

REFERENCE TITLE: hazard disclosures; reports

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
First Regular Session  
2007

## **HB 2323**

Introduced by  
Representative Reagan

AN ACT

AMENDING SECTIONS 33-423 AND 36-3002, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-424; RELATING TO REAL PROPERTY DISCLOSURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 33-423, Arizona Revised Statutes, is amended to  
3 read:

4 33-423. Disclosure; reports; indemnity; applicability;  
5 violation; classification

6 A. A disclosure report ~~authorized~~ pursuant to this section may be  
7 provided to the BUYER OR seller of real property by a third party as  
8 authorized by the BUYER OR seller and shall be based on officially adopted  
9 and electronically posted or otherwise readily available governmental maps or  
10 information that discloses whether the real property is subject to any ONE OR  
11 MORE of the following:

12 1. Special flood hazard areas designated by the federal emergency  
13 management agency pursuant to 42 United States Code chapter 50.

14 2. Military airports or ancillary military facilities as defined in  
15 section 28-8461 or as disclosed pursuant to section 28-8484 or 32-2113.

16 3. Military training routes as shown in the map produced pursuant to  
17 section 37-102 and military restricted airspace as shown in the map produced  
18 pursuant to section 37-102.

19 4. Public or private airports that are approved by the federal  
20 aviation administration.

21 5. Expansive soils as shown on maps issued by the natural resource  
22 conservation service or on other officially adopted and readily available  
23 governmental maps.

24 6. ~~Soils subject to~~ LOCATION OF fissures as shown on maps issued by  
25 the Arizona geological survey or on other officially adopted and readily  
26 available governmental maps.

27 7. Special tax assessment areas as shown in the current tax records of  
28 the applicable county assessor.

29 ~~8. Radon gas potential zones as shown on current maps issued by the~~  
30 ~~United States environmental protection agency.~~

31 ~~9.~~ 8. Environmental hazard superfund sites as shown in reports from  
32 the United States environmental protection agency or on maps issued by the  
33 department of environmental quality.

34 9. ANY OTHER CONDITION THAT AFFECTS THE REAL PROPERTY AS AUTHORIZED TO  
35 BE DISCLOSED BY THE BUYER OR SELLER AND DESCRIBED IN A THIRD PARTY DISCLOSURE  
36 REPORT.

37 B. For any third party provider of information as prescribed by this  
38 section, the following ~~applies~~ APPLY:

39 1. A seller OR BUYER shall not be required to provide the written  
40 disclosure provided by this section to an insurance company, a lender or a  
41 governmental agency.

42 2. The third party provider shall carry ERRORS AND OMISSIONS insurance  
43 coverage with limits of at least ~~ten~~ ONE million dollars per occurrence AND  
44 IN AN AGGREGATE OF AT LEAST TEN MILLION DOLLARS. A PERSON WHO VIOLATES THIS  
45 PARAGRAPH IS GUILTY OF A CLASS 6 FELONY.

1 C. If an action is brought as a result of an error, inaccuracy or  
2 omission in the disclosure made only by ~~the~~ A third party provider WHO IS  
3 PROVIDING INFORMATION PURSUANT TO SUBSECTION A OF THIS SECTION, the third  
4 party provider shall provide a defense against the action, shall indemnify  
5 the ~~person~~ BUYER, SELLER OR AGENT FOR THE BUYER OR SELLER for any judgment  
6 rendered and shall reimburse reasonable attorney fees and costs incurred in  
7 defending the action, unless the ~~person~~ BUYER, SELLER OR AGENT FOR THE BUYER  
8 OR SELLER had knowledge of the error, inaccuracy or omission or the person  
9 modified the disclosure and the modification resulted in the error,  
10 inaccuracy or omission. Nothing in this section shall be construed to  
11 prohibit a third party provider of information from agreeing by contract that  
12 the third party provider shall indemnify a person to a greater extent than is  
13 required by this section.

14 D. If information that is disclosed pursuant to this section is  
15 subsequently rendered inaccurate as a result of any governmental action, map  
16 revision, changed information or other act or occurrence after the delivery  
17 of the disclosure, no person is liable for the information that was disclosed  
18 unless the person had knowledge of the error, inaccuracy or omission.

19 E. This section shall not be construed to create a cause of action for  
20 the use of maps or other information pursuant to this section. This section  
21 does not apply to the sale of real property by any person pursuant to section  
22 32-2183 or section 32-2195.03, or any affiliate of that person.

23 F. THIS SECTION DOES NOT OBLIGATE ANY PERSON TO PROVIDE OR PURCHASE A  
24 DISCLOSURE REPORT THAT IS THE SUBJECT OF THIS SECTION.

25 G. THE DISCLOSURE REPORT THAT IS THE SUBJECT OF THIS SECTION AND ITS  
26 CONTENTS ARE NOT MATERIAL DISCLOSURES IN ANY REAL ESTATE TRANSACTIONS.

27 H. A THIRD PARTY DISCLOSURE REPORT PROVIDER SHALL DISCLOSE IN ANY  
28 AGREEMENT OR MARKETING MATERIAL THAT BUYERS AND SELLERS OF REAL PROPERTY ARE  
29 NOT REQUIRED TO PURCHASE A THIRD PARTY DISCLOSURE REPORT.

30 Sec. 2. Title 33, chapter 4, article 2, Arizona Revised Statutes, is  
31 amended by adding section 33-424, to read:

32 33-424. Representation of legal requirement; enforcement;  
33 private action; classification

34 A. IT IS UNLAWFUL FOR A THIRD PARTY PROVIDER OFFERING A DISCLOSURE  
35 REPORT PURSUANT TO SECTION 33-423 TO REPRESENT IN MARKETING MATERIALS,  
36 CONTRACTS OR BY ANY OTHER MEANS ANY OF THE FOLLOWING:

37 1. THAT SUCH A DISCLOSURE REPORT IS REQUIRED BY LAW TO BE PURCHASED.

38 2. THAT A BUYER, A SELLER OR A PERSON LICENSED PURSUANT TO TITLE 32,  
39 CHAPTER 20 WHO REPRESENTS A BUYER OR SELLER IS REQUIRED TO COMPLY WITH  
40 SECTION 33-423 BY PURCHASING A THIRD PARTY DISCLOSURE REPORT.

41 3. THAT THE THIRD PARTY PROVIDER OFFERS PROTECTION FROM OTHER PROPERTY  
42 CONDITIONS THAT ARE NOT THE SUBJECT OF THE THIRD PARTY PROVIDER REPORT.

43 B. AN ACT OR PRACTICE IN VIOLATION OF THIS SECTION IS SUBJECT TO  
44 ENFORCEMENT THROUGH PRIVATE ACTION AND PROSECUTION BY THE ATTORNEY GENERAL OR  
45 BY THE COUNTY ATTORNEY OF THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED.

1 C. A PERSON WHO RECEIVES MARKETING MATERIALS, CONTRACTS OR OTHER  
2 COMMUNICATION IN VIOLATION OF THIS SECTION MAY BRING AN ACTION PURSUANT TO  
3 THIS SECTION IN ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY IN WHICH  
4 THE REAL PROPERTY IS LOCATED.

5 D. A THIRD PARTY PROVIDER WHO OFFERS A DISCLOSURE REPORT PURSUANT TO  
6 SECTION 33-423 AND WHO IS FOUND TO HAVE VIOLATED THIS SECTION IS LIABLE TO  
7 THE PARTY RECEIVING THE MARKETING MATERIALS, CONTRACTS OR OTHER COMMUNICATION  
8 FOR REASONABLE ATTORNEY FEES AND COSTS OF THE ACTION IF THE PARTY PREVAILS,  
9 AND THE THIRD PARTY PROVIDER SHALL PAY A CIVIL PENALTY OF NOT LESS THAN TWO  
10 THOUSAND DOLLARS PER OCCURRENCE. CIVIL PENALTIES COLLECTED PURSUANT TO THIS  
11 SUBSECTION SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE  
12 DOMESTIC VIOLENCE SHELTER FUND ESTABLISHED BY SECTION 36-3002.

13 E. A PERSON WHO VIOLATES SUBSECTION A OF THIS SECTION IS GUILTY OF A  
14 CLASS 6 FELONY.

15 Sec. 3. Section 36-3002, Arizona Revised Statutes, is amended to read:  
16 36-3002. Domestic violence shelter fund; purpose

17 A. The domestic violence shelter fund is established consisting of  
18 monies received pursuant to section 12-284.03, paragraph 2 AND SECTION  
19 33-424. The program administrator shall administer the fund for the purposes  
20 prescribed in this section.

21 B. The department of economic security, after full consultation with a  
22 statewide coalition against domestic violence, shall establish program  
23 priorities for the fund. Subject to legislative appropriation, the  
24 department shall expend monies in the fund to provide financial assistance to  
25 shelters for victims of domestic violence through contracts for shelter  
26 services.

27 C. Monies in the fund do not revert to the state general fund.