

Conference Engrossed

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

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

CHAPTER 271

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 AND INCLUDE THE LEGAL DESCRIPTION OF THE
10 AFFECTED LAND. THE COMMISSIONER SHALL ALSO PROVIDE NOTICE OF THE ORDER OR
11 SUSPENSION TO ALL AFFECTED PARTIES WITH AN OWNERSHIP INTEREST OF RECORD IN
12 ANY LOT, PARCEL OR FRACTIONAL INTEREST IN THE SUBDIVISION PROPERTY WITHIN TEN
13 BUSINESS DAYS OF ISSUING THE ORDER OF SUSPENSION.

14 B. In the event of revocation of any of the orders which require
15 recording in subsection A, an order of release shall be recorded in the same
16 manner WITHIN TEN BUSINESS DAYS AFTER THE REVOCATION.

17 C. THE DEPARTMENT SHALL RECORD A PUBLIC NOTICE FOR EACH PLAT, PARCEL
18 OR LOT IN THE COUNTY IN WHICH THE SUBDIVIDED LAND IS LOCATED WHEN THE LAND
19 HAS BEEN SUBDIVIDED IN VIOLATION OF THIS ARTICLE. THE NOTICE SHALL INCLUDE
20 THE LEGAL DESCRIPTION OF THE AFFECTED LAND AND PROVIDE THAT A CITY OR TOWN
21 PURSUANT TO AUTHORITY GRANTED BY THE STATE UNDER TITLE 9 OR TO A COUNTY
22 PURSUANT TO AUTHORITY GRANTED UNDER TITLE 11 MAY DECLINE TO ISSUE BUILDING
23 PERMITS FOR THE LAND UNTIL THE REQUISITE STATE AND LOCAL APPROVAL IS
24 ACQUIRED. THE DEPARTMENT SHALL RECORD A RELEASE IN THE SAME MANNER WITHIN
25 TEN BUSINESS DAYS AFTER THE SUBDIVISION IS IN COMPLIANCE WITH THIS ARTICLE.

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

28 32-2185.09. Civil penalties; limitation

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

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

42 C. A SUBDIVIDER WHO SELLS OR LEASES IN THIS STATE ANY LOTS, PARCELS OR
43 FRACTIONAL INTEREST IN A SUBDIVISION WITHOUT FIRST OBTAINING A PUBLIC REPORT
44 FROM THE COMMISSIONER EXCEPT AS PROVIDED IN SECTION 32-2181.01 OR 32-2182.02
45 FOR A LOT OR LOTS CREATED FROM AND AFTER DECEMBER 31, 2008 AND ON AN ORDER

1 ISSUED BY THE COMMISSIONER, MAY BE ASSESSED A CIVIL PENALTY BY THE
2 COMMISSIONER, AFTER A HEARING, IN AN AMOUNT NOT TO EXCEED FIVE THOUSAND
3 DOLLARS FOR EACH INFRACTION. A PROCEEDING FOR THE IMPOSITION OF A CIVIL
4 PENALTY OR SUSPENSION OR REVOCATION OF A LICENSE FOR A VIOLATION OF THIS
5 SUBSECTION OR ANY RULE ADOPTED OR ORDER ISSUED BY THE COMMISSIONER MUST BE
6 COMMENCED WITHIN FIVE YEARS OF ACTUAL DISCOVERY BY THE DEPARTMENT OR
7 DISCOVERY THAT SHOULD HAVE OCCURRED WITH THE EXERCISE OF REASONABLE DILIGENCE
8 BY THE DEPARTMENT.

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

11 32-2195.12. Recording of actions

12 A. WHENEVER THE COMMISSIONER ISSUES A CEASE AND DESIST ORDER, OBTAINS
13 A COURT ORDER ENJOINING FURTHER SALES, ISSUES AN ORDER OF PROHIBITION OR
14 SUSPENDS APPROVAL OF AN UNSUBDIVIDED LANDS PUBLIC REPORT, THE ACTION SHALL BE
15 RECORDED IN THE BOOK OF DEEDS IN THE OFFICE OF THE COUNTY RECORDER IN ANY
16 COUNTY IN WHICH THE UNSUBDIVIDED PROPERTY IS LOCATED AND INCLUDE THE LEGAL
17 DESCRIPTION OF THE AFFECTED LAND. THE COMMISSIONER SHALL ALSO PROVIDE NOTICE
18 OF THE ORDER OR SUSPENSION TO ALL AFFECTED PARTIES WITH AN OWNERSHIP INTEREST
19 OF RECORD IN ANY LOT, PARCEL OR FRACTIONAL INTEREST, IN THE UNSUBDIVIDED
20 PROPERTY WITHIN TEN BUSINESS DAYS OF ISSUING THE ORDER OR SUSPENSION.

21 B. IN THE EVENT OF A REVOCATION OF ANY OF THE ORDERS WHICH REQUIRE
22 RECORDING IN SUBSECTION A, AN ORDER OF RELEASE SHALL BE RECORDED IN THE SAME
23 MANNER WITHIN TEN BUSINESS DAYS.

24 Sec. 4. Section 33-422, Arizona Revised Statutes, is amended to read:

25 33-422. Land divisions; recording; disclosure affidavit

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

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

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

35 D. The buyer has the right to rescind the sales transaction for a
36 period of five days after the affidavit of disclosure is furnished to the
37 buyer.

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

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

When recorded mail to:

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

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.

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

1 14. The sale of the property does does not . . . meet the
2 requirements of A.R.S. § 11-809 regarding land divisions. If those
3 requirements are not met, the property owner may not be able to
4 obtain a building permit. The seller or property owner shall
5 disclose each of the deficiencies to the buyer.

6 Explain: _____
7 _____
8 _____

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

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

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

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

25 This affidavit of disclosure supersedes any previously recorded
26 affidavit of disclosure.

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

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

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

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

33 State of Arizona)

34) ss.

35 County of _____)

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

38 _____
39 Notary public

40 My commission expires:
41 _____ (date)

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

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

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

1 19. USE OF THE PROPERTY IS IS NOT LIMITED IN ANY WAY
2 RELATING TO AN ENCUMBRANCE OF TITLE DUE TO A LIS PENDENS, A COURT
3 ORDER OR A STATE REAL ESTATE DEPARTMENT ORDER OR A PENDING LEGAL
4 ACTION. IF THE USE OF THE PROPERTY IS LIMITED DUE TO AN
5 ENCUMBRANCE OF TITLE, THE SELLER OR PROPERTY OWNER SHALL DISCLOSE
6 THE LIMITATIONS TO THE BUYER.

7 EXPLAIN: _____
8 _____
9 _____

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

17 Sec. 5. Emergency

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

APPROVED BY THE GOVERNOR JUNE 16, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 16, 2008.