

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

PREAMBLE

1.

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R20-4-216	New Section
R20-4-332	New Section
R20-4-403	New Section
R20-4-709	New Section
R20-4-927	New Section
R20-4-1813	New Section
R20-4-1912	New Section

2. **The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute:	A.R.S. § 6-123(2)
Implementing statute:	A.R.S. § 23-1361

3. **A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening, ___ A.A.R. ___, [date]

4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	John P. Hudock
Address:	Department of Financial Institutions 2910 North 44th Street, Suite 310 Phoenix, AZ 85018

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5. An explanation of the rule, including the agency’s reasons for initiating the rule:

These new Sections will require licensee-employers to report on employees terminated for certain specified kinds of misconduct. The event that triggers a duty to report is an employee’s termination.

A.R.S. § 23-1361, a long standing Arizona labor relations statute, provides civil immunity for communications between banks, credit unions, escrow agents, mortgage brokers, mortgage bankers, and commercial mortgage bankers about dishonest employees. The statute deems such communications, concerning employees or prospective employees, privileged when the information exchanged between companies is reported to DFI “. . . pursuant to written rules or policies” A.R.S. § 23-1361(E).

This rulemaking proposes new Sections that will trigger the protections of A.R.S. § 23-1361. They will require the licensees to report information about errant former employees whose conduct warranting termination falls under any of the categories of A.R.S. § 6-161, which authorizes the Superintendent to remove dishonest and unfit employees. The new Sections will work with A.R.S. § 23-1361 to provide civil immunity to employers and allow them to help DFI eliminate unfit and dishonest employees from these licensed and chartered financial services entities.

To cure the increasing perception of illegal conduct in these industries, members of the regulated community have approached the Department over the last year and a half requesting assistance in creating a way for industries to self-police. The new rule recognizes this need and

creates an avenue for industry to safely share information about employee misconduct with the Department and with each other. The free exchange of information would prevent dishonest employees from moving from one employer to another when their misconduct is discovered. It would also aid the Department's supervisory task of removing bad actors from these industries. Both these goals would be invaluable in protecting Arizona consumers. The Department would not propose these new Sections if it were not for the requests of the regulated community and the existence of A.R.S. § 23-1361.

The new Sections work together with existing statutory law in the following way. The proposed Sections require licensees to report the conduct of only those employees terminated as a result of certain misconduct. Licensee-employers will be protected because A.R.S. § 23-1361(E) grants privileged status to communications between a prospective employer and a former employer if the information relayed by the former employer was communicated to the Department under a written rule or policy. At the same time, A.R.S. § 23-1361(F) grants employers immunity from civil liability for privileged communications made under subsection 23-1361(E).

These two subsections of § 23-1361 make a communication privileged and immune from civil liability only if the information conveyed was also reported to the Department under a written rule or policy. The Department's administrative rules do not currently require these reports, so the rule is being adopted to make those privileges and immunities available to licensees.

The combination of these new Sections and the existing statutes gives licensees a greater opportunity to self-police and remove the worst actors from the financial services industry. In

the past, the department and licensee-employers have found it difficult to obtain information about employee misconduct. The rule is designed to change that.

The new Sections will ease communication and permit licensees to provide each other with protected information, so that bad actors have less chance of moving from one unsuspecting employer to the next. The reporting process will also allow the Department to make better use of its removal power.

The removal process requires some explanation. Since 1973 when the legislature enacted A.R.S. § 6-161, the Superintendent has had the power to remove persons from the financial services industry as a penalty for having committed certain forms of misconduct. Information reported under the new Sections is confidential under A.R.S. § 6-129. The Department will investigate and consider whether to seek removal of the employee. A decision to remove a reported employee will be pursued under A.R.S. § 6-161.

Several industry leaders have already commented on the rule and it has gone through several revisions. These are the issues already addressed:

1. The earliest version of the rule required the licensee-employer to report all persons who have knowledge of the misconduct. One writer suggested that a licensee should have to report only those persons the reporting licensee knows about. The rule now contains this more feasible reporting duty.

2. The same writer pointed out that the rule required the licensee to search for and describe all records evidencing the reported misconduct in the licensee's possession. The suggestion was that the company should only be required to assemble and describe the records it compiles for its own termination investigation.

On the other hand, the Department's interest is in having all pertinent records. The more information the department has, the greater likelihood it can make a sound decision on whether to seek removal. The current language of the new Sections balances these competing interests in favor of feasibility and permits supplementation of the licensee's report to include after-acquired or later-discovered information and records.

3. It has also been noted that early versions of these proposed Sections required the licensee to retain all records of reported misconduct indefinitely and to destroy those records only with the Department's consent. The Sections were modified to remedy the problem of an indefinite retention period. In drafting the modifications, the Department assumed any licensee that fires an employee for the kind of conduct that would trigger a reporting duty would retain its records of any pre-termination investigation at least until the statute of limitations has run on any claims the terminated employee might assert. In the proposed Sections' language they state no definite retention period but obligate the Department not to withhold consent without a reason.

4. Several commentators were bothered by the definition of misconduct in the draft rule, noting that the language of A.R.S. § 23-1361(G) is a more narrow definition of misconduct than the broader language of A.R.S. § 6-161(A)(1). How is a licensee-employer to know what misconduct to report? The definitions in the two statutes are different, but overriding concerns lead the department to conclude that the rules must contain the broader definition of "misconduct" set out in the current drafts.

First, A.R.S. § 6-161 gives the department the power and authority to remove persons committing the kinds of misconduct described in the statute. The concern is that, if this rule does not require reports of any and all forms of misconduct that can lead to removal, this rulemaking project will be less effective at achieving the goals contemplated by the legislature

when it enacted A.R.S. § 6-161. That statute lists statutory grounds for removal, and the rules that implement it would be less than effective if they did not include all the statutory grounds.

Also, the duty to report stated in the current draft is triggered by termination. Other forms of employee discipline are not implicated in the new Sections. The Department believes that if a licensee has done an investigation sufficient to conclude an employee should be terminated, it will also have the information it needs to decide if the employee's misconduct should be reported under any criteria set out or incorporated into the rules. And in the end, the Department has to make its own determination whether to seek removal of a reported employee. Under the statutes and this rule, a report of misconduct is privileged and cloaked in immunity from suit. Therefore, in its broader form, the rule works in favor of licensees by providing immunity from civil liability.

5. One commentator inquired as to the penalty for failure to comply with the rule. Under the authority of A.R.S. § 6-132, the penalty for a licensee's failure to comply with any statute, rule, or order adopted or issued under Title 6, A.R.S. is a civil money penalty not to exceed \$5,000 per violation per day.

6. A commentator suggested that the Department develop a form to use in making the required reports. This is a welcome suggestion and one the Department believes it has fulfilled by drafting the rule so that it can serve as its own checklist.

7. How will a licensee know when it is prohibited from employing a given person? For the use of all licensees as well as the general public, the Department's website contains a chart of Final Orders, including a list of all Removal Orders. In response to this question, we plan to have a separate link placed on the Department's home page that will link directly to the Removal Orders. Each linked Removal Order is identified by the name of the person removed from the

financial services industry. Likewise, each Removal Order is posted as a link so that the full text of the order can be downloaded, printed, or saved by licensees.

8. Finally, a concern has been expressed about the privacy and safety of employees identified in reports as persons known to have knowledge of the reported misconduct. Both the privacy and safety concerns are related, and we believe the rule safeguards both interests.

First of all, any information contained in a "report" is confidential in the hands of the Department under A.R.S. § 6-129. Neither the rule nor the statute requires disclosure of the "report" to the accused employee.

The provision of the Labor Code, A.R.S. § 23-1361, deals with "reports," made by an employer to the Department that trigger the privileged status of the information conveyed to the Department. The confidentiality of the reports protects the witnesses' privacy.

The statute also deals with "employment references." As the term is used in the statute, employment references are made by a previous employer to a prospective employer. There is no requirement in the statute that the information conveyed in the employment reference should include the identity of any witnesses or persons with knowledge of the misconduct.

It is true that, as a condition of immunity, A.R.S. § 23-1361(G) requires a previous employer that makes an "employment reference" disclosing reported misconduct to send a copy of the "employment reference" to the applicant in question. But that requirement is only as to "employment references." The proposed Sections do not affect the contents of "employment references," nor do they require that copies of "reports" be sent to accused employees. The information shared with the terminated employee need not include witnesses' names, and that circumstance also protects the witness's privacy. In this context, all privacy protections also safeguard the witnesses' safety.

6. **A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to 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 does not propose to rely on, any study as an evaluator or justification for the proposed rule.

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

Not applicable

8. **The preliminary summary of the economic, small business, and consumer impact:**

A. The Department of Financial Institutions

The Department will incur the costs of completing this rulemaking and of putting the new Sections into effect. It expects to receive the offsetting benefits of an open channel of communication with protected licensees about employee misconduct. The Department will then have an easier task of removing dishonest or corrupt employees from the vital financial services industry and will, therefore, be better able to protect Arizona consumers.

B. Other Public Agencies

The State will incur normal publishing costs incident to rulemaking.

C. Private Persons and Businesses Directly Affected

Costs of services will not increase to any measurable degree. Some of the Sections' record keeping and reporting requirements will marginally increase licensees' cost of

doing business in compliance with these rules. At the same time, licensees will have statutorily conferred immunity for making the required reports. In the long term, licensees will have decreased risk of liability for the actions of dishonest or corrupt employees.

D. Consumers

Consumers will be better protected against dishonest conduct in their financial transactions. If licensees pass on compliance costs, consumers may pay more for financial services.

E. Private and Public Employment

The department expects no measurable effect on private and public employment.

F. State Revenues

This rulemaking will not change state revenues.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name:	John P. Hudock
Address:	Department of Financial Institutions 2910 North 44th Street, Suite 310 Phoenix, Arizona 85018
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10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No oral proceeding is scheduled. The department will schedule an oral proceeding on the proposed rule if it receives a written request for a proceeding within 30 days after the publication date of this notice, under the provisions of A.R.S. § 41-1023(C). Send requests for an oral proceeding to the department personnel listed in items 4 and 9. The department invites and will accept written comments on the proposed rule or the preliminary economic, small business, and consumer impact statement. Submit comments during regular business hours, at the address listed in item 9, until the close of the record for this proposed rulemaking. The record will close on the 31st day following publication of this notice, unless the department schedules an oral proceeding.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

There is no material incorporated by reference in these rules.

13. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

ARTICLE 2. BANK ORGANIZATION AND REGULATION

R20-4-216. Reports of Employee Misconduct

ARTICLE 3. SAVINGS AND LOAN ASSOCIATIONS

R20-4-332. Reports of Employee Misconduct

ARTICLE 4. CREDIT UNIONS

R20-4-403. Reports of Employee Misconduct

ARTICLE 7. ESCROW AGENTS

R20-4-709. Reports of Employee Misconduct

ARTICLE 9. MORTGAGE BROKERS

R20-4-927. Reports of Employee Misconduct

ARTICLE 18. MORTGAGE BANKERS

R20-4-1813. Reports of Employee Misconduct

ARTICLE 19. COMMERCIAL MORTGAGE BANKERS

R20-4-1912. Reports of Employee Misconduct

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

ARTICLE 2. BANK ORGANIZATION AND REGULATION

R20-4-216. Reports of Employee Misconduct

A. As the term is used in this Section:

- 1.** “Employee” has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the bank.
- 2.** “Misconduct” means any conduct listed in this subsection that occurs in Arizona or harms an Arizona resident.
 - a.** Any act, omission, or practice in any business transaction that demonstrates personal dishonesty,
 - b.** A willful violation of an order of the superintendent,
 - c.** A refusal to testify or produce records in response to a subpoena issued by the superintendent,
 - d.** A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit,
 - e.** Any activity described in 12 United States Code § 1818(e)(1). For purposes of this subsection, any references in the federal statute to the appropriate federal banking agency are to the superintendent,
 - f.** Any act, practice, or transaction which in any way would jeopardize the safety and soundness of the bank
 - g.** A theft,
 - h.** An embezzlement,

- D.** A bank shall retain all records of reported misconduct described under subsection (C)(7) of this Section, and shall obtain the Department’s consent before the bank destroys any of the retained records. The Department’s consent shall not be unreasonably withheld.

ARTICLE 3. SAVINGS AND LOAN ASSOCIATIONS

R20-4-332. Reports of Employee Misconduct

- A.** As the term is used in this Section:

- 1.** “Employee” has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the savings and loan;
- 2.** “Misconduct” means any conduct listed in this subsection that occurs in Arizona or harms an Arizona resident.
 - a.** Any act, omission, or practice in any business transaction that demonstrates personal dishonesty,
 - b.** A willful violation of an order of the superintendent,
 - c.** A refusal to testify or produce records in response to a subpoena issued by the superintendent,
 - d.** A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit,
 - e.** Any activity described in 12 United States Code § 1818(e)(1). For purposes of this subsection, any references in the federal statute to the appropriate federal banking agency are to the superintendent,
 - f.** Any act, practice, or transaction which in any way would jeopardize the safety and soundness of the savings and loan,

- g.** A theft,
- h.** An embezzlement,
- i.** A misappropriation,
- j.** Any other defalcation,
- k.** Any violation of Title 6, A.R.S. chapter 3,
- l.** Any violation of Title 20, Chapter 4, Article 3 of the Arizona Administrative Code.

B. In the event a savings and loan terminates an employee for misconduct, as that term is defined in subsection (A)(2) of this Section, the savings and loan shall report the employee's misconduct to the Department within 30 days of the employee's termination.

C. The initial report required by subsection B of this Section shall contain all the information specified in this subsection and known to the savings and loan at the time the report is made. The savings and loan shall supplement its report within 10 days of the savings and loan learning new information.

- 1.** The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the savings and loan at the time of the report;
- 2.** The capacity in which the employee worked for the reporting savings and loan;
- 3.** The employee's misconduct;
- 4.** The names of all persons known to the savings and loan that have been, or may have been, injured or damaged by the reported misconduct;
- 5.** The employee's last known business and residence addresses;

6. The names of all persons known, to the savings and loan, to have knowledge of the reported misconduct; and
 7. A description of all records evidencing the reported misconduct in the savings and loan's possession.
- D.** A savings and loan shall retain all records of reported misconduct described under subsection (C)(7) of this Section, and shall obtain the Department's consent before the savings and loan destroys any of the retained records. The Department's consent shall not be unreasonably withheld.

ARTICLE 4. CREDIT UNIONS

R20-4-403. Reports of Employee Misconduct

- A.** As the term is used in this Section:
1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the credit union;
 2. "Misconduct" means any conduct listed in this subsection that occurs in Arizona or harms an Arizona resident.
 - a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty,
 - b. A willful violation of an order of the superintendent,
 - c. A refusal to testify or produce records in response to a subpoena issued by the superintendent,
 - d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit,

- e. Any activity described in 12 United States Code § 1818(e)(1). For purposes of this subsection, any references in the federal statute to the appropriate federal banking agency are to the superintendent,
- f. Any act, practice, or transaction which in any way would jeopardize the safety and soundness of the credit union,
- g. A theft,
- h. An embezzlement,
- i. A misappropriation,
- j. Any other defalcation,
- k. Any violation of Title 6, A.R.S. chapter 4,
- l. Any violation of Title 20, Chapter 4, Article 4 of the Arizona Administrative Code.

B. In the event a credit union terminates an employee for misconduct, as that term is defined in subsection (A)(2) of this Section, the credit union shall report the employee's misconduct to the Department within 30 days of employee's termination.

C. The initial report required by subsection B of this Section shall contain all the information specified in this subsection and known to the credit union at the time the report is made.

The credit union shall supplement its report within 10 days of the credit union learning new information.

1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the credit union at the time of the report;
2. The capacity in which the employee worked for the reporting credit union;

3. The employee's misconduct;
 4. The names of all persons known to the credit union that have been, or may have been, injured or damaged by the reported misconduct;
 5. The employee's last known business and residence addresses;
 6. The names of all persons known to the credit union to have knowledge of the reported misconduct; and
 7. A description of all records evidencing the reported misconduct in the credit union's possession.
- D. A credit union shall retain all records of reported misconduct described under subsection (C)(7) of this Section, and shall obtain the Department's consent before the credit union destroys any of the retained records. The Department's consent shall not be unreasonably withheld.

ARTICLE 7. ESCROW AGENTS

R20-4-709. Reports of Employee Misconduct

- A. As the term is used in this Section:
1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the escrow agent.
 2. "Misconduct" means any conduct listed in this subsection that occurs in Arizona or harms an Arizona resident.
 - a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty,
 - b. A willful violation of an order of the superintendent,

- c. A refusal to testify or produce records in response to a subpoena issued by the superintendent,
- d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit,
- e. A theft,
- f. An embezzlement,
- g. A misappropriation,
- h. Any other defalcation,
- i. Any violation of Title 6, A.R.S. chapter 7,
- j. Any violation of Title 20, chapter 4, Article 7 of the Arizona Administrative Code.

B. In the event an escrow agent terminates an employee for misconduct, , as that term is defined in subsection (A)(2) of this Section, the escrow agent shall report the employee's misconduct to the Department within 30 days of the employee's termination.

C. The initial report required by subsection B of this Section shall contain all the information specified in this subsection and known to the escrow agent at the time the report is made. The escrow agent shall supplement its report within 10 days of the escrow agent learning new information.

1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the escrow agent at the time of the report;
2. The capacity in which the employee worked for the reporting escrow agent;
3. The employee's misconduct;

4. The names of all persons known to the escrow agent that have been, or may have been, injured or damaged by the reported misconduct;
 5. The employee's last known business and residence addresses;
 6. The names of all persons known to the escrow agent to have knowledge of the reported misconduct; and
 7. A description of all records evidencing the reported misconduct in the escrow agent's possession.
- D. An escrow agent shall retain all records of reported misconduct described under subsection (C)(7) of this Section, and shall obtain the Department's consent before the escrow agent destroys any of the retained records. The Department's consent shall not be unreasonably withheld.

ARTICLE 9. MORTGAGE BROKERS

R20-4-927. Reports of Employee Misconduct

- A. As the term is used in this Section:
1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the mortgage broker;
 2. "Misconduct" means any conduct listed in this subsection that occurs in Arizona or harms an Arizona resident.
 - a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty,
 - b. A willful violation of an order of the superintendent,

- c. A refusal to testify or produce records in response to a subpoena issued by the superintendent,
- d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit,
- e. A theft,
- f. An embezzlement,
- g. A misappropriation,
- h. Any other defalcation,
- i. Any violation of Title 6, A.R.S. chapter 9, article 1
- j. Any violation of Title 20, chapter 9, Article 7 of the Arizona Administrative Code.

B. In the event a mortgage broker terminates an employee for misconduct, as that term is defined in subsection (A)(2) of this Section, the mortgage broker shall report the employee's misconduct to the Department within 30 days of the employee's termination.

C. The initial report required by subsection B of this Section shall contain all the information specified in this subsection and known to the mortgage broker at the time the report is made. The mortgage broker shall supplement its report within 10 days of the mortgage broker learning new information.

1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the mortgage broker at the time of the report;
2. The capacity in which the employee worked for the reporting mortgage broker;
3. The employee's misconduct;

4. The names of all persons known to the mortgage broker that have been, or may have been, injured or damaged by the reported misconduct;
 5. The employee's last known business and residence addresses;
 6. The names of all persons known to the mortgage broker to have knowledge of the reported misconduct; and
 7. A description of all records evidencing the reported misconduct in the mortgage broker's possession.
- D.** A mortgage broker shall retain all records of reported misconduct described under subsection (C)(7) of this Section, and shall obtain the Department's consent before the mortgage broker destroys any of the retained records. The Department's consent shall not be unreasonably withheld.

ARTICLE 18. MORTGAGE BANKERS

R20-4-1813. Reports of Employee Misconduct

- A.** As the term is used in this Section:
1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the mortgage banker;
 2. "Misconduct" means any conduct listed in this subsection that occurs in Arizona or harms an Arizona resident.
 - a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty,
 - b. A willful violation of an order of the superintendent,

- c. A refusal to testify or produce records in response to a subpoena issued by the superintendent,
 - d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit,
 - e. A theft,
 - f. An embezzlement,
 - g. A misappropriation,
 - h. Any other defalcation,
 - i. Any violation of Title 6, A.R.S. chapter 9, article 2
 - j. Any violation of Title 20, chapter 4, Article 18 of the Arizona Administrative Code.
- B.** In the event a mortgage banker terminates an employee for misconduct, as that term is defined in subsection (A)(2) of this Section, the mortgage banker shall report the employee's misconduct to the Department within 30 days of the employee's termination.
- C.** The initial report required by subsection B of this Section shall contain all the information specified in this subsection and known to the mortgage banker at the time the report is made. The mortgage banker shall supplement its report within 10 days of the mortgage banker learning new information.
 - 1.** The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the mortgage banker at the time of the report;
 - 2.** The capacity in which the employee worked for the reporting mortgage banker;
 - 3.** The employee's misconduct;

4. The names of all persons known to the mortgage banker that have been, or may have been, injured or damaged by the reported misconduct;
5. The employee's last known business and residence addresses;
6. The names of all persons known to the mortgage banker to have knowledge of the reported misconduct; and
7. A description of all records evidencing the reported misconduct in the mortgage banker's possession.

D. A mortgage banker shall retain all records of reported misconduct described under subsection (C)(7) of this Section, and shall obtain the Department's consent before the mortgage banker destroys any of the retained records. The Department's consent shall not be unreasonably withheld.

ARTICLE 19. COMMERCIAL MORTGAGE BANKERS

R20-4-1912. Reports of Employee Misconduct

A. As the term is used in this Section:

1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the commercial mortgage banker.
2. "Misconduct" means any conduct listed in this subsection that occurs in Arizona or harms an Arizona resident.
 - a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty,
 - b. A willful violation of an order of the superintendent,
 - c. A refusal to testify or produce records in response to a subpoena issued by the superintendent,

4. The names of all persons known to the commercial mortgage banker that have been, or may have been, injured or damaged by the reported misconduct;
 5. The employee's last known business and residence addresses;
 6. The names of all persons known to the commercial mortgage banker to have knowledge of the reported misconduct; and
 7. A description of all records evidencing the reported misconduct in the commercial mortgage banker's possession.
- D.** A commercial mortgage banker shall retain all records of reported misconduct described under subsection (C)(7) of this Section, and shall obtain the Department's consent before the commercial mortgage banker destroys any of the retained records. The Department's consent shall not be unreasonably withheld.