

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

HOUSE BILL 2310

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 32-2183. Subdivision public reports; denial of issuance;
5 unlawful sales; voidable sale or lease; order
6 prohibiting sale or lease; investigations; hearings;
7 summary orders

8 A. Upon examination of a subdivision, the commissioner, unless there
9 are grounds for denial, shall issue to the subdivider a public report
10 authorizing the sale or lease in this state of the lots, parcels or
11 fractional interests within the subdivision. The report shall contain the
12 data obtained in accordance with section 32-2181 and any other information
13 which the commissioner determines is necessary to implement the purposes of
14 this article. If any of the lots, parcels or fractional interests within the
15 subdivision are located within territory in the vicinity of a military
16 airport or ancillary military facility as defined in section 28-8461, under a
17 military training route as delineated in the military training route map
18 prepared pursuant to section 37-102, under restricted air space as delineated
19 in the restricted air space map prepared pursuant to section 37-102 or
20 contained in the military electronics range as delineated in the military
21 electronics range map prepared pursuant to section 37-102, the report shall
22 include, in bold twelve point font block letters on the first page of the
23 report, the statements required pursuant to section 28-8484, subsection A,
24 section 32-2183.05 or section 32-2183.06 and, if the department has been
25 provided a map prepared pursuant to section 28-8484, subsection B or section
26 37-102, the report shall include a copy of the map. The military airport
27 report requirements do not require the amendment or reissuance of any public
28 report issued on or before December 31, 2001 or on or before December 31 of
29 the year in which the lots, parcels or fractional interests within a
30 subdivision become territory in the vicinity of a military airport or
31 ancillary military facility. The military training route report requirements
32 do not require the amendment or reissuance of any public report issued on or
33 before December 31, 2004. The restricted air space report requirements do
34 not require the amendment or reissuance of any public report issued on or
35 before December 31, 2006. The military electronics range report requirements
36 do not require the amendment or reissuance of any public report issued on or
37 before December 31, 2008. The commissioner shall require the subdivider to
38 reproduce the report, make the report available to each prospective customer
39 and furnish each buyer or lessee with a copy before the buyer or lessee signs
40 any offer to purchase or lease, taking a receipt therefor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 8. Failure of the declaration for a condominium created pursuant to
2 title 33, chapter 9, article 2 to comply with the requirements of section
3 33-1215 or failure of the plat for the condominium to comply with the
4 requirements of section 33-1219. The commissioner may require an applicant
5 for a public report to submit a notarized statement signed by the subdivider
6 or an engineer or attorney licensed to practice in this state certifying that
7 the condominium plat and declaration of condominium are in compliance with
8 the requirements of sections 33-1215 and 33-1219. If the notarized statement
9 is provided, the commissioner is entitled to rely on this statement.

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

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

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

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

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

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

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

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

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

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

4 H. In areas outside of active management areas, if the subdivision is
5 located in a county that has adopted the provision authorized by section
6 11-806.01, subsection F or in a city or town that has enacted an ordinance
7 pursuant to section 9-463.01, subsection O, the commissioner shall deny
8 issuance of a public report or the use of any exemption pursuant to section
9 32-2181.02, subsection B unless one of the following applies:

10 1. The director of water resources has reported pursuant to section
11 45-108 that the subdivision has an adequate water supply.

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

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

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

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

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

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

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

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

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

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

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

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