

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SENATE BILL 1491

AN ACT

AMENDING SECTIONS 32-2183.02 AND 32-2185.09, ARIZONA REVISED STATUTES;
AMENDING TITLE 32, CHAPTER 20, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING
SECTION 32-2195.12; AMENDING SECTION 33-422, ARIZONA REVISED STATUTES;
RELATING TO SUBDIVIDED AND UNSUBDIVIDED LANDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-2183.02, Arizona Revised Statutes, is amended to
3 read:

4 32-2183.02. Recording of actions

5 A. Whenever the commissioner issues a cease and desist order, obtains
6 a court order enjoining further sales, issues an order of prohibition or
7 suspends approval of a subdivision, the action shall be recorded in the book
8 of deeds in the office of the county recorder in any county in which the
9 subdivision property is located. **THE COMMISSIONER SHALL ALSO PROVIDE NOTICE**
10 **OF THE ORDER OR SUSPENSION TO ALL PARTIES WITH A FINANCIAL INTEREST IN THE**
11 **SUBDIVISION PROPERTY WITHIN FIFTEEN DAYS OF ISSUING THE ORDER OR SUSPENSION.**

12 B. In the event of revocation of any of the orders which require
13 recording in subsection A, an order of release shall be recorded in the same
14 manner.

15 C. **THE DEPARTMENT SHALL RECORD A PUBLIC NOTICE IN THE COUNTY IN WHICH**
16 **THE SUBDIVIDED LAND IS LOCATED WHEN THE LAND HAS BEEN SUBDIVIDED IN VIOLATION**
17 **OF THIS ARTICLE. THE NOTICE SHALL STATE THAT NO BUILDING PERMITS ARE ALLOWED**
18 **FOR THE LAND UNTIL THE REQUISITE STATE AND LOCAL APPROVAL IS ACQUIRED. THE**
19 **DEPARTMENT SHALL RECORD A RELEASE IN THE SAME MANNER WITHIN FIFTEEN DAYS**
20 **AFTER THE SUBDIVISION IS IN COMPLIANCE WITH THIS ARTICLE.**

21 Sec. 2. Section 32-2185.09, Arizona Revised Statutes, is amended to
22 read:

23 32-2185.09. Civil penalties; limitation

24 A. A subdivider or agent who is subject to the jurisdiction of the
25 department, who violates ~~any provision of~~ this chapter or any rule adopted or
26 order issued by the commissioner or who engages in any unlawful practices
27 defined in section 44-1522 with respect to the sale or lease of subdivided
28 lands may be assessed a civil penalty by the commissioner, after a hearing,
29 in an amount not to exceed one thousand dollars for each infraction. An
30 infraction which concerns more than one lot in a subdivision is a single
31 infraction for the purposes of this section.

32 B. A proceeding for imposition of a civil penalty or for suspension or
33 revocation of a license for ~~A violation of any provision of~~ this article or
34 any rule adopted or order issued by the commissioner must be commenced within
35 five years of actual discovery by the department or discovery which should
36 have occurred with the exercise of reasonable diligence by the department.

37 C. **A SUBDIVIDER OR AGENT WHO IS SUBJECT TO THE JURISDICTION OF THE**
38 **DEPARTMENT, WHO IS FOUND TO BE ACTING IN CONCERT AS DEFINED IN THIS ARTICLE**
39 **FOR A LOT OR LOTS CREATED FROM AND AFTER DECEMBER 31, 2008 AND ON AN ORDER**
40 **ISSUED BY THE COMMISSIONER, MAY BE ASSESSED A CIVIL PENALTY BY THE**
41 **COMMISSIONER, AFTER A HEARING, IN AN AMOUNT NOT TO EXCEED FIVE THOUSAND**
42 **DOLLARS FOR EACH INFRACTION. AN INFRACTION THAT CONCERNS MORE THAN ONE LOT**
43 **IN A SUBDIVISION IS A SINGLE INFRACTION FOR THE PURPOSES OF THIS SUBSECTION.**
44 **A PROCEEDING FOR THE IMPOSITION OF A CIVIL PENALTY OR SUSPENSION OR**

1 REVOCATION OF A LICENSE FOR A VIOLATION OF THIS SUBSECTION OR ANY RULE
2 ADOPTED OR ORDER ISSUED BY THE COMMISSIONER MUST BE COMMENCED WITHIN FIVE
3 YEARS OF ACTUAL DISCOVERY BY THE DEPARTMENT OR DISCOVERY THAT SHOULD HAVE
4 OCCURRED WITH THE EXERCISE OF REASONABLE DILIGENCE BY THE DEPARTMENT.

5 Sec. 3. Title 32, chapter 20, article 7, Arizona Revised Statutes, is
6 amended by adding section 32-2195.12, to read:

7 32-2195.12. Recording of actions

8 A. WHENEVER THE COMMISSIONER ISSUES A CEASE AND DESIST ORDER, OBTAINS
9 A COURT ORDER ENJOINING FURTHER SALES, ISSUES AN ORDER OF PROHIBITION OR
10 SUSPENDS APPROVAL OF AN UNSUBDIVIDED LANDS PUBLIC REPORT, THE ACTION SHALL BE
11 RECORDED IN THE BOOK OF DEEDS IN THE OFFICE OF THE COUNTY RECORDER IN ANY
12 COUNTY IN WHICH THE UNSUBDIVIDED PROPERTY IS LOCATED. THE COMMISSIONER SHALL
13 ALSO PROVIDE NOTICE OF THE ORDER OR SUSPENSION TO ALL PARTIES WITH A
14 FINANCIAL INTEREST IN THE UNSUBDIVIDED PROPERTY WITHIN FIFTEEN DAYS OF
15 ISSUING THE ORDER OR SUSPENSION.

16 B. IN THE EVENT OF A REVOCATION OF ANY OF THE ORDERS WHICH REQUIRE
17 RECORDING IN SUBSECTION A, AN ORDER OF RELEASE SHALL BE RECORDED IN THE SAME
18 MANNER.

19 Sec. 4. Section 33-422, Arizona Revised Statutes, is amended to read:
20 33-422. Land divisions; recording; disclosure affidavit

21 A. A seller of five or fewer parcels of land, other than subdivided
22 land, in an unincorporated area of a county and any subsequent seller of such
23 a parcel shall furnish a written affidavit of disclosure to the buyer, at
24 least seven days before the transfer of the property, and the buyer shall
25 acknowledge receipt of the affidavit.

26 B. The affidavit must be written in twelve point type.

27 C. No release or waiver of a seller's liability arising out of any
28 omission or misrepresentation contained in an affidavit of disclosure is
29 valid or binding on the buyer.

30 D. The buyer has the right to rescind the sales transaction for a
31 period of five days after the affidavit of disclosure is furnished to the
32 buyer.

33 E. The seller shall record the executed affidavit of disclosure at the
34 same time that the deed is recorded. The county recorder is not required to
35 verify the accuracy of any statement in the affidavit of disclosure. A
36 subsequently recorded affidavit supersedes any previous affidavit.

37 F. The affidavit of disclosure shall meet the requirements of section
38 11-480 and follow substantially the following form:

39 When recorded mail to:
40 _____
41 _____
42 _____
43 _____

Affidavit of Disclosure
Pursuant to A.R.S. §33-422

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I, _____ (seller(s))
being duly sworn, hereby make this affidavit of disclosure
relating to the real property situated in the unincorporated
area of:

_____, County, State of Arizona, located at:

_____ and legally described as:

(Legal description attached hereto as exhibit "A")
(property).

- 1. There is is not legal access to the property, as defined in A.R.S. § 11-809 unknown

Explain: _____

- 2. There is is not physical access to the property. unknown

Explain: _____

- 3. There is is not a statement from a licensed surveyor or engineer available stating whether the property has physical access that is traversable by a two-wheel drive passenger motor vehicle.

- 4. The legal and physical access to the property is is not the same.... unknown not applicable.

Explain: _____

If access to the parcel is not traversable by emergency vehicles, the county and emergency service providers may not be held liable for any damages resulting from the inability to traverse the access to provide needed services.

- 5. The road(s) is/are publicly maintained privately maintained not maintained not applicable. If applicable, there is is not a recorded road maintenance agreement.

If the roads are not publicly maintained, it is the responsibility of the property owner(s) to maintain the roads and roads that are not improved to county standards and accepted for maintenance are not the county's responsibility.

- 1 6. A portion or all of the property is is not
2 located in a FEMA designated regulatory floodplain. If the
3 property is in a floodplain, it may be subject to floodplain
4 regulation.
- 5 7. The property is is not subject to fissures or
6 expansive soils. unknown
7 Explain: _____
8 _____
9 _____
- 10 8. The following services are currently provided to the property:
11 water sewer electric natural gas single
12 party telephone cable television services.
- 13 9. The property is is not served by a water supply
14 that requires the transportation of water to the property.
- 15 10. The property is served by a private water company a
16 municipal water provider a private well a shared well
17 no well. If served by a shared well, the shared well is
18 is not a public water system, as defined by the safe
19 drinking water act (42 United States Code § 300f).
20 Notice to buyer: If the property is served by a well, A private
21 water company or a municipal water provider the Arizona
22 department of water resources may not have made a water supply
23 determination. For more information about water supply, contact
24 the water provider.
- 25 11. The property does have does not have an on-site
26 wastewater treatment facility (i.e., standard septic or
27 alternative system to treat and dispose of wastewater).
28 unknown. If applicable: a) The property will will not
29 require installation of an on-site wastewater treatment
30 facility; b) The on-site wastewater treatment facility has
31 has not been inspected.
- 32 12. The property has been has not been subject to a
33 percolation test. unknown.
- 34 13. The property does does not meet the minimum
35 applicable county zoning requirements of the applicable zoning
36 designation.
- 37 14. The sale of the property does does not meet the
38 requirements of A.R.S. § 11-809 regarding land divisions. If those
39 requirements are not met, the property owner may not be able to
40 obtain a building permit. The seller or property owner shall
41 disclose each of the deficiencies to the buyer.

1 Explain: _____
2 _____
3 _____

4 15. The property is is not located in the clear zone of a
5 military airport or ancillary military facility, as defined in
6 A.R.S. § 28-8461. (Maps are available at the state real estate
7 department's web site.)

8 16. The property is is not located in the high noise or
9 accident potential zone of a military airport or ancillary military
10 facility, as defined in A.R.S. § 28-8461. (Maps are available at
11 the state real estate department's web site.)

12 17. Notice: If the property is located within the territory in the
13 vicinity of a military airport or ancillary military facility, the
14 property is required to comply with sound attenuation standards as
15 prescribed by A.R.S. § 28-8482. (Maps are available at the state
16 real estate department's web site.)

17 18. The property is is not located under military restricted
18 airspace. unknown. (Maps are available at the state real
19 estate department's web site.)

20 This affidavit of disclosure supersedes any previously recorded
21 affidavit of disclosure.

22 I certify under penalty of perjury that the information
23 contained in this affidavit is true, complete and correct
24 according to my best belief and knowledge.

25 Dated this _____ (date) day of _____ (year) by:

26 Seller's name (print): _____ Signature: _____

27 Seller's name (print): _____ Signature: _____

28 State of Arizona)

29) ss.

30 County of _____)

31 Subscribed and sworn before me this _____ (date) day of
32 _____ (year), by _____.

33 _____
34 Notary public

35 My commission expires:
36 _____ (date)

37 Buyer(s) hereby acknowledges receipt of a copy of this affidavit
38 of disclosure this _____ (date) day of _____ (year)

39 Buyer's name (print): _____ Signature: _____

40 Buyer's name (print): _____ Signature: _____

41 19. USE OF THE PROPERTY IS IS NOT LIMITED IN ANY WAY
42 RELATING TO DEVELOPMENT DUE TO A LIS PENDENS, A COURT ORDER, A
43 STATE REAL ESTATE DEPARTMENT ORDER OR A PENDING LEGAL ACTION. IF

1 THE USE OF THE PROPERTY IS LIMITED, THE SELLER OR PROPERTY OWNER
2 SHALL DISCLOSE THE LIMITATIONS TO THE BUYER.

3 EXPLAIN: _____
4 _____
5 _____

6 G. For the purposes of this section, seller and subsequent seller do
7 not include a trustee of a deed of trust who is selling property by a
8 trustee's sale pursuant to title 33, chapter 6.1 or any officer who is
9 selling property by execution sale pursuant to title 12, chapter 9 and
10 title 33, chapter 6. If the seller is a trustee of a subdivision trust as
11 defined in section 6-801, the disclosure affidavit required by this section
12 shall be provided by the beneficiary of the subdivision trust.

13 Sec. 5. Emergency

14 This act is an emergency measure that is necessary to preserve the
15 public peace, health or safety and is operative immediately as provided by
16 law.