

Notices of Final Rulemaking

establish a process in rule that allows for mortgage brokers to convert their license to a commercial mortgage broker license. R20-4-927 is intended to provide this conversion process.

A third legislative change occurred with the passage of HB2296 (national banks; mortgage loan originators), which was signed by Governor Brewer on April 19, 2011. The Department is now authorized in A.R.S. § 6-912 to "...charge a fee for processing the original or renewal application for a certificate of exemption and for other costs incurred by the Department." The purpose of R20-4-928 is to implement the fees that the Department will charge in response to this statute, as well as provide the process for applying for and renewing a certificate of exemption. Further, R20-4-102 is being amended to define "exclusive contract" as it is used in A.R.S. §§ 6-912 and 6-991.02. Additionally, R20-4-102 is being amended to add a numbering system that will create ease in identifying definitions established by rule.

Finally, with these legislative changes, as well as the sunset of the deferred presentment company ("payday lender") statutes in 2010, and changes to the loan originator statutes in 2009, it was necessary to amend Table A. Licensing Time-frames to include new license type time frames and delete those which no longer exist.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department has not reviewed, and did not rely on, any study as an evaluation or justification for the proposed rules.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

The Department's current projection is that there will be less than 5 entities that apply and qualify for the certificate of exemption to supervise loan originators; therefore it is unlikely that the addition of this registration will result in an increase to state revenues. However, even one applicant for the certificate of exemption, opens up the possibility for at least 200 individuals to obtain their loan originator license. This will have a minimal, yet notable impact on private employment in Arizona and could potentially raise the revenues generated from loan originator licensing.

The ability for a mortgage broker to be able to convert to a commercial mortgage broker license and only pay the applicable renewal fees for the newly acquired license type will be a substantial savings for the private business, not only financially but also with regard to their time. Rather than having to start as an original applicant for a commercial mortgage broker license and pay the original application and licensing fees, mortgage brokers will be permitted to pay only the renewal fees upon converting the license. This could result in an individual savings for each entity of \$800 for the application fee, the applicable prorated licensing fee, and \$250 for each branch. Further, there will be an additional savings by not having to pay for and attend continuing education courses every year. The overall economic impact of these rules on private and public business is projected to be minimal.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

Only minor, non-substantive grammatical, formatting, and clarifying changes were made between the proposed and the final rulemaking at the request of GRRC staff.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

No comments were submitted.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Licenses affected fall within the definition of general permit in A.R.S. § 41-1001(10).

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

The rules are promulgated under state law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

None

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

There is no material incorporated by reference in these rules.

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published

in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

ARTICLE 1. GENERAL

Section

R20-4-102. Definitions
Table A. Licensing Time-frames

ARTICLE 9. MORTGAGE BROKERS

Section

R20-4-927. Conversion to Commercial Mortgage Broker License
R20-4-928. Certificate of Exemption Application and Renewal

ARTICLE 18. MORTGAGE BANKERS

Section

R20-4-1813. Conversion to Mortgage Broker License

ARTICLE 1. GENERAL

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

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- 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 ~~(a)~~ (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 ~~6-126(C)(8); (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:
 - a. If an Arizona corporation, it is incorporated under A.R.S. Title 10, Chapter 2, Article 1;
 - b. 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;
 - c. If a business trust, it obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 18, Article 4;
 - d. 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;
 - e. 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;
 - f. 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;
 - g. 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;
 - h. 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
 - i. 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:

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- a. Lives in Arizona during the entire period of designation as the responsible individual on a license;
- b. Is in active management of a licensee's affairs;
- c. Meets the qualifications listed in A.R.S. §§ 6-903, 6-943, or 6-973; and
- d. Is an officer, director, member, partner, employee, or trustee of a licensed entity.

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
7	<i>Debt Management</i>	A.R.S. § 6-701, et seq.			
	Initial Application	A.R.S. § 6-704(A), R20-4-602(A), R20-4-620(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) <u>and (D)</u>	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

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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.			
	Dealer Initial Application	A.R.S. § 44-282(B)	30	15	45
18	<i>Sales Finance Co.</i>	A.R.S. § 44-281, et seq.			
	Sales Finance Initial Application	A.R.S. § 44-282(B)	30	15	45
19	Deferred Presentment Company <i>Certificate of Exemption</i>	A.R.S. § 6-1259 A.R.S. § 6-912			
	Initial Application	A.R.S. § 6-1253 A.R.S. § 6-912(B)	<u>45</u>	<u>45</u>	<u>90</u>
20	<i>Loan Originators</i>	A.R.S. § 6-991, et seq.			
	Initial Application	A.R.S. § 6-991.04(A)	<u>60</u>	<u>60</u>	<u>120</u>

ARTICLE 9. MORTGAGE BROKERS

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.

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

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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.

ARTICLE 18. MORTGAGE BANKERS

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.