House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

CHAPTER 17

HOUSE BILL 2310

AN ACT

AMENDING SECTION 32-2183, ARIZONA REVISED STATUTES; RELATING TO SUBDIVISIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 32-2183, Arizona Revised Statutes, is amended to read:

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

A. Upon examination of a subdivision, the commissioner, unless there are grounds for denial, shall issue to the subdivider a public report authorizing the sale or lease in this state of the lots, parcels or fractional interests within the subdivision. The report shall contain the data obtained in accordance with section 32-2181 and any other information which the commissioner determines is necessary to implement the purposes of this article. If any of the lots, parcels or fractional interests within the subdivision are located within territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, under a military training route as delineated in the military training route map prepared pursuant to section 37-102, under restricted air space as delineated in the restricted air space map prepared pursuant to section 37-102 or contained in the military electronics range as delineated in the military electronics range map prepared pursuant to section 37-102, the report shall include, in bold twelve point font block letters on the first page of the report, the statements required pursuant to section 28-8484, subsection A, section 32-2183.05 or section 32-2183.06 and, if the department has been provided a map prepared pursuant to section 28-8484, subsection B or section 37-102, the report shall include a copy of the map. The military airport report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2001 or on or before December 31 of the year in which the lots, parcels or fractional interests within a subdivision become territory in the vicinity of a military airport or ancillary military facility. The military training route report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2004. The restricted air space report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2006. The military electronics range report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2008. The commissioner shall require the subdivider to reproduce the report, make the report available to each prospective customer and furnish each buyer or lessee with a copy before the buyer or lessee signs any offer to purchase or lease, taking a receipt therefor.

B. This section shall not be construed to require a public report issued sixty or fewer days prior to the filing of the military electronics range map prepared pursuant to section 37-102 to meet the military electronics range notification requirements of this section.

C. A public report issued sixty-one or more days after the filing of the military electronics range map prepared pursuant to section 37-102 shall meet all of the requirements of subsection A of this section.

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

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

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

3. The department shall assign a registration number to each notification and public report submitted pursuant to this subsection and shall maintain a database of all of these submissions. The subdivider shall place the number on each public report.

4. ~~The department shall determine within fifteen business days after the~~ ON receipt of the notification and public report, ~~whether the notification and public report are administratively complete. The commissioner either may issue~~ THE DEPARTMENT SHALL REVIEW AND ISSUE WITHIN TEN BUSINESS DAYS EITHER a certification that the notification and public report are administratively complete or ~~may deny issuance of the certification~~ A DENIAL LETTER if it appears that the application or project is not in compliance with all legal requirements, that the applicant has a background of violations of state or federal law or that the applicant or project presents an unnecessary risk of harm to the public. IF THE COMMISSIONER HAS RECEIVED THE NOTIFICATION AND PUBLIC REPORT BUT HAS NOT ISSUED A CERTIFICATION OR A DENIAL LETTER WITHIN TEN BUSINESS DAYS PURSUANT TO THIS PARAGRAPH, THE NOTIFICATION AND PUBLIC REPORT ARE ADMINISTRATIVELY COMPLETE.

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

6. Before or after the commissioner issues a certificate of administrative completeness OR, IF APPLICABLE, AFTER THE NOTIFICATION AND PUBLIC REPORT ARE DEEMED TO BE ADMINISTRATIVELY COMPLETE PURSUANT TO PARAGRAPH 4 OF THIS SUBSECTION, the department may examine any public report, subdivision or applicant that has applied for or received the certificate. If the commissioner determines that the subdivider or subdivision is not in compliance with any requirement of state law or that grounds exist under this chapter to suspend, deny or revoke a public report, the commissioner may commence an administrative action under section 32-2154 or 32-2157. If the subdivider immediately corrects the deficiency and comes into full compliance

with state law, the commissioner shall vacate any action that the commissioner may have commenced pursuant to section 32-2154 or 32-2157.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Failure of any blanket encumbrance or valid supplementary agreement executed by the holder of the blanket encumbrance to contain provisions that enable the purchaser to acquire title to a lot or parcel free of the lien of the blanket encumbrance, on completion of all payments and performance of all of the terms and provisions required to be made or performed by the purchaser under the real estate sales contract by which the purchaser has acquired the lot or parcel. The subdivider shall file copies of documents acceptable to the commissioner containing these provisions with the commissioner before the sale of any subdivision lot or parcel subject to a blanket encumbrance.

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

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

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

1. All proposed or promised subdivision improvements are completed.

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

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

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

G. If the subdivision is within an active management area, as defined in section 45-402, the commissioner shall deny issuance of a public report or the use of any exemption pursuant to section 32-2181.02, subsection B unless the subdivider has been issued a certificate of assured water supply by the director of water resources and has paid all applicable fees pursuant to sections 48-3772 and 48-3774.01, or unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or

private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576.

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

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

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

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

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

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

J. Any applicant objecting to the denial of a public report, within thirty days after receipt of the order of denial, may file a written request for a hearing. The commissioner shall hold the hearing within twenty days after receipt of the request for a hearing unless the party requesting the hearing has requested a postponement. If the hearing is not held within twenty days after a request for a hearing is received, plus the period of any

postponement, or if a proposed decision is not rendered within forty-five days after submission, the order of denial shall be rescinded and a public report issued.

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

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

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

N. The court, on receipt of an application for the appointment of a receiver or for a writ of ne exeat, or both, shall examine the verified application of the commissioner and other evidence that the commissioner may present the court. If satisfied that the interests of the public require the

appointment of a receiver or the issuance of a writ of ne exeat without notice, the court shall issue an order appointing the receiver or issue the writ, or both. If the court determines that the interests of the public will not be harmed by the giving of notice, the court shall set a time for a hearing and require notice be given as the court deems satisfactory.

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

APPROVED BY THE GOVERNOR JULY 9, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 9, 2009.

Passed the House May 12, 20 09

by the following vote: 34 Ayes,

24 Nays, 2 Not Voting

Speaker of the House

Norman L. Moore

Chief Clerk of the House

Passed the Senate June 22, 20 09

by the following vote: 21 Ayes,

8 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

1st day of July, 20 09

at 8:25 o'clock A. M.

Susan K Myers

Secretary to the Governor

Approved this 9th day of

July 2009

at 3:14 o'clock P M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 9 day of July, 20 09

at 4:15 o'clock P. M.

Ken Bennett

Secretary of State

H.B. 2310