

REFERENCE TITLE: subdivision public reports

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

# HB 2535

Introduced by  
Representative Paton

AN ACT

AMENDING SECTION 32-2183, ARIZONA REVISED STATUTES; RELATING TO THE SALE OF  
SUBDIVIDED 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, Arizona Revised Statutes, is amended to  
3 read:

4 32-2183. Subdivision public reports; denial of issuance;  
5 unlawful sales; voidable sale or lease; order  
6 prohibiting sale or lease; investigations; hearings;  
7 summary orders

8 A. Upon examination of a subdivision, the commissioner, unless there  
9 are grounds for denial, shall issue to the subdivider a public report  
10 authorizing the sale or lease in this state of the lots, parcels or  
11 fractional interests within the subdivision. The report shall contain the  
12 data obtained in accordance with section 32-2181 and any other information  
13 which the commissioner determines is necessary to implement the purposes of  
14 this article. If any of the lots, parcels or fractional interests within the  
15 subdivision are located within territory in the vicinity of a military  
16 airport or ancillary military facility as defined in section 28-8461, under a  
17 military training route as delineated in the military training route map  
18 prepared pursuant to section 37-102 or under restricted air space as  
19 delineated in the restricted air space map prepared pursuant to section  
20 37-102, the report shall include, in bold twelve point font block letters on  
21 the first page of the report, the statements required pursuant to section  
22 28-8484, subsection A, section 32-2183.05 or section 32-2183.06 and, if the  
23 department has been provided a map prepared pursuant to section 28-8484,  
24 subsection B or section 37-102, the report shall include a copy of the  
25 map. The military airport report requirements do not require the amendment  
26 or reissuance of any public report issued on or before December 31, 2001 or  
27 on or before December 31 of the year in which the lots, parcels or fractional  
28 interests within a subdivision become territory in the vicinity of a military  
29 airport or ancillary military facility. The military training route report  
30 requirements do not require the amendment or reissuance of any public report  
31 issued on or before December 31, 2004. The restricted air space report  
32 requirements do not require the amendment or reissuance of any public report  
33 issued on or before December 31, 2006. The commissioner shall require the  
34 subdivider to reproduce the report, make the report available to each  
35 prospective customer **ON REQUEST** and furnish each buyer or lessee with a copy  
36 before the buyer or lessee signs any offer to purchase or lease, taking a  
37 receipt therefor.

38 B. Notwithstanding subsection A of this section, a subdivider may  
39 elect to prepare a final public report for use in the sale of improved lots  
40 as defined in section 32-2101, as follows:

41 1. The subdivider shall prepare the public report and provide a copy  
42 of the report to the commissioner with the submission of the notification  
43 required by sections 32-2181 and 32-2184 and shall comply with all other  
44 requirements of this article.

1           2. An initial filing fee of five hundred dollars or an amended filing  
2 fee of two hundred fifty dollars shall accompany the notification required by  
3 paragraph 1 of this subsection.

4           3. The department shall assign a registration number to each  
5 notification and public report submitted pursuant to this subsection and  
6 shall maintain a database of all of these submissions. The subdivider shall  
7 place the number on **THE COVER OF** each public report.

8           4. The department shall determine within fifteen business days after  
9 the receipt of the notification and public report whether the notification  
10 and public report are administratively complete. The commissioner either may  
11 issue a certification that the notification and public report are  
12 administratively complete or may deny issuance of the certification if it  
13 appears that the application or project is not in compliance with all legal  
14 requirements, that the applicant has a background of violations of state or  
15 federal law or that the applicant or project presents an unnecessary risk of  
16 harm to the public.

17           5. A subdivider may commence sales or leasing activities as permitted  
18 under this article after obtaining a certificate of administrative  
19 completeness from the commissioner.

20           6. Before or after the commissioner issues a certificate of  
21 administrative completeness, the department may examine any public report,  
22 subdivision or applicant that has applied for or received the  
23 certificate. If the commissioner determines that the subdivider or  
24 subdivision is not in compliance with any requirement of state law or that  
25 grounds exist under this chapter to suspend, deny or revoke a public report,  
26 the commissioner may commence an administrative action under section 32-2154  
27 or 32-2157. If the subdivider immediately corrects the deficiency and comes  
28 into full compliance with state law, the commissioner shall vacate any action  
29 that the commissioner may have commenced pursuant to section 32-2154 or  
30 32-2157.

31           7. The department shall provide forms and guidelines for the  
32 submission of the notification and public report pursuant to this section.

33           C. The commissioner may suspend, revoke or deny issuance of a public  
34 report on any of the following grounds:

35           1. Failure to comply with this article or the rules of the  
36 commissioner pertaining to this article.

37           2. The sale or lease would constitute misrepresentation to or deceit  
38 or fraud of the purchasers or lessees.

39           3. Inability to deliver title or other interest contracted for.

40           4. Inability to demonstrate that adequate financial or other  
41 arrangements acceptable to the commissioner have been made for completion of  
42 all streets, sewers, electric, gas and water utilities, drainage and flood  
43 control facilities, community and recreational facilities and other  
44 improvements included in the offering.

1           5. Failure to make a showing that the lots, parcels or fractional  
2 interests can be used for the purpose for which they are offered.

3           6. The owner, agent, subdivider, officer, director or partner,  
4 subdivider trust beneficiary holding ten per cent or more direct or indirect  
5 beneficial interest or, if a corporation, any stockholder owning ten per cent  
6 or more of the stock in the corporation has:

7           (a) Been convicted of a felony or misdemeanor involving fraud or  
8 dishonesty or involving conduct of any business or a transaction in real  
9 estate, cemetery property, time-share intervals or membership camping  
10 campgrounds or contracts.

11           (b) Been permanently or temporarily enjoined by order, judgment or  
12 decree from engaging in or continuing any conduct or practice in connection  
13 with the sale or purchase of real estate or cemetery property, time-share  
14 intervals, membership camping contracts or campgrounds, or securities or  
15 involving consumer fraud or the racketeering laws of this state.

16           (c) Had an administrative order entered against him by a real estate  
17 regulatory agency or security regulatory agency.

18           (d) Had an adverse decision or judgment entered against him involving  
19 fraud or dishonesty or involving the conduct of any business or transaction  
20 in real estate, cemetery property, time-share intervals or membership camping  
21 campgrounds or contracts.

22           (e) Disregarded or violated this chapter or the rules of the  
23 commissioner pertaining to this chapter.

24           (f) Controlled an entity to which subdivision (b), (c), (d) or (e)  
25 applies.

26           7. Procurement or an attempt to procure a public report by fraud,  
27 misrepresentation or deceit or by filing an application for a public report  
28 that is materially false or misleading.

29           8. Failure of the declaration for a condominium created pursuant to  
30 title 33, chapter 9, article 2 to comply with the requirements of section  
31 33-1215 or failure of the plat for the condominium to comply with the  
32 requirements of section 33-1219. The commissioner may require an applicant  
33 for a public report to submit a notarized statement signed by the subdivider  
34 or an engineer or attorney licensed to practice in this state certifying that  
35 the condominium plat and declaration of condominium are in compliance with  
36 the requirements of sections 33-1215 and 33-1219. If the notarized statement  
37 is provided, the commissioner is entitled to rely on this statement.

38           9. Failure of any blanket encumbrance or valid supplementary agreement  
39 executed by the holder of the blanket encumbrance to contain provisions that  
40 enable the purchaser to acquire title to a lot or parcel free of the lien of  
41 the blanket encumbrance, on completion of all payments and performance of all  
42 of the terms and provisions required to be made or performed by the purchaser  
43 under the real estate sales contract by which the purchaser has acquired the  
44 lot or parcel. The subdivider shall file copies of documents acceptable to

1 the commissioner containing these provisions with the commissioner before the  
2 sale of any subdivision lot or parcel subject to a blanket encumbrance.

3 10. Failure to demonstrate permanent access to the subdivision lots or  
4 parcels.

5 11. The use of the lots presents an unreasonable health risk.

6 D. It is unlawful for a subdivider to sell any lot in a subdivision  
7 unless one of the following occurs:

8 1. All proposed or promised subdivision improvements are completed.

9 2. The completion of all proposed or promised subdivision improvements  
10 is assured by financial arrangements acceptable to the commissioner. The  
11 financial arrangements may be made in phases for common community and  
12 recreation facilities required by a municipality or county as a stipulation  
13 for approval of a plan for a master planned community.

14 3. The municipal or county government agrees to prohibit occupancy and  
15 the subdivider agrees not to close escrow for lots in the subdivision until  
16 all proposed or promised subdivision improvements are completed.

17 4. The municipal or county government enters into an assurance  
18 agreement with any trustee not to convey lots until improvements are  
19 completed within the portion of the subdivision containing these lots, if the  
20 improvements can be used and maintained separately from the improvements  
21 required for the entire subdivision plat. The agreement shall be recorded in  
22 the county in which the subdivision is located.

23 E. If the subdivision is within an active management area, as defined  
24 in section 45-402, the commissioner shall deny issuance of a public report or  
25 the use of any exemption pursuant to section 32-2181.02, subsection B unless  
26 the subdivider has been issued a certificate of assured water supply by the  
27 director of water resources and has paid all applicable fees pursuant to  
28 sections 48-3772 and 48-3774.01, or unless the subdivider has obtained a  
29 written commitment of water service for the subdivision from a city, town or  
30 private water company designated as having an assured water supply by the  
31 director of water resources pursuant to section 45-576 or is exempt from the  
32 requirement pursuant to section 45-576.

33 F. In areas outside of active management areas, if the subdivision is  
34 located in a county that has adopted the provision authorized by section  
35 11-806.01, subsection F or in a city or town that has enacted an ordinance  
36 pursuant to section 9-463.01, subsection 0, the commissioner shall deny  
37 issuance of a public report or the use of any exemption pursuant to section  
38 32-2181.02, subsection B unless one of the following applies:

39 1. The director of water resources has reported pursuant to section  
40 45-108 that the subdivision has an adequate water supply.

41 2. The subdivider has obtained a written commitment of water service  
42 for the subdivision from a city, town or private water company designated as  
43 having an adequate water supply by the director of water resources pursuant  
44 to section 45-108.

1           3. The plat was approved pursuant to an exemption authorized by  
2 section 9-463.01, subsection K, pursuant to an exemption authorized by  
3 section 11-806.01, subsection G, paragraph 1, pursuant to an exemption  
4 granted by the director of water resources under section 45-108.02 and the  
5 exemption has not expired or pursuant to an exemption granted by the director  
6 of water resources under section 45-108.03.

7           4. The subdivision received final plat approval from the city, town or  
8 county before the requirement for an adequate water supply became effective  
9 in the city, town or county, and there have been no material changes to the  
10 plat since the final plat approval. If changes were made to the plat after  
11 the final plat approval, the director of water resources shall determine  
12 whether the changes are material pursuant to the rules adopted by the  
13 director to implement section 45-108.

14           G. A subdivider shall not sell or lease or offer for sale or lease in  
15 this state any lots, parcels or fractional interests in a subdivision without  
16 first obtaining a public report from the commissioner except as provided in  
17 section 32-2181.01 or 32-2181.02. Unless exempt, the sale or lease of  
18 subdivided lands prior to issuance of the public report or failure to deliver  
19 the public report to the purchaser or lessee shall render the sale or lease  
20 rescindable by the purchaser or lessee. An action by the purchaser or lessee  
21 to rescind the transaction shall be brought within three years of the date of  
22 execution of the purchase or lease agreement by the purchaser or lessee. In  
23 any rescission action, the prevailing party is entitled to reasonable  
24 attorney fees as determined by the court.

25           H. Any applicant objecting to the denial of a public report, within  
26 thirty days after receipt of the order of denial, may file a written request  
27 for a hearing. The commissioner shall hold the hearing within twenty days  
28 after receipt of the request for a hearing unless the party requesting the  
29 hearing has requested a postponement. If the hearing is not held within  
30 twenty days after a request for a hearing is received, plus the period of any  
31 postponement, or if a proposed decision is not rendered within forty-five  
32 days after submission, the order of denial shall be rescinded and a public  
33 report issued.

34           I. On the commissioner's own motion, or when the commissioner has  
35 received a complaint and has satisfactory evidence that the subdivider or the  
36 subdivider's agent is violating this article or the rules of the commissioner  
37 or has engaged in any unlawful practice as defined in section 44-1522 with  
38 respect to the sale of subdivided lands or deviated from the provisions of  
39 the public report, the commissioner may investigate the subdivision project  
40 and examine the books and records of the subdivider. For the purpose of  
41 examination, the subdivider shall keep and maintain records of all sales  
42 transactions and funds received by the subdivider pursuant to the sales  
43 transactions and shall make them accessible to the commissioner upon  
44 reasonable notice and demand.

1 J. On the commissioner's own motion, or when the commissioner has  
2 received a complaint and has satisfactory evidence that any person has  
3 violated this article or the rules of the commissioner or has engaged in any  
4 unlawful practice as defined in section 44-1522 with respect to the sale of  
5 subdivided lands or deviated from the provisions of the public report or  
6 special order of exemption, or has been indicted for fraud or against whom an  
7 information for fraud has been filed or has been convicted of a felony,  
8 before or after the commissioner issues the public report as provided in  
9 subsection A of this section, the commissioner may conduct an investigation  
10 of the matter, issue a summary order as provided in section 32-2157, or hold  
11 a public hearing and, after the hearing, may issue the order or orders the  
12 commissioner deems necessary to protect the public interest and ensure  
13 compliance with the law, rules or public report or the commissioner may bring  
14 action in any court of competent jurisdiction against the person to enjoin  
15 the person from continuing the violation or engaging in or doing any act or  
16 acts in furtherance of the violation. The court may make orders or  
17 judgments, including the appointment of a receiver, necessary to prevent the  
18 use or employment by a person of any unlawful practices, or which may be  
19 necessary to restore to any person in interest any monies or property, real  
20 or personal, that may have been acquired by means of any practice in this  
21 article declared to be unlawful.

22 K. When it appears to the commissioner that a person has engaged in or  
23 is engaging in a practice declared to be unlawful by this article and that  
24 the person is concealing assets or self or has made arrangements to conceal  
25 assets or is about to leave the state, the commissioner may apply to the  
26 superior court, ex parte, for an order appointing a receiver of the assets of  
27 the person or for a writ of ne exeat, or both.

28 L. The court, on receipt of an application for the appointment of a  
29 receiver or for a writ of ne exeat, or both, shall examine the verified  
30 application of the commissioner and other evidence that the commissioner may  
31 present the court. If satisfied that the interests of the public require the  
32 appointment of a receiver or the issuance of a writ of ne exeat without  
33 notice, the court shall issue an order appointing the receiver or issue the  
34 writ, or both. If the court determines that the interests of the public will  
35 not be harmed by the giving of notice, the court shall set a time for a  
36 hearing and require notice be given as the court deems satisfactory.

37 M. If the court appoints a receiver without notice, the court shall  
38 further direct that a copy of the order appointing a receiver be served on  
39 the person engaged in or engaging in a practice declared to be unlawful under  
40 this article by delivering the order to the last address of the person that  
41 is on file with the state real estate department. The order shall inform the  
42 person that the person has the right to request a hearing within ten days of  
43 the date of the order and, if requested, the hearing shall be held within  
44 thirty days from the date of the order.