

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 4. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS –
FINANCIAL INSTITUTIONS
ARTICLE 1. GENERAL

R20-4-101. Scope of Article

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

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 Insurance and Financial Institutions - Financial Institutions Division as they relate to the licensee, and
 - ii. Other applicable laws and rules; and
 - c. Has sufficient authority to ensure compliance.
2. “Affiliate” means the same as defined under A.R.S. § 6-901, 6-941, 6-971, and 6-991.
3. “Attorney General” means the Attorney General or an assistant Attorney General of the state of Arizona.
4. “Back-office location” means a location that:
 - a. Is dedicated to administrative and operational functions of the licensee that are incidental to the activity requiring licensure;
 - b. Does not involve interaction with the public whether in-person, telephonically, or electronically;
 - c. Is subject to the licensee’s comprehensive written information security plan; and
 - d. Is able to produce records associated with the location as part of a Department investigation or examination.
5. “Branch office” means, unless otherwise provided by law, a business location which is not the licensee’s principal place of business, is maintained by the licensee, and where the licensee conducts regulated activities. A branch office does not include a “back-office location” or “remote work location” as defined in this Section.
6. “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.
7. “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.
8. "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.
 9. "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.
 10. "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.
 11. "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.
 12. "Department" means the same as defined under A.R.S. § 6-101(5).
 13. "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:
 - a. Includes any of the following:
 - i. Providing consulting or advisory services in connection with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage loan transaction to an investor, concerning the location or identity of potential borrowers if the consulting or advisory services include direct interaction, including by telephone or electronic means, with a potential borrower that results in a request or obtaining a consumer's date of birth, social security number, credit report, employment information, work history, or account information held in any depository, trust, or investment account;
 - ii. Providing consulting or advisory services in connection with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage loan transaction to a consumer, concerning the location or identity of potential lenders if the consulting or advisory services include a representation with regard to pre-qualification, approval, rate, terms, or conditions of a loan;
 - iii. Preparing or providing assistance in preparing an application for a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage banking loan transaction;

- iv. Loan processing; or
 - v. Loan underwriting.
- b. Does not include:
- i. Providing technological, 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; or
 - 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.
14. “Director” means the same as defined under A.R.S. § 20-102.
15. “Electronic record” means the same as defined under A.R.S. § 44-7002(7).
16. “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, if applicable;
 - 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 (16)(a) through (e) belong to the licensee regardless of whether another person also shares those rights and duties.
17. “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.
18. “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.

19. “Generally accepted accounting principles” means United States Generally Accepted Accounting Principles issued by the Financial Accounting Standards Board or the International Financial Reporting Standards issued by the International Accounting Standards Board.
20. “Loan,” as that term is used in A.R.S. §§ 6-126(D)(5) and (7), means all loans negotiated or closed that are secured by Arizona real property.
21. “Loan Processing” means requesting, collecting, receiving, or reviewing a loan application’s supporting documents for use in underwriting, and communicating with the consumer to obtain information necessary for making a credit decision.
22. “Loan underwriting” means analyzing information in connection with the making of a credit decision.
23. “Person” means a natural person, including a sole proprietor, 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.
24. “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.
25. “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), if applicable;
 - c. Obtains a completed and signed employment application, if applicable;
 - 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. Makes inquiries regarding the applicant’s qualifications and competence for the position;
 - g. If for a 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.
26. “Record” means the same as defined under A.R.S. § 44-7002(13).
27. “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.
28. “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 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 Director an executed copy of the trust instrument creating the trust together with:
 - i. All the current amendments, or
 - ii. 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.
29. "Remote work location" means a location at which the employees (including licensed loan originators) of a licensee may conduct licensed activities other than the principal place of business or branch office. Licensed activities from a remote work location are permitted when under the supervision of the licensee and when all of the following apply:
- a. The licensee has written policies and procedures for supervision of employees working from their residence or a location other than a licensed location,
 - b. Access to company platforms and customer information shall be in accordance with the licensee's comprehensive written information security plan; and
 - c. Physical records shall not be maintained at a remote work location.
30. "Resident of this state" means a natural person domiciled in Arizona.
31. "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:
- a. Is in active management of a licensee's affairs; and
 - b. Meets the qualifications listed in A.R.S. §§ 6-903, 6-943, or 6-973.

R20-4-103. Fingerprints Repealed

R20-4-104. Acceptance of Other Forms

If another entity's applications and forms provide all the information required by Arizona law, the Director has the discretion to accept them, even if another provision of this Chapter requires use of a specific Department form. The Director's exercise of the discretion to accept alternative forms does not limit the Director's power to require additional information necessary to complete an application or other form.

R20-4-105. Claims Against a Deposit in Place of Bond

A. As used in this Section:

1. "Deposit" means cash or alternatives to cash deposited by a licensee with the Director in place of a bond.

2. "Depositor" means licensee or an employee of the licensee who makes a deposit with the Director.
 3. "Verified claim" means a claim filed with the Director under subsection (B).
 4. "Award" means an amount of money granted under subsection (F).
- B.** A person may file a claim against a deposit by delivering documentation of the claim to the Director. 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 Director, 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 A.R.S. § 41-1092.03(B).
- 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 Director 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 Director 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 Director grants a verified claim, the Director 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 Director 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 Director upon request.

- H. If the Director grants a verified claim under subsection (F), the Director shall authorize the State Treasurer, in writing, to release the deposit to the claimant in the amount stated in subsection (F) if the Director has not received notice of another pending civil action under subsection (G).
- I. If given notice under subsection (G), the Director shall determine whether the deposit is sufficient to satisfy all claims under subsection (F). The Director shall determine award amounts for each claim of which the Director has notice, and authorize payment, as follows:
 - 1. If the deposit is sufficient to satisfy all claims under subsection (F), the Director shall authorize its release as described in subsection (H).
 - 2. If the deposit is not sufficient to satisfy all claims under subsection (F), the Director 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 Director's award for the verified claim.
 - ii. The denominator of the fraction is the sum of the amount of the Director's award for the verified claim plus the total compensatory damages sought in all other civil actions against the same depositor disclosed to the Director under subsection (G).
 - c. The Director 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 Director shall not release any part of a deposit to a depositor or former licensee until the Director determines whether there are any awards on verified claims unsatisfied because of an apportionment under subsection (I). The Director 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 Director 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 Director. The copy may be uncertified if the receiver is the Director or any other officer or agency of the state of Arizona. The Director 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.

R20-4-106. Bankruptcy

An enterprise licensee or consumer lender licensee shall immediately deliver written notice to the Director 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 Director 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.

R20-4-107. Licensing Time-frames

- A.** Definitions. The definitions in A.R.S. § 41-1072 and the following definitions apply to this Section.
1. "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.
 2. "License" means the same as defined under A.R.S. § 41-1001(13).
- B.** The time-frames listed in Table A apply to licenses issued by the Department. The licensing time-frames consist of an administrative completeness review, a substantive review, and an overall review. The administrative completeness review time-frame begins to run upon receipt of an application by the Department.
- C.** Within the time-frame for the administrative completeness review set forth in Table A, the Department shall notify the applicant in writing whether the application is complete or deficient.
1. If the application is deficient, the Department shall issue a notice of deficiency to the applicant which shall include a comprehensive list of the specific deficiencies. If the Department issues a written notice of deficiency within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall review time-frame are suspended from the date the notice is issued until the date that the Department receives an adequate response from the applicant.
 2. The Department is not precluded from issuing additional notices of deficiency during an administrative completeness review.
 3. If an applicant does not adequately respond to each specified deficiency in a notice of deficiency issued under subsection (C)(1) within 60 days after the date of a notice of deficiency the application is deemed withdrawn, and the Department is not required to take further action with respect to the application.
- D.** Within the time-frame for the substantive review set forth in Table A, the Department may issue one comprehensive written request for additional information to the applicant specifying each component or item of information required.
1. If the Department issues a comprehensive written request for additional information within the substantive review time-frame, the substantive review time-frame and the overall time-frame are suspended from the date the written request is issued until the date that the Department receives an adequate response from the applicant.
 2. The Department is not precluded from issuing supplemental requests by mutual agreement for additional information, during the substantive review.
 3. If an applicant does not adequately respond to each component or item of information required in a comprehensive written request or a supplemental request for additional

information, within 60 days after the date of a comprehensive written request, or within 60 days after the date of the supplemental request for additional information, the application is deemed withdrawn, and the Department is not required to take further action with respect to the application.

- E.** Within the overall time-frames set forth in Table A, unless extended by mutual agreement under A.R.S. § 41-1075, the Department shall notify the applicant in writing that the application is granted or denied. If the application is denied, the Department shall provide to the applicant a written notice that complies with the provisions of A.R.S. § 41-1076.
- F.** In computing the time periods prescribed in these time-frame rules, the last day of a notice period is included in the computation, unless it is a Saturday, Sunday, or legal holiday.
- G.** 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.

Table A. Licensing Time-frames

No.	License Type	Legal Authority	Administrative Completeness Review (Days)	Substantive Review (Days)	Overall Time-Frame (Days)
1	Bank	A.R.S. § 6-203, et seq.			
	Initial Application	R20-4-211	75	75	150
2	Bank Trust Dept.	A.R.S. § 6-381			
	Initial Application	A.R.S. § 6-203, A.R.S. § 6-204(C)	60	60	120
3	Savings & Loan	A.R.S. § 6-401, et seq.			
	Initial Application	A.R.S. § 6-408, R20-4-327	75	75	150
4	Credit Union	A.R.S. § 6-501, et seq.			
	Initial Application	A.R.S. § 6-506(A)	150	150	300
5	Trust Company	A.R.S. § 6-851, et seq.			
	Initial Application	A.R.S. § 6-854(A)	75	75	150
6	Consumer Lender	A.R.S. § 6-601, et seq.			
	Initial Application	A.R.S. § 6-603(C)	60	60	120
7	Debt Management	A.R.S. § 6-701, et seq.			
	Initial Application	A.R.S. § 6-704(A), R20-4-602(A)	60	60	120
8	Escrow Agent	A.R.S. § 6-801, et seq.			
	Initial Application	A.R.S. § 6-814	60	60	120
9	Mortgage Broker or Commercial Mortgage Broker	A.R.S. § 6-901, et seq.			

	Initial Application	A.R.S. § 6-903(C) & (D)	60	60	120
10	Mortgage Banker	A.R.S. § 6-941, et seq.			
	Initial Application	A.R.S. § 6-943(D)	60	60	120
11	Commercial Mortgage Banker	A.R.S. § 6-971, et seq.			
	Initial Application	A.R.S. § 6-974(A)	60	60	120
12	Acquisition of Control of Financial Institution	R20-4-1602, R20-4-1702			
	Initial Application	A.R.S. 6-1104	30	30	60
13	Money Transmitter	A.R.S. § 6-1201, et seq.			
	Initial Application	A.R.S. § 6-1204(A)	60	60	120
14	Advance Fee Loan Broker	A.R.S. § 6-1301, et seq.			
	Initial Application	A.R.S. § 6-1303(A)	60	60	120
15	Premium Finance Co.	A.R.S. § 6-1401, et seq.			
	Initial Application	A.R.S. § 6-1402(C)	60	60	120
16	Collection Agency	A.R.S. § 32-1001, et seq.			
	Initial Application	A.R.S. § 32-1021, R20-4-1502	60	60	120
17	Sales Finance Co.	A.R.S. § 44-281, et seq.			
	Initial Application	A.R.S. § 44-282(B)	60	60	120
18	Certificate of Exemption	A.R.S. § 6-912			
	Initial Application	A.R.S. § 6-912(B)	60	60	120
19	Loan Originators	A.R.S. § 6-991, et seq.			

	Initial Application	A.R.S. § 6-991.04(A)	60	60	120
20	Real Estate Appraisal	A.R.S. § 32-3601, et seq.			
	Initial Application	A.R.S. § 32-3611	60	60	120