

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2445

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

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

4 32-2101. Definitions

5 In this chapter, unless the context otherwise requires:

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

8 2. "Advertising" means attempting by publication, dissemination,
9 exhibition, solicitation or circulation, oral or written, or for broadcast
10 on radio or television to induce directly or indirectly any person to enter
11 into any obligation or acquire any title or interest in lands subject to
12 this chapter, including the land sales contract to be used and any
13 photographs, drawings or artist's presentations of physical conditions or
14 facilities existing or to exist on the property. Advertising does not
15 include:

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

20 (b) Communications to stockholders as follows:

21 (i) Annual reports and interim financial reports.

22 (ii) Proxy materials.

23 (iii) Registration statements.

24 (iv) Securities prospectuses.

1 (v) Applications for listing of securities on stock exchanges.

2 (vi) Prospectuses.

3 (vii) Property reports.

4 (viii) Offering statements.

5 3. "Affiliate" means a person who, directly or indirectly through
6 one or more intermediaries, controls, is controlled by or is under common
7 control with the person specified.

8 4. "Associate broker" means a licensed broker who is employed by
9 another broker. Unless otherwise specifically provided, an associate
10 broker has the same license privileges as a salesperson.

11 5. "Barrier" means a natural or man-made geographic feature that
12 prevents parcels of land from being practicably, reasonably and
13 economically united or reunited and that was not caused or created by the
14 owner of the parcels.

15 6. "Blanket encumbrance":

16 (a) Means either:

17 (i) Any mortgage, any deed of trust or any other encumbrance or lien
18 that secures or evidences the payment of monies and that affects more than
19 one lot or parcel of subdivided land.

20 (ii) An agreement that affects more than one lot or parcel by which
21 the subdivider holds the subdivision under an option, contract to sell or
22 trust agreement.

23 (b) Does not include taxes and assessments that are levied by public
24 authority.

25 7. "Board" means the real estate advisory board.

26 8. "Broker", when used without modification, means a person who is
27 licensed as a broker under this chapter or who is required to be licensed
28 as a broker under this chapter.

29 9. "Business broker" means a real estate broker who acts as an
30 intermediary or agent between sellers or buyers, or both, in the sale or
31 purchase, or both, of businesses or business opportunities where a lease or

1 sale of real property is either a direct or incidental part of the
2 transaction.

3 10. "Camping site" means a space that is designed and promoted for
4 the purpose of locating any trailer, tent, tent trailer, pickup camper or
5 other similar device used for camping.

6 11. "Cemetery" or "cemetery property" means any one, or a
7 combination of more than one, of the following in a place that is used, or
8 intended to be used, and dedicated for cemetery purposes:

9 (a) A burial park, for earth interments.

10 (b) A mausoleum, for crypt or vault entombments.

11 (c) A crematory, or a crematory and columbarium, for cinerary
12 interments.

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

15 12. "Cemetery broker" means a person other than a real estate broker
16 or real estate salesperson who, for another, for compensation:

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

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

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

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

26 13. "Cemetery salesperson" means a natural person who acts on the
27 person's own behalf or through and on behalf of a professional limited
28 liability company or a professional corporation engaged by or on behalf of
29 a licensed cemetery or real estate broker, or through and on behalf of a
30 corporation, partnership or limited liability company that is licensed as a
31 cemetery or real estate broker, to perform any act or transaction included
32 in the definition of cemetery broker.

1 14. "Commissioner" means the state real estate commissioner.

2 15. "Common promotional plan" means a plan, undertaken by a person
3 or a group of persons acting in concert, to offer lots for sale or lease.
4 If the land is offered for sale by a person or group of persons acting in
5 concert, and the land is contiguous or is known, designated or advertised
6 as a common unit or by a common name, the land is presumed, without regard
7 to the number of lots covered by each individual offering, as being offered
8 for sale or lease as part of a common promotional plan. Separate
9 subdividers selling lots or parcels in separately platted subdivisions
10 within a master planned community shall not be deemed to be offering their
11 combined lots for sale or lease as part of a common promotional plan.

12 16. "Compensation" means any fee, commission, salary, monies or
13 other valuable consideration for services rendered or to be rendered as
14 well as the promise of consideration whether contingent or not.

15 17. "Contiguous":

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

18 (b) Does not include lots, parcels or fractional interests that are
19 separated by either of the following:

20 (i) A barrier.

21 (ii) A road, street or highway that has been established by this
22 state or by any agency or political subdivision of this state, that has
23 been designated by the federal government as an interstate highway or that
24 has been regularly maintained by this state or by any agency or political
25 subdivision of this state and has been used continuously by the public for
26 at least the last five years.

27 18. "Control" or "controlled" means a person who, through ownership,
28 voting rights, power of attorney, proxy, management rights, operational
29 rights or other rights, has the right to make decisions binding on an
30 entity, whether a corporation, a partnership or any other entity.

1 19. "Corporation licensee" means a lawfully organized corporation
2 that is registered with the Arizona corporation commission and that has an
3 officer licensed as the designated broker pursuant to section 32-2125.

4 20. "Department" means the state real estate department.

5 21. "Designated broker" means a natural person who is licensed as a
6 broker under this chapter and who is either:

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

9 (b) Doing business as a sole proprietor.

10 22. "Developer":

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

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

17 23. "Development" means any division, proposed division or use of
18 real property that the department has authority to regulate, including
19 subdivided and unsubdivided lands, cemeteries, condominiums, timeshares,
20 membership campgrounds and stock cooperatives.

21 24. "Employing broker" means a person who is licensed or is required
22 to be licensed as a:

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

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

26 25. "Fractional interest" means an undivided interest in improved or
27 unimproved land, lots or parcels of any size created for the purpose of
28 sale or lease and evidenced by any receipt, certificate, deed or other
29 document conveying the interest. Undivided interests in land, lots or
30 parcels created in the names of a husband and wife as community property,
31 joint tenants or tenants in common, or in the names of other persons who,
32 acting together as part of a single transaction, acquire the interests

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

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

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

14 28. "Lease" or "leasing" includes any lease, whether it is the sole,
15 the principal or any incidental part of a transaction.

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

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

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

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

30 33. "Live classroom course" means a course or instructional segment
31 delivered in either an in-person classroom instructional format or a

1 synchronous remote instructional format that allows students to observe and
2 participate remotely in an instructional segment via livestreaming.

3 34. "Lot reservation" means an expression of interest by a
4 prospective purchaser in buying at some time in the future a subdivided or
5 unsubdivided lot, unit or parcel in this state. In all cases, a subsequent
6 affirmative action by the prospective purchaser must be taken to create a
7 contractual obligation to purchase.

8 35. "Master planned community" means a development that consists of
9 two or more separately platted subdivisions and that is either subject to a
10 master declaration of covenants, conditions or restrictions, is subject to
11 restrictive covenants sufficiently uniform in character to clearly indicate
12 a general scheme for improving or developing real property or is governed
13 or administered by a master owner's association.

14 36. "Member" means a member of the real estate advisory board.

15 37. "Membership camping broker" means a person, other than a
16 salesperson, who, for compensation:

17 (a) Sells, purchases, lists, exchanges or leases membership camping
18 contracts.

19 (b) Offers to sell, purchase, exchange or lease membership camping
20 contracts.

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

23 (d) Advertises or holds himself out as being engaged in the business
24 of selling, buying, exchanging or leasing membership camping contracts or
25 counseling or advising regarding membership camping contracts.

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

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

31 38. "Membership camping contract" means an agreement that is offered
32 or sold in this state evidencing a purchaser's right or license to use the

1 camping or outdoor recreation facilities of a membership camping operator
2 and includes a membership that provides for this use.

3 39. "Membership camping operator":

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

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

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

20 41. "Online course" means prelicensure education that is a planned
21 learning experience with a geographic separation that may be synchronous or
22 asynchronous, that does not require real-time interaction between a student
23 and an instructor and that uses a platform with self-paced or prerecorded
24 lessons and materials that a student can access via the internet to proceed
25 at the student's own pace.

26 42. "Partnership licensee" means a partnership with a managing
27 general partner who is licensed as the designated broker pursuant to
28 section 32-2125.

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

32 44. "Perpetual care" or "endowed care":

1 (a) Means maintaining and caring, in all places where interments
2 have been made, for the trees, shrubs, roads, streets and other
3 improvements and embellishments contained within or forming a part of the
4 cemetery.

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

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

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

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

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

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

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

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

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

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

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

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

13 (f) Buys, sells, offers to buy or sell or otherwise deals in options
14 on real estate, businesses and business opportunities or timeshare
15 interests or improvements to real estate, businesses and business
16 opportunities or timeshare interests.

17 (g) Collects or offers, attempts or agrees to collect rent for the
18 use of real estate, businesses and business opportunities or timeshare
19 interests. This subdivision does not apply to a person who is not a
20 licensee, who works for a real estate broker or a real estate salesperson,
21 who collects in-person rent and related fees on behalf of the real estate
22 broker or real estate salesperson for the use of real estate as part of the
23 person's clerical duties and who provides a receipt when rent is paid.

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

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

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

4 (k) Incident to the sale of real estate, businesses and business
5 opportunities negotiates or offers, attempts or agrees to negotiate a loan
6 secured or to be secured by any mortgage or other encumbrance on or
7 transfer of real estate, businesses and business opportunities or timeshare
8 interests subject to section 32-2155, subsection D. This subdivision does
9 not apply to mortgage brokers as defined in and subject to title 6, chapter
10 9, article 1.

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

14 (m) Claims, demands, charges, receives, collects or contracts to
15 collect an advance fee in connection with any employment enumerated in this
16 section, including employment undertaken to promote the sale or lease of
17 real property by advance fee listing, by furnishing rental information to a
18 prospective tenant for a fee paid by the prospective tenant, by advertising
19 or by any other offering to sell, lease, exchange or rent real property or
20 selling kits connected therewith. This does not include the activities of
21 any communications media of general circulation or coverage not primarily
22 engaged in advertising real estate or any communications media activities
23 that are specifically exempt from applicability of this article under
24 section 32-2121.

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

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

1 (p) Acts as a business broker.

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

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

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

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

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

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

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

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

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

4 57. "Subdivider":

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

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

11 58. "Subdivision" or "subdivided lands":

12 (a) Means improved or unimproved land or lands divided or proposed
13 to be divided for the purpose of sale or lease, whether immediate or
14 future, into six or more lots, parcels or fractional interests, WHICH
15 INCLUDES SIX OR MORE DETACHED SINGLE RESIDENTIAL HOMES.

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

19 (c) Does not include:

20 ~~(i) Leasehold offerings of one year or less.~~

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

25 (iii) (ii) The leasing of agricultural lands or apartments,
26 offices, stores, hotels, motels, pads or similar space within an apartment
27 building, industrial building, rental recreational vehicle community,
28 rental manufactured home community, rental mobile home park or commercial
29 building.

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

1 ~~(v)~~ (iv) A sale or lease of a lot, parcel or fractional interest
2 that occurs ten or more years after the sale or lease of another lot,
3 parcel or fractional interest if the other lot, parcel or fractional
4 interest is not subject to this article and is treated as an independent
5 parcel unless, on investigation by the commissioner, there is evidence of
6 intent to subdivide.

7 59. "Timeshare" or "timeshare property" means real property
8 ownership or right of occupancy in real property pursuant to article 9 of
9 this chapter. For the purposes of this chapter, a timeshare is not a
10 security unless it meets the definition of a security under section
11 44-1801.

12 60. "Trustee":

13 (a) Means a person who either:

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

16 (ii) Holds bare legal title to real property under a subdivision
17 trust.

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

20 61. "Unimproved lot or parcel" means a lot or parcel of a
21 subdivision that is not an improved lot or parcel.

22 62. "Unsubdivided lands":

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

30 (b) Includes any land that is sold and that would otherwise
31 constitute the sixth lot, parcel or fractional interest if the sale occurs
32 ten or more years after the earliest of the previous five sales and if all

1 of the sales consist of property that was originally contained within the
2 same parcel that is thirty-six acres or more and less than one hundred
3 sixty acres.

4 Sec. 2. Emergency

5 This act is an emergency measure that is necessary to preserve the
6 public peace, health or safety and is operative immediately as provided by
7 law."

8 Amend title to conform

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