

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

# HOUSE BILL 2323

AN ACT

AMENDING SECTION 33-423, 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~~ AND ancillary military facilities as defined  
15 in 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~~ AND 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 fissures as shown on maps issued by the Arizona~~  
25 ~~geological survey or on other officially adopted and readily available~~  
26 ~~governmental maps.~~  
27 6. FISSURES AS SHOWN ON EARTH FISSURE MAPS ISSUED BY THE ARIZONA  
28 GEOLOGICAL SURVEY OR PURSUANT TO SECTION 27-152.01, PARAGRAPH 3.  
29 7. Special tax assessment areas OR TAXING AUTHORITY AND AMOUNT OF  
30 SPECIAL ASSESSMENTS IN ADDITION TO AD VALOREM TAXES as shown in the current  
31 tax records of the applicable county assessor.  
32 8. Radon gas potential zones as shown on current maps issued by the  
33 United States environmental protection agency.  
34 9. Environmental hazard superfund sites ~~as shown in reports from the~~  
35 ~~United States environmental protection agency or on maps issued by the~~  
36 ~~department of environmental quality.~~ INCLUDING THE SITES LISTED IN THE  
37 ARIZONA SUPERFUND PROGRAM LIST AND THE WATER QUALITY ASSURANCE REVOLVING FUND  
38 REGISTRY OR LISTED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
39 INCLUDING THE NATIONAL PRIORITIES LIST, THE COMPREHENSIVE ENVIRONMENTAL  
40 RESPONSE COMPENSATION AND LIABILITY INFORMATION SYSTEM DATABASE OR ON MAPS  
41 ISSUED BY THE ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY OR EQUIVALENT  
42 DATABASES OF THOSE SITES.  
43 10. ANY OTHER CONDITION THAT AFFECTS THE REAL PROPERTY WHICH THE BUYER  
44 OR SELLER AUTHORIZES AND THE THIRD PARTY PROVIDER AGREES TO PROVIDE IN A  
45 THIRD PARTY PROVIDER DISCLOSURE REPORT.

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

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

6 2. The third party provider shall carry ERRORS AND OMISSIONS insurance  
7 coverage with limits of at least ~~ten~~ ONE million dollars per occurrence AND  
8 IN AN AGGREGATE OF AT LEAST TEN MILLION DOLLARS. A PERSON WHO VIOLATES THIS  
9 PARAGRAPH IS GUILTY OF A CLASS 1 MISDEMEANOR.

10 C. If an action is brought as a result of an error, inaccuracy or  
11 omission in the disclosure made only by ~~the~~ A third party provider WHO IS  
12 PROVIDING INFORMATION PURSUANT TO SUBSECTION A OF THIS SECTION, the third  
13 party provider shall provide a defense against the action, shall indemnify  
14 the ~~person for any judgment rendered~~ BUYER OR SELLER WHO AUTHORIZED THE  
15 DISCLOSURE REPORT AND PERSONS LICENSED PURSUANT TO TITLE 32, CHAPTER 20 WHO  
16 REPRESENT THE BUYER OR SELLER and shall reimburse reasonable attorney fees  
17 and costs incurred in defending the action, unless the ~~person~~ BUYER, SELLER  
18 OR AGENT FOR THE BUYER OR SELLER had knowledge of the error, inaccuracy or  
19 omission or the person modified the disclosure and the modification resulted  
20 in the error, inaccuracy or omission. Nothing in this section shall be  
21 construed to prohibit a third party provider of information from agreeing by  
22 contract that the third party provider shall indemnify a person to a greater  
23 extent than is required by this section.

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

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

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

35 G. THE LISTING OF A CONDITION IN SUBSECTION A OF THIS SECTION OR IN A  
36 THIRD PARTY PROVIDER DISCLOSURE REPORT SHALL NOT IN AND OF ITSELF MAKE THAT  
37 CONDITION MATERIAL OR IMMATERIAL TO A PARTICULAR REAL ESTATE TRANSACTION.  
38 THE MATERIALITY OF ANY DISCLOSURE IS GOVERNED AS OTHERWISE PROVIDED BY LAW.

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

41 33-424. Representation of legal requirement; enforcement;  
42 private action; classification

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

- 1           1. THAT SUCH A DISCLOSURE REPORT IS REQUIRED BY LAW TO BE PURCHASED.  
2           2. THAT A BUYER, A SELLER OR A PERSON LICENSED PURSUANT TO TITLE 32,  
3 CHAPTER 20 WHO REPRESENTS A BUYER OR SELLER IS REQUIRED TO COMPLY WITH  
4 SECTION 33-423 BY PURCHASING A THIRD PARTY DISCLOSURE REPORT.  
5           3. THAT THE THIRD PARTY PROVIDER OFFERS PROTECTION FROM LIABILITY FOR  
6 OR INFORMATION ABOUT PROPERTY CONDITIONS THAT ARE NOT THE SUBJECT OF THE  
7 THIRD PARTY PROVIDER REPORT OR THAT ARE NOT WITHIN THE CURRENT ABILITY OF THE  
8 THIRD PARTY PROVIDER TO PROVIDE.  
9           B. AN ACT OR PRACTICE IN VIOLATION OF THIS SECTION OR SECTION 33-423,  
10 SUBSECTION B, PARAGRAPH 2 IS SUBJECT TO ENFORCEMENT THROUGH PRIVATE ACTION  
11 AND PROSECUTION BY THE ATTORNEY GENERAL OR BY THE COUNTY ATTORNEY OF THE  
12 COUNTY IN WHICH THE REAL PROPERTY IS LOCATED.  
13           C. A PERSON WHO RECEIVES MARKETING MATERIALS, CONTRACTS OR OTHER  
14 COMMUNICATION IN VIOLATION OF THIS SECTION MAY BRING AN ACTION PURSUANT TO  
15 THIS SECTION IN ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY IN WHICH  
16 THE REAL PROPERTY IS LOCATED.  
17           D. A THIRD PARTY PROVIDER WHO OFFERS A DISCLOSURE REPORT PURSUANT TO  
18 SECTION 33-423 AND WHO IS FOUND TO HAVE VIOLATED THIS SECTION IN ADDITION TO  
19 ANY OTHER REMEDIES PROVIDED BY LAW, IS LIABLE TO THE PARTY RECEIVING THE  
20 MARKETING MATERIALS, CONTRACTS OR OTHER COMMUNICATION FOR DAMAGES OF NOT MORE  
21 THAN TWO THOUSAND DOLLARS PER OCCURRENCE. IN ANY ACTION BROUGHT PURSUANT TO  
22 THIS SECTION THE SUCCESSFUL PARTY SHALL BE AWARDED REASONABLE COSTS AND  
23 ATTORNEYS FEES.  
24           E. A PERSON WHO VIOLATES SUBSECTION A OF THIS SECTION IS GUILTY OF A  
25 CLASS 1 MISDEMEANOR.