

House Engrossed

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 117

HOUSE BILL 2446

AN ACT

AMENDING SECTIONS 32-2181 AND 33-1215, ARIZONA REVISED STATUTES; RELATING TO
CONDOMINIUMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 32-2181, Arizona Revised Statutes, is amended to
3 read:

4 32-2181. Notice to commissioner of intention to subdivide lands;
5 unlawful acting in concert; exceptions; deed
6 restrictions; definition

7 A. Before offering subdivided lands for sale or lease, the subdivider
8 shall notify the commissioner in writing of the subdivider's intention. The
9 notice shall contain:

10 1. The name and address of the owner. If the holder of any ownership
11 interest in the land is other than an individual, such as a corporation,
12 partnership or trust, a statement naming the type of legal entity and listing
13 the interest and the extent of any interest of each principal in the
14 entity. For the purposes of this section, "principal" means any person or
15 entity having a ten per cent or more financial interest or, if the legal
16 entity is a trust, each beneficiary of the trust holding a ten per cent or
17 more beneficial interest.

18 2. The name and address of the subdivider.

19 3. The legal description and area of the land.

20 4. A true statement of the condition of the title to the land,
21 including all encumbrances on the land, and a statement of the provisions
22 agreed to by the holder of any blanket encumbrance enabling a purchaser to
23 acquire title to a lot or parcel free of the lien of the blanket encumbrance
24 on completion of all payments and performance of all of the terms and
25 provisions required to be made or performed by the purchaser under the real
26 estate sales contract by which the purchaser has acquired the lot or parcel.
27 The subdivider shall file copies of documents acceptable to the department
28 containing these provisions with the commissioner before the sale of any
29 subdivision lot or parcel subject to a blanket encumbrance.

30 5. The terms and conditions on which it is intended to dispose of the
31 land, together with copies of any real estate sales contract, conveyance,
32 lease, assignment or other instrument intended to be used, and any other
33 information the owner or the owner's agent or subdivider desires to present.

34 6. A map of the subdivision which has been filed in the office of the
35 county recorder in the county in which the subdivision is located.

36 7. A brief but comprehensive statement describing the land on and the
37 locality in which the subdivision is located.

38 8. A statement of the provisions that have been made for permanent
39 access and provisions, if any, for health department approved sewage and
40 solid waste collection and disposal and public utilities in the proposed
41 subdivision, including water, electricity, gas and telephone facilities.

42 9. A statement as to the location of the nearest public common and
43 high schools available for the attendance of school age pupils residing on
44 the subdivision property.

1 10. A statement of the use or uses for which the proposed subdivision
2 will be offered.

3 11. A statement of the provisions, if any, limiting the use or
4 occupancy of the parcels in the subdivision, together with copies of any
5 restrictive covenants affecting all or part of the subdivision.

6 12. The name and business address of the principal broker selling or
7 leasing, within this state, lots or parcels in the subdivision.

8 13. A true statement of the approximate amount of indebtedness which
9 is a lien on the subdivision or any part of the subdivision and which was
10 incurred to pay for the construction of any on-site or off-site improvement,
11 or any community or recreational facility.

12 14. A true statement or reasonable estimate, if applicable, of the
13 amount of any indebtedness which has been or is proposed to be incurred by
14 an existing or proposed special district, entity, taxing area or assessment
15 district, within the boundaries of which the subdivision, or any part of the
16 subdivision, is located, and which is to pay for the construction or
17 installation of any improvement or to furnish community or recreational
18 facilities to the subdivision, and which amounts are to be obtained by ad
19 valorem tax or assessment, or by a special assessment or tax upon the
20 subdivision or any part of the subdivision.

21 15. A true statement as to the approximate amount of annual taxes,
22 special assessments or fees to be paid by the buyer for the proposed annual
23 maintenance of common facilities in the subdivision.

24 16. A statement of the provisions for easements for permanent access
25 for irrigation water where applicable.

26 17. A true statement of assurances for the completion of off-site
27 improvements, such as roads, utilities, community or recreational facilities
28 and other improvements to be included in the offering or represented as being
29 in the offering, and approval of the offering by the political subdivision
30 with authority. This statement shall include a trust agreement or other
31 evidence of assurances for delivery of the improvements and a statement of
32 the provisions, if any, for the continued maintenance of the improvements.

33 18. A true statement of the nature of any improvements to be installed
34 by the subdivider, the estimated schedule for completion and the estimated
35 costs related to the improvements which will be borne by purchasers of lots
36 in the subdivision.

37 19. A true statement of the availability of sewage disposal facilities
38 and other public utilities including water, electricity, gas and telephone
39 facilities in the subdivision, the estimated schedule for their installation,
40 and the estimated costs related to the facilities and utilities which will
41 be borne by purchasers of lots in the subdivision.

42 20. A true statement as to whether all or any portion of the
43 subdivision is located in an open range or area in which livestock may roam
44 at large under the laws of this state and what provisions, if any, have been

1 made for the fencing of the subdivision to preclude livestock from roaming
2 within the subdivided lands.

3 21. If the subdivider is a subsidiary corporation, a true statement
4 identifying the parent corporation and any of the following in which the
5 parent or any of its subsidiaries are or have been involved within the past
6 five years:

7 (a) Any subdivision in this state.

8 (b) Any subdivision, wherever located, for which registration is
9 required pursuant to the federal interstate land sales full disclosure act.

10 (c) Any subdivision, wherever located, for which registration would
11 have been required pursuant to the federal interstate land sales full
12 disclosure act but for the exemption for subdivisions whose lots are all
13 twenty acres or more in size.

14 22. A true statement identifying all other subdivisions, designated in
15 paragraph 21, in which any of the following are or, within the last five
16 years, have been directly or indirectly involved:

17 (a) The holder of any ownership interest in the land.

18 (b) The subdivider.

19 (c) Any principal or officer in the holder or subdivider.

20 23. A true statement as to whether all or any portion of the
21 subdivision is located in territory in the vicinity of a military airport as
22 defined in section 28-8461, in territory in the vicinity of a public airport
23 as defined in section 28-8486 or, on or after July 1, 2001, in a high noise
24 or accident potential zone as defined in section 28-8461. The statement
25 required pursuant to this paragraph does not require the amendment or
26 refiling of any notice filed before July 1, 2001.

27 24. IF THE SUBDIVISION IS A CONVERSION FROM MULTIFAMILY RENTAL TO
28 CONDOMINIUMS AS DEFINED IN SECTION 33-1202, A TRUE STATEMENT AS TO THE
29 FOLLOWING:

30 (a) THAT THE PROPERTY IS A CONVERSION FROM MULTIFAMILY RENTAL TO
31 CONDOMINIUMS.

32 (b) THE DATE ORIGINAL CONSTRUCTION WAS COMPLETED.

33 ~~24.~~ 25. Other information and documents and certifications as the
34 commissioner may reasonably require.

35 B. The commissioner, upon application, may grant a subdivider of lots
36 or parcels within a subdivision for which a public report was previously
37 issued by the commissioner an exemption from all or part of the notification
38 requirements of subsection A of this section. The subdivider shall file a
39 statement with the commissioner indicating the change of ownership in the
40 lots or parcels together with any material changes occurring subsequent to
41 the original approval of the subdivision within which the lots or parcels are
42 located. The statement shall further refer to the original approval by the
43 commissioner.

44 C. If the subdivision is within a groundwater active management area,
45 as defined in section 45-402, the subdivider shall accompany the notice with

1 a certificate of assured water supply issued by the director of water
2 resources, unless the subdivider has obtained a written commitment of water
3 service for the subdivision from a city, town or private water company
4 designated as having an assured water supply by the director of water
5 resources pursuant to section 45-576 or is exempt from the requirement
6 pursuant to section 45-576. If the subdivider has submitted a certificate
7 of assured water supply to a city, town or county prior to approval of the
8 plat by the city, town or county and this has been noted on the face of the
9 plat, the submission constitutes compliance with this subsection.

10 D. It is unlawful for a person or group of persons acting in concert
11 to attempt to avoid the provisions of this article by acting in concert to
12 divide a parcel of land or sell subdivision lots by using a series of owners
13 or conveyances or by any other method which ultimately results in the
14 division of the lands into a subdivision or the sale of subdivided land. The
15 plan or offering is subject to the provisions of this article. Unlawful
16 acting in concert pursuant to this subsection with respect to the sale or
17 lease of subdivision lots requires proof that the real estate licensee or
18 other licensed professional knew or with the exercise of reasonable diligence
19 should have known that property which the licensee listed or for which the
20 licensee acted in any capacity as agent was subdivided land subject to the
21 provisions of this article.

22 E. A creation of six or more lots, parcels or fractional interests in
23 improved or unimproved land, lots or parcels of any size is subject to the
24 provisions of this article except when:

25 1. Each of the lots, parcels or fractional interests represents, on
26 a partition basis, thirty-six acres or more in area of land located in this
27 state including to the center line of dedicated roads or easements, if any,
28 contiguous to the land in which the interests are held.

29 2. The lots, parcels or fractional interests are the result of a
30 foreclosure sale, the exercise by a trustee under a deed of trust of a power
31 of sale or the grant of a deed in lieu of foreclosure. This paragraph does
32 not allow circumvention of the requirements of this article.

33 3. The lots, parcels or fractional interests are created by a valid
34 order or decree of a court pursuant to and through compliance with title 12,
35 chapter 8, article 7 or by operation of law. This paragraph does not allow
36 circumvention of the requirements of this article.

37 4. The lots, parcels or fractional interests consist of interests in
38 any oil, gas or mineral lease, permit, claim or right therein and such
39 interests are regulated as securities by the United States or by this state.

40 5. The lots, parcels or fractional interests are registered as
41 securities under the laws of the United States or the laws of this state or
42 are exempt transactions under the provisions of section 44-1844, 44-1845 or
43 44-1846.

44 6. The commissioner by special order exempts offerings or
45 dispositions of any lots, parcels or fractional interests from compliance

1 with the provisions of this article upon written petition and upon a showing
2 satisfactory to the commissioner that compliance is not essential to the
3 public interest or for the protection of buyers.

4 F. In areas outside of groundwater active management areas
5 established pursuant to title 45, chapter 2, article 2, if the director of
6 water resources, pursuant to section 45-108, reports an inadequate on-site
7 supply of water to meet the needs projected by the developer or if no water
8 is available, the state real estate commissioner shall require that all
9 promotional material and contracts for the sale of lots in subdivisions
10 approved by the commissioner adequately display the director of water
11 resources' report or the developer's brief summary of the report as approved
12 by the commissioner on the proposed water supply for the subdivision.

13 G. The commissioner may require the subdivider to supplement the
14 notice of intention to subdivide lands and may require the filing of periodic
15 reports to update the information contained in the original notice of
16 intention to subdivide lands.

17 H. The commissioner may authorize the subdivider to file as the
18 notice of intention to subdivide lands, in lieu of some or all of the
19 requirements of subsection A of this section, a copy of the statement of
20 record filed with respect to the subdivision pursuant to the federal
21 interstate land sales full disclosure act if the statement complies with the
22 requirements of the act and the regulations pertinent to the act.

23 I. Neither a real estate sales contract, conveyance, lease,
24 assignment or other instrument to transfer any interest in subdivided land
25 nor any covenant or restriction affecting real property shall contain any
26 provision limiting the right of any party to appear or testify in support of
27 or opposition to zoning changes, building permits or any other official acts
28 affecting real property before a governmental body or official considering
29 zoning changes, building permits or any other official acts affecting real
30 property, whether the property is located within or outside of the boundaries
31 of the subdivision. All contractual provisions which conflict with this
32 subsection are declared to be contrary to public policy. Nothing contained
33 in this subsection shall prohibit private restrictions on the use of any real
34 property.

35 J. Before offering subdivided lands for lease or sale the subdivider
36 who makes any promises through any form of advertising media that the
37 subdivided lands will be exclusively a retirement community or one which is
38 limited to the residency of adults or senior citizens shall include the
39 promises in the deed restrictions affecting any interest in real property
40 within the subdivided lands.

41 Sec. 2. Section 33-1215, Arizona Revised Statutes, is amended to read:

42 33-1215. Contents of declaration

43 A. The declaration shall contain:

1 1. The name of the condominium, which shall include the word
2 "condominium" or be followed by the words "a condominium", and the name of
3 the association.

4 2. The name of every county in which any portion of the condominium
5 is located.

6 3. A legal description of the real estate included in the condominium.

7 4. A description of the boundaries of each unit created by the
8 declaration, including each unit's identifying number.

9 5. A description of any limited common elements, other than those
10 specified in section 33-1212, paragraphs 2 and 4, but the declaration shall
11 contain a description of any porches, balconies, patios and entryways, if
12 any, as provided in section 33-1219, subsection B, paragraph 11.

13 6. A description of any development rights and other special declarant
14 rights, together with a legal description of the real estate to which each
15 of those rights applies, any time limit within which each of those rights
16 must be exercised and any other conditions or limitations under which the
17 rights described in this paragraph may be exercised or will lapse.

18 7. An allocation to each unit of the allocated interests in the manner
19 described in section 33-1217.

20 8. Any restrictions on use, occupancy and alienation of the units.

21 9. All matters required by sections 33-1216, 33-1217, 33-1218,
22 33-1219, AND 33-1226 and SECTION 33-1243, subsection D.

23 10. A statement that the assessment obligation of the unit owner under
24 section 33-1255 is secured by a lien on the owner's unit in favor of the
25 association pursuant to section 33-1256.

26 11. IF THE CONDOMINIUM IS A CONVERSION FROM MULTIFAMILY RENTAL TO
27 CONDOMINIUMS, A STATEMENT CONTAINING ALL OF THE FOLLOWING:

28 (a) A STATEMENT THAT THE PROPERTY IS A CONVERSION FROM MULTIFAMILY
29 RENTAL TO CONDOMINIUMS.

30 (b) THE DATE ORIGINAL CONSTRUCTION WAS COMPLETED.

31 (c) THE NAME AND ADDRESS OF THE ORIGINAL OWNER, BUILDER, DEVELOPER AND
32 GENERAL CONTRACTOR AS SHOWN ON THE APPLICABLE CITY, TOWN OR COUNTY BUILDING
33 PERMIT.

34 (d) THE NAME AND ADDRESS OF EACH SUBSEQUENT OWNER AS DETERMINED BY A
35 SEARCH OF THE COUNTY RECORDER'S RECORDS IN THE COUNTY IN WHICH THE PROPERTY
36 IS LOCATED.

37 (e) THE SUBDIVIDER'S AGREEMENT TO PROVIDE THE FOLLOWING INFORMATION
38 ON REQUEST:

39 (i) THE NAME AND ADDRESS OF ANY BUILDER, DEVELOPER, GENERAL
40 CONTRACTOR, SUBCONTRACTORS, ARCHITECTS AND ENGINEERS WHO DESIGNED OR MADE
41 IMPROVEMENTS TO THE PROPERTY IMMEDIATELY BEFORE THE FIRST CONDOMINIUM WAS
42 SOLD.

43 (ii) A SPECIFIC DESCRIPTION OF ALL IMPROVEMENTS MADE,

1 B. IF A CITY, TOWN OR COUNTY IS UNABLE TO PRODUCE A BUILDING PERMIT
2 AS REQUIRED IN SUBSECTION A, PARAGRAPH 11, SUBDIVISION (c) OF THIS SECTION,
3 THE SUBDIVIDER SHALL SUBMIT A LETTER FROM THE APPLICABLE CITY, TOWN OR COUNTY
4 STATING THAT THE INFORMATION REQUIRED BY SUBSECTION A, PARAGRAPH 11,
5 SUBDIVISION (c) OF THIS SECTION IS NOT AVAILABLE.
6 B. C. The declaration may contain any other matters the declarant
7 deems appropriate.

APPROVED BY THE GOVERNOR MAY 1, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2002.

Passed the House April 9, 2002,

Passed the Senate April 25, 2002,

by the following vote: 47 Ayes,

by the following vote: 27 Ayes,

6 Nays, 7 Not Voting

0 Nays, 3 Not Voting

Jake Flake
Speaker of the House
Pro Tempore

Ronald S. Swad
President of the Senate

Norman L. Fyoo
Chief Clerk of the House

Charmine Ballester
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

29 day of April, 2002

at 3:23 o'clock P. M.

Sandra Gray
Secretary to the Governor

Approved this 1 day of

May, 2002,

at 12:29 o'clock P. M.

Jane Dee Hull
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 1st day of May, 2002,

at 2:37 o'clock P. M.
Betty Bayless
Secretary of State

H.B. 2446