, or limited liability limited partnership.
 21. “Property insurance,” as that term is used in A.R.S. §§ 6-909 and 6-947, does not include flood insurance as that term is used in the Flood Disaster Protection Act of 1973, as modified by the National Flood Insurance Reform Act of 1994. 42 U.S.C. 4001, et seq.
 22. “Reasonable investigation of the background,” as that term is used in A.R.S. §§ 6-903, 6-943, or 6-976 means a licensee, at a minimum:
 - a. Collects and reviews all the documents authorized by the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324a;
 - b. Obtains a completed Employment Eligibility Verification (Form I-9);
 - c. Obtains a completed and signed employment application;

- d. Obtains a signed statement attesting to all of an applicant's felony convictions, including detailed information regarding each conviction;
- e. Consults with the applicant's most recent or next most recent employer, if any;
- f. Inquiries regarding the applicant's qualifications and competence for the position;
- g. If for a loan officer, loan originator, loan processor, branch manager, supervisor, or similar position, obtains a current credit report from a credit reporting agency; and
- h. Investigates further if any information received in the above inquiries raises questions as to the applicant's honesty, truthfulness, integrity, or competence. An inquiry is sufficient after two attempts to contact a person, including at least one written inquiry.
23. "Record" has the meaning stated at A.R.S. § 44-7002(13).
24. "Registered to do business in this state" means:
- If an Arizona corporation, it is incorporated under A.R.S. Title 10, Chapter 2, Article 1;
 - If a foreign corporation, it either transfers its domicile under A.R.S. Title 10, Chapter 2, Article 2, or obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 15, Article 1;
 - If a business trust, it obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 18, Article 4;
 - If an estate, it acts through a personal representative duly appointed by this state's Superior Court, under the provisions of A.R.S. Title 14, Chapter 3 or 4;
 - If a trust, it delivers to the Superintendent an executed copy of the trust instrument creating the trust together with:
 - All the current amendments, or
 - A true copy of the trust instrument certified accurate and complete by a trustee of the trust before a notary public;
 - If a general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it is organized under A.R.S. Title 29;
 - If a foreign general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it is registered with the Arizona Secretary of State's office under A.R.S. Title 29;
 - If a joint venture, association, or any entity not specified in this subsection, it is organized and conducts its business in compliance with Arizona law; or
 - The entity is exempt from registration.
25. "Registered Exempt Person" means a person who is exempt from licensure pursuant to A.R.S. § 6-912 and A.R.S. Title 6, Chapter 9, Articles 1, 2 and 3 as a federally chartered savings bank that is registered with the nationwide mortgage licensing system and registry and holds a certificate of exemption.
26. "Resident of this state" means a natural person domiciled in Arizona.
27. "Responsible individual" or "responsible person", as those terms are used in A.R.S. §§ 6-903, 6-943, 6-973, and 6-976, means a resident of this state who:
- Lives in Arizona during the entire period of designation as the responsible individual on a license;
 - Is in active management of a licensee's affairs;
- Meets the qualifications listed in A.R.S. §§ 6-903, 6-943, or 6-973; and
 - Is an officer, director, member, partner, employee, or trustee of a licensed entity.
- Historical Note**
- Former Rule 2. Former R4-4-102 repealed, new R4-4-102 adopted effective August 16, 1991 (Supp. 91-3). R20-4-102 recodified from R4-4-102 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10 (Supp. 99-2). Amended by final rulemaking at 7 A.A.R. 668, effective January 10, 2001 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4). Amended by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).
- R20-4-103. Fingerprints**
- A licensee or applicant shall deliver fingerprints requested or required by the Superintendent on fingerprint cards provided by the Superintendent.
 - A licensee or applicant shall bear any costs incurred in obtaining or submitting fingerprints.
 - A licensee or applicant shall arrange to have fingerprints taken, signed, and dated by:
 - A municipal police department,
 - A local sheriff's office, or
 - Another law enforcement authority recognized by the Superintendent.
- Historical Note**
- Former Rule 3. Former R4-4-103 repealed, new R4-4-103 adopted effective August 16, 1991 (Supp. 91-3). R20-4-103 recodified from R4-4-103 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4670, effective November 14, 2000 (Supp. 00-4).
- R20-4-104. Acceptance of Other Forms**
- If another entity's applications and forms provide all the information required by Arizona law, the Superintendent has the discretion to accept them, even if another provision of this Chapter requires use of a specific Department of Financial Institutions form. The Superintendent's exercise of the discretion to accept alternative forms does not limit the Superintendent's power to require additional information necessary to complete an application or other form.
- Historical Note**
- Former Rule 4. Former R4-4-104 repealed, new R4-4-104 adopted effective August 16, 1991 (Supp. 91-3). R20-4-104 recodified from R4-4-104 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4670, effective November 14, 2000 (Supp. 00-4).
- R20-4-105. Claims Against a Deposit in Place of Bond**
- As used in this Section:
 - "Deposit" means cash or alternatives to cash deposited by a licensee with the Superintendent in place of a bond.
 - "Depositor" means licensee or an employee of the licensee who makes a deposit with the Superintendent.
 - "Verified claim" means a claim filed with the Superintendent under subsection (B).
 - "Award" means an amount of money granted under subsection (F).
 - A person may file a claim against a deposit by delivering documentation of the claim to the Superintendent. The claim shall be based on a final judgment in favor of the claimant, entered by a court of competent jurisdiction. To support a claim, the judgment shall be:

1. Against a depositor;
 2. For injury caused by the depositor's wrongful act, default, fraud, or misrepresentation committed in the course of the depositor's licensed business activity; and
 3. Documented by:
 - a. A certified copy of the complaint in the action;
 - b. A certified copy of the judgment in the action;
 - c. A statement that execution of the judgment has not been stayed, or an explanation of the terms and reason for any stay;
 - d. A statement of any amounts recovered on the judgment; and
 - e. A sworn and notarized statement that the claim is true and correct to the best of the claimant's knowledge and belief.
- C.** A claimant shall file a claim with the Superintendent, and all required supporting documentation, not more than six months after entry of the judgment asserted in the claim. However, if execution of the asserted judgment is stayed during the first six months after its entry, the claimant may file a verified claim only during the six months after the stay is lifted. The Department shall process a timely-filed verified claim as a request for hearing under R20-4-1208.
- D.** The claimant shall notify the depositor of the filing of a verified claim under this Section, and make the depositor a party to all proceedings on the claim. To do so, the claimant shall send the depositor a copy of all documents filed under subsection (B). The claimant shall make this delivery no more than 10 days after the original filing with the Superintendent under subsection (B). The Department considers a proceeding on a verified claim to be a contested case, governed by the provisions of 20 A.A.C. 4, Article 12.
- E.** The Superintendent shall, after a hearing, deny a verified claim if the hearing produces evidence of any of the following circumstances:
1. The judgment is not for an injury caused by the depositor and described in subsection (B)(2);
 2. The judgment was awarded by default, stipulation, or consent, and no showing is made in the hearing of an injury caused by the depositor and described in subsection (B)(2);
 3. The judgment's execution has been stayed for any reason;
 4. The judgment was procured through fraud or collusion;
 5. The judgment has been satisfied from other sources; or
 6. The action that produced the judgment was barred by the applicable statute of limitations at the time it was commenced.
- F.** If the Superintendent grants a verified claim, the Superintendent shall do so in the amount of the compensatory damages awarded against the depositor in the judgment, exclusive of:
1. Attorney's fees, and
 2. Amounts previously paid on the judgment.
- G.** A person injured by a depositor shall give the Superintendent written notice at the time of filing a civil action if the claims alleged could be made as a verified claim under this Section. The written notice shall include a statement of the amount of compensatory damages sought against the depositor. The injured person shall provide further information about the civil action to the Superintendent upon request.
- H.** If the Superintendent grants a verified claim under subsection (F), the Superintendent shall authorize the State Treasurer, in writing, to release the deposit to the claimant in the amount stated in subsection (F) if the Superintendent has not received notice of another pending civil action under subsection (G).
- I.** If given notice under subsection (G), the Superintendent shall determine whether the deposit is sufficient to satisfy all claims under subsection (F). The Superintendent shall determine award amounts for each claim of which the Superintendent has notice, and authorize payment, as follows:
1. If the deposit is sufficient to satisfy all claims under subsection (F), the Superintendent shall authorize its release as described in subsection (H).
 2. If the deposit is not sufficient to satisfy all claims under subsection (F), the Superintendent shall calculate the award on each claim as follows:
 - a. Each granted claim shall receive a pro rata share of the total deposit.
 - b. Each pro rata share shall be a dollar amount calculated by multiplying the total deposit by a fraction.
 - i. The numerator of the fraction is the amount of the Superintendent's award for the verified claim.
 - ii. The denominator of the fraction is the sum of the amount of the Superintendent's award for the verified claim plus the total compensatory damages sought in all other civil actions against the same depositor disclosed to the Superintendent under subsection (G).
 - c. The Superintendent shall authorize the State Treasurer to release the pro rata portion of the deposit calculated for each verified claim.
- J.** A depositor or former licensee may request return of its deposit if it substitutes a bond for the deposit, or if its license is surrendered, revoked, or expired, and if all statutory conditions for release of the deposit have been satisfied. The Superintendent shall not release any part of a deposit to a depositor or former licensee until the Superintendent determines whether there are any awards on verified claims unsatisfied because of an apportionment under subsection (I). The Superintendent shall use the deposit amount to pay any unsatisfied portion of those awards. If the deposit amount is not sufficient to pay in full all unsatisfied awards, the Superintendent shall pay the remaining amount of the deposit to claimants in the ratio their awards bear to the total of all awards granted against the deposit.
- K.** The court supervising a licensee in receivership may order the release of a deposit to persons injured by conduct described in subsection (B). In that event, the receiver shall deliver a certified copy of the court's order to the Superintendent. The copy may be uncertified if the receiver is the Superintendent or any other officer or agency of the state of Arizona. The Superintendent shall then authorize the State Treasurer, in writing, to release the deposit to the receiver. The receiver shall distribute the deposit as ordered by the receivership court, rather than under this Section.

Historical Note

Adopted effective August 16, 1991 (Supp. 91-3). R20-4-105 recodified from R4-4-105 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4670, effective November 14, 2000 (Supp. 00-4).

R20-4-106. Bankruptcy

An enterprise licensee or consumer lender licensee shall immediately deliver written notice to the Superintendent if it files a voluntary bankruptcy petition, or if its creditors name the licensee a debtor in an involuntary bankruptcy petition. On the date of each of the following documents' filing with the bankruptcy court, the licensee shall deliver to the Superintendent a copy of the:

1. Petition for relief,
2. Schedule of assets and liabilities,
3. Statement of financial affairs,
4. List of creditors, and

5. Plan of reorganization.

Historical Note

Adopted effective August 16, 1991 (Supp. 91-3). R20-4-106 recodified from R4-4-106 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4).

R20-4-107. Licensing Time-frames

- A. As used in this Section, “application” means a document specified or described in this Title, or in any statute enforced by the Department, requesting any permit, certificate, approval, registration, charter, or similar permission described in Table A, together with all supporting documentation required by statute or rule.
- B. The time-frames in Table A apply solely to applications received by the Department after the effective date of this Section. Each overall time-frame consists of an administrative completeness review time-frame, and a substantive review time-frame. The administrative completeness review time-frame begins to run upon receipt of an application by the Department.
 - 1. Within the administrative completeness review time-frame in Table A, the Department shall notify the applicant in writing whether the application is complete. If the application is incomplete, the notice shall specify the missing information or component.
 - 2. An applicant whose application is incomplete shall supply the missing information within 60 days after the date of the notice. If an applicant shows good cause in writing before the expiration of the 60 day time limit, the Superintendent shall extend the period for administrative completion of an application. The administrative

completeness review time-frame stops running on the postmark date of the Department’s written notice of an incomplete application, and resumes when the Department receives a complete application. If the applicant fails to submit a complete application within the specified time limit, the Department shall reject the application and close the file. An applicant may reapply.

- 3. The substantive review time-frame begins to run on the postmark date of the Department’s written notice that the application is administratively complete.
- 4. Within the overall time-frame set forth in Table A the Department shall send the applicant written notice of its decision to approve, conditionally approve, or deny a license, unless the time-frame is extended by mutual agreement under A.R.S. § 41-1075. If the Department denies an application, it shall provide written justification for the denial and a written explanation of the applicant’s right to a hearing or appeal in the form required by A.R.S. § 41-1076.
- 5. The Department shall calculate time limits prescribed in this Section under R2-19-107.
- C. The time-frames in this Section apply solely to actions taken by the Department. Nothing in this Section relieves a licensee or applicant of a duty to fulfill any other legal or regulatory requirement that is a condition of its power and authority to engage in business.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4).

Table A. Licensing Time-frames

No.	License Type	Legal Authority	Administrative Completeness Review (Days)	Substantive Review (Days)	Overall Time-Frame (Days)
1	<i>Bank</i>	A.R.S. § 6-203, et seq.			
	Initial Application	R20-4-211	45	45	90
2	<i>Bank Trust Dept.</i>	A.R.S. § 6-381			
	Initial Application	A.R.S. § 6-203, A.R.S. § 6-204(C)	45	45	90
3	<i>Savings & Loan</i>	A.R.S. § 6-401, et seq.			
	Initial Application	A.R.S. § 6-408, R20-4-327	75	75	150
4	<i>Credit Union</i>	A.R.S. § 6-501, et seq.			
	Initial Application	A.R.S. § 6-506(A)	60	60	120
5	<i>Trust Company</i>	A.R.S. § 6-851, et seq.			
	Initial Application	A.R.S. § 6-854(A)	75	75	150
6	<i>Consumer Lender</i>	A.R.S. § 6-601, et seq.			
	Initial Application	A.R.S. § 6-603(C)	60	60	120

Department of Financial Institutions

7	<i>Debt Management</i>	A.R.S. § 6-701, et seq.			
	Initial Application	A.R.S. § 6-704(A), R20-4-602(A)	30	30	60
8	<i>Escrow Agent</i>	A.R.S. § 6-801, et seq.			
	Initial Application	A.R.S. § 6-814	60	60	120
9	<i>Mortgage Broker or Commercial Mortgage Broker</i>	A.R.S. § 6-901, et seq.			
	Initial Application	A.R.S. § 6-903(C) & (D)	60	60	120
10	<i>Mortgage Banker</i>	A.R.S. § 6-941, et seq.			
	Initial Application	A.R.S. § 6-943(D)	60	60	120
11	<i>Commercial Mortgage Banker</i>	A.R.S. § 6-971, et seq.			
	Initial Application	A.R.S. § 6-974(A)	60	60	120
12	<i>Acquisition of Control of Financial Institution</i>	R20-4-1602, R20-4-1702			
	Initial Application	A.R.S. 6-1104	30	30	60
13	<i>Money Transmitter</i>	A.R.S. § 6-1201, et seq.			
	Initial Application	A.R.S. § 6-1204(A)	60	60	120
14	<i>Advance Fee Loan Broker</i>	A.R.S. § 6-1301, et seq.			
	Initial Application	A.R.S. § 6-1303(A)	30	30	60
15	<i>Premium Finance Co.</i>	A.R.S. § 6-1401, et seq.			
	Initial Application	A.R.S. § 6-1402(C)	60	60	120
16	<i>Collection Agency</i>	A.R.S. § 32-1001, et seq.			
	Initial Application	A.R.S. § 32-1021, R20-4-1502	30	15	45
17	<i>Motor Vehicle Dealer</i>	A.R.S. § 44-281, et seq.			
	Initial Application	A.R.S. § 44-282(B)	30	15	45
18	<i>Sales Finance Co.</i>	A.R.S. § 44-281, et seq.			
	Initial Application	A.R.S. § 44-282(B)	30	15	45
19	<i>Certificate of Exemption</i>	A.R.S. § 6-912			
	Initial Application	A.R.S. § 6-912(B)	45	45	90
20	<i>Loan Originators</i>	A.R.S. § 6-991, et seq.			
	Initial Application	A.R.S. § 6-991.04(A)	60	60	120

Historical Note

Table A adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4). Amended by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

ARTICLE 2. BANK ORGANIZATION AND REGULATION

R20-4-201. Articles of Incorporation

A licensee shall deliver to the Superintendent a copy of each amendment to the licensee's articles of incorporation within 30 days after the amendment is filed with the Arizona Corporation

Commission. Before delivery to the Superintendent, an officer of the licensee shall:

1. Certify the copy delivered in compliance with this Section, in writing, signed by the certifying officer, attesting

- to the completeness, accuracy, and authenticity of the certified copy; and
- 2. Ensure the copy bears a stamp affixed by the Arizona Corporation Commission to evidence filing with the Commission.

Historical Note

Former Rule 1. R20-4-201 recodified from R4-4-201 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 811, effective January 10, 2001 (Supp. 01-1).

R20-4-202. Bylaws

A licensee shall deliver to the Superintendent a copy of each amendment to the licensee's bylaws within 30 days after the amendment is adopted. An officer of the licensee shall certify the copy delivered in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.

Historical Note

Former Rule 2. R20-4-202 recodified from R4-4-202 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 811, effective January 10, 2001 (Supp. 01-1).

R20-4-203. Repealed

Historical Note

Former Rule 3; Amended subsection (C) effective September 4, 1981 (Supp. 81-5). R20-4-203 recodified from R4-4-203 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-204. Repealed

Historical Note

Former Rule 4. R20-4-204 recodified from R4-4-204 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-205. Repealed

Historical Note

Former Rule 5. R20-4-205 recodified from R4-4-205 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

R20-4-206. Bankers Blanket Bond Coverage -- A.R.S. § 6-188

- A. Each bank shall carry at least the following basic blanket bond coverage:

Banks with Deposits of:		Amounts:
Less than \$750,000		\$25,000
\$ 750,000	to 1,500,000	50,000
1,500,000	to 2,000,000	75,000
2,000,000	to 3,000,000	90,000
3,000,000	to 5,000,000	120,000
5,000,000	to 7,500,000	150,000
7,500,000	to 10,000,000	175,000
10,000,000	to 15,000,000	200,000
15,000,000	to 20,000,000	250,000
20,000,000	to 25,000,000	300,000
25,000,000	to 35,000,000	350,000
35,000,000	to 50,000,000	450,000
50,000,000	to 75,000,000	550,000
75,000,000	to 100,000,000	700,000
100,000,000	to 150,000,000	850,000
150,000,000	to 250,000,000	1,200,000
250,000,000	to 500,000,000	1,700,000
500,000,000	to 1,000,000,000	2,500,000

- | | | | | |
|--|--------------------|----|---------------|-----------|
| | 1,000,000,000 | to | 2,000,000,000 | 4,000,000 |
| | Over 2,000,000,000 | | | 6,000,000 |
- B. Each bank shall supplement the bankers blanket bond coverage with at least a \$1,000,000 excess fidelity bond. Effective 8-8-73.

Historical Note

Former Rule 6. R20-4-206 recodified from R4-4-206 (Supp. 95-1).

R20-4-207. Capital Obligations

- A. An applicant for a Superintendent's order of approval to issue a capital obligation shall submit the following documents to the Superintendent, and shall not issue any capital obligation before the Superintendent issues the order of approval. The required documents are:
 1. A certified copy of the resolution adopted by the Board of Directors, or a certified copy of the unanimous written consent of the Board of Directors, authorizing the sale of the capital obligation;
 2. A copy of the agreement underlying the capital obligation;
 3. A copy of the note or debenture intended to represent the capital obligation; and
 4. A copy of the prospectus, if any, proposed for use in the sale of the capital obligation.
- B. Each document evidencing a capital obligation shall:
 1. Bear on its face, in bold face type, the following: This obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation.
 2. Have a maturity provision that either:
 - a. Gives the obligation a maturity of at least five years, or
 - b. In the case of an obligation or issue that provides for scheduled repayments of principal, gives an average maturity of at least five years. The restriction on maturity stated in this subsection does not apply to any obligation that otherwise meets all the requirements of this rule if the Superintendent determines that exigent circumstances require the issuance of the obligation without regard to any restriction on maturity. The provisions of this subsection do not apply to mandatory convertible debt obligations or issues.
 3. State expressly on its face that the obligation:
 - a. Is subordinated and junior in right of payment to the issuing bank's obligations to its depositors and to the bank's other obligations to its general and secured creditors, and
 - b. Is ineligible as collateral for a loan by the issuing bank, except as provided in A.R.S. § 6-354.
 4. Be unsecured.
 5. State expressly on its face that the issuing bank may not retire any part of its capital obligation without the Superintendent's prior written order of approval, and the prior written consent of the Federal Deposit Insurance Corporation.
 6. Include, if the obligation is issued to a depository institution, a specific waiver of the right of offset by the lending depository institution.
 7. State that, in the event of liquidation, all depositors and other creditors of the bank are to be paid in full before any payment of principal or interest is made on a capital obligation.
- C. No payment shall be made under an optional right of payment reserved to the bank without the separate authorization of the

Superintendent. The Superintendent may grant that authority in the initial order of approval or in a later order of approval.

Historical Note

Former Rule 7. R20-4-207 recodified from R4-4-207 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 2155, effective May 4, 2001 (Supp. 01-2).

R20-4-208. Repealed

Historical Note

Former Rule 8. R20-4-208 recodified from R4-4-208 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

R20-4-209. Notice of Permanent Closing of Banking Office

A bank may close fewer than all of its banking offices. Before closing any office, a bank shall deliver a letter to the Superintendent specifying the banking office it plans to close and the closing date. The bank shall ensure that the Superintendent receives the letter at least 10 days before the closing date. Closing the banking office shall terminate the bank's authority to maintain that banking office on the date of the actual closure.

Historical Note

Former Rule 9. R20-4-209 recodified from R4-4-209 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5388, effective November 9, 2001 (Supp. 01-4).

R20-4-210. Repealed

Historical Note

Former Rule 10. R20-4-210 recodified from R4-4-210 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

R20-4-211. Application for a Banking Permit

- A. Before an application is filed, the representatives of the potential applicant shall meet with the Superintendent of Banks to discuss capitalization, location, and management of the proposed bank.
- B. After the meeting required by subsection (A), persons who wish to proceed with the application process shall submit an application in the form the Superintendent prescribes. The applicant shall support the application with sufficient information to enable the Superintendent to make a determination.

Historical Note

Former Rule 11. R20-4-211 recodified from R4-4-211 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

R20-4-212. Repealed

Historical Note

Former Rule 12. Amended effective September 4, 1981 (Supp. 81-4). R20-4-212 recodified from R4-4-212 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-213. Repealed

Historical Note

Former Rule 13. Repealed effective September 13, 1981 (Supp. 81-5). R20-4-213 recodified from R4-4-213 (Supp. 95-1).

R20-4-214. Preservation of Records

- A. Every bank shall keep its corporate and business records as originals or as copies of the originals made by reproduction methods that accurately and permanently preserve the records. Copies complying with this subsection, when satisfactorily identified, have the same evidentiary status as an original. A

bank may use an electronic recordkeeping system. The Department shall not require a bank to keep a written copy of its records if the bank can generate all information and copies required by this Section in a timely manner for examination or other purposes.

- B. A bank shall keep its corporate and business records for the period required by this Section. These periods are measured from the date of the last entry or final action date. A bank shall have and comply with its own record retention schedule that is consistent with this Section. A bank may comply with this Section by complying with a preemptive federal regulation, even if the federal regulation requires a shorter retention period than is listed in this Section. This Section does not prohibit record retention for longer periods than these state-required minimums for any reason, including a retention period established by preemptive federal law or regulation. Likewise, this Section does not prohibit a bank from keeping any type of record not required in subsection (D).
- C. Beginning on the effective date of this Section, corporate and business records of a bank operating in the state of Arizona are classified, and their retention periods are prescribed, according to the schedule in subsection (D). Retention periods are listed in subsection (D) using the notations, acronyms, and abbreviations listed in this Section.
 1. A numerical designation refers to a period of years unless a shorter period of time is specified in the schedule.
 2. "AC" means after closure.
 3. "ACH" means automated clearing house.
 4. "AE" means after expiration.
 5. "ALC" means after last contact.
 6. "AP" means after paid.
 7. "ATD" means after termination date.
 8. "CTR" means a cash transaction report required by the Federal Bank Secrecy Act.
 9. "FDIC" means the Federal Deposit Insurance Corporation.
 10. "FHA" means the Federal Housing Administration.
 11. "FHLMC" means the Federal Home Loan Mortgage Corporation.
 12. "FNMA" means the Federal National Mortgage Association.
 13. "GNMA" means the Government National Mortgage Association.
 14. "IRS" means the United States Department of the Treasury's Internal Revenue Service.
 15. "M" means months.
 16. "P" means the bank shall keep the record permanently.
 17. "PMI" means private mortgage insurance.
 18. "SAR" means a suspicious activity report required by the federal Bank Secrecy Act.
 19. "TTL" means a treasury, tax, and loan account maintained by a bank.
 20. "UCC" means the Uniform Commercial Code as it is in effect in Arizona.
- D. Retention Schedule
 1. Accounting and Auditing
 - a. Accrual and bond amortization 3
 - b. Audit report 6
 - c. Audit work papers 3
 - d. Bank call, income and dividend report 5
 - e. Bill, statement, or invoice - paid 7
 - f. Budget work papers 2
 - g. Collateral vault "in-and-out" ticket 1
 - h. Daily reserve computation 1
 - i. Earnings report 7
 - j. Expense voucher or invoice

Department of Financial Institutions

k.	Financial statement	7	c.	Film copy of every IRS financial reporting form	6
l.	Interoffice reconciliation	1	d.	Program change	P
m.	Interoffice transaction	1	e.	System, program and procedure manual	P
n.	Periodic statement for account owned by the bank	2	6.	Deposits	
o.	Reconcilement of deposits-due to bank	2	a.	Account opened and account closed report	1
p.	Reconcilement register-due from bank	2	b.	Certificate of deposit purchase record	7
q.	Return and cash item register	1	c.	Check paid, withdrawal slip, and other debits to account	7
r.	Service contract	2	d.	Club account check register	1
s.	Treasury tax and loan account	2	e.	Club account coupon	1
t.	Unclaimed property record	7	f.	SAR - for suspicious transaction under \$10,000	5
2.	Administration		g.	CTR - for transaction exceeding \$10,000	5
a.	Articles of incorporation or association, bylaws, or other record of organization	P	h.	Customer authorization, resolution, and signature card	6 AC
b.	Bankers blanket bond-record showing compliance	5 AE	i.	Deposit account record needed to reconstruct	7
c.	Bank examiner's report	7	j.	Deposit and other credits	7
d.	Capital note issuance and transfer record	P	k.	Dormant account - after closed or escheated	7 ALC
e.	Depreciation record-office equipment	3	l.	Form 1096, and 1099 reports to IRS	7
f.	Dividend check and register	7	m.	Individual retirement account record	7
g.	Dividend check-outstanding	P	n.	Interest check or other record of interest payment and reports	7
h.	Expired policy insuring the bank	3 AE	o.	Internal management reports:	
i.	FDIC assessment base, record	5	i.	Large balance	1
j.	FDIC certificate	P	ii.	Overdraft	1
k.	Insurance policy number, record of premium paid and amount recovered	3 AE	iii.	Public funds	1
l.	Legal proceedings when completed	5	iv.	Service charges	1
m.	Minute book of:		v.	Stop payment	1
i.	Meetings of the board of directors	P	vi.	Uncollected funds	1
ii.	Meetings of committees of the board of directors	P	vii.	Unposted item	1
iii.	Shareholders' meetings	P	viii.	Zero balance	1
n.	Postage meter record book (from date of final entry)	1	p.	Ledger card	5 AC
o.	Real estate documentation	5 ATD	q.	Power of attorney document	7 ATD
p.	Report to directors	3	r.	Receipt for statement held at customer's request	1
q.	Stock issuance and transfer record	P	s.	Record showing compliance with the following federal regulations. The stated retention period applies unless, and until, it is preempted by federal law:	
r.	Required report to supervisory agency	3	i.	Regulation CC, Expedited Funds Availability Act	2
s.	Tax controversy or proceeding when completed	7	ii.	Regulation DD, Truth in Savings Act	2
t.	Tax record not material to any controversy	7	iii.	Regulation E, Electronic Funds Transfer Act	2
u.	Voting list and proxies	3	t.	Returned statement and cancelled checks	6
3.	Collections		u.	Statement	6
a.	Collection payment record	1	v.	Stop payment order	6 AE
b.	Collection receipt-carbon	1	w.	Document used to request and receive Tax Identification Number	6
c.	Collection register	1	x.	Transaction journal	6
d.	Coupon cash letter-outgoing	1	y.	Trial balance	6
e.	Coupon envelope	1	7.	Due from banks	
f.	Customer file copy	1	a.	Advice from correspondent bank	1
g.	Incoming collection letter	1	b.	Bank statement	1
h.	Incoming contract or note letter	1	c.	Draft-original	7
4.	Customer service		d.	Draft register or copy	1 AP
a.	Broker account holder-identification	5	e.	Duplicate check-information and documentation pertaining to issuance	7
b.	Broker's confirmation	3	f.	Reconcilement register	1
c.	Broker's invoice	3	8.	Due to banks	
d.	Broker's statement	3	a.	Account opened and account closed-reports	1
e.	E-Bond application	2	b.	Advice-copy	1
f.	E-Bond sold or redeemed-record	2	c.	Incoming cash letter memo for credit	1
g.	E-Bond transmittal letter	2	d.	Incoming cash letter for remittance	1
h.	Lock box daily receipts	1	e.	Reconcilement register (TTL)	2
i.	Night depository agreement	1 AC	f.	Reconcilement verification	1
j.	Night depository daily record	1	g.	Resolution	2 AC
k.	Safekeeping record and receipt	5	h.	Signature card	6 AC
l.	Securities buy order and sell order	3	i.	Trial balance (fiche)	7
5.	Data processing (management information systems)				
a.	Back-up data (for reconstruction) daily, end of month, quarter, or year	1			
b.	Disaster recovery program	P			

Department of Financial Institutions

j.	Undelivered statement, reconstruction available from bank records	1	vi.	Monthly remittance report	7
k.	Undelivered statement, reconstruction not possible	7	13.	Loans. A bank shall keep each loan record listed for the period required by this subsection. These periods are measured from the date of final activity. A bank shall have and comply with its own record retention schedule that is consistent with this subsection. A bank may comply with this subsection by complying with a preemptive federal regulation, even if the federal regulation requires a shorter retention period than is listed in this subsection. This subsection does not prohibit record retention for longer periods than these state-required minimums for any reason, including a retention period established by preemptive federal law or regulation. Likewise, this Section does not prohibit a bank from keeping any type of record not required by this subsection.	
9.	General		a.	All Loans - general	
a.	Address change order	1	i.	Application for loan approved	6
b.	Affidavit from customer including affidavit of loss, forgery, or non-use of cashier's check	1	ii.	Appraisal	6
c.	Writ of attachment or garnishment	5	iii.	Borrower's financial statement	6
d.	Attachment, release	5	iv.	Charge-off record	10
e.	Armored car receipt	1	v.	Charged off note	10
f.	Check book order	1	vi.	Collateral file	6
g.	Check book-receipt	1	vii.	Correspondence	6
h.	Court order memorandum record	5	viii.	Credit file - all documentation	6
i.	Notice of Protest	1	ix.	Credit report	6
j.	Travelers check-application	2	x.	Daily proof and record	6
k.	Vault record-opening and closing	1	xi.	Loan committee minutes	P
l.	Wire transfer debit entry and credit entry	7	xii.	Miscellaneous loan reports including new loan journal, paid loan journal, past due report, and transaction journal as original entry	6
10.	General ledger		xiii.	Other documentation for reconstruction of loan	2
a.	Daily statement of condition	3	b.	Commercial loans	
b.	General journal-if byproduct of posting the general ledger	3	i.	Application for loan denied	12 M
c.	General journal-if used as book of original entry with description	3	ii.	Bill of sale	6
d.	General ledger	5	iii.	Borrowing resolution	3
e.	General ledger ticket-debit and credit	2	iv.	Business annual report (fiscal or year end) - after date of report	3
11.	International department		v.	Business cash-flow analysis report - after date of report	3
a.	Broker account holder-identification	5	vi.	Business tax return - after date of return	6
b.	Cable copy	7	vii.	Commitment letter	6
c.	Cable requisition	7	viii.	Copy of mortgage note or deed of trust	6
d.	Collection paid	1	ix.	Evidence of insurance	6
e.	Correspondence	2	x.	Guaranty	6
f.	Draft	7	xi.	Letter of credit	6
g.	Foreign collection register	6	xii.	Participation agreement	6
h.	Foreign draft application	6	xiii.	Promissory note	6
i.	Foreign draft-carbon	2 ATD	xiv.	Purchase and sale agreement	6
j.	Foreign exchange remittance sheet or book	6	xv.	Security agreement	6
k.	Foreign financial account-record	7	xvi.	Title documentation	6
l.	Foreign mail transfer application	6	xvii.	UCC filing	6
m.	Foreign mail transfer-carbon	2 ATD	c.	Consumer loans	
n.	Foreign outstanding cash	2	i.	Application for loan denied, including adverse action notice	25 M
o.	Foreign payment-incoming	2	ii.	Collateral record	6
p.	Letter of credit application	2	iii.	Hazard insurance record	6
q.	Letter of credit ledger sheet	7	iv.	Invoice	6
r.	Transfer outside of the United States in excess of \$10,000 - record	5	v.	Life and disability insurance record	6
12.	Investments		vi.	Overdraft loan agreement	6
a.	Bonds		vii.	Promissory note and modification agreement - copy	6
i.	Amortization record	6	viii.	Title documentation	6
ii.	Confirmation	3	ix.	UCC filing - copy	6
iii.	Safekeeping receipt	2	d.	Real estate loans	
b.	Broker's securities		i.	Assignment of escrow	6
i.	Broker's invoice	3			
ii.	Broker's statement	3			
iii.	Report of lost or stolen securities	3			
iv.	Safekeeping advice	2			
v.	Taxpayer identification number	5			
c.	Commercial paper				
i.	Broker's advice	2			
ii.	Purchase order	2			
iii.	Remittance advice	2			
d.	Mortgage-backed securities				
i.	Buy-and-sell agreement	3			
ii.	Commitment letter	7			
iii.	FHLMC and FNMA loan file	7			
iv.	GNMA certificate	7			
v.	Interest accrual record	7			

Department of Financial Institutions

ii. Assumption	6	c. Delivery of will, burial plot deed, insurance policy-receipt	6
iii. Commitment letter	6	d. Forced entry record	6
iv. Copy of deed of trust or mortgage note, as it may have been modified	6	e. Lease or contract-closed account	2 AC
v. Escrow analysis and record	6	f. Ledger record of account	1
vi. Evidence of any FHA or PMI insurance required	6	g. Opened box contents-record and report	7
vii. Hazard insurance	life of loan	h. Rent receipt-copy	1
viii. Proof of insurance excluding hazard	6	i. Sale to satisfy lien-record	7
ix. Sales contract	6	j. Signature card, authorization, and resolution	6 AC
x. Settlement sheet	6	18. Tellers	
xi. Survey	6	a. Mail teller envelope	3 M
xii. Title documentation	6	b. Teller's balancing recap or recap book	1
e. Construction loans. In addition to the documents specified in subsection (d), a bank shall keep a record for a construction loan as specified in this subsection:		c. Teller's cash ticket-original and carbons	1
i. Certificate of occupancy	6	d. Teller's cash shipment record	1
ii. Construction progress report	6	e. Teller's exchange ticket	1
iii. Contractor's cost breakdown	6	f. Teller's machine tape	1
iv. Disbursement documentation	6	19. Transit, proof, and clearing	
v. Inspection report	6	a. ACH entry	6
vi. Residential construction specifications and material list	6	b. Advice of correction to deposit	2
14. Official checks and drafts		c. Clearinghouse settlement sheet - recapitulation of checks delivered to the clearinghouse or federal reserve	2
a. Affidavit, bond, indemnity agreement, other documentation supporting the issuance of a duplicate check or draft	7	d. Record of items processed	6
b. Bank draft	3	e. Proof machine tape or other record	2
c. Cashier's check-cancelled	7	f. Receipt for transit letter	1
d. Cashier's check register-copy	7	g. Return item letter	5
e. Expense check-cancelled	7	20. Trust department administration	
f. Expense check register-copy	7	a. Appraisal of real or personal property held as a trust asset	3 AC
g. Expense voucher or invoice	7	b. Correspondence	3 AC
h. Money order-bank or personal	7	c. Decree or receipt and release	3 AC
i. Money order register-copy	7	d. Fee record and supporting data	3 AC
j. Official check outstanding	P	e. Intermediate and final account	3 AC
15. Personnel Records		f. Legal documentation including judgment, court order, and legal opinion	3 AC
a. Attendance record, and time card	3	g. Paid bill	3 AP
b. Authorization for payroll deduction	2	h. Real estate insurance policy	1 AE
c. Department of labor report	5	i. Real estate and mortgage document	3 AC
d. Disability record	5	j. Receipt for asset received or delivered	3 AC
e. Employee record and personnel folder	5	k. Record of asset tax cost	3 AC
f. Employment application	3 AT	l. Summary card, original instrument, agreement and amendment, and letters of appointment	3 AC
g. Insurance record	2	m. Synopsis sheet	3 AC
h. Payroll check	2	21. Corporate trust	
i. Pension fund record	10	a. Bond registration journal	3 AC
j. Profit sharing fund record	10	b. Bond-cancelled	7
k. Rejected employee application	2	c. Indemnity bond	P
l. Salary ledger or electronic data processing printout	4	d. Certification	2
m. Salary receipt	2	e. Coupon envelope	6 M
n. W-3 reconciliation of income tax withheld from wages	3	f. Coupon-cancelled	6 M
o. W-4 withholding exemption certificate	3	g. Customer receipt	7
p. Wage and tax statement record (W-2)	7	h. Dividend and coupon record	3 AC
q. Wage differential documentation (Fair Labor Standards Act)	3	i. Dividend and interest disbursement check and list	3 AC
16. Registered mail		j. General ledger ticket	2
a. Marine insurance book	3	k. Legal paper	P
b. Record of incoming and outgoing registered mail	1	l. Copy of cancelled stock certificate, original returned to customer	1
c. Return receipt card	3	m. Stock registration journal	3 AC
17. Safe deposit vault		n. Stock transfer memo	1
a. Access ticket or card	6	o. Stock transfer receipt	1
b. Court order and correspondence	6	p. Tax return	3 AC
		q. Transfer-supporting papers	3 AC
		r. Transfer journal	3 AC
		s. Transfer tax waiver	3 AC
		t. Trust ledger-corporate	7

Department of Financial Institutions

22. Personal trust		i. Common trust fund	10
a. Record of previously discharged fiduciary		ii. Pooled fund	10
i. Accounting	3 AC	c. Minutes	P
ii. Decree	3 AC	i. Investment committee	P
iii. Receipt and release	3 AC	ii. Administrative committee	P
b. Accounting - recorded	3 AC	d. Investment order and broker's confirmation	3 AC
c. Advice of payment - securities department regarding bond and coupon collection	3 AC	e. investment review and related material	3 AC
d. Appraisal		f. Correspondence	3 AC
i. Real property	3 AC	g. Summary of annual account activity	3 AC
ii. Personal property	3 AC	25. Wire transfer	
e. Asset delivery receipt	3 AC	a. Incoming wire log	1
f. Authorization		b. Outgoing wire log	1
i. By co-fiduciary	P	c. Transmission record	7
ii. By consultant	P	d. Wire transfer request	7
g. Approval			
i. By co-fiduciary	P		
ii. By consultant	P		
h. Broker's statement	7		
i. Buy and sell order	7		
j. Cash documentation			
i. Customer cash and asset statement	7		
ii. Cash and security journal	7		
iii. Cash trial balance	1		
k. Common trust fund annual report	10		
l. Correspondence			
i. Transfer letter	3 AC		
ii. Claim letter	3 AC		
m. Coupon collection record	7		
n. Court accounting and petition	7		
o. Daily transaction journal	6 M		
p. Debits and credits-daily	1		
q. Documentation necessary to support account decision	3 AC		
r. Tax Documentation			
i. Federal estate tax return	10		
ii. State estate tax return	10		
iii. Tax-related work papers	10		
iv. Federal gift tax return	10		
s. Fee calculations and supporting data	1		
t. Income tax return			
i. Federal	3 AC		
ii. State	3 AC		
u. Inventory	3 AC		
v. Investment review and related material	3 AC		
w. Minutes			
i. Investment committee	P		
ii. Trust committee	P		
23. Other personal trust records			
a. Legal opinion	3 AC		
b. Correspondence related to legal opinion	3 AC		
c. Paid bill	7		
d. Review and recommendation	3 AC		
e. Safekeeping record and receipt	3 AC		
f. Security ledger sheet	P		
g. Trust check	10		
h. Trust entry-original	3 AC		
i. Trust or agency agreement-original	3 AC		
j. Vault withdrawal and deposit ticket	7		
k. Will-certified copy	P		
l. Work papers supporting tax return	7		
24. Trust Investments			
a. Annual report			
i. Common trust fund	10		
ii. Pooled fund	10		
b. Valuation			

Historical Note
Former Rule 14. R20-4-214 recodified from R4-4-214 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4142, effective September 12, 2001 (Supp. 01-3).

R20-4-215. Trust Business
All banks authorized to conduct trust business under their banking permit shall comply with the applicable requirements of R20-4-808 through R20-4-816.

Historical Note
Adopted effective June 30, 1977 (Supp. 77-3). R20-4-215 recodified from R4-4-215 (Supp. 95-1).

ARTICLE 3. SAVINGS AND LOAN ASSOCIATIONS

R20-4-301. Fidelity Bond -- A.R.S. § 6-420
Fidelity bonds of officers and employees shall be in an amount to meet the requirements of the Federal Savings and Loan Insurance Corporation and shall be approved by the filing of a copy or a certificate of issuance thereof with the Superintendent. Associations shall immediately notify the Superintendent of any change in liability or a default arising on or by said bond.

Historical Note
Former Rule 1. R20-4-301 recodified from R4-4-301 (Supp. 95-1).

R20-4-302. Repealed
Historical Note
Former Rule 2; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-302 recodified from R4-4-302 (Supp. 95-1).

R20-4-303. Separate Trust Account -- A.R.S. § 6-449(C)(3)
A separate trust bank account required by A.R.S. § 6-449(C)(3) may be established in one or more banks provided that the same are consolidated for accounting purpose, deposits thereto are made promptly, and that individual member records are maintained clearly indicating the equity of the member therein.

Historical Note
Former Rule 3. R20-4-303 recodified from R4-4-303 (Supp. 95-1).

R20-4-304. Publication of Intent to Organize -- A.R.S. § 6-123
If the Superintendent does not deny the application for permit to organize a new association on the basis of the data submitted in the application and any other information in his possession, he shall instruct the applicants to publish the following notice once each week for two successive weeks in the English language in a newspaper of general circulation published in the community in which the proposed association would be located, or if no such newspaper exists in said community, then in the county in which the proposed association would be located:

NOTICE OF INTENT TO ORGANIZE THE

_____ Savings and Loan Association. Notice is hereby given that, pursuant to the provisions of Title 6, Chapter 3 of the Arizona Revised Statutes and Rule No. 4327 of the Superintendent of Banks, _____ (fill in names of applicants) have filed an application for a permit to organize a savings and loan association to be located at, or in the immediate vicinity of

_____ (Street Address) _____ (City)

Arizona. A hearing will be held before the Superintendent of Banks at

_____ on _____, 19 _____, in Room _____ (Time) _____ (Date)

101, Commerce Building, 1601 West Jefferson, Phoenix, Arizona, at which time any person may appear, or in advance of that time any person may file communications, including briefs, with the Superintendent of Banks, in favor of or in protest of the application. Two copies of any such communication shall be filed.

The publisher's affidavits of publication of the notice shall be filed with the Superintendent prior to the hearing date.

Effective 8-8-73

Historical Note

Former Rule 4. R20-4-304 recodified from R4-4-304 (Supp. 95-1).

R20-4-305. Repealed**Historical Note**

Former Rule 5. R20-4-305 recodified from R4-4-305 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-306. Repealed**Historical Note**

Former Rule 6. R20-4-306 recodified from R4-4-306 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-307. Repealed**Historical Note**

Former Rule 7. R20-4-307 recodified from R4-4-307 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-308. Repealed**Historical Note**

Former Rule 8. R20-4-308 recodified from R4-4-308 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-309. Sale and Servicing of Loans -- A.R.S. §§ 6-451, 6-402

- A. The total dollar amount of loans and/or participating interest of loans sold in any calendar year shall not, without prior written approval of the Superintendent of Banks, exceed 20% of the total amount of all loans held by the association at the beginning of such calendar year.
- B. All loans and/or participating interest of loans sold shall be sold without recourse.
- C. If the loans or participating interests sold are to be serviced by the seller, no such loans shall be sold except under the terms of a service agreement contract form. A sample service agreement contract form, in blank, shall have been filed in advance

with an approval requested from the Superintendent of Banks. Any future changes in the approved form shall be handled in a similar manner.

- D. The selling association shall report to the Superintendent of Banks within 30 days of the date of any sale:
 1. Name and address of the purchaser.
 2. Gross amount of mortgage loans involved in sale.
 3. Amount of participation sold.
 4. Percentage of amount of sale to gross amount of loans involved in sale.
 5. Number of loans sold in whole or part.
 6. Service fee rate.

Historical Note

Former Rule 9. R20-4-309 recodified from R4-4-309 (Supp. 95-1).

R20-4-310. Reserved**R20-4-311. Repealed****Historical Note**

Former Rule 11; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-311 recodified from R4-4-311 (Supp. 95-1).

R20-4-312. Repealed**Historical Note**

Former Rule 12. R20-4-312 recodified from R4-4-312 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-313. Reserved**R20-4-314. Repealed****Historical Note**

Former Rule 14. R20-4-314 recodified from R4-4-314 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-315. Repealed**Historical Note**

Former Rule 15. R20-4-315 recodified from R4-4-315 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-316. Repealed**Historical Note**

Former Rule 16. R20-4-316 recodified from R4-4-316 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-317. Repealed**Historical Note**

Former Rule 17; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-317 recodified from R4-4-317 (Supp. 95-1).

R20-4-318. Service Corporations -- A.R.S. § 6-446(5)

- A. General service corporations. An association may, if permitted by the terms of its articles of incorporation, invest in the capital stock, obligations or other securities of any service corporation organized under the laws of this state, if:
 1. The entire capital stock of such service corporation is available for purchase by, and only by, any and all savings and loan associations with a home office in this state, and the capital stock is owned by more than one savings and loan association;

2. Not more than 33 1/3% of the outstanding capital stock of such service corporation is, or may be, owned by any savings and loan association;
 3. Every eligible savings and loan association is permitted to own an equal amount of the capital stock of such service corporation or on such uniform basis as may be fixed by such corporation, each such association is permitted to own an amount of capital stock that is a stated percentage of its assets or savings capital at the time of any purchase by it of such stock; and
 4. Substantially all of the activities of such service corporation, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist of one or more of the following:
 - a. Originating, purchasing, selling, and servicing any of the following:
 - i. Loans and participations in loans on a prudent basis and secured by real estate, including brokerage and warehousing of such real estate loans;
 - ii. Loans, and participations in loans, secured by first liens upon mobile homes, including brokerage and warehousing of such mobile home loans;
 - iii. Loans, with or without security, for the altering, repairing, improving, equipping or furnishing of any residential real estate;
 - b. Making any investment of the types specified in Sections 545.9 and 545.9-3 of the regulations of the Federal Home Loan Bank Board;
 - c. Making investments in the accounts of associations holding capital stock in the corporation;
 - d. Performing the following services, primarily for savings and loan associations with home offices in Arizona:
 - i. Clerical services, accounting, data processing and internal auditing;
 - ii. Credit information, appraising, construction loan inspection, and abstracting;
 - iii. Development and administration of personnel benefit programs including life insurance, health insurance, and pension or retirement plans;
 - iv. Research, studies and surveys;
 - v. Purchasing of office supplies, furniture and equipment;
 - vi. Development and operation of storage facilities for microfilm or other duplicate records;
 - vii. Advertising and other services to procure and retain both savings accounts and loans;
 - e. Acquisition of unimproved real estate lots and other unimproved real estate for the purpose of prompt development and subdivision, principally for construction of housing or for resale to others for such construction, or for use as mobile home sites;
 - f. Development and subdivision of and construction of improvements (including improvements to be used for commercial or community purposes when incidental to a housing project) for sale or for rental on, real estate referred to in subsection (A)(4)(e);
 - g. Acquisition of improved residential real estate and mobile homes to be held for rental;
 - h. Acquisition of improved residential real estate for remodeling, rehabilitation, modernization, renovation, or demolition and rebuilding for sale or for rental;
 - i. Maintenance and management of rental real estate referred to in subsections (A)(4)(f), (g), and (h), and any real estate owned by holders of its capital stock;
 - j. Serving as insurance broker or agent primarily dealing in policies for savings and loan associations, their borrowers and accountholders which provide protection such as homeowners', fire, theft, automobile, life, health, accident, and title, excluding private mortgage insurance;
 - k. Serving in the capacity of trustee under deeds of trust, or escrow agent;
 - l. Activities reasonably incidental to the activities described in the foregoing subparagraphs of subsection (A)(4); and
 - m. Such other activities, reasonably related to the activities of savings and loan associations as the Superintendent may approve upon application therefor by any such service corporation.
- B.** Other service corporations. In addition to investment in a service corporation which meets the requirements of subsection (A) of this rule, an association may invest in the capital stock, obligations, or other securities of any service corporation organized under the laws of Arizona, if:
1. The entire capital stock of such corporation is held by one or more savings and loan associations or federal associations with a home office in Arizona;
 2. The activities of such corporation, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist solely of one or more of the activities specified in subparagraphs (a) through (l), of subsection (A), paragraph (4) of this rule, and such other activities, reasonably related to the activities of a savings and loan association, as the Superintendent may approve upon application therefor by such corporation; and
 3. The following limitations are complied with:
 - a. if less than five savings and loan associations (including any federal association) hold capital stock in such corporation or one such association holds more than 40% of such stock, such corporation, including any subsidiary, does not incur or have outstanding at any time debt in excess of the following limitations:
 - (1) in the case of all unsecured debt (to holders of its capital stock and to others), an amount equal to two times its net worth;
 - (2) in the case of all debt (secured and unsecured, to holders of its capital stock and to others), except as permitted by subdivision 3(a)(3) in an amount equal to ten times its net worth;
 - (3) in the case of all debt (secured and unsecured, to a holder of its capital stock and others) engaged solely in the activities specified in subsection (A), paragraph (4), subdivision (a)(i) of this rule, an amount equal to 20 times its net worth;
 - (4) secured debt will be deemed to be unsecured for the purposes of this subsection (B), paragraph (3), subdivision (a) to the extent that such debt exceeds the market value of any security at the time the loan is made;
 - b. the approval of the Superintendent is obtained for any investment by such service corporation in a joint venture or the acquisition of a going business if a director, officer or controlling person of any savings and loan association owning any of the service cor-

poration's capital stock has a direct or indirect beneficial interest in the joint venture or going business.

C. Amount of investment

1. Except as provided in subsection (C), paragraph (2), an association may not make any investment under this Section if its aggregate outstanding investment in the capital stock, obligations or other securities of service corporations would thereupon exceed 1% of assets. The limitation in the preceding sentence includes all loans, secured and unsecured, and all guarantees of such loans, to service corporations, or any subsidiaries thereof, and to joint ventures of such service corporations or subsidiaries, whether or not such association is a stockholder therein.
2. In addition to amounts which may be invested within the limitation set forth in subsection (C), paragraph (1), an association which has a net worth of at least 5% of withdrawable accounts may loan additional amounts to service corporations, or any subsidiaries thereof, and to joint ventures of such service corporations or subsidiaries, as follows:
 - a. an aggregate outstanding amount not to exceed 20% of such associations net worth may be invested in loans made to service corporations, or any subsidiaries thereof, and to joint ventures of such service corporations or subsidiaries; and
 - b. the limitation set forth in subsection (C), paragraph (1) shall not be applicable to loans to any service corporation which qualifies as a service corporation under subsection (A) of this rule, or to any service corporation in which the lending association does not have any investment made under the authority of this rule.

D. No association may invest in the capital stock, obligations, or other securities of any service corporation unless said service corporation has filed with the Superintendent a certified copy of a resolution of its board of directors that:

1. In the case of a service corporation described in subsection (A) of this rule, such corporation will permit and pay the cost of such examination of the corporation by the Superintendent as the Superintendent from time to time deems necessary to determine the propriety of any investment by an association under this rule; and
2. In the case of a service corporation described in subsection (B) of this rule, such corporation will permit and pay the cost of such examination and/or audit by the Superintendent as the Superintendent may from time to time deem necessary.

E. Whenever a service corporation engages in an activity which is not permissible for, or exceeds the limitations on, a service corporation in which an association may invest, or whenever the capital stock ownership requirements of this rule are not met, an association having an investment in such corporation, including any subsidiary thereof, shall dispose of such investment promptly unless, within 90 days following the date of mailing of written notice by the Superintendent to such investing association, the impermissible activity is discontinued, the limitation is complied with, or the capital stock ownership requirement is met.

F. A service corporation may establish and maintain one or more branch offices within the state of Arizona for the purpose of carrying on the functions of the service corporation. No service corporation may establish or maintain a branch office outside of the state of Arizona except with the specific approval of the Superintendent upon application therefor by such service corporation.

G. In the case of any investment by an association in a service corporation which was specifically approved by the Superintendent prior to September 26, 1974, said approval is hereby deemed to apply to such investment on and after September 26, 1974, if the activities of such corporation consist only of those activities approved by the Superintendent and any activities described in subsection (B), paragraph (2) of this rule, and if the limitations of this rule are complied with.

H. The term "joint venture" means any joint undertaking by a service corporation or a wholly-owned subsidiary thereof with one or more persons or legal entities in any form, including a joint tenancy, tenancy in common, or partnership and including investment in a corporation other than a wholly-owned subsidiary.

I. The term "aggregate outstanding investment" means the sum of amounts paid for the acquisition of capital stock or securities and amounts invested in obligations of service corporations less amounts received for the sale of capital stock or securities of service corporations and amounts paid to an association to retire obligations of service corporations.

J. The terms "unsecured debt" and "unsecured loan" exclude accounts payable incurred in the ordinary course of business and paid within 60 days.

Effective 9-26-74

Historical Note

Former Rule 18. R20-4-318 recodified from R4-4-318 (Supp. 95-1).

R20-4-319. Repealed

Historical Note

Former Rule 19. R20-4-319 recodified from R4-4-319 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-320. Repealed

Historical Note

Former Rule 20. R20-4-320 recodified from R4-4-320 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-321. Repealed

Historical Note

Former Rule 21. R20-4-321 recodified from R4-4-321 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-322. Repealed

Historical Note

Former Rule 22; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-322 recodified from R4-4-322 (Supp. 95-1).

R20-4-323. Repealed

Historical Note

Former Rule 23. R20-4-323 recodified from R4-4-323 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-324. Give-aways -- A.R.S. § 6-444

A give-away may be given by an association if:

1. The give-away is given in connection with a promotional campaign for the opening of or increasing the amount of savings accounts and not on a recurring basis;
2. The value of the give-away does not exceed:

- a. \$5.00 for the opening of a new account, or for an addition to an existing account of less than \$5,000.00;
- b. \$10.00 for the opening of a new account, or for an addition to an existing account, of \$5,000.00 or more.

Effective 8-13-72

Historical Note

Former Rule 24. R20-4-324 recodified from R4-4-324 (Supp. 95-1).

R20-4-325. Appraisal Requirements -- A.R.S. § 6-457

No association shall grant, make, disburse any portion of, or invest its funds in, any loan on the security of real estate, until:

1. At least one qualified person, whose qualifications have been approved by the board of directors of the association, and whose compensation shall not in any way be affected by the approval or declining of the loan, has appraised the real property security; and
2. Each such appraisal shall be in writing with a certificate signed by the appraiser, under oath, stating that he has personally examined the described property, setting forth the value of the land and, separately, the nature, condition, and value of the improvement, or improvements to be made, if any; and
3. Notwithstanding the provisions hereof, an association may make any insured or guaranteed loan on the basis of a valuation of the real estate security furnished to such association by any lending, insuring or guaranteeing agency of the United States or of the state of Arizona which shall insure or guarantee such loan, wholly or in part.

Effective 8-13-72

Historical Note

Former Rule 25. R20-4-325 recodified from R4-4-325 (Supp. 95-1).

R20-4-326. Capital Notes and Debentures -- A.R.S. § 6-405.01

All capital notes and debentures must be authorized by the articles of incorporation of the association and approved by the Superintendent prior to issuance and sale. In the event offering circulars or subscription agreements are used in connection with the sale of notes or debentures, the offering circular and subscription agreement must be approved by the Superintendent.

1. The following, when applicable, shall be submitted with any request for approval of capital notes or debentures:
 - a. Proposed form of note or debenture;
 - b. Proposed form of offering circular;
 - c. Proposed form of subscription agreement;
 - d. Certified copy of resolution adopted by the board of directors;
 - e. Certified copy of resolution by stockholders owning a majority of the issued and outstanding shares entitled to vote; and
 - f. Such other material as required by the Superintendent.

2. Capital notes and debentures shall:
 - a. Have an original maturity of seven years or more, provided that this restriction on maturity shall not apply to any obligation which otherwise meets all the requirements of this rule and with respect to which the Superintendent has determined that exigent circumstances require the issuance of such obligation without regard to the restriction on maturity;
 - b. Have a principal amount of at least \$500.00.
3. Capital notes and debentures shall:
 - a. State expressly on its face in bold face type:

“THIS SECURITY IS NOT A SAVINGS ACCOUNT OR DEPOSIT AND IT IS NOT INSURED BY THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION.”
 - b. State expressly that it is unsecured;
 - c. State expressly that it is subordinate to the claims of depositors, account holders, members other than holders of shares of guaranty capital stock, and all other creditors of the association, regardless of whether such claims arose before or after the issuance of the capital note or debenture. That, in the event of liquidation, all depositors, account holders, members other than holders of shares of guaranty capital stock and all other creditors of the association shall be entitled to be paid in full before any payment shall be made on account of principal or interest on such capital note or debenture;
 - d. State expressly that no payment shall at any time be made on account of the principal thereof unless following such payment the aggregate of the guaranty capital stock, surplus, undivided profits and capital notes or debentures thereafter outstanding shall be equal to such aggregate immediately before the original issue of such capital note or debenture and the association is in compliance with the capital requirements of A.R.S. § 6-425, subsection (D), or as may be otherwise authorized by the Superintendent; and
 - e. State expressly that it is ineligible as collateral for a loan from the issuing savings and loan association.

Effective 8-8-73

Historical Note

Former Rule 26. R20-4-326 recodified from R4-4-326 (Supp. 95-1).

R20-4-327. Application for Permit to Organize a New Association -- A.R.S. § 6-408

- A. Before an application is filed, the applicants shall meet with the Superintendent of Banks to discuss capitalization, location and management of the proposed savings and loan association.
- B. Applicants shall submit, upon the original filing, sufficient information in support of the application to enable the Superintendent to make a determination without further amendments and additions thereto.
- C. The application shall be in the following form on legal size paper securely fastened at the top:

-----, 19--

Superintendent of Banks
101 Commerce Building
1601 West Jefferson
Phoenix, Arizona 85007

Sir:

We, the undersigned residents of the state of Arizona, do hereby make application for a permit to organize a savings and loan association under the provisions of Title 6, Chapter 3, Arizona Revised Statutes, to be located at -----, -----, Arizona and to be known as ----- Savings and Loan Association. In support of said application, we submit the following information:

- 1. The capital stock will be divided into ----- shares at the par value of \$----- per share. Total \$-----
2. Paid-in Surplus -----
3. Undivided Profits -----
Total =====

4. Attached as Exhibit A is a copy of a statement from the Corporation Commission indicating the reservation of the name for the proposed association.

5. Names, addresses and length of residence in Arizona of the applicants:

Name Address Resident of Arizona Since

- 6. Attached as Exhibit B is a brief resume, current financial statement and credit report for each applicant.
7. None of the applicants has been convicted of any criminal offense involving dishonesty or a breach of trust.
8. Population of town or city in which the proposed association is to be located is ----- as of ----- 19--. Source:

9. Population of trade area to be served by the proposed association is ----- as of -----, 19--. Source:

10. Savings and loan association offices located within the trade area and distance from proposed association office site:

Association Address Distance

11. Bank offices located within the trade area:

Bank Address

- 12. Attached as Exhibit C is a map delineating the trade area to be served by the proposed association.
13. Attached as Exhibit D is a report in which is set forth pertinent economic data, lending needs, nature and characteristics of the trade area to be served by the proposed association.

14. Known prospective stockholders:

Name Address Shares

15. Proposed staff:

Position Salary

16. Statement of the estimated assets, liabilities and net worth of the proposed association, as of the beginning of business, is as follows:

17. Statement of estimated deposits at the close of the first, second and third year of operations of the proposed association is as follows:

18. Statement of estimated loans to be made during the first year of operations of the proposed association is as follows:

Number Type Amount

19. Statement of estimated operating earnings and expenses for the first year of operations of the proposed association, with supporting data stated in notes to the statement, is as follows:

20. Statement of estimated assets, liabilities, reserves and net worth at the end of the first year of operations of the proposed association is as follows:

21. Itemized statement of estimated expenses in connection with the organization of the proposed association is as follows:

22. The organization expenses will be paid out of funds from the following sources:

23. Statement that a need does exist for a new savings and loan association, and that the public convenience and advantage will be promoted by the proposed association, in the trade area to be served by the proposed association is as follows:

24. The name of the proposed association is not the same as, or deceptively similar to, the name of any other financial institution located in the state of Arizona.

25. Other information deemed pertinent to this application is as follows:

Enclosed herewith is a check in the amount of \$1,000.00 representing payment of the filing fee for this application.

Signature of applicants:

State of Arizona)
) ss
County of -----)

Before me, a Notary Public in and for the County and State above named, personally appeared ----- and that each of them stated under oath that all the matters herein contained are true and correct to their best knowledge and belief.

Subscribed and sworn to before me this ----- day of -----, 19--.

(Notary Public)

(Seal)

My commission expires: -----, 19--.

Effective 8-8-73.

Historical Note

Former Rule 27. R20-4-327 recodified from R4-4-327 (Supp. 95-1).

R20-4-328. Application for Approval to Establish a Branch Office -- A.R.S. § 6-475

- A. Applicants shall submit, upon the original filing, a complete application incorporating all the pertinent information required by law and the superintendent.
- B. Approval of the application will be granted only upon a strong showing in the application and during the hearing required by law that the establishment and maintenance of the proposed

branch office will not unduly injure any existing association located in the same county as the proposed branch office and is advisable and in the public interest, that the current earnings of the association are sufficient to support the proposed branch office operation, and that the association will have qualified personnel available to staff the proposed branch office when it is opened.

- C. The application shall be in the following form:

Superintendent of Banks
101 Commerce Building
1601 West Jefferson
Phoenix, Arizona 85007

-----, 19--

Sir:

The -----
(Applicant) (Street Address) (City)

hereby makes application for approval to establish and maintain a branch office at -----
(Street Address) (City) (County)

to be known as ----- office.

The functions to be performed in the proposed branch office are as follows:

In support of this application, we submit the following information:

- 1. Attached as Exhibit A is a certified copy of the resolution of the Board of Directors authorizing the filing of this application:
2. The association opened for business on -----, 19--.
3. Attached as Exhibit B (confidential) is a statement showing the number and amount of loans and deposits held in each of the ----- association offices as of the end of the last calendar year and the end of the last quarter.
4. The following ----- branch offices have been approved but not opened:

Street Address City Date Anticipated
Approved Opening Date

- 5. The following branch office applications are pending approval:
6. Attached as Exhibit C is a statement of condition of the association as of -----, 19--.
7. The capital structure of the association as of the application date -----, 19-- .
a. Capital stock (----- shares, \$ ----- par value) \$-----
b. Paid-in surplus -----
c. Capital notes and debentures -----
d. Reserves for losses -----
e. Earned surplus (including undivided profits) -----
Total Capital =====
8. The total deposits in the association as of the application date -----, 19-- is \$-----.
9. The ratio of total capital to total deposits as of the application date -----, 19-- is -----%.
10. The capital structure will be increased as follows prior to the establishment of the proposed branch office (confidential):
11. The estimated cost and description of the premises to be occupied by the proposed branch office is as follows:
12. The investment in land and building or leasehold improvements for the proposed branch office will not result in the association exceeding the limitation imposed in A.R.S. § 6-453.
13. The estimated cost of furniture, fixtures and equipment in the proposed branch office is \$-----.
14. Attached as Exhibit D is a statement of estimated income and expenses for the first year of operation of the proposed branch office.
15. Estimated number and amount of deposits and loans as of the end of the first year of operations of the proposed branch office is as follows:
16. It is estimated that \$----- of deposits and \$----- of loans will be transferred to the proposed branch office from other offices of the association.
17. Attached as Exhibit E (confidential) is a budget of the association for the current dividend period and for the next succeeding semi-annual period which reflects the estimated additional income and expense of the maintenance of the proposed branch office.
18. The gross assets, deposits and loans of the association at the end of the three calendar years last past and at the end of the last quarter were as follows:
19. The name, duties, salary and brief resume of the managing officer of the proposed branch office is as follows:
20. Officers of the proposed branch office will have the following authority in connection with extension of credit:

- 21. The following is a summary of the supervision and control which will be exercised by the officials of the association over the activities of the proposed branch office:
- 22. The association maintains fidelity bond coverage on its directors, officers, employees and agents as follows:
- 23. The approximate population of the city in which the proposed branch office is to be located is ----- as of -----, 19--. Source:
- 24. The approximate population of the trade area to be served by the proposed branch office is ----- as of -----, 19--. Source:
- 25. Existing and approved associations and branch offices located within a three mile radius of the proposed branch office are as follows:

<u>Name</u>	<u>Location</u>	<u>Distance</u>
- 26. Attached as Exhibit F is a map delineating the trade area and indicating the location of each of the above associations and branch offices in the trade area and the proposed branch office.
- 27. Relative information regarding the trade area in which the proposed branch office is to be located is as follows:
- 28. The establishment and maintenance of the proposed branch office will not unduly injure any existing association located in the same county as the proposed branch office for the following reasons:
- 29. The establishment and maintenance of the proposed branch office is advisable and in the public interest for the following reasons:
- 30. Attached is a copy of (contract, lease, option or letter of intent) covering the purchase or lease of the property. If no copy is attached state the reason:

Attached is our check in the amount of \$375.00 representing payment of the filing fee for this application.

The undersigned does hereby certify and state that he has read this application and all statements, representation and information contained therein are true and correct to the best of his knowledge and belief.

(President or Vice President)

Attest:

(Secretary)

Effective 8-8-73.

Historical Note

Former Rule 28. R20-4-328 recodified from R4-4-328 (Supp. 95-1).

R20-4-329. Repealed

Historical Note

Former Rule 29. R20-4-329 recodified from R4-4-329 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

Historical Note

Original Rule. R20-4-330 recodified from R4-4-330 (Supp. 95-1).

R20-4-331. Repealed

Historical Note

Original Rule. R20-4-331 recodified from R4-4-331 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-330. First Payment Date on Loans -- A.R.S. § 6-449(E)

The first payment date on loans shall not be later than as follows:

- 1. Regular installment loans, other than (2), (3) and (4) hereof, six months from the date of the note;
- 2. Construction loans:
 - Property Improvement - 12 months from date of note;
 - One to Four Family Dwellings - 18 months from date of note;
 - All other construction loans - 36 months from date of note;
- 3. Insured loans, not later than as acceptable to the insurer; and
- 4. Guaranteed loans, not later than as acceptable to the guarantor.

Effective 9-27-74.

ARTICLE 4. CREDIT UNIONS

R20-4-401. Fidelity Bond Coverage

- A. A credit union shall have a fidelity bond in the form and in the amount required to maintain federal insurance on its accounts.
- B. A fidelity bond purchased by a credit union to comply with this Section shall include faithful-performance-of-duty coverage.
- C. A credit union shall purchase its fidelity bond from an insurer that holds a certificate of authority from the Arizona Director of Insurance to transact surety business in Arizona.

Historical Note

Former Rule 1. R20-4-401 recodified from R4-4-401 (Supp. 95-1). Amended effective April 21, 1995 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 2229, effective May 3, 2001 (Supp. 01-2).

R20-4-402. Repealed**Historical Note**

Former Rule 2. R20-4-402 recodified from R4-4-402 (Supp. 95-1). Repealed effective April 21, 1995 (Supp. 95-2).

ARTICLE 5. SMALL LOANS**R20-4-501. Repealed****Historical Note**

Former Rule 1. R20-4-501 recodified from R4-4-501 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-502. Repealed**Historical Note**

Former Rule 2. R20-4-502 recodified from R4-4-502 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-503. Adjustments in Precomputed Charges

A licensee shall adjust the total precomputed charges if the first installment period is more or less than one month long. The licensee's records shall reflect the adjustment's collection in one of three ways.

1. In the first installment payment,
2. Amortized over the life of the contract, or
3. As part of the final payment.

Historical Note

Former Rule 3. R20-4-503 recodified from R4-4-503 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-504. Repealed**Historical Note**

Former Rule 4. R20-4-504 recodified from R4-4-504 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-505. Repealed**Historical Note**

Former Rule 5. R20-4-505 recodified from R4-4-505 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-506. Repealed**Historical Note**

Former Rule 6. R20-4-506 recodified from R4-4-506 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-507. Repealed**Historical Note**

Former Rule 7. R20-4-507 recodified from R4-4-507 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-508. Cut-off Date for Computing Refunds upon Early Repayment in Full

If a borrower repays a loan before the due date of the final installment, a licensee shall calculate any refund or credit due on the pre-computed loan using the following rules:

1. A licensee shall credit any full repayment, made on or before the 15th day following an installment date, as if received on the last previous installment date.
2. A licensee shall credit any full repayment, made on or after the 16th day following an installment date, as if received on the next installment date.

Historical Note

Former Rule 8. R20-4-508 recodified from R4-4-508 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, November 14, 2000 (Supp. 00-4).

R20-4-509. Repealed**Historical Note**

Former Rule 9. R20-4-509 recodified from R4-4-509 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-510. Repealed**Historical Note**

Former Rule 10. R20-4-510 recodified from R4-4-510 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-511. Repealed**Historical Note**

Former Rule 11. R20-4-511 recodified from R4-4-511 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-512. Reserved**R20-4-513. Repealed****Historical Note**

Former Rule 13. R20-4-513 recodified from R4-4-513 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-514. Repealed**Historical Note**

Former Rule 14. R20-4-514 recodified from R4-4-514 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-515. Repealed**Historical Note**

Former Rule 15. R20-4-515 recodified from R4-4-515 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-516. Repealed**Historical Note**

Former Rule 16. R20-4-516 recodified from R4-4-516 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-517. Repealed**Historical Note**

Former Rule 17. R20-4-517 recodified from R4-4-517 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-518. Deferral Fee

- A.** A licensee may collect a deferral fee at the time it agrees to a deferral or at any time after the assessment of a deferral fee. If a licensee receives a payment when it agrees to the deferral, it may apply the payment first to the deferral fee. Any remainder of the payment shall be applied to the balance of the loan.
- B.** If a licensee receives a payment that is large enough to pay in full a delinquent installment and all allowable delinquency fees, the licensee shall apply the payment first to the delinquent installment and fees. The licensee shall not show the paid installment as deferred, and shall not collect a deferral fee.

Historical Note

Former Rule 18. R20-4-518 recodified from R4-4-518 (Supp. 95-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-519. Deferment Statement

A licensee shall give the borrower a statement at the time a deferment is made, and shall retain a copy of the statement in the borrower's credit file. The statement shall contain the following information:

1. The amount of the deferral fee,
2. The date of the borrower's next scheduled payment,
3. The amount of the borrower's next scheduled payment, and
4. The extended maturity date of the loan.

Historical Note

Former Rule 19. R20-4-519 recodified from R4-4-519 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-520. Repealed**Historical Note**

Former Rule 20. R20-4-520 recodified from R4-4-520 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-521. Repealed**Historical Note**

Former Rule 21. R20-4-521 recodified from R4-4-521 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-522. Repealed**Historical Note**

Former Rule 22. R20-4-522 recodified from R4-4-522 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-523. Repealed**Historical Note**

Former Rule 23. R20-4-523 recodified from R4-4-523 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-524. Books, Accounts, and Records

- A.** A licensee may use a computer recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of its books, accounts, and records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may modify a computer recordkeeping system's hard-

ware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any modification that changes a computer system back to a paper-based recordkeeping system;

- B.** A licensee shall keep its books, accounts, and records of operations licensed under A.R.S. Title 6, Chapter 5 separate from the books, accounts, and records of its other business activities.
- C.** In addition to any statutory requirements, the books, accounts, and records maintained by a Small Loan Company shall include the following:
1. A file containing a record of all legal actions brought during the fiscal year. A licensee shall keep the file until the Department of Financial Institutions conducts its examination of the licensee.
 2. An itemized record of disbursing the proceeds of each loan. The itemized record shall include the amount of refund on each loan that is renewed or refinanced if the licensee makes precomputed loans.
 3. A record of the receipt of all allowable fees.
 4. A record for each borrower and each loan that contains documentary evidence of filing or recording each instrument of record for the loan.
 5. A record of the borrower's voluntary election to purchase any insurance in connection with a loan, if that insurance is sold by the licensee.

Historical Note

Former Rule 24. R20-4-524 recodified from R4-4-524 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-525. Repealed**Historical Note**

Former Rule 25. R20-4-525 recodified from R4-4-525 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-526. Repealed**Historical Note**

Former Rule 26. R20-4-526 recodified from R4-4-526 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-527. Repealed**Historical Note**

Former Rule 27. R20-4-527 recodified from R4-4-527 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-528. Repealed**Historical Note**

Former Rule 28. R20-4-528 recodified from R4-4-528 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-529. Repealed**Historical Note**

Former Rule 29. R20-4-529 recodified from R4-4-529 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-530. Repealed**Historical Note**

Former Rule 30. R20-4-530 recodified from R4-4-530 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-531. Repealed**Historical Note**

Former Rule 31. R20-4-531 recodified from R4-4-531 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-532. Repealed**Historical Note**

Former Rule 32. R20-4-532 recodified from R4-4-532 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-533. Reserved**R20-4-534. Insurance**

- A.** A licensee shall obtain written evidence of the borrower's voluntary election to purchase insurance in connection with a loan if the licensee's sale of insurance to the borrower is intended to secure repayment of a loan. The licensee shall retain this evidence of voluntary election in its records as required by statute. A document sufficient to comply with this Section shall read as follows:

TO SECURE REPAYMENT OF MY LOAN, I ELECT TO PURCHASE INSURANCE IN THE AMOUNT OF \$ _____.
I UNDERSTAND THAT MY TOTAL LOAN OBLIGATION IS THE SUM OF \$ _____.

- B.** A licensee shall obtain written evidence of the borrower's voluntary election to purchase property insurance in connection with a loan if the licensee's sale of property insurance to the borrower is intended to secure repayment of a loan. The licensee shall retain this evidence of voluntary election in its records as required by statute. A document sufficient to comply with this Section shall read as follows:

TO SECURE REPAYMENT OF MY LOAN, I ELECT TO PURCHASE PROPERTY INSURANCE IN THE AMOUNT OF \$ _____.
I UNDERSTAND THAT MY TOTAL LOAN OBLIGATION IS THE SUM OF \$ _____.
I ATTEST THAT THE VALUE OF MY PROPERTY INSURED IN CONNECTION WITH THIS LOAN IS THE SUM OF \$ _____.

Historical Note

Former Rule 34. R20-4-534 recodified from R4-4-534 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-535. Reserved**R20-4-536. Repealed****Historical Note**

Former Rule 36. R20-4-536 recodified from R4-4-536 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

ARTICLE 6. DEBT MANAGEMENT COMPANIES

Article 6, consisting of Sections R4-4-601 through R4-4-620, adopted effective October 26, 1978, except that Sections R4-4-603, R4-4-604 and R4-4-607 shall become effective January 1, 1979. R20-4-601 through R20-4-620 recodified from R4-4-601 through R4-4-620 (Supp. 95-1).

Former Article 6 consisting of Section R4-4-601 repealed effective October 26, 1978. R20-4-601 recodified from R4-4-601 (Supp. 95-1).

R20-4-601. Repealed**Historical Note**

Former Rule 1; Former Section R4-4-601 repealed, new Section R4-4-601 adopted effective October 26, 1978 (Supp. 78-5). R20-4-601 recodified from R4-4-601 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-602. Applications

- A.** An applicant for a debt management company license shall send the Department an application on the form required by the Superintendent. The Department shall order a credit report from a local credit reporting agency disclosing the credit history of the applicant's principals or managing agents. The Department shall direct the credit reporting agency to send the credit report directly to the Superintendent. The applicant shall pay the cost of obtaining the credit report. A complete application shall include the credit report required by this Section and all of the following:

1. The surety bond required by A.R.S. § 6-704(B);
2. The fidelity bond required by A.R.S. § 6-704(D);
3. The nonrefundable application fee and original license fee described in A.R.S. § 6-706, and specified in A.R.S. § 6-126(A)(14);
4. A sample of the contract intended to be used by the applicant;
5. Current financial statements as described in R20-4-604(A)(5);
6. A certified copy of the current articles of incorporation, by-laws, partnership agreement or other organizing documents used to form the applicant business entity; and
7. Statements of personal history, on the form required by the Superintendent, for each of the applicant's principals, principal officers, trustees, partners, and managing agents.

- B.** A debt management company applying to operate a branch office or use an agency shall send the Department an application on the form required by the Superintendent.

- C.** A debt management company applying to renew a license shall deliver, on or before June 15 of each year, an application to the Department on the form required by the Superintendent. A debt management company shall apply separately to renew the license of each authorized business location. With each application for renewal, a debt management company shall include the renewal fee described in A.R.S. § 6-706 and specified in A.R.S. § 6-126(C)(2).

- D.** The Department may require additional information the Superintendent considers necessary in connection with an application under this Section.

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-602 recodified from R4-4-602 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

R20-4-603. Reports

- A.** Each debt management company and each nonprofit corporation or association exempt from licensure under A.R.S. § 6-702(4) and (5), shall send the Department an annual report of its business and operations for each place of business during the previous year beginning July 1 and ending June 30, using the form required by the Superintendent. A debt management company shall deliver its report to the Department on or before August 15.
- B.** Each debt management company organized as a corporation shall send the Department a copy, date-stamped by the Ari-

zona Corporation Commission, of each annual report and certificate of disclosure filed under the authority of A.R.S. § 10-202 or 10-1622 within ten days of filing the report and certificate with the Arizona Corporation Commission.

- C. Each debt management company shall notify the Department of any change in its ownership or in the names of its officers, directors, trustees, partners, or managing agents within ten days of the change.

Historical Note

Adopted effective January 1, 1979 (Supp. 78-5). R20-4-603 recodified from R4-4-603 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

R20-4-604. Records

- A. A debt management company shall keep books, accounts, and records adequate to provide a clear and readily understandable record of all its business activity. A debt management company may use an electronic recordkeeping system. The Department shall not require a debt management company to keep a written copy of its books, accounts, and records if the debt management company can generate all information and documentation required by this Section within three days of the Department's request for production of the records for examination or other purposes. A debt management company's books, accounts, and records shall include:

1. A file for each account containing:
 - a. A copy of all correspondence concerning the account;
 - b. Evidence of the notice given to creditors of the debt management contract;
 - c. A subsidiary ledger disclosing all financial transactions concerning the account;
 - d. A copy of each written statement of account given to the debtor;
 - e. The original budget analysis required under R20-4-607; and
 - f. The original contract between the debt management company and the debtor, including all amendments.
2. A trust account general ledger, kept current daily, that reflects each deposit to and disbursement from the trust account.
3. Each reconciliation of the debt management company's trust account, prepared at least once a month.
4. A general ledger, kept current monthly, that reflects each financial transaction by the debt management company except those recorded in its trust account general ledger.
5. A financial statement produced in accordance with generally accepted accounting principles at least once every three months, or more frequently if directed by the Superintendent, that reflects the financial condition of the debt management company. The financial statement shall include:
 - a. A balance sheet,
 - b. A statement of income and retained earnings,
 - c. A statement of changes in financial condition, and
 - d. Appropriate footnotes that either:
 - i. Explain entries in the documents listed in subsections (A)(5)(a), (b), and (c);
 - ii. Contain material information not required or not reportable in documents listed in subsections (A)(5)(a), (b), or (c); or
 - iii. Contain other disclosures required by generally accepted accounting principles.
6. A record of all pending litigation naming the debt management company as a party. The debt management com-

pany shall keep, during the pendency of each case, a copy of the complaint, and a copy of any answer or motion filed by the debt management company in response to the complaint.

- B. All records required under this Section may be maintained at the debt management company's office in Arizona. A debt management company may keep its records outside this state if it:

1. Makes the records available to the Superintendent, for examination or other purposes, in this state not more than three business days after demand; and
2. Allows its debtor customers to call toll free to obtain information from the records that is not available from the debt management company's office in Arizona.

- C. Each debt management company shall preserve its books, accounts, and records for the period required by A.R.S. §§ 6-709(J) and 6-710(1).

Historical Note

Adopted effective January 1, 1979 (Supp. 78-5). R20-4-604 recodified from R4-4-604 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

R20-4-605. Reserved

R20-4-606. Reserved

R20-4-607. Budget Analysis

- A. A debt management company shall not accept an account unless it first concludes that the debtor can reasonably meet the payments agreed upon by the debt management company and the debtor. The debt management company's conclusion shall be supported by a written budget analysis kept in the company's records.
- B. The written budget analysis shall either be part of an application form or a separate document. The debtor shall date and sign the written budget analysis before the debt management company draws any conclusions from the budget analysis.
- C. The budget analysis shall disclose the disposable income available for payment to the debt management company after the debtor pays its reasonable and necessary living expenses including taxes, insurance, child support, alimony, and residential rent or mortgage payments.

Historical Note

Adopted effective January 1, 1979 (Supp. 78-5). R20-4-607 recodified from R4-4-607 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

R20-4-608. Reserved

R20-4-609. Repealed

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-609 recodified from R4-4-609 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-610. Repealed

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-610 recodified from R4-4-610 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-611. Advertising

- A. A debt management company shall send the Department copies of all advertising, communication, or sales material at least five days before the company uses the advertising, communi-

cation, or sales material to promote the sale of the company's services. This requirement applies to every type of promotional material used, whether the company will publish, exhibit, broadcast, or personally distribute the material by any other method or medium.

- B.** A debt management company shall not use advertising, communication, or sales material that contains:
1. A false, misleading, or deceptive statement about the debt management company's services or charges. A statement is a violation of this Section if the person making the statement does not state a material fact necessary to make the statement true, in light of the circumstances under which it is made;
 2. A claim, direct or implied, that the debt management company consolidates debts or makes loans; or
 3. A schedule of payments in any form.
- C.** A debt management company's advertising, communication, and sales material shall contain:
1. The name of the debt management company exactly as it appears on the current license; and
 2. The following legend, conspicuously displayed in at least 12 point type and in bold print:
"NOT A LOAN COMPANY."
- D.** The Department's failure to object to the advertising, communication, or sales material filed with it is not and shall not be represented as an approval of the material or the statements it contains.

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-611 recodified from R4-4-611 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

R20-4-612. Solvency and Minimum Liquid Assets

- A.** A debt management company shall not operate if it is insolvent. For purposes of this Section "insolvent" has the same meaning as in A.R.S. § 47-1201(23).
- B.** To determine compliance with A.R.S. § 6-709(A), a debt management company's liquid assets include funds held in its trust account. Liquid assets do not include goodwill and other intangible assets. A debt management company's total liquid assets shall exceed by \$2,500.00 the total of all its current business liabilities together with all balances held for debtors as reflected in the company's subsidiary ledgers.
- C.** Except as otherwise provided by this Section, or in a specific ruling by the Superintendent, a debt management company shall use generally accepted accounting principles to compute assets and liabilities.

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-612 recodified from R4-4-612 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

R20-4-613. Reserved

R20-4-614. Reserved

R20-4-615. Reserved

R20-4-616. Reserved

R20-4-617. Reserved

R20-4-618. Reserved

R20-4-619. Reserved

R20-4-620. Repealed

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-620 recodified from R4-4-620 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

ARTICLE 7. ESCROW AGENTS

R20-4-701. Change in Location of Business

An escrow agent shall mail the Superintendent written notice of any change in the location of the escrow agent's business. The escrow agent shall ensure that the Superintendent receives the notice at least five days before the escrow agent conducts business at the new location. The escrow agent shall mail the fee required by A.R.S. § 6-126(A), together with the current escrow license, to the Superintendent with the notice of the location change. The Superintendent shall change the submitted license to reflect the new business location and return it to the escrow agent.

Historical Note

Former Rule 1. R20-4-701 recodified from R4-4-701 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

R20-4-702. Account Practices and Records

An escrow agent shall maintain records to enable the Superintendent to reconstruct the details of each escrow transaction. The records shall include the following:

1. The seller's name and address;
2. The buyer's name and address;
3. The lender's name and address, if any;
4. The borrower's name and address, if any;
5. The real estate agent's name and address, if any;
6. Complete escrow instructions;
7. Records and supporting documentation for each receipt and disbursement made through the escrow; and
8. A copy of the escrow settlement.

Historical Note

Former Rule 2. R20-4-702 recodified from R4-4-702 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

R20-4-703. Preservation of Records

An escrow agent shall preserve the records, books, and accounts pertaining to each escrow transaction for at least three years following the final settlement date of the transaction. An escrow agent may use an electronic recordkeeping system. The Department shall not require an escrow agent to keep a written copy of the records, books, and accounts if the escrow agent can generate all information and copies of documents required by A.R.S. § 6-831 in a timely manner for examination or other purposes.

Historical Note

Former Rule 3. R20-4-703 recodified from R4-4-703 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

R20-4-704. Subsidiary Account Records

An escrow agent shall maintain subsidiary account records that identify the funds deposited in each escrow. The total of all credit balances in the subsidiary accounts shall always equal the balance of the general ledger control account.

Historical Note

Former Rule 4. R20-4-704 recodified from R4-4-704 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

R20-4-705. Reserved**R20-4-706. Repealed****Historical Note**

Former Rule 6. R20-4-706 recodified from R4-4-706 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

R20-4-707. Expired**Historical Note**

Adopted effective June 25, 1993 (Supp. 93-2). R20-4-707 recodified from R4-4-707 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 411, effective September 30, 2014 (Supp. 15-1).

R20-4-708. Financial Condition and Resources

The Superintendent shall consider the following criteria in evaluating an escrow agent's, other escrow agent's, or applicant's financial condition and resources under A.R.S. § 6-817:

1. Amount of positive net worth,
2. Amount of tangible net worth,
3. Amount of liquid assets,
4. Amount of cash provided by operations,
5. Ratio of debt to net worth,
6. Owner's personal financial resources,
7. Outside resources available,
8. Profitability,
9. Projected operating results,
10. Status as agent for a title insurance company, and
11. Sources of new business.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

ARTICLE 8. TRUST COMPANIES**R20-4-801. Definitions**

In this Article, unless the context otherwise requires:

"Account" means the trust, estate, or other fiduciary relationship established with a trust department or trust company.

"Affiliate" has the meaning stated at A.R.S. § 6-801.

"Certificate" has the meaning stated at A.R.S. § 6-851.

"Fiduciary" has the meaning stated at A.R.S. § 6-851.

"Governing instrument" means a document, and all its operative amendments, that:

Creates a trust and regulates the trustee's conduct,

Creates an agency relationship between a trust department or trust company and a client, or

Otherwise evidences a fiduciary relationship between a trust department or trust company and a client.

"Investment responsibility" means full and unrestricted discretion to invest trust funds without direction from anyone as to any matter, including the terms of the trade or the identity of the broker.

"Person" has the meaning stated at A.R.S. § 1-215.

"Superintendent" has the meaning stated at A.R.S. § 6-851.

"Trust asset" means any property or property right held by a trust department or trust company for the benefit of another.

"Trust business" has the meaning stated at A.R.S. § 6-851.

"Trust company" has the meaning stated at A.R.S. § 6-851.

"Trust department" means a permittee under both A.R.S. § 6-201 et seq. and Article 2 of this Chapter that possesses a banking permit authorizing it to engage in trust business.

"Trust funds" means any money held by a trust department or trust company for the benefit of another.

"Trustor" means a person who creates or funds a trust, or both.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-801 recodified from R4-4-801 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-802. Reserved**R20-4-803. Reserved****R20-4-804. Repealed****Historical Note**

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-804 recodified from R4-4-804 (Supp. 95-1). Repealed by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2).

R20-4-805. Reports

A. Within 90 days following each December 31, each trust department and trust company shall file an annual report of trust assets with the Superintendent on the form prescribed by the Superintendent. The annual report shall include the current market value of all trust assets held by the trust department or trust company as of December 31. The report shall also identify and briefly describe all transactions conducted in the report period that are regulated by R20-4-812(E) through R20-4-812(G).

B. Each trust company shall deliver a copy of its annual report and certificate of disclosure to the Superintendent within 10 days of filing the report and certificate at the Arizona Corporation Commission. A report or certificate covered by this subsection is one filed under the authority of A.R.S. §§ 10-202 or 10-1622. A copy delivered to the Superintendent, as required in this subsection, shall be date-stamped by the Arizona Corporation Commission to confirm the actual filing date.

C. Each trust company shall notify the Superintendent of any change in the directors or officers of the company within 10 days of the change. Any trust company with more than 25 officers may, after obtaining the Superintendent's written approval, limit the officers covered by this subsection to those with substantial involvement in the trust company's corporate operations or in the trust company's trust business in this state.

Historical Note

Adopted effective September 1, 1977 (Supp. 77-3). R20-4-805 recodified from R4-4-805 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-806. Records

A. A trust company may use a computer recordkeeping system if the trust company gives the Superintendent advanced written notice that it intends to do so. Except for records required by subsections (B)(1)(a) and (B)(1)(b), the Department shall not require a trust company to keep a written copy of its records if the trust company can generate all information required by this Section in a timely manner for examination or other purposes. A trust company may add, delete, modify, or customize a computer recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a trust company shall report to the Superintendent any alteration in the computer recordkeeping system's fundamental character, medium, or function if the

alteration changes the computer system to a paper-based system.

- B.** A trust department or trust company shall keep books, accounts, and records adequate to provide clear and readily understandable evidence of all business conducted by the trust department or trust company, including the following:
1. A file for each account that includes:
 - a. The original of the governing instrument,
 - b. The originals of all contracts and other legal documents,
 - c. Copies of all correspondence,
 - d. Accounting records disclosing all the financial transactions, and
 - e. A listing of all the account's assets and liabilities.
 2. An investment file for each account that includes:
 - a. All original documentary evidence of the account's assets; or
 - b. Copies of the original documentary evidence of the account's assets, together with written evidence of custody or receipt of the originals by an authorized holder; and
 - c. A record of the initial and annual investment reviews for the account.
 3. The corporate general ledger kept current on a daily basis. This record shall identify and segregate all financial transactions conducted by the trust department or trust company for itself, distinguishing them from those relating to the trust department's or trust company's trust business;
 4. Unaudited financial statements. A trust department or trust company shall produce these statements quarterly or more frequently when directed by the Superintendent. The financial statements shall include at least:
 - a. A balance sheet; and
 - b. A statement of income, expenses, and retained earnings.
 5. Adequate records of all pending litigation that names the trust department or trust company as a party.
- C.** A trust department shall keep its fiduciary records separate and distinct from the trust department's corporate records.
- D.** A trust department or trust company shall keep records described in subsections (B)(1) and (B)(2) for at least three years after closing an account. If litigation occurs concerning a particular account, the trust department or trust company shall keep that account's records, described in subsections (B)(1) and (B)(2), for three years after the litigation is resolved.

Historical Note

Adopted effective September 1, 1977 (Supp. 77-3). R20-4-806 recodified from R4-4-806 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-807. Unsafe or Unsound Condition

For purposes of A.R.S. §§ 6-863 and 6-865, a trust company conducts business in an unsafe manner or its affairs are in an unsound condition if it:

1. Violates any fiduciary duty or obligation, including those listed in R20-4-809 through R20-4-815;
2. Violates any state or federal requirement for operating or maintaining trusts, common trust funds, or other accounts;
3. Violates any applicable federal or state law or regulation regarding corporations or securities;
4. Employs an officer or director who violates a corporate fiduciary duty;

5. Is insolvent; or
6. Engages in any conduct that the Superintendent determines constitutes an unsafe or unsound business practice jeopardizing the trust company's financial condition or the interests of a stockholder, creditor, trustor, beneficiary, or trust company's principal.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-807 recodified from R4-4-807 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-808. Administration of Fiduciary Powers

- A.** The board of directors and the officers share responsibility for the exercise of fiduciary powers by a trust department or trust company. The board of directors is responsible for determining policy; investing and disposing of trust assets; and directing and reviewing the actions of all directors, officers, and committees of the board that exercise fiduciary powers. The board of directors may delegate the necessary power and authority to perform the trust department's or trust company's duties as a fiduciary to selected directors, officers, employees, or committees of the board if the delegation is consistent with the corporate charter. The minutes of the board's meetings shall duly reflect all those delegations.
- B.** A trust department or trust company shall not accept a new account without first obtaining the board's approval, or that of the directors, officers, or committees that the board may have authorized to approve new accounts. The trust department or trust company shall keep a written record of each new account approval and of the closing of each account. The trust department or trust company shall conduct an asset review within 60 days after it accepts each new account if it has investment responsibility for that account. The trust department's or trust company's board shall ensure that an annual review of account assets is conducted for any account in which the trust department or trust company has investment responsibility, to determine whether to retain or dispose of the assets.
- C.** A trust department or trust company exercising fiduciary powers shall use independent legal counsel admitted to practice in Arizona to advise and inform the trust department or trust company on fiduciary matters and all other legal issues presented to the trust department or trust company by the conduct of its trust business.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-808 recodified from R4-4-808 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-809. Fiduciary Duties

A trust department or trust company shall perform all fiduciary duties imposed upon it by law, including the following:

1. Administer accounts strictly according to the governing instrument and solely in the account beneficiary's interests;
2. Use reasonable care and skill to make the account productive;
3. Provide complete and accurate information of the nature and amount of assets held to each account's beneficiary or principal and permit the beneficiary, principal, or any person duly authorized by the beneficiary or principal to inspect the account's records at any time during normal business hours. The information provided in compliance

with this subsection shall be delivered at least quarterly, unless:

- a. The trust department or trust company and its account's beneficiary, principal, or authorized person agree otherwise in writing;
 - b. The governing instrument provides otherwise; or
 - c. A different frequency is established by a lawful course of dealing before the effective date of this rule; and
4. Comply with all lawful provisions of the governing instrument.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-809 recodified from R4-4-809 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-810. Funds Awaiting Investment or Distribution

- A. Trust funds held by a trust department or trust company awaiting investment or distribution shall not remain uninvested or undistributed any longer than is reasonable for the account's proper management.
- B. A trust department or trust company may keep trust funds in deposit accounts maintained by the trust department or trust company, unless prohibited by law or by the governing instrument. The trust department or trust company shall set aside collateral security for all deposited trust funds under a third party's control. The collateral shall be the following types of securities, in any combination:
 1. Direct obligations of the United States or any agency, department, division, or administration of the federal government;
 2. Any other obligations fully guaranteed by the United States government as to principal and interest;
 3. Obligations of a Federal Reserve Bank;
 4. Obligations of any state, political subdivision of a state, or public authority organized under the laws of a state; or
 5. Readily marketable securities that either:
 - a. Qualify as investment securities under the Investment Securities regulations of the Comptroller of the Currency, 12 CFR, Chapter 1, Part 1; or
 - b. Satisfy state pledging requirements under A.R.S. § 6-245(C).
- C. The securities set aside under subsection (B) shall, at all times, have a market value no less than the amount of trust funds deposited. No collateral security is required to the extent the Federal Deposit Insurance Corporation, or its successor, insures the deposited trust funds.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-810 recodified from R4-4-810 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-811. Investment of Trust Funds

- A. A trust department or trust company shall invest trust funds according to:
 1. The governing instrument; and
 2. All applicable laws, including A.R.S. §§ 6-862, 14-7402, and 14-7601 through 14-7611.
- B. A trust department or trust company shall make any collective investment of trust funds exclusively under the terms of R20-4-815.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-811 recodified from R4-4-811 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-812. Self-dealing

- A. A trust department or trust company shall not invest trust funds in the following types of property unless expressly authorized by the governing instrument, applicable state or federal law, or court order:
 1. Its own securities;
 2. Other types of property acquired from the trust department or trust company;
 3. Property acquired from the trust department's or trust company's directors, officers, or employees;
 4. Property acquired from the trust department's or trust company's affiliates;
 5. Property acquired from its affiliates' directors, officers, or employees; or
 6. Property acquired from other individuals or organizations with an interest in the trust department or trust company if that interest might affect the trust department's or trust company's exercise of discretion to the detriment of its trust clients.
- B. A trust department or trust company may use trust funds to purchase its own securities, or its affiliates' securities:
 1. If the trust department or trust company has authority under subsection (A), and
 2. If those securities are offered pro rata to all stockholders of the trust department or trust company.
- C. A trust department or trust company shall not sell or loan trust property to itself, or to the following types of persons, unless expressly authorized by the governing instrument, applicable state or federal law, or court order:
 1. Its directors, officers, or employees;
 2. Its affiliates;
 3. Its affiliates' directors, officers, or employees; or
 4. Other individuals or organizations with an interest in the trust department or trust company if that interest might affect the trust department's or trust company's exercise of discretion to the detriment of its trust clients.
- D. However, a trust department or trust company may sell or loan trust property to persons prohibited by subsection (C) if either:
 1. Its counsel has advised in writing that, by holding certain property, the trust department or trust company has incurred a contingent or potential liability for breach of fiduciary duty; and
 - a. The proposed sale or loan avoids the contingent or potential liability;
 - b. Its board of directors authorizes the sale or loan by an action duly noted in the trust department's or trust company's minutes;
 - c. Its board of directors' action expressly authorizes reimbursement to the affected account; and
 - d. The affected account is reimbursed, in cash, at no loss to that account; or
 2. The Superintendent requires or approves, in writing, the sale or loan to otherwise prohibited parties.
- E. A trust department or trust company may sell trust property held in one account to another of its accounts if:
 1. The transaction is fair to both accounts; and
 2. The transaction is not prohibited by the governing instruments, applicable state or federal law, or court order.
- F. A trust department or trust company may loan trust property held in one account to another of its accounts if:

1. The transaction is fair to both accounts; and
 2. The transaction is not prohibited by the governing instruments, applicable state or federal law, or court order.
- G.** A trust department or trust company may make a loan to a trust account, taking trust assets of the borrowing account as security for repayment, if:
1. The transaction is fair to the borrowing account; and
 2. The transaction is not prohibited by the governing instrument, applicable state or federal law, or court order.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-812 recodified from R4-4-812 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-813. Custody of Investments

- A.** A trust department or trust company shall keep each account's investments separate from its own assets. It shall place each account's assets in the joint control of at least two officers or employees of the trust department or trust company designated in writing for that purpose by:
1. The trust department's or trust company's board of directors, or
 2. One or more officers authorized by the trust department's or trust company's board of directors to make the designation.
- B.** A trust department or trust company shall either:
1. Keep each account's investments separate from all other accounts' investments, except as provided in R20-4-815; or
 2. Adequately identify each account's property in the trust department's or trust company's records.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-813 recodified from R4-4-813 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-814. Compensation

- A.** A trust department or trust company acting as a fiduciary may charge a reasonable fee for its services. It shall receive the fee allowed by the court when it is acting under a court appointment. Any agreement as to fees in the governing instrument shall control the fee unless contrary to law, regulation, or court order.
- B.** A trust department or trust company shall not permit any of its officers or employees to take any compensation for acting as a co-fiduciary with the trust department or trust company in the administration of an account.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-814 recodified from R4-4-814 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-815. Collective Investments

- A.** All collective investments made by a trust department or trust company shall be in a common trust fund established under A.R.S. § 6-871, and maintained by the trust department or trust company exclusively for the collective investment and reinvestment of funds contributed by the trust department or trust company acting as a fiduciary. A trust department or trust

company shall not establish a common trust fund unless it first:

1. Prepares a written plan regarding the common trust fund; and
 2. Obtains its board of directors' approval of the plan, evidenced by a duly adopted resolution or the board's unanimous written consent.
- B.** The plan shall describe the common trust fund's operational details, including a description of:
1. The trust department's or trust company's investment powers and investment policy over all funds deposited in the common trust fund,
 2. The manner for allocating the common trust fund's income and losses,
 3. The criteria for admission to or withdrawal from participating in the common trust fund, and
 4. The method for valuing assets in the common trust fund and the frequency of valuation.
- C.** A trust department or trust company shall advise all persons having an interest in its common trust fund of the existence of the plan described in subsection (B), and shall provide a copy of the plan upon request.
- D.** The annual report required under R20-4-805(A) shall include all common trust funds operated by the trust department or trust company.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-815 recodified from R4-4-815 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-816. Termination of Trust or Fiduciary Powers and Duties

- A.** Any trust department that wants to surrender its trust powers shall file with the Superintendent a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. If, after investigation, the Superintendent concludes that the trust department has no remaining fiduciary duties, the Superintendent shall notify the trust department that it no longer has authority to exercise trust powers.
- B.** Any trust company that wants to surrender its certificate of authority to conduct trust business and wind up its affairs shall file with the Superintendent a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. Upon receipt of the resolution or consent, the Superintendent shall cancel the trust company's certificate of authority, and the trust company shall not accept new trust accounts.
- C.** After winding up its affairs, any trust company that wants to surrender its rights and obligations as a fiduciary and remove itself from the Superintendent's supervision shall file with the Superintendent a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. If, after investigation, the Superintendent concludes that the trust company has no further fiduciary duties, the Superintendent shall notify the trust company that it no longer has authority to exercise fiduciary powers.
- D.** Any trust department or trust company that surrenders its powers, rights, obligations, or certificate under this Section or that has them cancelled, suspended, or revoked shall continue to be regulated under A.R.S. § 6-864 and this Article until it winds up its affairs. No action under this Section impairs any liability or cause of action, existing or incurred, against any trust

department or trust company or its stockholders, directors, or officers.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-816 recodified from R4-4-816 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

Appendix A. Repealed

Historical Note

Appendix A repealed by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2).

Appendix B. Repealed

Historical Note

Appendix B repealed by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2).

ARTICLE 9. MORTGAGE BROKERS

R20-4-901. Reserved

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-901 recodified from R4-4-901 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-902. Reserved

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-902 recodified from R4-4-902 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-903. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States

- A.** The exemption under A.R.S. § 6-902 (A)(1) only applies to a person whose offers to make or negotiate a mortgage loan, as defined in A.R.S. § 6-901, and all mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.
- B.** The required regulation of the transactions listed in subsection (A) includes:
1. Rules governing a claimant's accounting and recordkeeping practices;
 2. The authority to examine a claimant's books and records relating to its mortgage lending activities; and
 3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant's mortgage lending activities.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-903 recodified from R4-4-903 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-904. Reserved

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-904 recodified from R4-4-904 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-905. Repealed

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-905 recodified from R4-4-905 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-906. Equivalent and Related Experience

- A.** An applicant may satisfy the three years' experience requirement of A.R.S. § 6-903 by the types of lending-related experience listed in this subsection. The Department counts each month in the following types of work experience toward the three years required for a mortgage broker license, under A.R.S. § 6-903(B), or as a responsible individual, under A.R.S. § 6-903(E). The Department counts a fractional month of experience, at least 15 days long, as a full month.
1. Mortgage broker with an Arizona license, responsible individual, or branch manager for a licensee;
 2. Mortgage banker with an Arizona license, responsible individual, or branch manager for a licensee;
 3. Loan officer with responsibility primarily for loans secured by lien interests on real property;
 4. Lender's branch manager with responsibility primarily for loans secured by lien interests on real property;
 5. Mortgage broker with license from another state, or responsible individual for a mortgage broker licensed in another state;
 6. Mortgage banker with license from another state, or responsible individual for a mortgage banker licensed in another state;
 7. Attorney certified by any state as a real estate specialist.
- B.** An applicant with insufficient actual experience of the types listed in subsection (A) may satisfy the remainder of the three years' experience requirement of A.R.S. § 6-903 by the types of related experience listed in this subsection. The Department counts each month in the following types of work experience according to the ratio listed below, of actual experience to equivalent experience, credited towards qualifying for a license, under A.R.S. § 6-903(B), or as a responsible individual, under A.R.S. § 6-903(E). The Department counts a fractional month of experience, at least 15 days long, as a full month. An applicant receives credit in only one area listed and for not more than three years' actual experience. The remaining years of experience required to qualify for a license shall be obtained from types of work experiences listed in subsection (A).
1. Attorney without state bar certified real estate specialty...3:2
 2. Paralegal with experience in real estate matters...3:2
 3. Loan underwriter...3:2
 4. Mortgage broker or mortgage banker from another state without license...3:2
 5. Real estate broker with an Arizona license or license from a state with substantially equivalent licensing requirements...3:2
 6. Escrow officer...3:2
 7. Trust officer with a title company...3:2
 8. Executive, supervisor, or policy maker involved in administering or operating a mortgage-related business...3:1.5
 9. Title officer with a title company...3:1.5
 10. Real estate broker, not qualified under subsection (B)(5)...3:1.5

11. Loan processor with responsibility primarily for loans secured by lien interests on real property...3:1.5
12. Lender's branch manager with responsibility primarily for loans not secured by lien interests on real property...3:1.5
13. Real property salesperson with an Arizona license or a license from a state with substantially equivalent licensing requirements...3:1
14. Loan officer, with responsibility primarily for loans not secured by lien interests on real property...3:1

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-906 recodified from R4-4-906 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-907. Course of Study

- A. A course of study shall be satisfactorily completed if the applicant has:
 1. Attended at least 24 hours of class, and
 2. Received a passing grade on the final exam.
- B. A course of study shall meet all the following requirements:
 1. The following items shall be submitted by the school to the Superintendent on an annual basis:
 - a. Course materials;
 - b. Class content outlines on a session-by-session basis; and
 - c. Sample final exam.
 2. The following subjects shall be taught:
 - a. Mortgage, deed of trust, and security agreement law;
 - b. Negotiable instrument law;
 - c. Mortgage broker law;
 - d. Escrow agent law;
 - e. Recordkeeping requirements of R20-4-917;
 - f. Federal Housing Administration, Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation requirements;
 - g. Ethics;
 - h. Principal and agent law;
 - i. Arithmetical computations common to mortgage brokerage;
 - j. Real estate lending principles;
 - k. Real estate law;
 - l. Real Estate Settlement Procedures Act, 12 U.S.C. 2601 through 2617, and Consumer Credit Protection Act, 15 U.S.C. 1601 through 1666j; and
 - m. Securities law.
 3. A final exam shall be given that substantially tests the student's knowledge of the subjects described above.
- C. The Superintendent shall review the items submitted to the Department and determine within 60 days of submission whether the proposed course of study is satisfactory. The Superintendent may audit a course of study at any time. If the Superintendent finds that a course of study is unsatisfactory, or if the Superintendent has not received the course materials, course content outlines, and sample final exam within the prior 13 months, the Superintendent may withhold or suspend approval.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-907 recodified from R4-4-907 (Supp. 95-1).

R20-4-908. Reserved**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-908 recodified from R4-4-908 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-909. Reserved**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-909 recodified from R4-4-909 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-910. Reserved**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-910 recodified from R4-4-910 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-911. Qualified Replacement Responsible Individual

If a licensee chooses an individual to serve as a replacement responsible individual and that individual has not satisfactorily completed the course of study required by A.R.S. § 6-903(B)(2) or passed the mortgage broker examination required by A.R.S. § 6-903(B)(3), and is not given the opportunity to do so prior to the expiration of the 90-day time period provided in A.R.S. § 6-903(F), but otherwise meets the requirements of A.R.S. § 6-903(B), the individual shall be qualified as a replacement responsible individual until the next course of study has been held and, if the person successfully completes the course of study, until the mortgage broker examination next following the completion of the course of study has been held and the results of the examination are available. If the individual fails to satisfactorily complete the course of study or fails the mortgage broker examination, the licensee shall then have a new 90-day time period within which to place itself under the active management of a qualified responsible individual. Notwithstanding the foregoing, a licensee shall have no longer than 180 days within which to place the licensee under the active management of a qualified responsible individual unless the Superintendent grants additional time to the licensee for good cause shown.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-911 recodified from R4-4-911 (Supp. 95-1).

R20-4-912. Restrictions on the Term of a Cash Alternative

If an applicant or a licensee elects to place with the Superintendent a deposit in the form of a certificate of deposit or investment certificate, in addition to the requirements of A.R.S. § 6-903(J), the certificate of deposit or investment certificate shall not be renewable, nor expire, earlier than 12 months from the date of issuance.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-912 recodified from R4-4-912 (Supp. 95-1).

R20-4-913. Reserved**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-913 recodified from R4-4-913 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-914. Reserved**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-914 recodified from R4-4-914 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-915. Requirements for a Person Intended to Oversee a Branch Office

A person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, shall supervise compliance by the branch with applicable law and rules, and shall have sufficient authority to ensure such compliance. One person may oversee more than one branch.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-915 recodified from R4-4-915 (Supp. 95-1).

R20-4-916. Notification of Change of Address

If the address of the principal place of business or of any branch office is changed, the licensee shall notify the Superintendent of the change within five business days after the occurrence of the change of location. Together with such notice, the licensee shall provide to the Department the license for the office changing addresses together with the fee required by A.R.S. § 6-126 for changing the address of an office. A copy of such license shall continue to be displayed at the place of business until a new license is issued.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-916 recodified from R4-4-916 (Supp. 95-1).

R20-4-917. Recordkeeping Requirements

A. The Superintendent shall approve a licensee's use of a computer or mechanical recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any alteration in the approved system's fundamental character, medium, or function if the alteration changes:

1. Any approved computer or mechanical system back to a paper-based system;
2. An approved mechanical system to a computer system; or
3. An approved computer system to a mechanical system.

B. In addition to any statutory requirement regarding records, a record maintained by a mortgage broker shall include the following:

1. A list of all executed loan applications or executed fee agreements that includes the following information:
 - a. Applicant's name;
 - b. Application date;
 - c. Amount of initial loan request;
 - d. Final disposition date;
 - e. Disposition (funded, denied, etc.); and
 - f. Name of loan officer;
2. A record, such as a cash receipts journal, of all money received in connection with a mortgage loan including:
 - a. Payor's name;
 - b. Date received;
 - c. Amount; and

- d. Receipt's purpose, including identification of a related loan, if any;
3. A sequential listing of checks written for each bank account relating to the mortgage broker business, such as a cash disbursement journal, including:
 - a. Payee's name;
 - b. Amount;
 - c. Date; and
 - d. Payment's purpose, including identification of a related loan, if any;
4. Bank account activity source documents for the mortgage broker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices.
5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
 - a. Borrower's name or co-borrowers' names;
 - b. Loan number, if any;
 - c. Amount received;
 - d. Purpose for the amount received;
 - e. Date received;
 - f. Date deposited into trust account;
 - g. Amount disbursed;
 - h. Date disbursed;
 - i. Disbursement's payee and purpose; and
 - j. Balance;
6. A file for each application for a mortgage loan containing:
 - a. The agreement with the customer concerning the broker's services, whether as a loan application, fee agreement, or both;
 - b. Document showing the application's final disposition, such as a settlement statement, or a denial or withdrawal letter;
 - c. Correspondence sent, received, or both by the licensee;
 - d. Contract, agreement, and escrow instructions to or with any depository;
 - e. Documents showing compliance with the Consumer Credit Protection Act's (15 U.S.C. §§ 1601 through 1666j) and the Real Estate Settlement Procedures Act's (12 U.S.C. §§ 2601 through 2617) disclosure requirements, to the extent applicable;
 - f. If the loan is funded by an investor that is not a financial institution, an enterprise, a licensed real estate broker or salesman, a profit sharing or pension trust or, an insurance company, the documents provided to the investor under A.R.S. § 6-907, a copy of the executed note and executed deed of trust or mortgage, and any assignment by the broker to the investor;
 - g. If the loan is closed in the mortgage broker's name, a copy of all closing documents including: closing instructions, any applicable rescission notice, HUD-1 settlement statement, final truth-in-lending disclosure, executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee; and
 - h. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee;
7. Samples of every piece of advertising relating to the mortgage broker's business in Arizona;
8. Copies of governmental or regulatory compliance reviews;
9. If the licensee is not a natural person, a file containing:
 - a. Organizational documents for the entity;

- b. Minutes;
 - c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
 - d. Annual report, if required by law;
10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction;
 11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal, or other final order disposing of the action; and
 12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them.
- C.** If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.
- D.** A licensee shall retain the documents described in subsections (B)(1) and (B)(6) for the length of time provided in A.R.S. § 6-906. For the purposes of A.R.S. § 6-906, a mortgage loan's closing date, on a loan application that did not result in the making of a loan, is either:
1. The date a licensee receives a written cancellation notice from an applicant; or
 2. The date a licensee mails written notice to an applicant that the application has been denied, as required by federal law.
- E.** A licensee shall maintain all records described in this Section, and not included in subsection (D), for at least two years.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-917 recodified from R4-4-917 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-918. Repealed**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-918 recodified from R4-4-918 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-919. Deposit of Monies Received by a Mortgage Broker

All monies received by a mortgage broker which are required to be deposited into an escrow account with an escrow agent licensed pursuant to A.R.S. § 6-801 et seq. shall be so deposited by 5:00 p.m. on the next business day after receipt of the funds.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-919 recodified from R4-4-919 (Supp. 95-1).

R20-4-920. Requirements for the Testing Committee

A. No licensee shall submit more than five names as nominees to serve on the testing committee. The resumes of the nominees shall be included. The names and resumes shall be submitted to the Superintendent no later than August 1 of each even-

numbered year. On or before September 30 of each even-numbered year, the Superintendent shall appoint four persons from the nominees submitted and one employee of the Department as members of the testing committee. A person may serve more than one two-year term. If the Superintendent does not find at least four persons from the list to be acceptable, the Superintendent shall solicit additional nominees from licensees.

- B.** In the event of a vacancy on the testing committee, the remaining members of the committee shall submit a list of nominees within 45 days of the vacancy to the Superintendent containing not less than two nominees for each vacancy. The Superintendent shall then appoint a nominee from the list to fill each vacancy for the remainder of the term. If the Superintendent does not find at least one person from the list to be acceptable to fill each vacancy, the remaining members of the committee shall, upon request, submit an additional list of nominees to the Superintendent.
- C.** The Superintendent may remove any member of the committee at any time without cause.
- D.** The committee shall review and revise questions on the test not less than once every two years. All questions used on the test shall first be submitted to and approved by the Superintendent.
- E.** The committee shall inform the applicant of the applicant's score on the test in writing within 30 days of administration of the test.
- F.** The handbook for mortgage brokers shall be updated by the committee as necessary to reflect changes in the law.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-920 recodified from R4-4-920 (Supp. 95-1).

R20-4-921. Authorizations to Complete Blank Spaces

An authorization, under A.R.S. § 6-909, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:

1. Specifically identify the document and the blank spaces to be completed;
2. Be in writing, dated, and signed by the authorizing parties; and
3. Contain the following notice, conspicuously printed on its face: YOUR SIGNATURE BELOW AUTHORIZES YOUR MORTGAGE BROKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-921 recodified from R4-4-921 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-922. Determining Loan Amounts

In determining the amount of a mortgage loan pursuant to A.R.S. § 6-909(D) or (G), only the principal amount of the loan shall be considered and not any points, interest, finance charges, insurance premiums of any kind, compensation paid to third parties or compensation retained by the mortgage broker or its agents.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-922 recodified from R4-4-922 (Supp. 95-1).

R20-4-923. Delay or Cause Delay

A mortgage broker shall not be deemed to have delayed or caused delay if such delay occurs due to events outside the control of the mortgage broker.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-923 recodified from R4-4-923 (Supp. 95-1).

R20-4-924. Receipt and Disbursement of Monies

A licensee is not receiving or disbursing monies in servicing or arranging a mortgage loan if the licensee, at the request of the lender or servicing agent, on an infrequent basis, assists in the collection or servicing of a mortgage loan by receiving from the borrower a check or draft payable to the lender or servicing agent and forwarding such instrument to the lender or servicing agent not later than 5:00 p.m. on the next business day after receipt by the licensee. For the purposes of this rule, an infrequent basis means, with regard to a particular loan, for not more than 25% of the regularly scheduled payments of the mortgage loan during any calendar year.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-924 recodified from R4-4-924 (Supp. 95-1).

R20-4-925. Waiver of Examination and Course of Study

The Superintendent's waiver of the examination and course of study requirement under A.R.S. § 6-903 extends to a person designated as a responsible individual by either an applicant or a licensee under A.R.S. § 6-903.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-926. Acquisition of Additional Interest in Licensee by Majority Owner

A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-927. Conversion to Commercial Mortgage Broker License

- A. Under A.R.S. § 6-913, a mortgage broker licensee shall only be permitted to convert his or her license to a commercial mortgage broker license during the renewal period established by A.R.S. § 6-904.
- B. The licensee seeking conversion shall not be subject to the 12 continuing education units as prescribed by A.R.S. § 6-903(V).
- C. The licensee seeking conversion shall submit:
 1. The renewal fees required by A.R.S. § 6-126 for commercial mortgage brokers, and
 2. The information and documents required by A.R.S. § 6-903.

Historical Note

New Section adopted by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

R20-4-928. Certificate of Exemption Application and Renewal

- A. Under A.R.S. § 6-912(C), upon application for a certificate of exemption, an applicant shall pay a nonrefundable fee of \$300.
- B. A person holding a certificate of exemption shall pay a renewal fee of \$150.00 on or before December 31 of each year. Certificates of exemption not renewed by December 31 are automatically suspended, and the certificate holder shall not act as a registered exempt person until the certificate is renewed or a new certificate is issued pursuant to A.R.S. § 6-912. While the certificate is suspended, the licensed loan originators sponsored by the registered exempt person may not transact business as a loan originator. A registered exempt person may renew an automatically suspended certificate by paying the renewal fee plus \$25.00 for each day after December 31 that a renewal fee is not received by the Superintendent and applying for renewal as prescribed by the Superintendent. A certificate of exemption that is not renewed by January 31 expires. A certificate of exemption shall not be granted to the holder of an expired certificate of exemption except as provided in A.R.S. § 6-912 for the issuance of an original certificate of exemption. Each licensed loan originator that is sponsored by a registered exempt person whose certificate has expired shall have his or her license placed on inactive status and shall not transact business in Arizona as a loan originator pursuant to A.R.S. § 6-991.02(M).
- C. In addition to the application fee, on issuance of the certificate of exemption, the Superintendent shall collect the first year's renewal fee prorated according to the number of quarters remaining until the date of the next annual renewal, as required by A.R.S. § 6-126(B).
- D. The following fees are payable to the Department:
 1. To change the name of the federally chartered savings bank on a certificate of exemption: \$250.00.
 2. To change the responsible individual for the exempt entity: \$250.00.
 3. To issue a duplicate or replace a lost certificate of exemption: \$100.00.
 4. To change the address of the federally chartered savings bank on a certificate of exemption: \$50.00.

Historical Note

New Section adopted by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

ARTICLE 10. SAFE DEPOSIT AND SAFEKEEPING CODE**R20-4-1001. Notice of Change of Location of Safe Deposit Repository**

- A. A corporation or association that moves a repository shall give written notice of the location change to the Superintendent and to its customers.
 1. A corporation or association shall provide notice of the location change to the Superintendent by mailing the notice required under this subsection by first class mail no less than 30 days before the scheduled moving date. The corporation or association shall include a copy of the notice to customers required under subsection (B).
 2. A corporation or association shall provide notice of the location change to its customers by:
 - a. Publishing notice of the change of location in:
 - i. An English language newspaper of general circulation in the county where the repository will be closed,
 - ii. In a weekly newspaper for two consecutive publications, or
 - iii. In a daily newspaper for three consecutive days; and

- b. Publishing the notice no more than 90 days, and no less than 30 days, before the scheduled moving date.
- B.** The corporation or association shall include all the following information in the notice:
1. The date the corporation or association intends to move the repository,
 2. The earliest date a customer can remove contents and transact other business related to the move,
 3. The latest date a customer can remove contents and transact other business related to the move,
 4. The street address of the repository to be closed, and
 5. The street address of the new repository.

Historical Note

Former Rule 1. R20-4-1001 recodified from R4-4-1001 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 5227, effective February 4, 2003 (Supp. 02-4). Preceding Historical Note entry corrected to read 2003 instead of 2002 (Supp. 03-1).

ARTICLE 11. PUBLIC DEPOSITORIES FOR PUBLIC MONIES**R20-4-1101. Capital structure of banks; defined**

“Capital structure” as the term is applied to banks under Article 2, Chapter 2, Title 35, Arizona Revised Statutes, means the sum of the following reserves and capital accounts of the institution as stated in the institution’s report of condition required by the supervisory banking authority for the year end next preceding the institution’s bid for deposit:

1. Reserve for bad debt losses on loans.
2. Other reserves on loans.
3. Reserves on securities.
4. Capital notes and debentures.
5. Preferred stock -- total par value.
6. Common stock -- total par value.
7. Surplus.
8. Undivided profits.
9. Reserve for contingencies and other capital reserves.

Historical Note

Adopted as an emergency effective July 29, 1975 (Supp. 75-1). Amended effective December 26, 1975 (Supp. 75-2). R20-4-1101 recodified from R4-4-1101 (Supp. 95-1).

R20-4-1102. Capital structure of savings and loan associations; defined

“Capital structure” as the term is applied to savings and loan associations under Article 2, Chapter 2, Title 35, Arizona Revised Statutes, means the sum of the following net worth accounts of the institution as stated in the institution’s report of condition required by the supervisory banking authority for the year end next preceding the institution’s bid for deposit:

1. Capital notes and debentures.
2. Guaranty capital stock.
3. General reserves. (Including bad debt reserves)
4. Other reserves.
5. Paid in surplus.
6. Earned surplus and undivided profits.

Historical Note

Adopted as an emergency effective July 29, 1975 (Supp. 75-1). Amended effective December 26, 1975 (Supp. 75-2). R20-4-1102 recodified from R4-4-1102 (Supp. 95-1).

ARTICLE 12. RULES OF PRACTICE AND PROCEDURE**BEFORE THE SUPERINTENDENT****R20-4-1201. Scope of Article**

This Article governs procedures in all contested cases and appealable agency actions, including administrative appeals, filed with the Department. The Department shall use the authority of A.R.S. §§ 41-1092 through 41-1092.12, and the Office of Administrative Hearings’ procedural rules to govern the initiation and conduct of proceedings. In a case or action, special procedural requirements in state statute or another Section in this Chapter shall also govern the proceedings unless the requirements are inconsistent with either A.R.S. §§ 41-1092 through 41-1092.12 or the Office of Administrative Hearings’ rules. This Article does not apply to rulemaking or to investigative proceedings before the Superintendent.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1201 recodified from R4-4-1201 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1202. Definitions

In this Article, unless the context otherwise requires:

- “Administrative law judge” has the meaning stated at A.R.S. § 41-1092(1).
- “Appealable agency action” has the meaning stated at A.R.S. § 41-1092 3).
- “Contested case” has the meaning stated at A.R.S. § 41-1001(4).
- “Department” means the Arizona State Department of Financial Institutions.
- “License” has the meaning stated at A.R.S. § 41-1001(10).
- “Party” means:
- The Department;
 - The Superintendent;
 - Each person either named or admitted as a party, and
 - Each person properly seeking, and entitled, to be a party.
- “Superintendent” has the meaning stated in A.R.S. § 6-101(16).

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1202 recodified from R4-4-1202 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1203. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1203 recodified from R4-4-1203 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1204. Filing; Service

- A.** A person shall either personally deliver all papers permitted or required to be filed with the Superintendent or shall mail them by first class, certified, or express mail, or send them by facsimile transmission (602-381-1225), to the Superintendent at 2910 N. 44th Street, Suite 310, Phoenix, AZ 85018-7270, or shall serve them by any method permitted under R2-19-108. The Department considers papers filed when actually received at the Superintendent’s address stated in this subsection.
- B.** A party in a contested case or appeal from an agency action shall make any required or permitted service in the manner permitted under R2-19-108. A party shall make service upon each represented party’s attorney unless the administrative law judge orders separate service on the actual party. A party shall make service upon each unrepresented party by service on the actual party.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1204 recodified from R4-4-1204 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Amended to correct a typographical error in subsection (B) (Supp. 01-4).

R20-4-1205. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1205 recodified from R4-4-1205 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1206. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1206 recodified from R4-4-1206 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1207. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1207 recodified from R4-4-1207 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1208. Commencement of Proceedings; Notice of Hearing

A person may obtain a hearing under A.R.S. § 41-1092.03 (B) on any appealable agency action or contested case, including the following, unless otherwise provided by law.

1. A letter or order granting or denying a license;
2. A license issued with restrictions or conditions;
3. A cease and desist order;
4. An order to remedy unsafe or unsound conditions;
5. An order to remedy an impairment of capital;
6. An order taking possession and control of a financial institution or enterprise;
7. An order assessing a fine;
8. Any other order or matter reviewable in a hearing either under the authority of these rules, a statute or an administrative rule enforced by the Superintendent, or by the order's express terms.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1208 recodified from R4-4-1208 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1209. Answer to Notice of Hearing

- A. The Superintendent may, in a notice of hearing, direct one or more parties to file an answer to the assertions in the notice of hearing. Any party to the proceeding may file an answer without being directed to do so.
- B. A party directed to file an answer shall do so within 20 days after issuance of a notice of hearing, unless the notice of hearing states a different period for the answer. The Superintendent may require any party to answer, in a reasonable time, amendments to the assertions in the notice made after service of the original notice.
- C. An answer filed under this Section shall briefly state the party's position or defense to the proceeding and shall specifically admit or deny each of the assertions in the notice of hearing. An answering party that does not have, or cannot easily obtain, knowledge or information sufficient to admit or deny

an assertion shall state that inability in its answer. That statement shall have the effect of a denial. A party admits each assertion that it does not deny. An answering party that intends to deny only a part or a qualification of an assertion, or to qualify an assertion, shall expressly admit as much of that assertion as is true and shall deny the remainder.

- D. A party that fails to file an answer required by this Section within the time allowed is in default. The Superintendent may resolve the proceeding against a defaulting party. In doing so, the Superintendent may regard any assertions in the notice of hearing as admitted by the defaulting party.
- E. An answering party waives all defenses not raised in its answer.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1209 recodified from R4-4-1209 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1210. Stays

A person aggrieved by the Department's action or order who files a timely written request for a hearing may ask, in the request for a hearing, that the Superintendent stay an action or any part of an order that will become effective before the Department can hold a hearing. The Superintendent may, in the Superintendent's discretion, stay the legal effectiveness of any action or order until the matter can be heard and finally decided if the aggrieved person's request demonstrates that:

1. The person has a reasonable defense that might prevail on the merits at the hearing,
2. The person will suffer irreparable injury unless the Superintendent grants the stay,
3. The stay would not substantially or irreparably harm other interested persons, and
4. The stay would not jeopardize the public interest or contravene public policy.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1210 recodified from R4-4-1210 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1211. Intervention

A person may only intervene in a proceeding if the person timely applies and:

1. A statute confers a right to intervene, or
2. The person's claim or defense shares a question of law or fact in common with the main proceeding.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1211 recodified from R4-4-1211 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1212. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1212 recodified from R4-4-1212 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1213. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1213 recodified from R4-4-1213 (Supp. 95-1). Section

repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1214. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1214 recodified from R4-4-1214 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1215. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1215 recodified from R4-4-1215 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1216. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1216 recodified from R4-4-1216 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1217. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1217 recodified from R4-4-1217 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1218. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1218 recodified from R4-4-1218 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1219. Rehearing

- A. Except as provided in subsection (H), any party in a contested case who is aggrieved by a decision rendered in that case may file with the Superintendent, within time limits and other procedural guidelines contained in A.R.S. § 41-1092.09, a written motion for rehearing or review of the decision specifying the particular reason for rehearing.
- B. A party requesting rehearing under this Section may amend a motion for rehearing at any time before the Superintendent rules on the motion. Any other party, or the Attorney General, may file a response to the motion for rehearing within 15 days after service of the motion for rehearing, or the amended motion for rehearing. The Superintendent may require a written brief of the issues raised in the motion and may allow oral argument.
- C. The Superintendent may grant a motion for rehearing for any of the following causes:
 1. Irregularity in the proceedings before the Superintendent, in any order, or any abuse of discretion that deprives the moving party of a fair hearing;
 2. Misconduct of the Superintendent, the Superintendent employees, the administrative law judge, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary care;
 4. Newly discovered material evidence that could not reasonably have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;

6. Error in admitting or rejecting evidence or other legal errors occurring at the hearing;
7. The decision is not justified by the evidence or is contrary to law.

- D. The Superintendent may affirm or modify the decision or grant a rehearing as to all or any of the parties and on all or part of the issues for any reason listed in subsection (C). An order granting a rehearing shall specify the reason for granting the rehearing, and the rehearing shall cover only those matters specified.
- E. The Superintendent, within the time for filing a motion for rehearing, may without a motion order a rehearing or review of a decision for any reason that would allow the granting of a motion for rehearing by a party. The order for rehearing, granted without a motion, shall specify the reason for granting the rehearing.
- F. After giving the parties notice and an opportunity to be heard on the matter, the Superintendent may grant a motion for rehearing, timely served, for a reason not stated in the motion. The order for rehearing, granted for a reason not stated in the motion, shall specify the reason for granting the rehearing.
- G. When a motion for rehearing is based on an affidavit, the moving party shall serve the affidavit with the motion. An opposing party or the Attorney General may serve opposing affidavits within 10 days after service of the motion for rehearing.
- H. The Superintendent may issue a final decision, subject only to judicial review, and without an opportunity for rehearing or administrative review if the Superintendent includes in the decision:
 1. An express finding that the decision needs to be made immediately effective to preserve the public peace, health, and safety; and
 2. An express finding that a rehearing or review is:
 - a. Impossible,
 - b. Unnecessary, or
 - c. Contrary to the public interest.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1219 recodified from R4-4-1219 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1220. Consent Agreements

- A. The Department will enter into a consent agreement, either in litigation or in an administrative proceeding, only if the defendant or respondent admits to the allegations in the complaint, notice, or order relating to the jurisdiction of the Superintendent or the jurisdiction of the tribunal that will enter the judgment or order.
- B. A refusal to admit allegations is a denial. However, a defendant or respondent may consent to a judgment or order reciting that it does not admit or deny the allegations except those required by subsection (A). A consent agreement shall contain those additional provisions required by the Superintendent in a given matter, and may include:
 1. Waiving any right to seek judicial review challenging the judgment's or order's validity,
 2. Waiving findings of fact and conclusions of law,
 3. Stating that the agreement is signed only to settle the matter and not as an admission that the defendant or respondent has violated the law.
- C. The Superintendent has sole discretion to decide whether to resolve a matter by consent agreement. Nothing in this Section gives the Superintendent a duty to approve a consent agreement in any matter.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1220 recodified from R4-4-1220 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

ARTICLE 13. LOAN ORIGINATORS**R20-4-1301. Scope of Article**

This Article applies to:

1. All loan originating activities of any person licensed under Arizona law as a loan originator, and
2. The conduct of any applicant for a loan originator license.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1302. Course of Study to Qualify for Licensure

- A. The Superintendent shall, under the authority of A.R.S. § 6-991.03(B)(1), approve a course of study that includes only those courses reviewed and approved by the Nationwide Mortgage Licensing System pursuant to A.R.S. § 6-991.03(E) and (F) and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 U.S.C. 5101 through 5116).
- B. An applicant for a loan originator license shall satisfactorily complete a course of study by:
 1. Attending at least 20 hours of instruction, and
 2. Receiving a passing grade of not less than 75 percent correct answers on both the national and Arizona state exam required by A.R.S. § 6-991.07 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 U.S.C. 5101 through 5116).
- C. A pre-licensure course of study shall include 20 hours of instruction in the following areas:
 1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): Three hours;
 2. Business ethics, including fraud, consumer protection laws, and fair lending practices: Three hours;
 3. Non-traditional mortgage product lending standards: Two hours;
 4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency and the obligations between principal and agent, and state privacy laws: Four hours;
 5. The remaining eight hours should be comprised of instruction in:
 - a. The obligations between principal and agent;
 - b. The statutory and regulatory laws governing loan originators;
 - c. Arithmetical computations common to mortgage lending;
 - d. Principles of real estate lending;
 - e. The purpose and effect of mortgages, deeds of trust, and security agreements;

- f. The terms and conditions of conforming and non-conforming residential mortgages;
- g. Real estate appraisal; and
- h. The principles of appraisal independence.

D. A continuing education course of study shall include eight hours of instruction each year in the following areas:

1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): Three hours;
2. Business ethics, including fraud, consumer protection laws, and fair lending practices: Two hours;
3. Non-traditional mortgage product lending standards: Two hours;
4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency and the obligations between principal and agent, and state privacy laws: One hour.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1303. Financial Responsibility

An applicant for a loan originator license shall demonstrate financial responsibility, as required by A.R.S. § 6-991.03, by either:

1. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and paying to the Superintendent, for deposit into the Mortgage Recovery Fund, the sum of \$100 at the time of filing an original or a renewal application pursuant to A.R.S. § 6-991.03(B)(6); or
2. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(6).

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1304. Fees

Loan Originator program fees:

1. Initial application fee (non-refundable) pursuant to A.R.S. § 6-126(A)(33): \$350,
2. Initial license fee (prorated according to the number of quarters remaining until the next annual renewal) pursuant to A.R.S. § 6-126(B): \$150,
3. Annual renewal fee pursuant to A.R.S. § 6-126(C)(12) or fee for change to inactive status pursuant to A.R.S. §§ 6-126(C)(13) and 6-991.04(G): \$150,
4. Transfer license to new employer fee pursuant to A.R.S. § 6-126(A)(34): \$50,

5. Change of residence address fee pursuant to A.R.S. § 6-991.04(J): \$50,
6. Examination fee pursuant to A.R.S. § 6-991.07(E): the amount charged by the vendor,
7. Late renewal fee pursuant to A.R.S. § 6-991.04(E): \$25 per day after the filing deadline.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1305. Practice and Procedure

Loan originators shall follow the practice outlined in 20 A.A.C. 4, Article 12 (Rules of Practice and Procedure Before the Superintendent) for challenging information the Superintendent enters into the Nationwide Mortgage Licensing System and Registry pursuant to A.R.S. §§ 6-991.03(K) and 6-991.04(M).

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section repealed; new Section made by renewed emergency rulemaking at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

ARTICLE 14. INVESTIGATIONS

R20-4-1401. Definitions

In this Article, unless the context otherwise requires:

1. "Examination" means reviewing an applicant's or licensee's operations, books, and records for any lawful purpose, including those listed in A.R.S. § 6-124(A).
2. "Investigation" means an inquiry, other than an examination, into the affairs of a licensed or unlicensed entity including a review of the entity's operations, books, and records, conducted by the Superintendent for any lawful purpose, including those listed in A.R.S. § 6-124(A).
3. "Licensee" means a financial institution or enterprise.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Former Section R4-4-1401 repealed, new Section R4-4-1401 renumbered from R4-4-1402 and amended effective August 14, 1991 (Supp. 91-3). Amended effective August 14, 1991 (Supp. 91-3). R20-4-1401 recodified from R4-4-1401 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4).

R20-4-1402. Repealed

Historical Note

Former Section R4-4-1402 renumbered to R4-4-1401, new Section R4-4-1402 adopted effective August 14, 1991 (Supp. 91-3). R20-4-1402 recodified from R4-4-1402 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4).

R20-4-1403. Subpoenas: Service; Amendment; Investigation or Examination not a Condition of the Superintendent's Subpoena Power

The Superintendent may serve a subpoena either by personal delivery or by first class, certified, or express mail, or by facsimile transmission. A Department employee, or an attorney or agent of the Attorney General's office, may accomplish service for the Superintendent. The Superintendent may amend a subpoena at any time, and may serve the amended subpoena as provided in this Section. Under A.R.S. §§ 6-123(3), 6-124(B), and 12-2212, the Superintendent may compel testimony or document production, by subpoena or other means, regardless of whether an examination or investigation is in progress.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Former Section R4-4-1403 repealed, new Section R4-4-1403 renumbered from R4-4-1407 and amended effective August 14, 1991 (Supp. 91-3). R20-4-1403 recodified from R4-4-1403 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4).

R20-4-1404. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1404 recodified from R4-4-1404 (Supp. 95-1).

R20-4-1405. Fingerprints; Background Information

- A. In connection with an examination or investigation, the Superintendent may investigate the following persons' background:
1. An applicant or a licensee, or a person whom the Superintendent reasonably believes may be violating any statute or rule administered by the Superintendent; and
 2. An officer, director, agent, employee, partner, joint venturer, affiliate, or other person associated with a person described in subsection (A)(1), if the other person has or had any involvement in or control over the activities of the person described in subsection (A)(1).
- B. In connection with an examination or investigation, the Superintendent may require a person described in A.R.S. § 6-123.01(A) or (E) to submit a statement of personal history and fingerprints to the Department.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Former Section R4-4-1405 repealed, new Section R4-4-1405 renumbered from R4-4-1409 and amended effective August 14, 1991 (Supp. 91-3). R20-4-1405 recodified from R4-4-1405 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4).

R20-4-1406. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1406 recodified from R4-4-1406 (Supp. 95-1).

R20-4-1407. Renumbered

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Renumbered to R4-4-1403 effective August 14, 1991 (Supp. 91-3). R20-4-1407 recodified from R4-4-1407 (Supp. 95-1).

R20-4-1408. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1).
Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1408 recodified from R4-4-1408 (Supp. 95-1).

R20-4-1409. Renumbered**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1).
Renumbered to R4-4-1405 effective August 14, 1991 (Supp. 91-3). R20-4-1409 recodified from R4-4-1409 (Supp. 95-1).

R20-4-1410. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1).
Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1410 recodified from R4-4-1410 (Supp. 95-1).

ARTICLE 15. COLLECTION AGENCIES**R20-4-1501. Definitions**

In this Article, unless the context otherwise requires:

1. "Account" means a contractual arrangement between a client and a collection agency that obligates the collection agency to attempt to collect one or more debts on the client's behalf.
2. "Active Manager" means the person who is in active management of the conduct of the collection agency's business, and who meets the qualifications listed in A.R.S. § 32-1023(A).
3. "Client" means a person who has hired a collection agency to collect a debt.
4. "Collection agency" has the meaning in A.R.S. § 32-1001(A)(2).
5. "Contact" means to communicate with, and includes attempted communications.
6. "Credit bureau" or "credit reporting agency" means any person engaged exclusively in the business of gathering, recording, and disseminating information about the credit-worthiness, financial responsibility, paying habits, and character of persons being considered for credit extension.
7. "Creditor" means a person who offers or extends credit creating a debt, or to whom a debt is owed. The term does not include a person that receives an assignment or transfer of a defaulted debt solely for use in collecting the debt for someone else.
8. "Debt" means a debtor's actual or claimed obligation to pay money, whether or not the obligation has been reduced to judgment.
9. "Debtor" means a person obligated to pay a debt. The term also means a person claimed to be obligated to pay a debt.
10. "Superintendent" has the meaning in A.R.S. § 6-101.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1501 recodified from R4-4-1501 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1502. Applications

A. An applicant for a license shall complete and file an application, as required by the Department, by delivering the applica-

tion to the Superintendent, together with the following documents and payment:

1. The bond required by A.R.S. § 32-1021;
 2. The nonrefundable investigation fee and original license fee required by A.R.S. § 32-1028 and stated in A.R.S. § 6-126;
 3. A current financial statement in the form required by the Department;
 4. A certified copy of the current articles of incorporation, by-laws, partnership agreement, or other organizational documents under which the applicant proposes to conduct business; and
 5. A statement of personal history for each principal officer, partner, and manager of the applicant, in the form required by the Department.
- B. An out-of-state collection agency applying for a license under A.R.S. § 32-1024 shall complete and file the application required by subsection (A), together with a signed statement declaring that:
1. The requirements for securing the out-of-state license were, when issued, substantially the same or equivalent to the requirements imposed under A.R.S. Title 32, Chapter 9, Article 2. The statement shall also contain a complete description of those requirements.
 2. The state issuing the out-of-state license extends reciprocity to Arizona licensees under similar circumstances. The statement shall also contain a complete description of the conditions for reciprocity in the other state.
- C. A licensee applying for license renewal shall complete and file an application, as required by the Department, by delivering the renewal application to the Superintendent before January 1, together with the renewal fee required by A.R.S. § 32-1028 and stated in A.R.S. § 6-126. An application for renewal shall also include a current financial statement in the form required by the Department.
- D. An applicant for a provisional license under A.R.S. § 32-1027 shall complete and file an application as required by the Department, by delivering the application to the Superintendent within 30 days of the event justifying a provisional license. The applicant shall deliver the application together with each of the following:
1. A bond that satisfies the requirements of A.R.S. § 32-1022;
 2. A current financial statement as required by the Department;
 3. A detailed description of the facts justifying the issuance of a provisional license; and
 4. Evidence that the licensee notified the Superintendent as required by A.R.S. § 32-1023, in the event the licensee has terminated its active manager.
- E. An applicant for a provisional license shall, in each instance, be appropriate to the circumstances justifying the provisional license, as follows:
1. A licensee's personal representative, or the personal representative's appointee, shall complete and file an application if the licensee, a natural person, has died;
 2. The surviving partners shall complete and file an application if the licensee, a partnership, has dissolved;
 3. A licensee shall complete and file an application if an active manager's employment was terminated.
- F. An applicant for a provisional license shall clearly label the top of the first page with the heading "APPLICATION FOR PROVISIONAL LICENSE UNDER A.R.S. § 32-1027."
- G. The Superintendent may require additional information the Superintendent considers necessary in connection with any application under this rule.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1502 recodified from R4-4-1502 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4).

R20-4-1503. Reports

- A.** A collection agency shall notify the Superintendent in writing of any change in the officers, directors, partners, or active manager of the collection agency not more than ten days after the change. With the notice, the collection agency shall provide the Superintendent with a Statement of Personal History for each new officer, director, partner, or active manager on a form obtained from the Department.
- B.** A collection agency shall notify the Superintendent in writing of any change in its place of business not more than 10 days after the change.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1503 recodified from R4-4-1503 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1504. Records

- A.** A licensee may use a computer recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of its books, accounts, and records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may modify a computer recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any modification that changes a computer system back to a paper-based recordkeeping system;
- B.** All licensees shall keep and maintain books, accounts, and records adequate to provide a clear and readily understandable record of all business conducted by the collection agency, including:
1. Records or books of account listing all clients' accounts in numerical order, or in alphabetical order according to the clients' names. If a collection agency keeps books of accounting in numerical order, the collection agency shall alphabetically cross-index each client name with the corresponding account's number. Each account shall reflect its true condition at each calendar month's end, and shall include:
 - a. The client's name and address;
 - b. Each debtor's name worked for collection in that month;
 - c. The amount, description, and date of each debit and each credit to the account; and
 - d. The balance due to, or owing from, the client.
 2. A record and history of each debt for collection that clearly shows:
 - a. The debtor's name;
 - b. The debt's principal amount;
 - c. The interest charged or collected;
 - d. The amount, and a description of any other charges;
 - e. The amount, and date, of each payment received or collected; and
 - f. The current balance due on the debt.
 3. An original of each written contract, between the licensee and a client, including any contract amendments.

4. A trust general ledger reflecting all deposits to and payments from a trust account. A licensee shall post transactions to its trust general ledger at least every five business days. A licensee shall bring its trust general ledger current within 24 hours when requested by the Superintendent.
 5. The licensee's trust account reconciliation, prepared at least once a month.
 6. Books, records, and files maintained so that the Superintendent can easily conduct an unannounced spot check, as well as the examinations and investigations required by A.R.S. §§ 6-122 and 6-124.
 7. A copy of all pleadings in pending litigation that names the collection agency as a defendant.
 8. A record of fictitious names used by the agency's debt collectors as required by R20-4-1520.
- C.** A person issuing a receipt for a collection agency shall sign the receipt using that person's true name. Each receipt shall also show the collection agency's name.
- D.** A licensee shall maintain all records required under this Section and shall make them available for examination, investigation, or audit in Arizona within three working days after the Superintendent demands the records.
- E.** A licensee shall retain the records required by this Section for the following periods:
1. A licensee shall retain all records described in subsections (B)(1), (B)(3), (B)(4), (B)(5), (B)(6), (B)(7), and (B)(8) for at least six years following their creation.
 2. A licensee shall retain all records described in subsection (B)(2) for at least three years from an account's assignment to the licensee. If a licensee collects any money on an account, the licensee shall retain the records described in subsection (B)(2) for at least three years from the last collection date.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). Amended effective December 18, 1979 (Supp. 79-6). R20-4-1504 recodified from R4-4-1504 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4).

R20-4-1505. Trust Account

- A.** A licensee that maintains an office in Arizona shall deposit all funds collected for a client in a trust account with an Arizona bank or savings and loan association. A licensee that does not maintain an office in Arizona shall deposit all funds collected for a client in a trust account at a depository in the state where the licensee maintains its principal office. A licensee shall deposit all client funds before the close of its business on the third business day after the licensee receives the funds. Client funds shall remain on deposit as required by this Section until:
1. Paid over to a client, or
 2. Otherwise paid as provided in this Section.
- B.** A licensee shall pay funds from the trust account either:
1. By prenumbered printed checks, or
 2. By electronic payment.
- C.** A licensee shall deposit in its trust account only the funds it has collected for its client. A licensee, its officers, directors, partners, managers, members, or employees shall not commingle, or permit the commingling of, their own funds with client funds. This prohibition includes any funds that a licensee, or any officer, director, partner, manager, member, or employee claims an interest in if that interest arises outside the licensee's contract with a client.

- D.** A licensee shall keep unpaid client funds in its trust account. A licensee may maintain a separate trust account for dormant accounts into which the licensee deposits unpaid funds such as those of a client that cannot be located, or any trust account check issued to a client that is returned without being negotiated. As to all those unpaid funds, under A.R.S. § 44-317, a licensee shall file an abandoned property report at the Arizona Department of Revenue as and when required by law.
- E.** A licensee shall withdraw from its trust account all fees and commissions due the licensee under its contract with a client and deposit them directly into its own operating account.
- F.** A licensee shall not pay funds from its trust account except as:
1. Provided in this Section,
 2. Expressly authorized in its contract with a client, or
 3. Authorized in writing by the Superintendent.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1505 recodified from R4-4-1505 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4).

R20-4-1506. Articles of Incorporation; Bylaws; Organizing Documents

- A.** A collection agency organized as a corporation shall file with the Superintendent a copy of each amendment to its articles of incorporation within 30 days after the amendment is adopted. Before filing with the Superintendent, an officer of the collection agency shall:
1. Certify the copy filed in compliance with this Section, in writing, signed by the certifying officer, attesting to the completeness, accuracy, and authenticity of the certified copy; and
 2. Ensure the copy bears a stamp affixed by the Arizona Corporation Commission to evidence filing with the Commission.
- B.** A collection agency organized as a corporation shall file with the Superintendent a copy of each amendment to its bylaws within 10 days after the amendment is adopted. An officer of the collection agency shall certify the copy filed in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.
- C.** A collection agency not organized as a corporation shall file with the Superintendent a copy of each amendment to its organizing documents within 10 days after the amendment is adopted. A partner, active manager, or agent of the collection agency shall certify the copy filed in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1506 recodified from R4-4-1506 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1507. Representations of Collection Agency's Identity

In all communications with debtors, either orally or in writing, all the following rules apply:

1. A collection agency shall represent itself as a collection agency.
2. A collection agency shall not directly or indirectly claim to be a credit reporting agency or credit bureau if it is not.
3. A collection agency shall not directly or indirectly claim to be a law enforcement agency.
4. A collection agency shall not directly or indirectly claim to be a law firm.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1507 recodified from R4-4-1507 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1508. Representations of the Law

A collection agency shall not:

1. Misrepresent the state of the law to a debtor,
2. Send a debtor written material that simulates legal process, or
3. Represent or imply that a debtor is, or may be, subject to criminal prosecution or arrest because of a failure to pay the debt.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1508 recodified from R4-4-1508 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1509. Representations as to Fees, Costs, and Legal Proceedings; Disinterested Counsel Required

- A.** A collection agency shall neither threaten to collect, nor attempt to collect, an attorney's fee, collection cost, or other fee that the debtor is not obliged to pay under the debtor's contract with the collection agency's creditor client.
- B.** A collection agency shall not inform a debtor that legal proceedings have been started unless, in fact, a lawsuit has been filed against the debtor.
- C.** A collection agency shall not threaten to start legal proceedings against a debtor unless the collection agency actually intends, at the time of the threat, to sue.
- D.** A collection agency shall not threaten to turn an account over to a lawyer unless the collection agency actually intends to do so at the time of the threat.
- E.** A collection agency shall not file a lawsuit against a debtor unless the lawsuit is filed by an attorney who has no personal or financial interest in that collection agency.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1509 recodified from R4-4-1509 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1510. Representations as to Rights Waived or Remedies Available

- A.** A collection agency shall not inform a debtor that the debtor waives any legal right or legal defense by a failure to contact the collection agency.
- B.** A collection agency shall not inform a debtor that the collection agency has the power or right to bypass the legal process.
- C.** A collection agency shall not misrepresent the remedies available to the collection agency.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1510 recodified from R4-4-1510 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1511. Prohibition of Harassment

- A. A collection agency shall not use unauthorized or oppressive tactics designed to harass any person to pay a debt.
- B. A collection agency shall not use written or oral communications that either ridicule, disgrace, or humiliate any person or tend to ridicule, disgrace, or humiliate any person.
- C. A collection agency shall not state, imply, or tend to imply, in written or oral communications that any person is guilty of fraud or any other crime.
- D. A collection agency shall not permit its agents, employees, representatives, debt collectors, or officers to use obscene or abusive language in efforts to collect a debt.
- E. A collection agency or its agents, employees, representatives or officers are subject to penalties listed in A.R.S. § 32-1056(B) for any violation of this Article, as well as other liabilities imposed under any other provision of law.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1511 recodified from R4-4-1511 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1512. Contacts with Debtors and Others

- A. A collection agency shall contact a debtor by telephone only during reasonable hours. A collection agency shall make a reasonable attempt to contact a debtor at the debtor's residence. A collection agency may contact a debtor at the debtor's place of employment if a reasonable attempt to contact the debtor at the debtor's residence has failed.
- B. A collection agency shall not contact a third party, including a debtor's friend, relative, neighbor, or employer and:
 - 1. Inform the third party of the debt;
 - 2. Ask the third party to pressure the debtor into paying the debt, or;
 - 3. Ask the third party to pay the debt, unless the third party is legally obligated to pay the debt.
- C. A collection agency shall not threaten to contact a third party listed in subsection (B) for any purpose listed in subsection (B).
- D. Despite the other provisions of this Section, a collection agency may make lawful service on third parties, including employers, of a writ of garnishment or other writ in aid of execution after judgment has been entered against a debtor.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1512 recodified from R4-4-1512 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1513. Cessation of Communication with the Debtor

- A. A collection agency shall stop contacting a debtor, directly or indirectly, if the debtor tells the collection agency that the debtor is represented by a lawyer and wants the collection agency to communicate with the debtor through that lawyer. The collection agency may later contact the debtor if the collection agency contacts the lawyer named by the debtor and learns that the lawyer does not represent the debtor.
- B. A collection agency shall stop contacting a debtor, directly or indirectly, if the debtor gives the collection agency written notice that the debtor:
 - 1. Refuses to pay the debt, or;

- 2. Wants the collection agency to stop all further communication with the debtor.
- C. Despite the provisions of subsection (B), a collection agency may contact a debtor to inform the debtor that:
 - 1. The collection agency has stopped trying to collect the debt, or
 - 2. The collection agency or the creditor may invoke specific remedies that are customarily used by the collection agency or the creditor.
- D. The debtor's written notice under subsection (B) is effective upon receipt by the collection agency if delivered by mail.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). Amended effective December 18, 1979 (Supp. 79-6). R20-4-1513 recodified from R4-4-1513 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1514. Disclosure of Information to Debtor

- A. Within five days after the initial communication with the debtor, a collection agency shall obtain, and be able to inform the debtor of:
 - 1. The name of the creditor;
 - 2. The time and place of the creation of the debt;
 - 3. The merchandise, services, or other value provided in exchange for the debt; and
 - 4. The date when the account was turned over to the collection agency by the creditor.
- B. A collection agency shall give the debtor access to any of the collection agency's records that contain the information listed in subsection (A).
- C. At the debtor's request, the collection agency shall give the debtor, free of charge, a copy of any document from its records that contains the information listed in subsection (A).

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1514 recodified from R4-4-1514 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1515. Aiding and Abetting

- A collection agency shall not help or encourage, directly or indirectly, any other person to evade or violate any provision of:
- 1. This Article, or
 - 2. A.R.S. Title 32, Chapter 9.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1515 recodified from R4-4-1515 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1516. Advertising

- A collection agency shall not use any form of communication to state or imply that it is:
- 1. Approved, bonded by, or affiliated with the state of Arizona;
 - 2. A state agency;
 - 3. The director of any state agency; or
 - 4. Authorized to practice law.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1516 recodified from R4-4-1516 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1517. Repealed**Historical Note**

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1517 recodified from R4-4-1517 (Supp. 95-1). Section repealed by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1518. Agreements with Clients

A collection agency's records shall document each client's account in writing. The records for an account shall include either a written agreement between the client creditor and the collection agency, or a written direction from the creditor to the collection agency concerning a specific debt placed for collection. The collection agency shall keep records that are specific, easily understood, and unambiguous. A provision of a written agreement or written direction that suggests the collection agency has authority to represent the client in court or to practice law in any other way is void and prohibited by this Section. The records for an account shall separately state:

1. The names of the parties to the agreement or written direction,
2. The terms or rate of compensation paid to the collection agency,
3. The length of time the agreement or written direction is intended to be in effect, and
4. Any conditions regarding collection of a particular debt.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1518 recodified from R4-4-1518 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1519. Licensee Names and Control

- A. The Department shall not issue a license with a name that is:
 1. Similar to, or that may be confused with, any federal, state, county, or municipal government function or agency;
 2. Descriptive of any business activity that the applicant does not actually conduct;
 3. The same as, or similar to, the name of any existing collection agency, or;
 4. Otherwise deceptive or misleading.
- B. The Department may permit the use of a name otherwise prohibited under subsection (A)(3) based on its analysis of whether the name includes geographic or other information that distinguishes it from the other collection agency.
- C. A collection agency shall not use a collection agency license to do business under more than one name. Each collection agency shall apply for and obtain a separate license for each business name it intends to use in Arizona.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1519 recodified from R4-4-1519 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1520. Representations of Collection Agency Employees' Identity or Position

- A. A collection agency shall not allow its debt collector, agent, representative, employee, or officer to:
 1. Misrepresent the person's true position with the collection agency,
 2. Claim to be, or imply that the person is, an attorney unless the person is licensed to practice law, or
 3. Claim to be, or imply that the person is, a public official, peace officer, or any other type of public employee, or
 4. Claim to be, or imply that the person is, any other third party.
- B. In any communication with a debtor, a person working for a collection agency shall indicate that the person is a debt collector.
- C. A collection agency shall keep a record of all fictitious names used by its debt collectors during their employment. The collection agency shall record the information required by this subsection before permitting the use of a fictitious name. The collection agency shall file a copy of the record of fictitious names with the Department on July 1 and December 31 of each year. After filing the initial report, a collection agency shall identify all changes to the record on July 1 and December 31 of each year. The collection agency's record of fictitious names shall include:
 1. The true name of each debt collector that uses a fictitious name,
 2. Each fictitious name used by the debt collector, together with the dates when the name is used, and
 3. The residential street address and residential mailing address of each debt collector that uses a fictitious name.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1520 recodified from R4-4-1520 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1521. Duty of Investigation

A collection agency shall give copies of its evidence of the debt to the debtor or the debtor's attorney on request. After providing the evidence, but before continuing its collection efforts against the debtor, the collection agency shall investigate any claim by the debtor or the debtor's attorney that:

1. The debtor has been misidentified,
2. The debt has been paid,
3. The debt has been discharged in bankruptcy, or
4. Based on any other reasonable claim, the debt is not owed.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1521 recodified from R4-4-1521 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1522. Reserved**R20-4-1523. Reserved****R20-4-1524. Reserved****R20-4-1525. Reserved****R20-4-1526. Reserved****R20-4-1527. Reserved****R20-4-1528. Reserved****R20-4-1529. Reserved****R20-4-1530. Repealed**

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1530 recodified from R4-4-1530 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4).

ARTICLE 16. ACQUIRING CONTROL OF FINANCIAL INSTITUTIONS**R20-4-1601. Definitions**

In this Article, unless the context otherwise requires:

“Acquiring party” means a person who intends to acquire control of a bank, trust company, savings and loan association, or controlling person under A.R.S. Title 6, Chapter 1, Article 4.

“Acquisition of control” has the meaning stated in A.R.S. § 6-141.

“Bank” has the meaning stated in A.R.S. § 6-101.

“Control” has the meaning stated in A.R.S. § 6-141.

“Controlling person” has the meaning stated in A.R.S. § 6-141.

“Person” has the meaning stated in A.R.S. § 6-141.

“Savings and loan association” means a person required to possess a permit issued by the Superintendent under A.R.S. Title 6, Chapter 3.

“Superintendent” has the meaning stated in A.R.S. § 6-101.

“Target company” means a bank, savings and loan association, trust company, or controlling person to be acquired by an acquiring party.

“Trust company” has the meaning stated in A.R.S. § 6-851.

“Voting security” has the meaning stated in A.R.S. § 6-141.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1601 recodified from R4-4-1601 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

R20-4-1602. Application for Approval to Acquire Control of Financial Institution

A. An applicant seeking approval to acquire control of a bank, savings and loan association, or controlling person of a bank or savings and loan association, under A.R.S. Title 6, Chapter 1, Article 4, shall file with the Superintendent copies of all application documents filed with federal regulatory agencies in connection with the planned acquisition of control.

B. As used in this subsection, “executive officer” includes the chairman of the board, president, each vice president, cashier, secretary, treasurer, and every other person who participates in major policymaking functions of the applicant. Under A.R.S. § 6-145(A), an applicant seeking approval to acquire control of a trust company or controlling person of a trust company, under A.R.S. Title 6, Chapter 1, Article 4 shall supply all information the Superintendent requires under this subsection. The Superintendent may require an applicant to supplement or amend its application based on issues raised by the initial submission. The initial application shall consist of the following items:

1. A copy of the signed purchase agreement,
2. The applicant’s audited financial statement,

3. A personal history statement, on a form supplied by the Department, for each executive officer and each director of the acquiring party,
4. Each executive officer’s and each director’s audited financial statement,
5. A fingerprint card for each executive officer and each director, and
6. A copy of each executive officer’s and each director’s driver’s license.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1602 recodified from R4-4-1602 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

R20-4-1603. Repealed**Historical Note**

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1603 recodified from R4-4-1603 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

R20-4-1604. Repealed**Historical Note**

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1604 recodified from R4-4-1604 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

ARTICLE 17. ARIZONA INTERSTATE BANK AND SAVINGS AND LOAN ASSOCIATION ACT**R20-4-1701. Definitions**

In this Article, unless the context otherwise requires:

“Acquire” has the meaning stated at A.R.S. § 6-321(1).

“Applicant” means an out-of-state financial institution that intends to acquire control of an in-state financial institution.

“Control” has the meaning stated at A.R.S. § 6-321(2).

“In-state financial institution” has the meaning stated at A.R.S. § 6-321(5).

“Out-of-state financial institution” has the meaning stated at A.R.S. § 6-321(6).

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1701 recodified from R4-4-1701 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1702. Notice to the Superintendent of Intent to Acquire Control of an In-state Financial Institution; Surrender of an Acquired Financial Institution’s Charter

A. An applicant shall give written notice of an acquisition to the Superintendent in the form of a courtesy copy of its federal application. The acquiring entity shall ensure that the notice is delivered to the Superintendent not less than ten days before the effective date of the acquisition. No other application is required under the provisions of A.R.S. Title 6, Chapter 2, Article 7, the Arizona Interstate Bank and Savings and Loan Association Act. The Superintendent may impose conditions

on an acquisition under the authority of A.R.S. §§ 6-324 and 6-328.

- B.** An acquired in-state financial institution shall surrender, by delivery to the Superintendent, all permits and certificates issued by the Superintendent within ten days after the effective date of the acquisition unless the acquired institution intends to continue operating, after the acquisition, as a stand alone subsidiary under the authority of its existing Arizona banking permit.

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1702 recodified from R4-4-1702 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1703. Repealed

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1703 recodified from R4-4-1703 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1704. Public Notice

- A.** An applicant shall transmit to the Superintendent of Banks two copies of each notice and the publisher's affidavit of publication required by the Federal Reserve Board, Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, or other regulatory authority that has concurrent jurisdiction.
- B.** An applicant shall provide the Superintendent of Banks copies of any protests known to have been received by the Federal Reserve Board, Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, or other regulatory authority that has concurrent jurisdiction.

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1704 recodified from R4-4-1704 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1705. Repealed

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1705 recodified from R4-4-1705 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1706. Repealed

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1706 recodified from R4-4-1706 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

ARTICLE 18. MORTGAGE BANKERS

R20-4-1801. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States

- A.** The exemption under A.R.S. § 6-942(A)(1) only applies to a person whose offers to make or negotiate a "mortgage banking loan" or a "mortgage loan," as those terms are defined in A.R.S. § 6-941, and all mortgage banking loans and mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.
- B.** The required regulation of the transactions listed in subsection (A) includes:
1. Rules governing a claimant's accounting and recordkeeping practices;

2. The authority to examine a claimant's books and records relating to its mortgage banking activities or mortgage lending activities, or both; and
3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant's mortgage banking activities, mortgage lending activities, or both.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1802. Equivalent and Related Experience

- A.** An applicant may satisfy the three years' experience requirement of A.R.S. § 6-943 by the types of lending-related experience listed in this subsection. The Department counts each month in the following types of work experience toward the three years required either for a mortgage banker license, or as a responsible individual, both under A.R.S. § 6-943(C). The Department counts a fractional month of experience, at least 15 days long, as a full month.
1. Mortgage banker with an Arizona license, responsible individual, or branch manager for a licensee;
 2. Mortgage broker with an Arizona license, responsible individual, or branch manager for a licensee;
 3. Loan officer with responsibility primarily for loans secured by lien interests on real property;
 4. Lender's branch manager with responsibility primarily for loans secured by lien interests on real property;
 5. Mortgage banker with license from another state, or responsible individual for the mortgage banker;
 6. Mortgage broker with license from another state, or responsible individual for the mortgage broker;
 7. Attorney certified by any state as a real estate specialist.
- B.** An applicant with insufficient actual experience of the types listed in subsection (A) may satisfy the remainder of the three years' experience requirement of A.R.S. § 6-943 by the types of related experience listed in this subsection. The Department counts each month in the following types of work experience according to the ratio listed below, of actual experience to equivalent experience, credited toward qualifying for a license, or as a responsible individual, both under A.R.S. § 6-943(C). The Department counts a fractional month of experience, at least 15 days long, as a full month. An applicant receives credit in only one area listed and for not more than three years' actual experience. The remaining years of experience required to qualify for a license shall be obtained from types of work experiences listed in subsection (A).
1. Attorney without state bar certified real estate specialty...3:2
 2. Paralegal with experience in real estate matters...3:2
 3. Loan underwriter...3:2
 4. Mortgage banker or mortgage broker from another state without license...3:2
 5. Real estate broker with an Arizona license or license from a state with substantially equivalent licensing requirements...3:2
 6. Escrow officer...3:2
 7. Trust officer with a title company...3:2
 8. Executive, supervisor, or policy maker involved in administering or operating a mortgage-related business...3:1.5
 9. Title officer with a title company...3:1.5
 10. Real estate broker, not qualified under subsection (B)(5)...3:1.5
 11. Loan processor with responsibility primarily for loans secured by lien interests on real property...3:1.5

12. Lender's branch manager with responsibility primarily for loans not secured by lien interests on real property...3:1.5
13. Real property salesperson, with an Arizona license or a license from a state with substantially equivalent licensing requirements...3:1
14. Loan officer, with responsibility primarily for loans not secured by lien interests on real property...3:1

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1803. Restrictions on the Term of a Cash Alternative to a Surety Bond

A licensee or applicant shall not place a certificate of deposit or investment certificate as a cash alternative to a surety bond with the Superintendent that is renewable or expires earlier than 12 months from the date of issuance.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1804. Requirements for a Person Intended to Oversee a Branch Office

A person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, supervise compliance by the branch with applicable law and rules, and have sufficient authority to ensure such compliance. One person may oversee more than one branch.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1805. Notification of Change of Address

If a licensee changes the licensee's principal place of business, or the location of a branch office, the licensee shall notify the Superintendent at least five business days before the address change. With the notice, a licensee shall provide the Superintendent with the license for the office changing its address and the fee required by A.R.S. § 6-126 for changing an office address. A copy of the license shall continue to be displayed at the place of business until a new license is issued.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4).

R20-4-1806. Recordkeeping Requirements

- A. The Superintendent shall approve a licensee's use of a computer or mechanical recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any alteration in the approved system's fundamental character, medium, or function if the alteration changes:
 1. Any approved computer or mechanical system back to a paper-based system; or

2. An approved mechanical system to a computer system; or
3. An approved computer system to a mechanical system.

- B. In addition to any statutory requirement regarding records, a record maintained by a mortgage banker shall include the following:
 1. A list of all executed loan applications or executed fee agreements that includes the following information:
 - a. Applicant's name;
 - b. Application date;
 - c. Amount of initial loan request;
 - d. Final disposition date;
 - e. Disposition (funded, denied); and
 - f. Name of loan officer;
 2. A record, such as a cash receipts journal, of all money received in connection with mortgage banking loans or mortgage loans including:
 - a. Payor's name;
 - b. Date received;
 - c. Amount; and
 - d. Receipt's purpose including identification of a related loan, if any;
 3. A sequential listing of checks written for each bank account relating to the mortgage banker business, such as a cash disbursement journal, including:
 - a. Payee's name;
 - b. Amount;
 - c. Date; and
 - d. Payment's purpose including identification of a related loan, if any;
 4. Bank account activity source documents for the mortgage banker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices;
 5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
 - a. Borrower's name or co-borrowers' names;
 - b. Loan number, if any;
 - c. Amount received;
 - d. Purpose for the amount received;
 - e. Date received;
 - f. Date deposited into trust account;
 - g. Amount disbursed;
 - h. Date disbursed;
 - i. Disbursement's payee and purpose; and
 - j. Balance;
 6. A file for each application for a mortgage banking loan or a mortgage loan containing:
 - a. The agreement with the customer concerning the mortgage banker's services, whether as a loan application, fee agreement, or both;
 - b. Document showing the application's final disposition, such as a settlement statement, or a denial or withdrawal letter;
 - c. Correspondence sent, received, or both by the licensee;
 - d. Contract, agreement and escrow instructions to or with any depository;
 - e. Documents showing compliance with the Consumer Credit Protection Act's (15 U.S.C. §§ 1601 through 1666j) and the Real Estate Settlement Procedures Act's (12 U.S.C. §§ 2601 through 2617) disclosure requirements, to the extent applicable;
 - f. If the loan is closed in the licensee's name, and funded by a lender that is not an institutional investor as defined at A.R.S. § 6-943, a copy of the executed note, executed deed of trust or mortgage, and

each assignment of beneficial interest by the licensee, if any. If any of the documents listed in this subsection have been recorded, the file shall also contain legible copies of the recorded documents, and;

- g. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee;
 7. Samples of every piece of advertising relating to the mortgage banker's business in Arizona;
 8. Copies of governmental or regulatory compliance reviews;
 9. If the licensee is not a natural person, a file containing:
 - a. Organizational documents for the entity;
 - b. Minutes;
 - c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
 - d. Annual report, if required by law;
 10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction;
 11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal or other final order disposing of the action;
 12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them;
 13. If a licensee does business in other states, it must be able to separate Arizona loan information from information relating to other states to enable the Superintendent to conduct an examination.
 14. A licensee shall produce a trial balance of the general ledger monthly to evidence the mortgage banker's net worth.
- C.** If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.
- D.** A licensee shall retain the documents described in subsections (B)(1) and (6) for the length of time provided in A.R.S. § 6-946. For the purposes of A.R.S. § 6-946, the mortgage banking loan's closing date, on a loan application that did not result in the making of a loan, is either:
1. The date a licensee receives a written cancellation notice from an applicant; or
 2. The date a licensee mails written notice to an applicant that an application has been denied, as required by federal law.
- E.** A licensee shall maintain all other records described in this Section, and not included in subsection (D), for at least two years.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1807. Providing Copies of Records

For each loan closed in an Arizona mortgage broker's name with a concurrent assignment of beneficial interest to a mortgage banker,

the mortgage banker licensee shall provide to the mortgage broker in whose name the loan closed a copy of:

1. The closing instructions;
2. Any applicable rescission notice;
3. The HUD-1 settlement statement;
4. The final truth-in-lending disclosure;
5. The note;
6. The executed deed of trust or mortgage; and
7. Each assignment of beneficial interest by the mortgage banker licensee.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1808. Authorization to Complete Blank Spaces

An authorization, under A.R.S. § 6-947, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:

1. Specifically identify the document and the blank spaces to be completed;
2. Be in writing, dated, and signed by the authorizing parties, and
3. Contain the following notice, conspicuously printed on its face: YOUR SIGNATURE BELOW AUTHORIZES YOUR MORTGAGE BANKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1809. Determining Loan Amounts

The amount of a mortgage banking loan or a mortgage loan under A.R.S. § 6-947(E) or 6-947(K), is the principal amount of the loan and does not include any points, interest, finance charges, insurance premiums of any kind, compensation paid to third parties, or compensation retained by a mortgage banker or its agents.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1810. Delay or Cause Delay

A mortgage banker does not delay or cause delay if the delay occurs due to events outside the control of the mortgage banker.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1811. Impound Account

The total of all funds retained by a mortgage banker from all periodic payments made by a borrower to maintain a cushion, as defined in R20-4-102, shall not exceed 1/6th of the estimated total annual payments from the impound account.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1812. Acquisition of Additional Interest in Licensee by Majority Owner

A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional frac-

tional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1813. Conversion to Mortgage Broker License

Under A.R.S. § 6-949 to apply for a conversion from a mortgage banker license to a mortgage broker license, the applicant shall submit during the renewal period all applicable renewal documents and renewal fees required by A.R.S. §§ 6-126 and 6-903 for mortgage brokers.

Historical Note

New Section adopted by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

ARTICLE 19. COMMERCIAL MORTGAGE BANKERS

R20-4-1901. Exemption for an Institutional Investor

A. The exemption from the licensure requirement for an institutional investor, solely as that term is used in A.R.S. §§ 6-971, 6-972, and this Article, applies only if a person claiming the exemption meets all the following criteria:

1. The claimant originates or directly or indirectly makes, negotiates, or offers to make or negotiate commercial mortgage loans that are all exclusively funded by the claimant's own resources, as defined in A.R.S. § 6-971;
2. The claimant does so in the regular course of business;
3. The claimant makes only commercial mortgage loans, as defined in A.R.S. § 6-971;
4. The claimant makes each loan on the security of commercial property, as defined in A.R.S. § 6-971; and
5. The claimant makes only loans of more than \$250,000.

B. If a claimant makes even one commercial mortgage loan that does not satisfy all the above criteria, any claim of exemption is invalid, and that person shall not engage in any lending activity before obtaining a license.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1902. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States

A. The exemption under A.R.S. § 6-972(9) only applies to a person whose offers to make or negotiate a "commercial mortgage loan," as that term is defined in A.R.S. § 6-971, and all commercial mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.

B. The required regulation of the transactions listed in subsection (A) includes:

1. Rules governing a claimant's accounting and recordkeeping practices;
2. The authority to examine a claimant's books and records relating to its commercial mortgage lending activities;
3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant's commercial mortgage lending activities.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1903. Equivalent and Related Experience

A. An applicant may satisfy the three years' experience requirement of A.R.S. § 6-973 by the types of lending-related experience listed in this subsection. The Department counts each month in the following types of work experience towards the three years required either for a commercial mortgage banker license, or as a responsible individual, both under A.R.S. § 6-973(D). The Department counts a fractional month of experience, at least 15 days long, as a full month.

1. Commercial mortgage banker with an Arizona license, or Responsible Individual or branch manager for a licensee;
2. Mortgage broker with Arizona license, or Responsible Individual or branch manager for a licensee;
3. Mortgage banker with an Arizona license, or Responsible Individual or branch manager for a licensee;
4. Loan officer, with responsibility primarily for loans secured by lien interests on commercial real property;
5. Lender's branch manager, with responsibility primarily for loans secured by lien interests on commercial real property;
6. Commercial mortgage banker with license from another state, or Responsible Individual for the commercial mortgage banker;
7. Mortgage broker with license from another state, or Responsible Individual for the mortgage broker;
8. Mortgage banker with license from another state, or responsible individual for the mortgage banker;
9. Attorney certified by any state as a real estate specialist.

B. The experience of an applicant with insufficient actual experience of the types listed in subsection (A) is reviewed and evaluated on a case by case basis.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1904. Restrictions on the Term of a Cash Alternative to a Surety Bond

A licensee or applicant shall not place a certificate of deposit or investment certificate as a cash alternative to a surety bond with the Superintendent that is renewable or expires earlier than 12 months from the date of issuance.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1905. Requirements for a Person Intended to Oversee a Branch Office

A Person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, supervise compliance by the branch with applicable law and rules, and have sufficient authority to ensure such compliance. One Person may oversee more than one branch.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1906. Notification of Change of Address

If a licensee changes the licensee's principal place of business, or the location of a branch office, the licensee shall notify the Superintendent within five business days after the address change. With the notice, a licensee shall provide the Superintendent with the license for the office changing its address and the fee required by A.R.S. § 6-126 for changing an office address. A copy of the license shall continue to be displayed at the place of business until a new license is issued.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1907. Recordkeeping Requirements

- A.** The Superintendent shall approve a licensee's use of a computer or mechanical recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any material alteration in the approved system's fundamental character, medium, or function if the alteration changes:
1. Any approved computer or mechanical system back to a paper-based system; or
 2. An approved mechanical system to a computer system; or
 3. An approved computer system to a mechanical system.
- B.** In addition to any statutory requirement regarding records, a record maintained by a commercial mortgage banker shall include the following:
1. A list of all executed loan applications or executed fee agreements that includes the following information:
 - a. Applicant's name;
 - b. Application date;
 - c. Amount of initial loan request;
 - d. Final disposition date;
 - e. Disposition (funded, denied); and
 - f. Name of loan officer;
 2. A record, such as a cash receipts journal, of all money received in connection with commercial mortgage loans including:
 - a. Payor's name;
 - b. Date received;
 - c. Amount; and
 - d. Receipt's purpose including identification of a related loan, if any;
 3. A sequential listing of checks written for each bank account relating to the commercial mortgage banker business, such as a cash disbursement journal, including:
 - a. Payee's name;
 - b. Amount;
 - c. Date; and
 - d. Payment's purpose including identification of a related loan, if any;
 4. Bank account activity source documents for the commercial mortgage banker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices.
 5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
 - a. Borrower's name or co-borrowers' names;
 - b. Loan number, if any;
 - c. Amount received;
 - d. Purpose for the amount received;
 - e. Date received;
 - f. Date deposited into trust account;
 - g. Amount disbursed;
 - h. Date disbursed;
 - i. Disbursement's payee and purpose, and
 - j. Balance.
 6. A file for each application for a commercial mortgage loan containing:
 - a. The agreement with the customer concerning the commercial mortgage banker's services, whether as a loan application, fee agreement, or both;
 - b. The documents showing the application's final disposition, such as a settlement statements, a denial or withdrawal letter, or internal memorandum;
 - c. Correspondence sent, received, or both by the licensee;
 - d. Contract, agreement, and escrow instructions to or with any depository;
 - e. If the loan is closed in the licensee's name, a copy of all closing documents including: closing instructions, copy of the executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee, if any. If any of the documents listed in this subsection have been recorded, the file shall also contain legible copies of the recorded documents, and
 - f. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee.
 7. Samples of every piece of advertising relating to the commercial mortgage banker's business in Arizona;
 8. Copies of governmental or regulatory reviews;
 9. If the licensee is a not a natural person, a file containing:
 - a. Organizational documents for the entity;
 - b. Minutes;
 - c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
 - d. Annual report, if required by law;
 10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction.
 11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal or other final order disposing of the action.
 12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them.
 13. If a licensee does business in other states, it must be able to separate Arizona loan information from information relating to other states to enable the Superintendent to conduct an examination.
 14. A licensee shall produce a trial balance of the general ledger monthly to evidence the commercial mortgage banker's net worth.
- C.** If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.
- D.** A licensee shall retain the documents described in subsections (B)(1) and (6) for the length of time provided in A.R.S. § 6-983. For the purposes of A.R.S. § 6-983, the commercial mortgage loan's closing date, on a loan application that did not result in the making of a loan, is either:
1. The date a licensee receives a written cancellation notice from the applicant; or

2. The date a licensee mails written notice to an applicant that an application has been denied; or
 3. The date of a licensee's internal memorandum closing a loan file.
- E. A licensee shall maintain all other records described in this Section, and not included in subsection (D), for at least two years.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1908. Impound Accounts

The total of all funds, if any, retained by the commercial mortgage banker from all periodic payments made by the borrower to maintain a Cushion, as defined in R20-4-102, is limited only by the written agreement of the parties, if at all.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1909. Authorization to Complete Blank Spaces

An authorization, under A.R.S. § 6-984, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:

1. Specifically identify the document and the blank spaces to be completed;
2. Be in writing, dated, and signed by the authorizing party, and
3. Contain the following notice, conspicuously printed on its face: YOUR SIGNATURE BELOW AUTHORIZES YOUR COMMERCIAL MORTGAGE BANKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT

BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1910. Delay or Cause Delay

A commercial mortgage banker does not delay or cause delay if the delay occurs due to events outside the control of the commercial mortgage banker.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1911. Acquisition of Additional Interest in Licensee by Majority Owner

A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).