

REFERENCE TITLE: subdivision property disclosure report

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

SB 1448

Introduced by
Senator Chevront

AN ACT

AMENDING SECTIONS 28-8484, 32-2101, 32-2117, 32-2181, 32-2181.02, 32-2181.03, 32-2182, 32-2183, 32-2183.01, 32-2183.03, 32-2183.05, 32-2183.06, 32-2184, 32-2185.06, 32-2195.03, 33-1260, 33-1806, 45-108.02, 45-139.01, 48-6411 AND 48-6412, ARIZONA REVISED STATUTES; RELATING TO REAL ESTATE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 28-8484, Arizona Revised Statutes, is amended to
3 read:

4 28-8484. Military airport disclosure; residential property

5 A. Any ~~publie~~ SUBDIVISION PROPERTY DISCLOSURE report issued after
6 December 31, 2001 pursuant to section 32-2183 or 32-2195.03 applicable to
7 property that is located within territory in the vicinity of a military
8 airport shall include the following statements:

9 1. That the property is located within territory in the vicinity of a
10 military airport.

11 2. If the state real estate department has been provided the registry
12 of information described in section 28-8483, that the state real estate
13 department maintains a registry of information, including the maps of
14 military flight operations provided by the military airport, pursuant to
15 section 28-8483 and, if provided to the department, the map prepared by the
16 military airport pursuant to subsection B of this section.

17 3. If the state real estate department has been provided the registry
18 of information described in section 28-8483, that the information is
19 available to the public on request.

20 B. Each military airport may provide the state real estate department
21 and each political subdivision with territory in the vicinity of the military
22 airport with a map that is in electronic form and that is eight and one-half
23 inches by eleven inches in size showing the exterior boundaries of each
24 territory in the vicinity of a military airport and the exterior boundaries
25 of each high noise or accident potential zone. The state real estate
26 department shall work closely with each military airport and political
27 subdivisions with territory in the vicinity of a military airport as
28 necessary to create a map that is visually useful in determining whether
29 property is located in or outside of a territory in the vicinity of a
30 military airport or in or outside of a high noise or accident potential
31 zone. If there are changes to the map, the military airport shall notify the
32 state real estate department and political subdivisions of the changes and
33 shall provide a new map in electronic form. If a new map is provided, the
34 department and the political subdivisions shall include the map in the
35 registry of information maintained pursuant to section 28-8483. The map
36 shall be included in ~~publie~~ SUBDIVISION PROPERTY DISCLOSURE reports issued
37 pursuant to section 32-2183 or 32-2195.03, and the map shall be available to
38 the public on request.

39 C. For any lot reservation or conditional sale that occurs before the
40 issuance of a ~~publie~~ SUBDIVISION PROPERTY DISCLOSURE report, the disclosure
41 statements listed in subsection A of this section shall be included within
42 the reservation document or conditional sales contract.

43 D. This section does not require the amendment or reissuance of any
44 ~~publie~~ SUBDIVISION PROPERTY DISCLOSURE report issued on or before December

1 31, 2001 or the amendment or reissuance of any reservation document or
2 conditional sales contract accepted on or before December 31, 2001.

3 E. From and after December 31, 2006, a seller of residential real
4 estate shall provide a written disclosure to the purchaser if the property is
5 located in territory in the vicinity of a military airport or ancillary
6 military facility as delineated on a map prepared by the state land
7 department pursuant to section 37-102 prior to the transfer of title. This
8 subsection does not require additional disclosure by a seller of residential
9 real estate that has already provided the disclosure in a ~~public~~ **SUBDIVISION**
10 **PROPERTY DISCLOSURE** report pursuant to section 32-2183 or ~~32-2195.05~~
11 **32-2195.03**.

12 Sec. 2. Section 32-2101, Arizona Revised Statutes, is amended to read:
13 **32-2101. Definitions**

14 In this chapter, unless the context otherwise requires:

15 1. "Acting in concert" means evidence of collaborating to pursue a
16 concerted plan.

17 2. "Advertising" means the attempt by publication, dissemination,
18 exhibition, solicitation or circulation, oral or written, or for broadcast on
19 radio or television to induce directly or indirectly any person to enter into
20 any obligation or acquire any title or interest in lands subject to this
21 chapter including the land sales contract to be used and any photographs,
22 drawings or artist's presentations of physical conditions or facilities
23 existing or to exist on the property. Advertising does not include:

24 (a) Press releases or other communications delivered to newspapers,
25 periodicals or other news media for general information or public relations
26 purposes if no charge is made by the newspapers, periodicals or other news
27 media for the publication or use of any part of these communications.

28 (b) Communications to stockholders as follows:

29 (i) Annual reports and interim financial reports.

30 (ii) Proxy materials.

31 (iii) Registration statements.

32 (iv) Securities prospectuses.

33 (v) Applications for listing of securities on stock exchanges.

34 (vi) Prospectuses.

35 (vii) Property reports.

36 (viii) Offering statements.

37 3. "Affiliate" means a person who, directly or indirectly through one
38 or more intermediaries, controls, is controlled by or is under common control
39 with the person specified.

40 4. "Associate broker" means a licensed broker employed by another
41 broker. Unless otherwise specifically provided, an associate broker has the
42 same license privileges as a salesperson.

43 5. "Barrier" means a natural or man-made geographical feature that
44 prevents parcels of land from being practicably, reasonably and economically

1 united or reunited and that was not caused or created by the owner of the
2 parcels.

3 6. "Blanket encumbrance" means any mortgage, any deed of trust or any
4 other encumbrance or lien securing or evidencing the payment of money and
5 affecting more than one lot or parcel of subdivided land, or an agreement
6 affecting more than one lot or parcel by which the subdivider holds the
7 subdivision under an option, contract to sell or trust agreement. Blanket
8 encumbrance does not include taxes and assessments levied by public
9 authority.

10 7. "Board" means the state real estate advisory board.

11 8. "Broker", when used without modification, means a person who is
12 licensed as a broker under this chapter or who is required to be licensed as
13 a broker under this chapter.

14 9. "Camping site" means a space designed and promoted for the purpose
15 of locating any trailer, tent, tent trailer, pickup camper or other similar
16 device used for camping.

17 10. "Cemetery" or "cemetery property" means any one, or a combination
18 of more than one, of the following in a place used, or intended to be used,
19 and dedicated for cemetery purposes:

20 (a) A burial park, for earth interments.

21 (b) A mausoleum, for crypt or vault entombments.

22 (c) A crematory, or a crematory and columbarium, for cinerary
23 interments.

24 (d) A cemetery plot, including interment rights, mausoleum crypts,
25 niches and burial spaces.

26 11. "Cemetery broker" means a person other than a real estate broker or
27 real estate salesperson who, for another, for compensation:

28 (a) Sells, leases or exchanges cemetery property or interment services
29 of or for another, or on the person's own account.

30 (b) Offers for another or for the person's own account to buy, sell,
31 lease or exchange cemetery property or interment services.

32 (c) Negotiates the purchase and sale, lease or exchange of cemetery
33 property or interment services.

34 (d) Negotiates the purchase or sale, lease or exchange, or lists or
35 solicits, or negotiates a loan on or leasing of cemetery property or
36 interment services.

37 12. "Cemetery salesperson" means a natural person who acts on the
38 person's own behalf or through and on behalf of a professional limited
39 liability company or a professional corporation engaged by or on behalf of a
40 licensed cemetery or real estate broker, or through and on behalf of a
41 corporation, partnership or limited liability company that is licensed as a
42 cemetery or real estate broker, to perform any act or transaction included in
43 the definition of cemetery broker.

44 13. "Commissioner" means the state real estate commissioner.

1 14. "Common promotional plan" means a plan, undertaken by a person or a
2 group of persons acting in concert, to offer lots for sale or lease. If the
3 land is offered for sale by a person or group of persons acting in concert,
4 and the land is contiguous or is known, designated or advertised as a common
5 unit or by a common name, the land is presumed, without regard to the number
6 of lots covered by each individual offering, as being offered for sale or
7 lease as part of a common promotional plan. Separate subdividers selling
8 lots or parcels in separately platted subdivisions within a master planned
9 community shall not be deemed to be offering their combined lots for sale or
10 lease as part of a common promotional plan.

11 15. "Compensation" means any fee, commission, salary, money or other
12 valuable consideration for services rendered or to be rendered as well as the
13 promise of consideration whether contingent or not.

14 16. "Contiguous" means lots, parcels or fractional interests that share
15 a common boundary or point. Lots, parcels or fractional interests are not
16 contiguous if they are separated by either of the following:

17 (a) A barrier.

18 (b) A road, street or highway that has been established by this state
19 or by any agency or political subdivision of this state, that has been
20 designated by the federal government as an interstate highway or that has
21 been regularly maintained by this state or by any agency or political
22 subdivision of this state and has been used continuously by the public for at
23 least the last five years.

24 17. "Control" or "controlled" means a person who, through ownership,
25 voting rights, power of attorney, proxy, management rights, operational
26 rights or other rights, has the right to make decisions binding on an entity,
27 whether a corporation, a partnership or any other entity.

28 18. "Corporation licensee" means a lawfully organized corporation that
29 is registered with the Arizona corporation commission and that has an officer
30 licensed as the designated broker pursuant to section 32-2125.

31 19. "Department" means the state real estate department.

32 20. "Designated broker" means the natural person who is licensed as a
33 broker under this chapter and who is either:

34 (a) Designated to act on behalf of an employing real estate, cemetery
35 or membership camping entity.

36 (b) Doing business as a sole proprietor.

37 21. "Developer" means a person who offers real property in a
38 development for sale, lease or use, either immediately or in the future, on
39 the person's own behalf or on behalf of another person, under this chapter.
40 Developer does not include a person whose involvement with a development is
41 limited to the listing of property within the development for sale, lease or
42 use.

43 22. "Development" means any division, proposed division or use of real
44 property that the department has authority to regulate, including subdivided

1 and unsubdivided lands, cemeteries, condominiums, timeshares, membership
2 campgrounds and stock cooperatives.

3 23. "Employing broker" means a person who is licensed or is required to
4 be licensed as a:

5 (a) Broker entity pursuant to section 32-2125, subsection A.

6 (b) Sole proprietorship if the sole proprietor is a broker licensed
7 pursuant to this chapter.

8 24. "Fractional interest" means an undivided interest in improved or
9 unimproved land, lots or parcels of any size created for the purpose of sale
10 or lease and evidenced by any receipt, certificate, deed or other document
11 conveying the interest. Undivided interests in land, lots or parcels created
12 in the names of a husband and wife as community property, joint tenants or
13 tenants in common, or in the names of other persons who, acting together as
14 part of a single transaction, acquire the interests without a purpose to
15 divide the interests for present or future sale or lease shall be deemed to
16 constitute only one fractional interest.

17 25. "Improved lot or parcel" means a lot or parcel of a subdivision
18 upon which lot or parcel there is a residential, commercial or industrial
19 building or concerning which a contract has been entered into between a
20 subdivider and a purchaser that obligates the subdivider directly, or
21 indirectly through a building contractor, to complete construction of a
22 residential, commercial or industrial building on the lot or parcel within
23 two years from the date on which the contract of sale for the lot is entered
24 into.

25 26. "Inactive license" means a license issued pursuant to article 2 of
26 this chapter to a licensee who is on inactive status during the current
27 license period and who is not engaged by or on behalf of a broker.

28 27. "Lease" or "leasing" includes any lease, whether it is the sole,
29 the principal or any incidental part of a transaction.

30 28. "License" means the whole or part of any agency permit,
31 certificate, approval, registration, public report, [SUBDIVISION PROPERTY](#)
32 [DISCLOSURE REPORT](#), charter or similar form of permission required by this
33 chapter.

34 29. "License period" means the period beginning with the date of
35 original issue or renewal of a particular license and ending on the
36 expiration date, if any.

37 30. "Licensee" means a person to whom a license for the current license
38 period has been granted under any provision of this chapter, and, for
39 purposes of section 32-2153, subsection A, shall include original license
40 applicants.

41 31. "Limited liability company licensee" means a lawfully organized
42 limited liability company that has a member or manager who is a natural
43 person and who is licensed as the designated broker pursuant to section
44 32-2125.

1 32. "Lot reservation" means an expression of interest by a prospective
2 purchaser in buying at some time in the future a subdivided or unsubdivided
3 lot, unit or parcel in this state. In all cases, a subsequent affirmative
4 action by the prospective purchaser must be taken to create a contractual
5 obligation to purchase.

6 33. "Master planned community" means a development that consists of two
7 or more separately platted subdivisions and that is either subject to a
8 master declaration of covenants, conditions or restrictions, is subject to
9 restrictive covenants sufficiently uniform in character to clearly indicate a
10 general scheme for improvement or development of real property or is governed
11 or administered by a master owner's association.

12 34. "Member" means a member of the real estate advisory board.

13 35. "Membership camping broker" means a person, other than a
14 salesperson, who, for compensation:

15 (a) Sells, purchases, lists, exchanges or leases membership camping
16 contracts.

17 (b) Offers to sell, purchase, exchange or lease membership camping
18 contracts.

19 (c) Negotiates or offers, attempts or agrees to negotiate the sale,
20 purchase, exchange or lease of membership camping contracts.

21 (d) Advertises or holds himself out as being engaged in the business
22 of selling, buying, exchanging or leasing membership camping contracts or
23 counseling or advising regarding membership camping contracts.

24 (e) Assists or directs in the procuring of prospects calculated or
25 intended to result in the sale, purchase, listing, exchange or lease of
26 membership camping contracts.

27 (f) Performs any of the foregoing acts as an employee or on behalf of
28 a membership camping operator or membership contract owner.

29 36. "Membership camping contract" means an agreement offered or sold in
30 this state evidencing a purchaser's right or license to use the camping or
31 outdoor recreation facilities of a membership camping operator and includes a
32 membership that provides for this use.

33 37. "Membership camping operator" means an enterprise, other than one
34 that is tax exempt under section 501(c)(3) of the internal revenue code of
35 1986, as amended, that solicits membership paid for by a fee or periodic
36 payments and has as one of its purposes camping or outdoor recreation
37 including the use of camping sites primarily by members. Membership camping
38 operator does not include camping or recreational trailer parks that are open
39 to the general public and that contain camping sites rented for a per use fee
40 or a mobile home park.

41 38. "Membership camping salesperson" means a natural person who acts on
42 the person's own behalf or through and on behalf of a professional limited
43 liability company or a professional corporation engaged by or on behalf of a
44 licensed membership camping or real estate broker, or by or on behalf of a
45 corporation, partnership or limited liability company that is licensed as a

1 membership camping or real estate broker, to perform any act or participate
2 in any transaction in a manner included in the definition of membership
3 camping broker.

4 39. "Partnership licensee" means a partnership with a managing general
5 partner who is licensed as the designated broker pursuant to section 32-2125.

6 40. "Permanent access", as required under article 4 of this chapter,
7 means permanent access from the subdivision to any federal, state or county
8 highway.

9 41. "Perpetual or endowed-care cemetery" means a cemetery wherein lots
10 or other burial spaces are sold or transferred under the representation that
11 the cemetery will receive "perpetual" or "endowed" care as defined in this
12 section free of further cost to the purchaser after payment of the original
13 purchase price for the lot, burial space or interment right.

14 42. "Perpetual-care" or "endowed-care" means the maintenance and care
15 of all places where interments have been made of the trees, shrubs, roads,
16 streets and other improvements and embellishments contained within or forming
17 a part of the cemetery. This shall not include the maintenance or repair of
18 monuments, tombs, copings or other man-made ornaments as associated with
19 individual burial spaces.

20 43. "Person" means any individual, corporation, partnership or company
21 and any other form of multiple organization for carrying on business, foreign
22 or domestic.

23 44. "Private cemetery" means a cemetery or place that is not licensed
24 under article 6 of this chapter, where burials or interments of human remains
25 are made, in which sales or transfers of interment rights or burial plots are
26 not made to the public and in which not more than ten interments or burials
27 occur annually.

28 45. "Promotion" or "promotional practice" means advertising and any
29 other act, practice, device or scheme to induce directly or indirectly any
30 person to enter into any obligation or acquire any title or interest in or
31 use of real property subject to this chapter, including meetings with
32 prospective purchasers, arrangements for prospective purchasers to visit real
33 property, travel allowances and discount, exchange, refund and cancellation
34 privileges.

35 46. "Real estate" includes leasehold-interests and any estates in land
36 as defined in title 33, chapter 2, articles 1 and 2, regardless of whether
37 located in this state.

38 47. "Real estate broker" means a person, other than a salesperson, who,
39 for another and for compensation:

40 (a) Sells, exchanges, purchases, rents or leases real estate or
41 timeshare interests.

42 (b) Offers to sell, exchange, purchase, rent or lease real estate or
43 timeshare interests.

44 (c) Negotiates or offers, attempts or agrees to negotiate the sale,
45 exchange, purchase, rental or leasing of real estate or timeshare interests.

1 (d) Lists or offers, attempts or agrees to list real estate or
2 timeshare interests for sale, lease or exchange.

3 (e) Auctions or offers, attempts or agrees to auction real estate or
4 timeshare interests.

5 (f) Buys, sells, offers to buy or sell or otherwise deals in options
6 on real estate or timeshare interests or improvements to real estate or
7 timeshare interests.

8 (g) Collects or offers, attempts or agrees to collect rent for the use
9 of real estate or timeshare interests.

10 (h) Advertises or holds himself out as being engaged in the business
11 of buying, selling, exchanging, renting or leasing real estate or timeshare
12 interests or counseling or advising regarding real estate or timeshare
13 interests.

14 (i) Assists or directs in the procuring of prospects, calculated to
15 result in the sale, exchange, leasing or rental of real estate or timeshare
16 interests.

17 (j) Assists or directs in the negotiation of any transaction
18 calculated or intended to result in the sale, exchange, leasing or rental of
19 real estate or timeshare interests.

20 (k) Incident to the sale of real estate negotiates or offers, attempts
21 or agrees to negotiate a loan secured or to be secured by any mortgage or
22 other encumbrance upon or transfer of real estate or timeshare interests
23 subject to section 32-2155, subsection C. This subdivision does not apply to
24 mortgage brokers as defined in and subject to title 6, chapter 9, article 1.

25 (l) Engages in the business of assisting or offering to assist another
26 in filing an application for the purchase or lease of, or in locating or
27 entering upon, lands owned by the state or federal government.

28 (m) Claims, demands, charges, receives, collects or contracts for the
29 collection of an advance fee in connection with any employment enumerated in
30 this section, including employment undertaken to promote the sale or lease of
31 real property by advance fee listing, by furnishing rental information to a
32 prospective tenant for a fee paid by the prospective tenant, by advertisement
33 or by any other offering to sell, lease, exchange or rent real property or
34 selling kits connected therewith. This shall not include the activities of
35 any communications media of general circulation or coverage not primarily
36 engaged in the advertisement of real estate or any communications media
37 activities that are specifically exempt from applicability of this article
38 under section 32-2121.

39 (n) Engages in any of the acts listed in subdivisions (a) through (m)
40 of this paragraph for the sale or lease of other than real property if a real
41 property sale or lease is a part of, contingent on or ancillary to the
42 transaction.

43 (o) Performs any of the acts listed in subdivisions (a) through (m) of
44 this paragraph as an employee of, or in behalf of, the owner of real estate,

1 or interest in the real estate, or improvements affixed on the real estate,
2 for compensation.

3 48. "Real estate sales contract" means an agreement in which one party
4 agrees to convey title to real estate to another party upon the satisfaction
5 of specified conditions set forth in the contract.

6 49. "Real estate salesperson" means a natural person who acts on the
7 person's own behalf or through and on behalf of a professional limited
8 liability company or a professional corporation engaged by or on behalf of a
9 licensed real estate broker, or by or on behalf of a limited liability
10 company, partnership or corporation that is licensed as a real estate broker,
11 to perform any act or participate in any transaction in a manner included in
12 the definition of real estate broker subject to section 32-2155.

13 50. "Sale" or "lease" includes every disposition, transfer, option or
14 offer or attempt to dispose of or transfer real property, or an interest, use
15 or estate in the real property, including the offering of the property as a
16 prize or gift if a monetary charge or consideration for whatever purpose is
17 required.

18 51. "Salesperson", when used without modification, means a natural
19 person who acts on the person's own behalf or through and on behalf of a
20 professional limited liability company or a professional corporation licensed
21 under this chapter or any person required to be licensed as a salesperson
22 under this chapter.

23 52. "School" means a person or entity that offers a course of study
24 towards completion of the education requirements leading to licensure or
25 renewal of licensure under this chapter.

26 53. "Stock cooperative" means a corporation to which all of the
27 following apply:

28 (a) The corporation is formed or used to hold title to improved real
29 property in fee simple or for a term of years.

30 (b) All or substantially all of the shareholders of the corporation
31 each receive a right of exclusive occupancy in a portion of the real property
32 to which the corporation holds title.

33 (c) The right of occupancy may only be transferred with the concurrent
34 transfer of the shares of stock in the corporation held by the person having
35 the right of occupancy.

36 54. "Subdivider" means any person who offers for sale or lease six or
37 more lots, parcels or fractional interests in a subdivision or who causes
38 land to be subdivided into a subdivision for the subdivider or for others, or
39 who undertakes to develop a subdivision, but does not include a public agency
40 or officer authorized by law to create subdivisions.

41 55. "Subdivision" or "subdivided lands":

42 (a) Means improved or unimproved land or lands divided or proposed to
43 be divided for the purpose of sale or lease, whether immediate or future,
44 into six or more lots, parcels or fractional interests.

1 (b) Includes a stock cooperative, lands divided or proposed to be
2 divided as part of a common promotional plan and residential condominiums as
3 defined in title 33, chapter 9.

4 (c) Does not include:

5 (i) Leasehold offerings of one year or less.

6 (ii) The division or proposed division of land located in this state
7 into lots or parcels each of which is or will be thirty-six acres or more in
8 area including to the centerline of dedicated roads or easements, if any,
9 contiguous to the lot or parcel.

10 (iii) The leasing of agricultural lands or apartments, offices, stores,
11 hotels, motels, pads or similar space within an apartment building,
12 industrial building, rental recreational vehicle community, rental
13 manufactured home community, rental mobile home park or commercial building.

14 (iv) The subdivision into or development of parcels, plots or
15 fractional portions within the boundaries of a cemetery that has been formed
16 and approved pursuant to this chapter.

17 56. "Timeshare" or "timeshare property" means real property ownership
18 or right of occupancy in real property pursuant to article 9 of this chapter.
19 For the purposes of this chapter, a timeshare is not a security unless it
20 meets the definition of a security under section 44-1801.

21 57. "Trustee" means:

22 (a) A person designated under section 32-2194.27 to act as a trustee
23 for an endowment-care cemetery fund.

24 (b) A person holding bare legal title to real property under a
25 subdivision trust. A trustee shall not be deemed to be a developer,
26 subdivider, broker or salesperson within this chapter.

27 58. "Unimproved lot or parcel" means a lot or parcel of a subdivision
28 that is not an improved lot or parcel.

29 59. "Unsubdivided lands" means land or lands divided or proposed to be
30 divided for the purpose of sale or lease, whether immediate or future, into
31 six or more lots, parcels or fractional interests and the lots or parcels are
32 thirty-six acres or more each but less than one hundred sixty acres each, or
33 that are offered, known or advertised under a common promotional plan for
34 sale or lease, except that agricultural leases shall not be included in this
35 definition.

36 Sec. 3. Section 32-2117, Arizona Revised Statutes, is amended to read:

37 32-2117. Earth fissure maps; posting; immunity

38 A. On receipt of maps from the state land department, the ~~department~~
39 ~~of~~ STATE real estate DEPARTMENT shall provide any earth fissure map to any
40 member of the public in printed or electronic format on request and provide
41 access on its web site to the earth fissure maps prepared by the state land
42 department pursuant to section 37-173, paragraph 11. The following notice
43 shall be displayed below each map:

1 estate sales contract by which the purchaser has acquired the lot or parcel.
2 The subdivider shall file copies of documents acceptable to the department
3 containing these provisions with the commissioner before the sale of any
4 subdivision lot or parcel subject to a blanket encumbrance.

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

9 6. A map of the subdivision that has been filed in the office of the
10 county recorder in the county in which the subdivision is located.

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

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

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

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

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

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

27 13. A true statement of the approximate amount of indebtedness that is
28 a lien on the subdivision or any part of the subdivision and that was
29 incurred to pay for the construction of any on-site or off-site improvement,
30 or any community or recreational facility.

31 14. A true statement or reasonable estimate, if applicable, of the
32 amount of any indebtedness that has been or is proposed to be incurred by an
33 existing or proposed special district, entity, taxing area or assessment
34 district, within the boundaries of which the subdivision, or any part of the
35 subdivision, is located, and that is to pay for the construction or
36 installation of any improvement or to furnish community or recreational
37 facilities to the subdivision, and which amounts are to be obtained by ad
38 valorem tax or assessment, or by a special assessment or tax upon the
39 subdivision or any part of the subdivision.

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

43 16. A statement of the provisions for easements for permanent access
44 for irrigation water where applicable.

1 17. A true statement of assurances for the completion of off-site
2 improvements, such as roads, utilities, community or recreational facilities
3 and other improvements to be included in the offering or represented as being
4 in the offering, and approval of the offering by the political subdivision
5 with authority. This statement shall include a trust agreement or any other
6 evidence of assurances for delivery of the improvements and a statement of
7 the provisions, if any, for the continued maintenance of the improvements.

8 18. A true statement of the nature of any improvements to be installed
9 by the subdivider, the estimated schedule for completion and the estimated
10 costs related to the improvements that will be borne by purchasers of lots in
11 the subdivision.

12 19. A true statement of the availability of sewage disposal facilities
13 and other public utilities, including water, electricity, gas and telephone
14 facilities in the subdivision, the estimated schedule for their installation,
15 and the estimated costs related to the facilities and utilities that will be
16 borne by purchasers of lots in the subdivision.

17 20. A true statement as to whether all or any portion of the
18 subdivision is located in an open range or area in which livestock may roam
19 at large under the laws of this state and what provisions, if any, have been
20 made for the fencing of the subdivision to preclude livestock from roaming
21 within the subdivided lands.

22 21. If the subdivider is a subsidiary corporation, a true statement
23 identifying the parent corporation and any of the following in which the
24 parent or any of its subsidiaries is or has been involved within the past
25 five years:

26 (a) Any subdivision in this state.

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

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

33 22. A true statement identifying all other subdivisions, designated in
34 paragraph 21 of this subsection, in which any of the following is or, within
35 the last five years, has been directly or indirectly involved:

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

37 (b) The subdivider.

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

39 23. A true statement as to whether all or any portion of the
40 subdivision is located in territory in the vicinity of a military airport or
41 ancillary military facility as defined in section 28-8461, in territory in
42 the vicinity of a public airport as defined in section 28-8486, on or after
43 July 1, 2001, in a high noise or accident potential zone as defined in
44 section 28-8461 or on or after July 1 of the year in which the subdivision
45 becomes located in a high noise or accident potential zone. The statement

1 required pursuant to this paragraph does not require the amendment or
2 refiling of any notice filed before July 1, 2001 or before July 1 of the year
3 in which the subdivision becomes located in a high noise or accident
4 potential zone.

5 24. If the subdivision is a conversion from multifamily rental to
6 condominiums as defined in section 33-1202, a true statement as to the
7 following:

8 (a) That the property is a conversion from multifamily rental to
9 condominiums.

10 (b) The date original construction was completed.

11 25. Other information and documents and certifications as the
12 commissioner may reasonably require.

13 B. The commissioner, on application, may grant a subdivider of lots or
14 parcels within a subdivision for which a ~~public~~ SUBDIVISION PROPERTY
15 DISCLOSURE report was previously issued by the commissioner an exemption from
16 all or part of the notification requirements of subsection A of this section.
17 The subdivider shall file a statement with the commissioner indicating the
18 change of ownership in the lots or parcels together with any material changes
19 occurring subsequent to the original approval of the subdivision within which
20 the lots or parcels are located. The statement shall further refer to the
21 original approval by the commissioner.

22 C. If the subdivision is within an active management area, as defined
23 in section 45-402, the subdivider shall accompany the notice with a
24 certificate of assured water supply issued by the director of water resources
25 along with proof that all applicable fees have been paid pursuant to sections
26 48-3772 and 48-3774.01, unless the subdivider has obtained a written
27 commitment of water service for the subdivision from a city, town or private
28 water company designated as having an assured water supply by the director of
29 water resources pursuant to section 45-576 or is exempt from the requirement
30 pursuant to section 45-576. If the subdivider has submitted a certificate of
31 assured water supply to a city, town or county prior to approval of the plat
32 by the city, town or county and this has been noted on the face of the plat,
33 the submission constitutes compliance with this subsection if the subdivider
34 provides proof to the commissioner that all applicable fees have been paid
35 pursuant to sections 48-3772 and 48-3774.01.

36 D. It is unlawful for a person or group of persons acting in concert
37 to attempt to avoid this article by acting in concert to divide a parcel of
38 land or sell subdivision lots by using a series of owners or conveyances or
39 by any other method that ultimately results in the division of the lands into
40 a subdivision or the sale of subdivided land. The plan or offering is
41 subject to this article. Unlawful acting in concert pursuant to this
42 subsection with respect to the sale or lease of subdivision lots requires
43 proof that the real estate licensee or other licensed professional knew or
44 with the exercise of reasonable diligence should have known that property

1 which the licensee listed or for which the licensee acted in any capacity as
2 agent was subdivided land subject to this article.

3 E. A creation of six or more lots, parcels or fractional interests in
4 improved or unimproved land, lots or parcels of any size is subject to this
5 article except when:

6 1. Each of the lots, parcels or fractional interests represents, on a
7 partition basis, thirty-six acres or more in area of land located in this
8 state, including to the centerline of dedicated roads or easements, if any,
9 contiguous to the land in which the interests are held.

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

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

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

21 5. The lots, parcels or fractional interests are registered as
22 securities under the laws of the United States or the laws of this state or
23 are exempt transactions under section 44-1844, 44-1845 or 44-1846.

24 6. The commissioner by special order exempts offerings or dispositions
25 of any lots, parcels or fractional interests from compliance with this
26 article on written petition and on a showing satisfactory to the commissioner
27 that compliance is not essential to the public interest or for the protection
28 of buyers.

29 F. In areas outside of active management areas established pursuant to
30 title 45, chapter 2, article 2:

31 1. If the subdivision is located in a county that has adopted the
32 provision authorized by section 11-806.01, subsection F, or in a city or town
33 that has enacted an ordinance pursuant to section 9-463.01, subsection 0, the
34 subdivider shall accompany the notice with a report issued by the director of
35 water resources pursuant to section 45-108 stating that the subdivision has
36 an adequate water supply, unless one of the following applies:

37 (a) The subdivider submitted the report to a city, town or county
38 before approval of the plat by the city, town or county and this has been
39 noted on the face of the plat.

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

1 (c) 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 under section 45-108.03. If the plat was approved pursuant to an authorized
7 exemption, the state real estate commissioner shall require that all
8 promotional material and contracts for the sale of lots in the subdivision
9 adequately display the following:

10 (i) The director of water resources' report or the developer's brief
11 summary of the report as approved by the commissioner on the proposed water
12 supply for the subdivision.

13 (ii) A statement describing the exemption under which the subdivision
14 was approved, including the specific conditions of the exemption that were
15 met. If the plat was approved by the legislative body of a city or town
16 pursuant to an exemption authorized by section 9-463.01, subsection K or by
17 the board of supervisors of a county pursuant to an exemption authorized by
18 section 11-806.01, subsection G, paragraph 1, the subdivider shall record the
19 document required by section 33-406.

20 (d) The subdivision received final plat approval from the city, town
21 or county before the requirement for an adequate water supply became
22 effective in the city, town or county, and there have been no material
23 changes to the plat since the final plat approval. If changes were made to
24 the plat after the final plat approval, the director of water resources shall
25 determine whether the changes are material pursuant to the rules adopted by
26 the director to implement section 45-108. If this subdivision applies, the
27 state real estate commissioner shall require that all promotional materials
28 and contracts for the sale of lots in the subdivision adequately display the
29 director of water resources' report or the developer's brief summary of the
30 report as approved by the commissioner on the proposed water supply for the
31 subdivision.

32 2. If the subdivision is not located in a county that has adopted the
33 provision authorized by section 11-806.01, subsection F or in a city or town
34 that has enacted an ordinance pursuant to section 9-463.01, subsection 0, and
35 if the director of water resources, pursuant to section 45-108, reports an
36 inadequate on-site supply of water to meet the needs projected by the
37 developer or if no water is available, the state real estate commissioner
38 shall require that all promotional material and contracts for the sale of
39 lots in subdivisions approved by the commissioner adequately display the
40 director of water resources' report or the developer's brief summary of the
41 report as approved by the commissioner on the proposed water supply for the
42 subdivision.

1 G. The commissioner may require the subdivider to supplement the
2 notice of intention to subdivide lands and may require the filing of periodic
3 reports to update the information contained in the original notice of
4 intention to subdivide lands.

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

11 I. Neither a real estate sales contract, conveyance, lease, assignment
12 or other instrument to transfer any interest in subdivided land nor any
13 covenant or restriction affecting real property shall contain any provision
14 limiting the right of any party to appear or testify in support of or
15 opposition to zoning changes, building permits or any other official acts
16 affecting real property before a governmental body or official considering
17 zoning changes, building permits or any other official acts affecting real
18 property, whether the property is located within or outside of the boundaries
19 of the subdivision. All contractual provisions that conflict with this
20 subsection are declared to be contrary to public policy. Nothing contained
21 in this subsection shall prohibit private restrictions on the use of any real
22 property.

23 J. Before offering subdivided lands for lease or sale, the subdivider
24 who makes any promises through any form of advertising media that the
25 subdivided lands will be exclusively a retirement community or one that is
26 limited to the residency of adults or senior citizens shall include the
27 promises in the deed restrictions affecting any interest in real property
28 within the subdivided lands.

29 Sec. 5. Section 32-2181.02, Arizona Revised Statutes, is amended to
30 read:

31 32-2181.02. Exempt sales and leases

32 A. The following are exempt under this article:

33 1. The sale or lease in bulk of six or more lots, parcels or
34 fractional interests to one buyer in one transaction.

35 2. The sale or lease of lots or parcels of one hundred sixty acres or
36 more.

37 B. The following are exempt from section 32-2181, subsection A and
38 section 32-2183, subsection A:

39 1. The sale or lease of parcels, lots, units or spaces that are zoned
40 and restricted to commercial or industrial uses.

41 2. The sale or lease of lots or parcels located in a single platted
42 subdivision by a subdivider if:

43 (a) A ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report has been issued
44 within the past two years pursuant to this article on the subdivision lots or
45 parcels.

1 (b) The subdivision meets all current requirements otherwise required
2 of a subdivision under this article.

3 (c) The method of sale or lease of lots or parcels meets all current
4 requirements under this article.

5 (d) The lots or parcels are included on a recorded subdivision plat
6 that is approved by a municipal or county government.

7 (e) All roads within the subdivision, all utilities to the lots or
8 parcels being offered for sale or lease and all other required improvements
9 within the subdivision, other than a residence to be built, are complete,
10 paid for and free of any blanket encumbrances.

11 (f) The roads, utilities or other improvements are not complete, but
12 the completion of all improvements is assured pursuant to section 32-2183,
13 subsection D.

14 (g) Except for matters relating to ownership, there have been no
15 material changes to the information set forth in the most recent ~~public~~
16 ~~SUBDIVISION PROPERTY DISCLOSURE~~ report issued for the subdivision lots that
17 would require an amendment to the ~~public~~ ~~SUBDIVISION PROPERTY DISCLOSURE~~
18 report.

19 (h) No owner of a ten per cent or greater interest, subdivider,
20 director, partner, agent, officer or developer of the subdivision has:

21 (i) Been convicted of a felony or any crime involving theft,
22 dishonesty, violence against another person, fraud or real estate, regardless
23 of whether the convictions were subsequently expunged.

24 (ii) Had a civil judgment entered against the person in a case
25 involving allegations of misrepresentation, fraud, breach of fiduciary duty,
26 misappropriation, dishonesty or, if the subject matter involved real
27 property, securities or investments.

28 (iii) Had a business or professional license, including a real estate
29 license, denied, suspended or revoked or voluntarily surrendered a business
30 or professional license during the course of an investigative or disciplinary
31 proceeding or other disciplinary action taken in this state or any other
32 state.

33 (i) The sale of the subdivided lands violates no laws or ordinances of
34 any governmental authority.

35 (j) Before the buyer's or lessee's execution of a purchase contract or
36 lease, the subdivider has provided the buyer or lessee with a copy of the
37 most recent ~~public~~ ~~SUBDIVISION PROPERTY DISCLOSURE~~ report on the lot and has
38 taken a receipt from the buyer for the copy.

39 (k) The subdivider has provided to the buyer or lessee, along with the
40 ~~public~~ ~~SUBDIVISION PROPERTY DISCLOSURE~~ report, a signed statement that the
41 subdivider has reviewed and is in compliance with the terms of the exemption
42 provided in this paragraph.

43 (l) Before sale or lease, the subdivider has notified the
44 commissioner, on a form provided by the department, of the subdivider's

1 intent to sell or lease lots or parcels pursuant to this paragraph. The
2 notice shall include:

- 3 (i) The name, address and telephone number of the subdivider.
- 4 (ii) The name, address and telephone number of any real estate broker
5 retained by the subdivider to make sales or leases of the lots.
- 6 (iii) The name and location of the subdivision.
- 7 (iv) The most recent subdivision ~~public~~ **PROPERTY DISCLOSURE** report
8 reference number on the lots.
- 9 (v) The completion status of subdivision improvements.

10 3. The conveyance to a person who previously conveyed the lot to a
11 home builder for the purpose of constructing a dwelling for the person.

12 4. The sale or lease by a person of individual lots or parcels that
13 were separately acquired by the person from different persons and that were
14 not acquired for the purpose of development if:

- 15 (a) The lots or parcels are not located in a platted subdivision.
- 16 (b) Each lot or parcel bears the same legal description that it bore
17 when the lot or parcel was acquired by the person.
- 18 (c) The seller or lessor is in compliance with all other applicable
19 state and local government requirements.

20 5. The sale of an improved lot in a subdivision that is located
21 outside of this state if:

- 22 (a) The subdivision is located within the United States and the sale
23 is exempt from the interstate land sales full disclosure act (P.L. 90-448; 82
24 Stat. 590; 15 United States Code sections 1701 through 1720).
- 25 (b) The subdivider is required by the state where the subdivision is
26 located to deliver a ~~public~~ **SUBDIVISION PROPERTY DISCLOSURE** report or
27 equivalent disclosure document to prospective purchasers and the subdivider
28 delivers the report or equivalent disclosure document.

29 6. The sale of an improved lot in a subdivision located in this state
30 where five or more sales were previously made by the seller if:

- 31 (a) The sale is the seller's first or second sale in the subdivision
32 within the previous twelve month period.
- 33 (b) The subdivision is located within the corporate limits of a town
34 or city.
- 35 (c) Electricity and telephone service are complete and available to
36 the improved lot.
- 37 (d) Water and sewage service is complete and available to the improved
38 lot.
- 39 (e) Streets and roads located outside of the subdivision provide
40 permanent access to the subdivision and are complete and maintained by the
41 county, town or city, or by a legally created and operational property
42 owners' association.
- 43 (f) Streets within the subdivision are dedicated, provide permanent
44 access to the lot, are complete to town or city standards and are maintained
45 by the town or city or, in the case of private streets, a legally created and

1 operational property owners' association accepts the responsibility of
2 perpetual maintenance.

3 (g) All subdivision common area improvements, including landscaping,
4 recreational facilities and other jointly used and maintained improvements,
5 are complete and maintained by a legally created and operational property
6 owners' association.

7 (h) The purchaser's down payment, earnest money, deposit or other
8 advanced money is placed and held in a neutral escrow depository in this
9 state until escrow closes and the deed is delivered to the purchaser.

10 (i) Within the previous twelve months the seller has not had an
11 ownership interest in more than two lots in the subdivision, including an
12 interest by option, an agreement for sale, a beneficial interest under a
13 trust or a purchase contract.

14 C. Nothing in this section shall be construed to increase, decrease or
15 otherwise affect any rights or powers granted the commissioner under this
16 chapter.

17 D. This section does not apply to lands on which the commissioner has
18 issued orders pursuant to sections 32-2154 and 32-2157 and section 32-2183,
19 subsection J unless the commissioner has issued a ~~public~~ SUBDIVISION PROPERTY
20 DISCLOSURE report on those lands subsequent to the date of the orders.

21 E. Nothing in this section shall be construed to increase, to decrease
22 or to otherwise affect any rights or powers granted to political subdivisions
23 of this state with respect to their jurisdictions.

24 Sec. 6. Section 32-2181.03, Arizona Revised Statutes, is amended to
25 read:

26 32-2181.03. Lot reservations: expiration

27 A. The notice of intent required by section 32-2181, subsection A or
28 section 32-2195, subsection B and the issuance of a ~~public~~ SUBDIVISION
29 PROPERTY DISCLOSURE report required by section 32-2183, subsection A or
30 section 32-2195.03, subsection A are not required for any party to enter into
31 a lot reservation on property located in this state.

32 B. Before the issuance of a ~~public~~ SUBDIVISION PROPERTY DISCLOSURE
33 report, a deposit may be accepted from a prospective buyer as a lot
34 reservation if all of the following requirements are met:

35 1. Before accepting any lot reservation, the prospective seller shall
36 mail or deliver written notice of the seller's intention to accept lot
37 reservations to the department. The notice shall include:

38 (a) The name, address and telephone number of the prospective seller.

39 (b) The name, address and telephone number of any real estate broker
40 retained by the prospective seller to promote the lot reservation program.

41 (c) The name and location of the project for which lot reservations
42 are to be offered.

43 (d) The form to be used for accepting lot reservations, subject to
44 approval by the commissioner.

1 2. The reservation deposit for a single lot or parcel shall not exceed
2 five thousand dollars.

3 3. Within one business day after a reservation is accepted by the
4 prospective seller, the reservation deposit shall be delivered to an escrow
5 agent licensed pursuant to title 6, chapter 7 and deposited by the escrow
6 agent in a depository insured by an agency of the United States. The escrow
7 account may be interest bearing at the direction of either the prospective
8 seller or prospective buyer. Payment of any account fees and payment of
9 interest monies shall be as agreed to between the prospective buyer and
10 prospective seller. All reservation deposits shall remain in an escrow
11 account until cancellation or termination of the lot reservation or execution
12 of a purchase contract.

13 4. Within fifteen calendar days of receipt by the prospective seller
14 of the ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report issued by the
15 commissioner relative to the reserved lot or parcel, the prospective seller
16 shall provide the prospective buyer with a copy of the ~~public~~ SUBDIVISION
17 PROPERTY DISCLOSURE report and a copy of the proposed purchase contract for
18 the sale of the lot or parcel. The prospective buyer and prospective seller
19 have seven business days after the prospective buyer's receipt of the ~~public~~
20 SUBDIVISION PROPERTY DISCLOSURE report and the proposed purchase contract
21 within which to enter into a contract for the purchase of the lot or parcel.
22 If the prospective buyer and prospective seller do not enter into a contract
23 for the purchase of the lot or parcel within the seven business day period,
24 the reservation automatically terminates. The prospective seller has no
25 cancellation rights other than as provided in this paragraph.

26 5. A prospective buyer may cancel a lot reservation at any time before
27 the execution of a purchase contract by delivering written notice of
28 termination to the prospective seller.

29 6. Within five business days after a lot reservation has been
30 terminated for any reason, the prospective seller shall refund to the
31 prospective buyer all reservation deposits made by the prospective buyer
32 including any interest monies earned less any account fees agreed upon, if
33 applicable. The escrow agent shall refund to the prospective buyer all
34 reservation deposits made by the prospective buyer including any interest
35 monies earned less any account fees agreed upon if the prospective seller is
36 not available. After this refund neither the prospective buyer nor the
37 prospective seller has any obligation to the other arising out of the lot
38 reservation.

39 7. A prospective buyer may not transfer rights under a reservation
40 without the prior written consent of the prospective seller, and any
41 purported transfer without the consent of the prospective seller is voidable
42 at the sole discretion of the prospective seller.

43 8. If the department denies an application for a ~~public~~ SUBDIVISION
44 PROPERTY DISCLOSURE report on the development on which lot reservations were
45 taken, within five business days of notification by the department, the

1 prospective seller shall notify in writing each prospective buyer who entered
2 into a lot reservation agreement. The prospective seller shall return any
3 reservation deposits previously taken.

4 9. All notices required by this section to be given to the department,
5 the prospective buyer or the prospective seller shall be in writing and
6 either hand delivered or sent by certified mail, return receipt requested,
7 with postage fully prepaid. Notices sent by mail are deemed delivered on the
8 earlier of actual receipt, as evidenced by the delivery receipt, or seven
9 calendar days after being deposited in the United States mail.

10 10. Each lot reservation form shall contain the following statement:

11 The state real estate department has not inspected or approved
12 this project and no ~~public~~ SUBDIVISION PROPERTY DISCLOSURE
13 report has yet been issued for the project. No offer to sell
14 may be made and no offer to purchase may be accepted before
15 issuance of a ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report for
16 the project.

17 C. The commissioner may deny authorization to accept lot reservations
18 under this section to any person who has violated or is in violation of any
19 provision of this chapter.

20 D. The authority to take lot reservations under this section expires
21 two years after the date the commissioner receives notice of the intent to
22 take lot reservations from a developer.

23 Sec. 7. Section 32-2182, Arizona Revised Statutes, is amended to read:
24 32-2182. Examination of subdivision by commissioner; fee

25 A. The commissioner shall examine any subdivision offered for sale or
26 lease, and shall make public his findings. The total cost of travel and
27 subsistence expenses incurred by the department in the examination, in
28 addition to the initial filing fee provided for in this section, shall be
29 borne by the subdivider on the basis of actual cost to the department. A
30 filing fee of five hundred dollars or such lesser fee as determined by the
31 commissioner shall accompany the written notification required in section
32 32-2181.

33 B. The commissioner may, but is not required to, inspect a subdivision
34 site if all of the following apply:

35 1. The commissioner has previously inspected the subdivision within
36 the past two years.

37 2. All proposed improvements were complete at the time of the previous
38 inspection.

39 3. The sales offering does not include any changes to the physical
40 aspects of the subdivision, including the plat, site and locations of
41 improvements.

42 C. The commissioner is not required to complete the inspection of the
43 subdivision site before issuing a ~~public~~ SUBDIVISION PROPERTY DISCLOSURE
44 report. Nevertheless, if the commissioner discovers anything during any
45 subsequent inspection that would have been grounds to deny issuance of the

1 ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report or anything that would have
 2 warranted additional disclosure in the ~~public~~ SUBDIVISION PROPERTY DISCLOSURE
 3 report, the commissioner may issue a summary order as provided in section
 4 32-2157 and take whatever other action he deems necessary to ensure
 5 compliance with the subdivision laws of this state.

6 Sec. 8. Section 32-2183, Arizona Revised Statutes, is amended to read:
 7 32-2183. Subdivision property disclosure report; denial of
 8 issuance; unlawful sales; voidable sale or lease;
 9 order prohibiting sale or lease; investigations;
 10 hearings; summary orders

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

42 B. Notwithstanding subsection A of this section, a subdivider may
 43 elect to prepare a final ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report for
 44 use in the sale of improved lots as defined in section 32-2101, as follows:

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

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

8 3. The department shall assign a registration number to each
9 notification and ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report submitted
10 pursuant to this subsection and shall maintain a database of all of these
11 submissions. The subdivider shall place the number on each ~~public~~
12 SUBDIVISION PROPERTY DISCLOSURE report.

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

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

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

37 7. The department shall provide forms and guidelines for the
38 submission of the notification and ~~public~~ SUBDIVISION PROPERTY DISCLOSURE
39 report pursuant to this section.

40 C. The commissioner may suspend, revoke or deny issuance of a ~~public~~
41 SUBDIVISION PROPERTY DISCLOSURE report on any of the following grounds:

- 42 1. Failure to comply with this article or the rules of the
43 commissioner pertaining to this article.
- 44 2. The sale or lease would constitute misrepresentation to or deceit
45 or fraud of the purchasers or lessees.

- 1 3. Inability to deliver title or other interest contracted for.
- 2 4. Inability to demonstrate that adequate financial or other
3 arrangements acceptable to the commissioner have been made for completion of
4 all streets, sewers, electric, gas and water utilities, drainage and flood
5 control facilities, community and recreational facilities and other
6 improvements included in the offering.
- 7 5. Failure to make a showing that the lots, parcels or fractional
8 interests can be used for the purpose for which they are offered.
- 9 6. The owner, agent, subdivider, officer, director or partner,
10 subdivider trust beneficiary holding ten per cent or more direct or indirect
11 beneficial interest or, if a corporation, any stockholder owning ten per cent
12 or more of the stock in the corporation has:
- 13 (a) Been convicted of a felony or misdemeanor involving fraud or
14 dishonesty or involving conduct of any business or a transaction in real
15 estate, cemetery property, time-share intervals or membership camping
16 campgrounds or contracts.
- 17 (b) Been permanently or temporarily enjoined by order, judgment or
18 decree from engaging in or continuing any conduct or practice in connection
19 with the sale or purchase of real estate or cemetery property, time-share
20 intervals, membership camping contracts or campgrounds, or securities or
21 involving consumer fraud or the racketeering laws of this state.
- 22 (c) Had an administrative order entered against him by a real estate
23 regulatory agency or security regulatory agency.
- 24 (d) Had an adverse decision or judgment entered against him involving
25 fraud or dishonesty or involving the conduct of any business or transaction
26 in real estate, cemetery property, time-share intervals or membership camping
27 campgrounds or contracts.
- 28 (e) Disregarded or violated this chapter or the rules of the
29 commissioner pertaining to this chapter.
- 30 (f) Controlled an entity to which subdivision (b), (c), (d) or (e)
31 applies.
- 32 7. Procurement or an attempt to procure a ~~public~~ SUBDIVISION PROPERTY
33 DISCLOSURE report by fraud, misrepresentation or deceit or by filing an
34 application for a ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report that is
35 materially false or misleading.
- 36 8. Failure of the declaration for a condominium created pursuant to
37 title 33, chapter 9, article 2 to comply with the requirements of section
38 33-1215 or failure of the plat for the condominium to comply with the
39 requirements of section 33-1219. The commissioner may require an applicant
40 for a ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report to submit a notarized
41 statement signed by the subdivider or an engineer or attorney licensed to
42 practice in this state certifying that the condominium plat and declaration
43 of condominium are in compliance with the requirements of sections 33-1215
44 and 33-1219. If the notarized statement is provided, the commissioner is
45 entitled to rely on this statement.

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

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

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

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

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

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

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

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

30 E. If the subdivision is within an active management area, as defined
31 in section 45-402, the commissioner shall deny issuance of a ~~public~~
32 **SUBDIVISION PROPERTY DISCLOSURE** report or the use of any exemption pursuant
33 to section 32-2181.02, subsection B unless the subdivider has been issued a
34 certificate of assured water supply by the director of water resources and
35 has paid all applicable fees pursuant to sections 48-3772 and 48-3774.01, or
36 unless the subdivider has obtained a written commitment of water service for
37 the subdivision from a city, town or private water company designated as
38 having an assured water supply by the director of water resources pursuant to
39 section 45-576 or is exempt from the requirement pursuant to section 45-576.

40 F. In areas outside of active management areas, if the subdivision is
41 located in a county that has adopted the provision authorized by section
42 11-806.01, subsection F or in a city or town that has enacted an ordinance
43 pursuant to section 9-463.01, subsection O, the commissioner shall deny
44 issuance of a ~~public~~ **SUBDIVISION PROPERTY DISCLOSURE** report or the use of any

1 exemption pursuant to section 32-2181.02, subsection B unless one of the
2 following applies:

3 1. The director of water resources has reported pursuant to section
4 45-108 that the subdivision has an adequate water supply.

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

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

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

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

34 H. Any applicant objecting to the denial of a **public SUBDIVISION**
35 **PROPERTY DISCLOSURE** report, within thirty days after receipt of the order of
36 denial, may file a written request for a hearing. The commissioner shall
37 hold the hearing within twenty days after receipt of the request for a
38 hearing unless the party requesting the hearing has requested a postponement.
39 If the hearing is not held within twenty days after a request for a hearing
40 is received, plus the period of any postponement, or if a proposed decision
41 is not rendered within forty-five days after submission, the order of denial
42 shall be rescinded and a **public SUBDIVISION PROPERTY DISCLOSURE** report
43 issued.

44 I. On the commissioner's own motion, or when the commissioner has
45 received a complaint and has satisfactory evidence that the subdivider or the

1 subdivider's agent is violating this article or the rules of the commissioner
2 or has engaged in any unlawful practice as defined in section 44-1522 with
3 respect to the sale of subdivided lands or deviated from the provisions of
4 the ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report, the commissioner may
5 investigate the subdivision project and examine the books and records of the
6 subdivider. For the purpose of examination, the subdivider shall keep and
7 maintain records of all sales transactions and funds received by the
8 subdivider pursuant to the sales transactions and shall make them accessible
9 to the commissioner upon reasonable notice and demand.

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

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

38 L. The court, on receipt of an application for the appointment of a
39 receiver or for a writ of ne exeat, or both, shall examine the verified
40 application of the commissioner and other evidence that the commissioner may
41 present the court. If satisfied that the interests of the public require the
42 appointment of a receiver or the issuance of a writ of ne exeat without
43 notice, the court shall issue an order appointing the receiver or issue the
44 writ, or both. If the court determines that the interests of the public will

1 not be harmed by the giving of notice, the court shall set a time for a
2 hearing and require notice be given as the court deems satisfactory.

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

11 Sec. 9. Section 32-2183.01, Arizona Revised Statutes, is amended to
12 read:

13 32-2183.01. Advertising material; contents; order prohibiting
14 use; costs of investigation; drawings or contests

15 A. Within ten days after request by the commissioner, the subdivider
16 shall file with the commissioner a copy of any advertising material used in
17 connection with sales of the subdivided lands.

18 B. No advertising, communication or sales literature of any kind,
19 including oral statements by salespersons or other persons, shall contain:

20 1. Any untrue statement of material fact or any omission of material
21 fact which would make such statement misleading in light of the circumstances
22 under which such statement was made.

23 2. Any statement or representation that the lot or parcels are offered
24 without risk or that loss is impossible.

25 3. Any statement or representation or pictorial representation of
26 proposed improvements or nonexistent scenes without clearly indicating the
27 improvements are proposed and the scenes do not exist.

28 4. Any statement or representation that the lot or parcels are
29 suitable as homesites or building lots unless either of the following is
30 true:

31 (a) Potable water is available from a certificated public utility or a
32 municipal corporation and either an individual sewage disposal system will
33 operate or a sewer system is available from a certified public utility or a
34 municipal corporation.

35 (b) Facts to the contrary are clearly and conspicuously included in
36 each advertisement pertaining to the property.

37 C. All advertising and sales literature shall be consistent with the
38 information contained in the notice of intention pursuant to section 32-2181
39 and the ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report pursuant to section
40 32-2183. The subdivider shall retain and have available for department
41 review copies of all advertising materials used in marketing lots in the
42 subdivision for three years after the last use of the advertising materials.

43 D. If it appears to the commissioner that any person is or has engaged
44 in advertising or promotional practices in violation of this article, the
45 commissioner may hold a hearing as a contested case under title 41, chapter

1 6, article 10 and issue such order or orders as he deems necessary to protect
2 the public interest, or the commissioner may bring an action in any court of
3 competent jurisdiction against such person to enjoin such person from
4 continuing such violation.

5 E. The commissioner may adopt such rules and guidelines as the
6 commissioner deems necessary to protect the public interest and to assure
7 that all advertising and promotional practices with respect to land subject
8 to the provisions of this article are not false or misleading.

9 F. It is unlawful for any owner, subdivider, agent or employee of any
10 subdivision or other person with intent directly or indirectly to sell or
11 lease lots or parcels subject to the provisions of this article to authorize,
12 use, direct or aid in any advertising, communication, sales literature or
13 promotional practice which violates this section.

14 G. Nothing contained in this section shall apply to the owner or
15 publisher of a newspaper or magazine or to any other publication of printed
16 matter wherein such advertisement appears or to the owner or operator of a
17 radio or television station which disseminates such advertisement when the
18 owner, publisher or operator has no knowledge of the intent, design or
19 purpose of the advertiser.

20 H. For any subdivision investigation made under section 32-2183 of an
21 out-of-state subdivision or any in-state subdivision to which the
22 commissioner issues any order necessary to protect the public interest and
23 ~~insure~~ ENSURE compliance with the law, rules or ~~public~~ SUBDIVISION PROPERTY
24 DISCLOSURE report, the subdivider shall reimburse travel and subsistence
25 expenses incurred by the department.

26 I. A subdivider may hold a drawing or contest to induce prospective
27 buyers to visit a subdivision if all of the following requirements are met:

28 1. The subdivision has in effect a current ~~public~~ SUBDIVISION PROPERTY
29 DISCLOSURE report.

30 2. The subdivider is not the subject of an ongoing investigation by
31 the department. The department may give permission to hold a drawing or
32 contest to a subdivider who is the subject of an ongoing investigation.

33 3. The details of the contest or drawing, including the method of
34 awarding any prize, are submitted to the department for review and approval
35 prior to holding the contest or drawing.

36 4. Any drawing or contest is limited in time, scope and geographic
37 location.

38 5. The material terms of the drawing or contest are fully disclosed in
39 writing to participants.

40 6. No fee is charged to any person who participates in a drawing or
41 contest.

42 7. No participant in a drawing or contest, as a condition of
43 participation, must attend a sales presentation or take a tour.

44 8. The subdivider is in compliance with all other applicable federal,
45 state and local laws involving drawings or contests.

1 9. The subdivider is responsible at all times for the lawful and
2 proper conduct of any drawing or contest.

3 Sec. 10. Section 32-2183.03, Arizona Revised Statutes, is amended to
4 read:

5 32-2183.03. Civil liabilities

6 A. When any part of the notice of intention filed pursuant to section
7 32-2181 contains an untrue statement of a material fact or omits a material
8 fact required to be stated in such notice, the subdivider or agent shall be
9 liable as provided in this section to any person who acquires a lot or parcel
10 in the subdivision covered by such notice of intention during such period the
11 notice of intention remained uncorrected unless at the time of such
12 acquisition the person acquiring the lot knew of such untruth or omission.

13 B. Any subdivider or agent who sells or leases a lot or parcel in a
14 subdivision in violation of section 32-2183 or by means of a ~~public~~
15 **SUBDIVISION PROPERTY DISCLOSURE** report which contains an untrue statement of
16 a material fact or omits a material fact required to be stated in such report
17 shall be liable to the purchaser of such lot or parcel as provided in this
18 section unless at the time of purchase the purchaser knew of the untruth or
19 omission.

20 C. It is unlawful for a subdivider or agent in selling or leasing, or
21 offering to sell or lease, any lot or parcel in a subdivision to:

22 1. Employ any device, scheme or artifice to defraud.

23 2. Obtain money or property by means of a material misrepresentation
24 with respect to any information included in the notice of intention or the
25 ~~public~~ **SUBDIVISION PROPERTY DISCLOSURE** report or with respect to any other
26 information pertinent to the lot, parcel or subdivision and upon which the
27 purchaser relies.

28 3. Engage in any transaction, practice or course of business which
29 operates or would operate as a fraud or deceit upon a purchaser.

30 D. Damages in any suit brought pursuant to this section shall be the
31 difference between the purchase price of the lot or parcel plus the cost of
32 any improvements made to such lot or parcel and the following applicable
33 amount:

34 1. The price at which such lot or parcel was sold in a bona fide
35 market transaction prior to suit or judgment.

36 2. If the lot or parcel has not been sold before judgment, the current
37 market value of the lot or parcel and any improvements as of the date the
38 suit was filed.

39 E. In any action in which a violation of this section is established
40 the purchaser shall also be entitled to recover reasonable attorney fees as
41 determined by the court. If a violation is not established, the court, in
42 its discretion, may award reasonable attorney fees to the defendant.

43 F. Every person who becomes liable to make any payment pursuant to
44 this section may recover contribution as in cases of contract from any person
45 who, if sued separately, would have been liable to make the same payment.

1 G. In no case shall the amount recoverable pursuant to this section
2 exceed the sum of the purchase price of the lot or parcel, the reasonable
3 cost of improvements installed by the purchaser and reasonable court costs
4 and attorneys' fees.

5 H. Nothing contained in this section shall be construed to preclude
6 any other remedies that may exist at law or in equity.

7 I. No action shall be maintained to enforce any liability created
8 pursuant to subsection A or B of this section unless brought within one year
9 after the discovery of the untrue statement or the omission or after such
10 discovery should have been made by the exercise of reasonable diligence. No
11 action shall be maintained to enforce any liability created pursuant to
12 subsection C of this section unless brought within two years after the
13 violation upon which it is based. In no event shall any such action be
14 brought by a purchaser more than three years after the sale or lease to such
15 purchaser.

16 Sec. 11. Section 32-2183.05, Arizona Revised Statutes, is amended to
17 read:

18 32-2183.05. Military training route disclosure; residential
19 property

20 A. Any ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report that is issued
21 after December 31, 2004 pursuant to section 32-2183 or 32-2195.03 and that is
22 applicable to property located under a military training route, as delineated
23 in the military training route map prepared by the state land department
24 pursuant to section 37-102, shall include the following statements:

- 25 1. The property is located under a military training route.
- 26 2. The state land department and the state real estate department
27 maintain military training route maps available to the public.
- 28 3. The military training route map is posted on the state real estate
29 department's web site.

30 B. The ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report prescribed by
31 subsection A of this section may contain a disclaimer that the subdivider has
32 no control over the military training routes as delineated in the military
33 training route map or the timing or frequency of flights and associated
34 levels of noise.

35 C. For any lot reservation or conditional sale that occurs before the
36 issuance of a ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report, the disclosure
37 statements listed in subsection A of this section shall be included within
38 the reservation document or conditional sales contract.

39 D. This section does not require the amendment or reissuance of any
40 ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report issued on or before December
41 31, 2004 or the amendment or reissuance of any reservation document or
42 conditional sales contract accepted on or before December 31, 2004.

43 E. Notwithstanding any other law, if the ~~public~~ SUBDIVISION PROPERTY
44 DISCLOSURE report complies with subsection A of this section, a subdivider is
45 not liable to any person or governmental entity for any act or failure to act

1 in connection with the disclosure of a military training route as delineated
2 in the military training route map.

3 Sec. 12. Section 32-2183.06, Arizona Revised Statutes, is amended to
4 read:

5 32-2183.06. Restricted air space disclosure: residential
6 property

7 A. Any ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report that is issued
8 after December 31, 2006 pursuant to section 32-2183 or 32-2195.03 and that is
9 applicable to property located under restricted air space, as delineated in
10 the restricted air space map prepared by the state land department pursuant
11 to section 37-102, shall include the following statements:

12 1. The property is located under restricted air space.

13 2. The state land department and the state real estate department
14 maintain restricted air space maps available to the public.

15 3. The restricted air space map is posted on the state real estate
16 department's web site.

17 B. The ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report prescribed by
18 subsection A of this section may contain a disclaimer that the subdivider has
19 no control over the restricted air space as delineated in the restricted air
20 space map or the timing or frequency of flights and associated levels of
21 noise.

22 C. For any lot reservation or conditional sale that occurs before the
23 issuance of a ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report, the disclosure
24 statements listed in subsection A of this section shall be included within
25 the reservation document or conditional sales contract.

26 D. This section does not require the amendment or reissuance of any
27 ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report issued on or before December
28 31, 2006 or the amendment or reissuance of any reservation document or
29 conditional sales contract accepted on or before December 31, 2006.

30 E. Notwithstanding any other law, if the ~~public~~ SUBDIVISION PROPERTY
31 DISCLOSURE report complies with subsection A of this section, a subdivider is
32 not liable to any person or governmental entity for any act or failure to act
33 in the disclosure of restricted air space as delineated in the restricted air
34 space map.

35 Sec. 13. Section 32-2184, Arizona Revised Statutes, is amended to
36 read:

37 32-2184. Change of subdivision plan after approval by
38 commissioner; notice

39 A. It is unlawful for any subdivider, after submitting to the
40 commissioner the plan under which a subdivision is to be offered for sale or
41 lease, ~~and~~ securing his approval, to change the plan materially or to
42 continue to offer lots or parcels within the subdivision for sale or lease
43 after a change has occurred that materially affects the plan without first
44 notifying the commissioner in writing of the intended change. Material
45 changes covered by this section shall be prescribed in the rules of the

1 commissioner. Upon receipt of any notice of a material change, the
2 commissioner may require the amendment of the ~~public~~ SUBDIVISION PROPERTY
3 DISCLOSURE report and, if he determines such action to be necessary for the
4 protection of purchasers, suspend his approval of sale or lease pending
5 amendment of the ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report in accordance
6 with section 32-2157.

7 B. If there has been a material change to the plan under which a
8 subdivision is offered for sale or lease and an amendment to the ~~public~~
9 SUBDIVISION PROPERTY DISCLOSURE report is required, a purchaser or lessee who
10 has executed a real estate sales contract or lease before the occurrence of
11 the material change but has not yet completed performance under the real
12 estate sales contract or has not taken possession under the lease may cancel
13 the real estate sales contract or lease within ten days after receiving
14 written notice from the subdivider of the material change if the material
15 change adversely impacts the purchaser or lessee and was caused by the
16 subdivider or an entity controlled by the subdivider or if the subdivider had
17 actual knowledge of the material change at the time the real estate sales
18 contract or lease was executed by the purchaser or lessee. Notwithstanding
19 that the subdivider was not aware of the material change and did not cause
20 the change to come about, the purchaser or lessee may cancel the sales
21 contract or lease as provided by this subsection if the material change would
22 involve an occupant's health, safety or ability to make designated use of the
23 lot. This subsection does not create any cause of action, for rescission or
24 otherwise, in favor of a purchaser who has not been impacted adversely by the
25 material change.

26 C. A filing fee of one-half of the amount that was charged for the
27 initial ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report pursuant to section
28 32-2182, but no less than two hundred fifty dollars, shall accompany an
29 application for an amended ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report. If
30 inspection of a subdivision site is necessary, the department shall assess an
31 inspection fee pursuant to section 32-2182, subsection A.

32 Sec. 14. Section 32-2185.06, Arizona Revised Statutes, is amended to
33 read:

34 32-2185.06. Contract disclosures; contract disclaimers

35 All agreements and contracts for the purchase or lease of subdivided
36 land from a subdivider, owner or agent shall clearly and conspicuously
37 disclose, in accordance with regulations adopted by the commissioner, the
38 nature of the document, the purchaser's right to receive a copy of the ~~public~~
39 SUBDIVISION PROPERTY DISCLOSURE report and, in the case of unimproved lots or
40 parcels not exempted by regulation pursuant to section 32-2185.01, the
41 purchaser's right to rescind the agreement as provided in section
42 32-2185.01. Any contract, agreement or lease which fails to make disclosures
43 pursuant to this section shall not be enforceable against the purchaser. If
44 the transaction involves a lot or parcel offered for present or future
45 residential use, the contract, agreement or lease shall not waive or disclaim

1 liability for prior material representations relied upon by the purchaser
2 made by the seller and such seller's agents concerning the subdivision and
3 lot or parcel involved, and any provision attempting to waive or disclaim
4 liability is void.

5 Sec. 15. Section 32-2195.03, Arizona Revised Statutes, is amended to
6 read:

7 32-2195.03. Unsubdivided land reports; denial of issuance;
8 order prohibiting sale or lease; investigations;
9 hearings; summary orders

10 A. Upon examination of unsubdivided land, the commissioner, unless
11 there are grounds for denial, shall prepare and issue to the owner or agent a
12 ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report authorizing the sale or lease
13 of the unsubdivided lands in this state. The report shall contain the data
14 obtained in accordance with section 32-2195 and any other information which
15 the commissioner determines is necessary to implement the purposes of this
16 article. If any of the unsubdivided land is located within territory in the
17 vicinity of a military airport or ancillary military facility as defined in
18 section 28-8461, the report shall include, in bold twelve point font block
19 letters on the first page of the report, the statements required pursuant to
20 section 28-8484, subsection A and, if the department has been provided a map
21 prepared pursuant to section 28-8484, subsection B, the report shall include
22 a copy of the map. These report requirements do not require the amendment or
23 reissuance of any ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report issued on or
24 before December 31, 2001 or on or after December 31 of the year in which the
25 unsubdivided land becomes territory in the vicinity of a military airport or
26 ancillary military facility. The commissioner shall require the owner or
27 agent to reproduce the report and furnish each prospective buyer with a copy
28 before the buyer signs an offer to purchase, taking a receipt therefor.

29 B. Notwithstanding ~~any provision of~~ subsection A of this section, an
30 owner may prepare a final ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report for
31 use in the sale of unsubdivided lands as defined in section 32-2101, as
32 follows:

33 1. The owner shall prepare the ~~public~~ SUBDIVISION PROPERTY DISCLOSURE
34 report and provide a copy of the report to the commissioner with the
35 submission of the notification required by sections 32-2195 and 32-2195.10
36 and shall comply with all other requirements of this article.

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

40 3. The department shall assign a registration number to each
41 notification and ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report submitted
42 pursuant to this subsection and shall maintain a database of all of these
43 submissions. The owner shall place the number on each ~~public~~ SUBDIVISION
44 PROPERTY DISCLOSURE report.

1 4. The department shall determine within fifteen business days after
2 the receipt of the notification and ~~public~~ SUBDIVISION PROPERTY DISCLOSURE
3 report whether the notification and ~~public~~ SUBDIVISION PROPERTY DISCLOSURE
4 report are administratively complete. The commissioner may either issue a
5 certification that the notification and ~~public~~ SUBDIVISION PROPERTY
6 DISCLOSURE report are administratively complete or may deny issuance of the
7 certification if it appears that the application or project is not in
8 compliance with all legal requirements, that the applicant has a background
9 of violations of state or federal law or that the applicant or project
10 presents an unnecessary risk of harm to the public.

11 5. An owner may commence sales or leasing activities as permitted
12 under this article after obtaining a certificate of administrative
13 completeness from the commissioner.

14 6. Before or after the commissioner issues a certificate of
15 administrative completeness, the department may examine any ~~public~~
16 SUBDIVISION PROPERTY DISCLOSURE report, development or applicant that has
17 applied for or received the certificate. If the commissioner determines that
18 the owner or development is not in compliance with any requirement of state
19 law or that grounds exist under this chapter to suspend, deny or revoke a
20 ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report, the commissioner may commence
21 an administrative action under section 32-2154 or 32-2157. If the owner
22 immediately corrects the deficiency and comes into full compliance with state
23 law, the commissioner shall vacate any action that he may have commenced
24 pursuant to section 32-2154 or 32-2157.

25 7. The department shall provide forms and guidelines for the
26 submission of the notification and ~~public~~ SUBDIVISION PROPERTY DISCLOSURE
27 report pursuant to this section.

28 C. The commissioner may deny issuance of a ~~public~~ SUBDIVISION PROPERTY
29 DISCLOSURE report on any of the following grounds:

30 1. Failure to comply with ~~any of the provisions of~~ this article or the
31 rules of the commissioner pertaining to this article.

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

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

35 4. Inability to demonstrate that adequate financial or other
36 arrangements acceptable to the commissioner have been made for installation
37 of all streets, sewers, electric, gas and water utilities, drainage, flood
38 control and other similar improvements included in the offering.

39 5. Failure to make a showing that the parcels can be used for the
40 purpose for which they are offered.

41 6. Failure to provide in the contract or other writing the use or
42 uses, if any, for which the parcels are offered, together with any covenants
43 or conditions relative to the parcel.

44 7. Failure to demonstrate that adequate financial arrangements have
45 been made for any guaranty or warranty included in the offering.

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

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

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

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

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

20 (e) Disregarded or violated ~~any of the provisions of~~ this chapter or
21 the rules of the commissioner pertaining to this chapter.

22 (f) Participated in, operated or held an interest in any entity to
23 which subdivision (b), (c), (d) or (e) applies.

24 D. No owner or agent may sell or lease or offer for sale or lease
25 unsubdivided lands without first obtaining a ~~public~~ SUBDIVISION PROPERTY
26 DISCLOSURE report from the commissioner. Any sale or lease of unsubdivided
27 lands prior to issuance of the ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report
28 shall be voidable by the purchaser. An action by the purchaser to void the
29 transaction shall be brought within three years of the date of execution of
30 the purchase agreement by the purchaser. In any avoidance action the
31 prevailing party is entitled to reasonable attorney fees as determined by the
32 court.

33 E. Any applicant objecting to the denial of a ~~public~~ SUBDIVISION
34 PROPERTY DISCLOSURE report, within thirty days after receipt of the order of
35 denial, may file a written request for a hearing. The commissioner shall
36 hold the hearing within twenty days after receipt of the request for a
37 hearing unless the party requesting the hearing requests a postponement. If
38 the hearing is not held within twenty days after a request for a hearing is
39 received plus the period of any postponement, or if a proposed decision is
40 not rendered within forty-five days after submission, the order of denial
41 shall be rescinded and a ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report
42 issued.

43 F. On the commissioner's own motion, or when the commissioner has
44 received a complaint and has satisfactory evidence that the owner or agent is
45 violating ~~any provision set forth in~~ this article or the rules of the

1 commissioner or has engaged in any unlawful practice as defined in section
2 44-1522 with respect to the sale of unsubdivided lands or deviated from the
3 provisions of the ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report, the
4 commissioner may investigate the subdivision project and examine the books
5 and records of the owner or agent. For the purpose of examination, the owner
6 or agent shall keep and maintain records of all sales transactions and funds
7 received by the owner or agent pursuant to the sales transactions and shall
8 make them accessible to the commissioner upon reasonable notice and demand.

9 G. On the commissioner's own motion, or when the commissioner has
10 received a complaint and has satisfactory evidence that grounds exist as
11 provided in subsection C of this section or that any person has engaged in
12 any unlawful practice as defined in section 44-1522 with respect to the sale
13 of unsubdivided lands or deviated from ~~the provisions of~~ the ~~public~~
14 SUBDIVISION PROPERTY DISCLOSURE report, the commissioner may conduct an
15 investigation of the matter, issue a summary order as provided in section
16 32-2157, or hold a public hearing and, after the hearing, may issue the order
17 or orders the commissioner deems necessary to protect the public interest and
18 ensure compliance with the law, rules or ~~public~~ SUBDIVISION PROPERTY
19 DISCLOSURE report. If, after the hearing, the violation of the law, rules or
20 ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report continues, the commissioner may
21 bring an action in any court of competent jurisdiction against the person to
22 enjoin the person from continuing the violation or engaging in or doing any
23 act or acts in furtherance of the violation.

24 Sec. 16. Section 33-1260, Arizona Revised Statutes, is amended to
25 read:

26 33-1260. Resale of units; information required; applicability;
27 definition

28 A. For condominiums with fewer than fifty units, a unit owner shall
29 mail or deliver to a purchaser within ten days after receipt of a written
30 notice of a pending sale of the unit, and for condominiums with fifty or more
31 units, the association shall mail or deliver to a purchaser within ten days
32 after receipt of a written notice of a pending sale that contains the name
33 and address of the purchaser, all of the following:

- 34 1. A copy of the bylaws and the rules of the association.
- 35 2. A copy of the declaration.
- 36 3. A dated statement containing:

37 (a) The telephone number and address of a principal contact for the
38 association, which may be an association manager, an association management
39 company, an officer of the association or any other person designated by the
40 board of directors.

41 (b) The amount of the common expense assessment for the unit and any
42 unpaid common expense assessment, special assessment or other assessment, fee
43 or charge currently due and payable from the selling unit owner.

44 (c) A statement as to whether a portion of the unit is covered by
45 insurance maintained by the association.

1 (d) The total amount of money held by the association as reserves.

2 (e) If the statement is being furnished by the association, a
3 statement as to whether the records of the association reflect any
4 alterations or improvements to the unit that violate the declaration. The
5 association is not obligated to provide information regarding alterations or
6 improvements that occurred more than six years before the proposed sale.
7 Nothing in this subdivision relieves the seller of a unit from the obligation
8 to disclose alterations or improvements to the unit that violate the
9 declaration, nor precludes the association from taking action against the
10 purchaser of a unit for violations that are apparent at the time of purchase
11 and that are not reflected in the association's records.

12 (f) If the statement is being furnished by the unit owner, a statement
13 as to whether the unit owner has any knowledge of any alterations or
14 improvements to the unit that violate the declaration.

15 (g) A statement of case names and case numbers for pending litigation
16 with respect to the unit filed by the association against the unit owner or
17 filed by the unit owner against the association. The unit owner or the
18 association shall not be required to disclose information concerning the
19 pending litigation that would violate any applicable rule of attorney-client
20 privilege under Arizona law.

21 (h) A statement that provides "I hereby acknowledge that the
22 declaration, bylaws and rules of the association constitute a contract
23 between the association and me (the purchaser). By signing this statement, I
24 acknowledge that I have read and understand the association's contract with
25 me (the purchaser). I also understand that as a matter of Arizona law, if I
26 fail to pay my association assessments, the association may foreclose on my
27 property." The statement shall also include a signature line for the
28 purchaser and shall be returned to the association within fourteen calendar
29 days.

30 4. A copy of the current operating budget of the association.

31 5. A copy of the most recent annual financial report of the
32 association. If the report is more than ten pages, the association may
33 provide a summary of the report in lieu of the entire report.

34 6. A copy of the most recent reserve study of the association, if any.

35 B. A purchaser or seller who is damaged by the failure of the unit
36 owner or the association to disclose the information required by subsection A
37 of this section may pursue all remedies at law or in equity against the unit
38 owner or the association, whichever failed to comply with subsection A of
39 this section, including the recovery of reasonable attorney fees.

40 C. The association may charge the unit owner a reasonable fee to
41 compensate the association for the costs incurred in the preparation of a
42 statement furnished by the association pursuant to this section. The
43 association shall make available to any interested party the amount of any
44 fee established from time to time by the association.

1 D. A sale in which a ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report is
2 issued pursuant to ~~sections~~ SECTION 32-2183 and A PUBLIC REPORT IS ISSUED
3 PURSUANT TO SECTION 32-2197.02 or a sale pursuant to section 32-2181.02 is
4 exempt from this section.

5 E. This section does not apply to timeshare plans or associations that
6 are subject to chapter 20 of this title.

7 F. For the purposes of this section, unless the context otherwise
8 requires, "unit owner" means the seller of the condominium unit title and
9 excludes any real estate salesperson or real estate broker who is licensed
10 under title 32, chapter 20 and who is acting as a salesperson or broker and
11 also excludes a trustee of a deed of trust who is selling the property in a
12 trustee's sale pursuant to chapter 6.1 of this title.

13 Sec. 17. Section 33-1806, Arizona Revised Statutes, is amended to
14 read:

15 33-1806. Resale of units; information required; definition

16 A. For planned communities with fewer than fifty units, a member shall
17 mail or deliver to a purchaser within ten days after receipt of a written
18 notice of a pending sale of the unit, and for planned communities with fifty
19 or more units, the association shall mail or deliver to a purchaser within
20 ten days after receipt of a written notice of a pending sale that contains
21 the name and address of the purchaser, all of the following:

- 22 1. A copy of the bylaws and the rules of the association.
- 23 2. A copy of the declaration.
- 24 3. A dated statement containing:

25 (a) The telephone number and address of a principal contact for the
26 association, which may be an association manager, an association management
27 company, an officer of the association or any other person designated by the
28 board of directors.

29 (b) The amount of the common regular assessment and the unpaid common
30 regular assessment, special assessment or other assessment, fee or charge
31 currently due and payable from the selling member.

32 (c) A statement as to whether a portion of the unit is covered by
33 insurance maintained by the association.

34 (d) The total amount of money held by the association as reserves.

35 (e) If the statement is being furnished by the association, a
36 statement as to whether the records of the association reflect any
37 alterations or improvements to the unit that violate the declaration. The
38 association is not obligated to provide information regarding alterations or
39 improvements that occurred more than six years before the proposed sale.
40 Nothing in this subdivision relieves the seller of a unit from the obligation
41 to disclose alterations or improvements to the unit that violate the
42 declaration, nor precludes the association from taking action against the
43 purchaser of a unit for violations that are apparent at the time of purchase
44 and that are not reflected in the association's records.

1 (f) If the statement is being furnished by the member, a statement as
2 to whether the member has any knowledge of any alterations or improvements to
3 the unit that violate the declaration.

4 (g) A statement of case names and case numbers for pending litigation
5 with respect to the unit filed by the association against the member or filed
6 by the member against the association. The member shall not be required to
7 disclose information concerning such pending litigation which would violate
8 any applicable rule of attorney-client privilege under Arizona law.

9 (h) A statement that provides "I hereby acknowledge that the
10 declaration, bylaws and rules of the association constitute a contract
11 between the association and me (the purchaser). By signing this statement, I
12 acknowledge that I have read and understand the association's contract with
13 me (the purchaser). I also understand that as a matter of Arizona law, if I
14 fail to pay my association assessments, the association may foreclose on my
15 property." The statement shall also include a signature line for the
16 purchaser and shall be returned to the association within fourteen calendar
17 days.

18 4. A copy of the current operating budget of the association.

19 5. A copy of the most recent annual financial report of the
20 association. If the report is more than ten pages, the association may
21 provide a summary of the report in lieu of the entire report.

22 6. A copy of the most recent reserve study of the association, if any.

23 B. A purchaser or seller who is damaged by the failure of the member
24 or the association to disclose the information required by subsection A of
25 this section may pursue all remedies at law or in equity against the member
26 or the association, whichever failed to comply with subsection A of this
27 section, including the recovery of reasonable attorney fees.

28 C. The association may charge the member a reasonable fee to
29 compensate the association for the costs incurred in the preparation of a
30 statement furnished by the association pursuant to this section. The
31 association shall make available to any interested party the amount of any
32 fee established from time to time by the association.

33 D. A sale in which a ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report is
34 issued pursuant to ~~sections~~ SECTION 32-2183 and A PUBLIC REPORT IS ISSUED
35 PURSUANT TO SECTION 32-2197.02 or a sale pursuant to section 32-2181.02 is
36 exempt from this section.

37 E. For purposes of this section, unless the context otherwise
38 requires, "member" means the seller of the unit title and excludes any real
39 estate salesperson or real estate broker who is licensed under title 32,
40 chapter 20 and who is acting as a salesperson or broker and also excludes a
41 trustee of a deed of trust who is selling the property in a trustee's sale
42 pursuant to chapter 6.1 of this title.

1 Sec. 18. Section 45-108.02, Arizona Revised Statutes, is amended to
2 read:

3 45-108.02. Exemption from adequate water supply requirements
4 for city, town or county based on substantial
5 capital investment; application; criteria;
6 expiration

7 A. If the director determines pursuant to section 45-108 that an
8 adequate water supply does not exist for a proposed subdivision and the
9 proposed subdivision is located in a city, town or county that requires a
10 determination of adequate water supply by the director as a condition of
11 approval of the plat pursuant to section 9-463.01, subsection J or O or
12 section 11-806.01, subsection F, the subdivider may apply to the director for
13 an exemption from the water adequacy requirement pursuant to this section on
14 a form prescribed by the director within one year after the requirement first
15 becomes effective. The director shall grant the exemption if the subdivider
16 demonstrates to the satisfaction of the director that all of the following
17 apply:

18 1. The subdivider has made substantial capital investment toward the
19 construction of the proposed subdivision before the date the water adequacy
20 requirement first became effective. For the purposes of this paragraph,
21 substantial capital investment may include construction costs, site
22 preparation costs, construction of off-site improvements and conversion or
23 remodeling costs for existing structures, as well as planning and design
24 costs associated with those items, but does not include the original cost of
25 acquiring the property.

26 2. The subdivider was not aware of the proposed water adequacy
27 requirement at the time the investment was made.

28 3. The proposed subdivision complied in all other respects with
29 existing state laws as of the date the water adequacy requirement became
30 effective.

31 B. If the director grants an exemption pursuant to subsection A of
32 this section:

33 1. The exemption expires five years after the date the exemption is
34 granted, unless before that date at least one parcel in the subdivision is
35 sold to a bona fide purchaser or the director extends the exemption pursuant
36 to paragraph 2 of this subsection.

37 2. The director may extend the period of the exemption for no more
38 than two successive five-year periods if the subdivider applies for an
39 extension before the exemption expires and demonstrates to the satisfaction
40 of the director that the subdivider has made material progress in developing
41 the subdivision, but that sales of parcels in the subdivision have been
42 delayed for reasons outside the control of the subdivider.

43 C. If an exemption granted under this section expires, any ~~public~~
44 **SUBDIVISION PROPERTY DISCLOSURE** report issued for the subdivision by the
45 state real estate commissioner pursuant to section 32-2183 expires and the

1 subdivider shall not sell any lots in the subdivision unless both of the
2 following apply:

3 1. The subdivider files with the state real estate commissioner a new
4 notice of intention to subdivide lands pursuant to section 32-2181 and
5 complies with section 32-2181, subsection F.

6 2. The state real estate commissioner issues a new ~~public~~ SUBDIVISION
7 PROPERTY DISCLOSURE report for the subdivision pursuant to section 32-2183.

8 D. Section 45-114, subsections A and B govern administrative
9 proceedings, rehearing or review and judicial review of final decisions of
10 the director under this section.

11 Sec. 19. Section 45-139.01, Arizona Revised Statutes, is amended to
12 read:

13 45-139.01. Notice of source of water used to fill or refill
14 body of water

15 A person who, after December 31, 1986, begins the physical on-site
16 construction of a body of water located in a subdivision as defined in
17 section 32-2101 and which will be filled or refilled with a source of water
18 identified in section 45-132, subsection B, paragraph 4, shall:

19 1. Make written disclosure to prospective purchasers of property
20 within the subdivision of the source of water to be used to fill or refill
21 the body of water, the legal basis for access to the source of water and the
22 duration of any permit or contract under which the source of water is
23 obtained. If a ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report for the
24 subdivision is issued under section 32-2183, the disclosure may be made in
25 the ~~public~~ SUBDIVISION PROPERTY DISCLOSURE report.

26 2. Include in the agreement or contract for the purchase of property
27 within the subdivision a provision stating the source of water to be used to
28 fill or refill the body of water and have the purchaser of the property
29 acknowledge this provision by signing or initialing the provision.

30 Sec. 20. Section 48-6411, Arizona Revised Statutes, is amended to
31 read:

32 48-6411. Adequate water supply requirements; notice; objections

33 A. Except as provided in subsection C of this section and sections
34 48-6412 and 48-6413, a person who proposes to offer subdivided lands, as
35 defined in section 32-2101, for sale or lease in the district shall apply for
36 and obtain a determination of adequate water supply from the director
37 pursuant to sections 45-108 and 45-108.04 before presenting the plat for
38 approval to the city, town or county in which the land is located, if it is
39 required, and before filing with the state real estate commissioner a notice
40 of intention to offer the lands for sale or lease pursuant to section
41 32-2181, unless the subdivider has obtained a written commitment of water
42 service for the subdivision from a city, town or private water company
43 designated as having an adequate water supply pursuant to sections 45-108 and
44 45-108.04.

1 B. Except as provided in subsection C of this section and sections
2 48-6412 and 48-6413, the county and a city or town in the district shall not
3 approve a subdivision plat for a proposed subdivision in the district unless
4 one of the following applies:

5 1. The director of water resources has determined that there is an
6 adequate water supply for the subdivision pursuant to sections 45-108 and
7 45-108.04 and the subdivider has included the report with the plat.

8 2. The subdivider has obtained a written commitment of water service
9 for the subdivision from a city, town or private water company designated as
10 having an adequate water supply by the director of water resources pursuant
11 to sections 45-108 and 45-108.04.

12 C. Subsections A and B of this section do not apply to:

13 1. A proposed subdivision that the director has determined will have
14 an inadequate water supply pursuant to sections 45-108 and 45-108.04 if the
15 director grants an exemption for the subdivision pursuant to section 48-6412
16 and the exemption has not expired or the director grants an exemption
17 pursuant to section 48-6413.

18 2. A proposed subdivision that received final plat approval from a
19 city, town or county before the district is established if the plat has not
20 been materially changed since it received the final plat approval. If
21 changes were made to the plat after the plat received the final plat
22 approval, the director shall determine whether the changes are material
23 pursuant to the rules adopted by the director to implement section 45-108.
24 If a city, town or county approves a plat pursuant to this subsection and the
25 director of water resources has determined that there is an inadequate water
26 supply for the subdivision pursuant to sections 45-108 and 45-108.04, the
27 city, town or county shall note this on the face of the plat.

28 D. If the county or a city or town in the district approves a
29 subdivision plat pursuant to subsection B of this section, the platting
30 entity shall note on the face of the plat that the director of water
31 resources has reported that the subdivision has an adequate water supply or
32 that the subdivider has obtained a commitment of water service for the
33 proposed subdivision from a city, town or private water company designated as
34 having an adequate water supply pursuant to sections 45-108 and 45-108.04.

35 E. If the county or a city or town in the district approves a
36 subdivision plat pursuant to an exemption granted by the director of water
37 resources pursuant to section 48-6412 or 48-6413 the county, city or town
38 shall both:

39 1. Give written notice of the approval to the director of water
40 resources and the director of environmental quality.

41 2. Include on the face of the plat a statement that the director of
42 water resources has determined that the water supply for the subdivision is
43 inadequate and a statement describing the exemption under which the plat was
44 approved, including a statement that the director has determined that the
45 specific conditions of the exemption were met. If the director subsequently

1 informs the county, city or town that the subdivision is being served by a
2 water provider that has been designated by the director as having an adequate
3 water supply pursuant to sections 45-108 and 45-108.04, the county, city or
4 town shall record in the county recorder's office a statement disclosing that
5 fact.

6 F. A person who is required to file a notice of intention to subdivide
7 lands with the state real estate commissioner under section 32-2181 for
8 subdivided lands in the district shall include with the notice a report
9 issued by the director of water resources pursuant to section 45-108 stating
10 that the subdivision has an adequate water supply, unless one of the
11 following applies:

12 1. The subdivider submitted the report to a city, town or county
13 before approval of the plat by the city, town or county and this has been
14 noted on the face of the plat.

15 2. The subdivider has obtained a written commitment of water service
16 for the subdivision from a city, town or private water company designated as
17 having an adequate water supply by the director of water resources pursuant
18 to sections 45-108 and 45-108.04.

19 3. The plat was approved by the county or a city or town in the
20 district pursuant to an exemption granted by the director under section
21 48-6412 and the exemption has not expired or pursuant to an exemption granted
22 by the director under section 48-6413. If the plat was approved pursuant to
23 an authorized exemption, the state real estate commissioner shall require
24 that all promotional material and contracts for the sale of lots in the
25 subdivision adequately display the director's report or the developer's brief
26 summary of the report as approved by the commissioner on the proposed water
27 supply for the subdivision and a statement describing the exemption under
28 which the subdivision was approved, including the specific conditions of the
29 exemption that were met.

30 4. The subdivision received final plat approval from the city, town or
31 county before the district is established, and there have been no material
32 changes to the plat since the final plat approval. If changes were made to
33 the plat after the final plat approval, the director of water resources shall
34 determine whether the changes are material pursuant to the rules adopted by
35 the director to implement section 45-108. If this paragraph applies, the
36 state real estate commissioner shall require that all promotional materials
37 and contracts for the sale of lots in the subdivision adequately display the
38 director of water resources' report or the developer's brief summary of the
39 report as approved by the commissioner on the proposed water supply for the
40 subdivision.

41 G. The state real estate commissioner shall deny issuance of a ~~public~~
42 **SUBDIVISION PROPERTY DISCLOSURE** report pursuant to section 32-2183 or **A**
43 **PUBLIC REPORT PURSUANT TO SECTION** 32-2197.08, whichever applies, or the use
44 of any exemption pursuant to section 32-2181.02, subsection B for subdivided

1 lands or timeshare property in the district unless one of the following
2 applies:

3 1. The director of water resources has reported pursuant to section
4 45-108 that the subdivision or timeshare property has an adequate water
5 supply.

6 2. The subdivider or timeshare property has obtained a written
7 commitment of water service for the subdivision from a city, town or private
8 water company designated as having an adequate water supply by the director
9 of water resources pursuant to sections 45-108 and 45-108.04.

10 3. The plat was approved pursuant to an exemption granted by the
11 director under section 48-6412 and the exemption has not expired or pursuant
12 to an exemption granted by the director under section 48-6413.

13 4. The subdivision received final plat approval from the city, town or
14 county before the district is established, and there have been no material
15 changes to the plat since the final plat approval. If changes were made to
16 the plat after the final plat approval, the director of water resources shall
17 determine whether the changes are material pursuant to the rules adopted by
18 the director to implement section 45-108.

19 H. On receipt of an application for a water report for a subdivision
20 in the district or an application by a city, town or private water company in
21 the district to be designated as having an adequate water supply under
22 sections 45-108 and 45-108.04, the director shall publish notice of the
23 application once each week for two consecutive weeks in a newspaper of
24 general circulation in the district. The first publication shall occur
25 within fifteen days after the application is determined or deemed to be
26 administratively complete. If the application is substantially modified
27 after notice of the application is given pursuant to this subsection, the
28 director shall give notice of the application as modified in the manner
29 prescribed by this subsection. The first publication of any subsequent
30 notice shall occur within fifteen days after the modified application is
31 determined or deemed to be administratively complete.

32 I. Notice pursuant to subsection H of this section shall state that
33 written objections to the application may be filed with the director by
34 residents and landowners in the district within fifteen days after the last
35 publication of notice. An objection shall state the name and mailing address
36 of the objector and be signed by the objector, the objector's agent or the
37 objector's attorney. The grounds for objection are limited to whether the
38 application meets the criteria for determining an adequate water supply set
39 forth in sections 45-108 and 45-108.04. The objection shall clearly set
40 forth reasons why the application does not meet the criteria.

41 J. In appropriate cases, including cases in which a proper written
42 objection to the application has been filed, an administrative hearing may be
43 held before the director's decision on the application if the director deems
44 a hearing necessary. Thirty days before the date of the hearing, the
45 director shall give notice of the hearing to the applicant and to any person

1 who filed a proper written objection to the application. The hearing shall
2 be scheduled for at least sixty days but not more than ninety days after the
3 expiration of the time in which to file objections.

4 K. If the application is for a water report:

5 1. If the director determines that an adequate water supply exists for
6 the proposed use, the director shall issue a water report stating that the
7 water supply for the subdivision is adequate.

8 2. If the director determines that an adequate water supply does not
9 exist, the director shall issue a water report stating that the water supply
10 for the subdivision is inadequate.

11 L. If the application is for a designation of adequate water supply:

12 1. If the director determines that an adequate water supply exists for
13 the proposed use, the director shall approve the application.

14 2. If the director determines that an adequate water supply does not
15 exist, the director shall deny the application.

16 M. The applicant or a person who contested the application by filing a
17 proper objection pursuant to subsection I of this section may seek judicial
18 review of the final decision of the director as provided in section 45-114,
19 subsection B in the superior court.

20 N. Section 45-114, subsections A and B govern administrative
21 proceedings, rehearings or reviews and judicial reviews of final decisions of
22 the director under this section. If an administrative hearing is held, it
23 shall be conducted in the district.

24 O. The district may bring an enforcement action in superior court to
25 enforce this section.

26 Sec. 21. Section 48-6412, Arizona Revised Statutes, is amended to
27 read:

28 48-6412. Exemption from adequate water supply requirements
29 based on substantial capital investment;
30 application; criteria; expiration

31 A. If the director determines pursuant to sections 45-108 and
32 45-108.04 that an adequate water supply does not exist for a proposed
33 subdivision in the district, the subdivider may apply to the director for an
34 exemption from the water adequacy requirements in section 48-6411,
35 subsections A and B on a form prescribed by the director within one year
36 after the date the district is established. The director shall grant the
37 exemption if the subdivider demonstrates to the satisfaction of the director
38 that all of the following apply:

39 1. The subdivider has made substantial capital investment toward the
40 construction of the proposed subdivision before the date the district was
41 established. For the purposes of this paragraph, substantial capital
42 investment may include construction costs, site preparation costs,
43 construction of off-site improvements and conversion or remodeling costs for
44 existing structures, as well as planning and design costs associated with

1 those items, but does not include the original cost of acquiring the
2 property.

3 2. The subdivider was not aware of the proposed requirement for an
4 adequate water supply at the time the investment was made.

5 3. The proposed subdivision complied in all other respects with
6 existing state laws as of the date the district was established.

7 B. If the director grants an exemption pursuant to this section:

8 1. The exemption expires five years after the date the exemption is
9 granted unless, before that date, at least one lot in the subdivision is sold
10 to a bona fide purchaser or the director extends the exemption pursuant to
11 paragraph 2 of this subsection.

12 2. The director may extend the period of the exemption for not more
13 than two successive five-year periods if the subdivider applies for an
14 extension before the exemption expires and demonstrates to the satisfaction
15 of the director that the subdivider has made material progress in developing
16 the subdivision, but that sales of parcels in the subdivision have been
17 delayed for reasons outside the control of the subdivider.

18 C. If an exemption granted under this section expires, any ~~public~~
19 ~~SUBDIVISION PROPERTY DISCLOSURE~~ report issued for the subdivision by the
20 state real estate commissioner pursuant to section 32-2183 expires and the
21 subdivider shall not sell any lots in the subdivision unless both of the
22 following apply:

23 1. The subdivider files with the state real estate commissioner a new
24 notice of intention to subdivide lands pursuant to section 32-2181 and
25 complies with section 48-6411.

26 2. The state real estate commissioner issues a new ~~public~~ ~~SUBDIVISION~~
27 ~~PROPERTY DISCLOSURE~~ report for the subdivision pursuant to section 32-2183.

28 D. Section 45-114, subsections A and B govern administrative
29 proceedings, rehearing or review and judicial review of final decisions of
30 the director under this section.