

REFERENCE TITLE: subdivision public reports

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

# HB 2310

Introduced by  
Representative Driggs

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, the department may examine any public report,  
37 subdivision or applicant that has applied for or received the certificate.  
38 If the commissioner determines that the subdivider or subdivision is not in  
39 compliance with any requirement of state law or that grounds exist under this  
40 chapter to suspend, deny or revoke a public report, the commissioner may  
41 commence an administrative action under section 32-2154 or 32-2157. If the  
42 subdivider immediately corrects the deficiency and comes into full compliance  
43 with state law, the commissioner shall vacate any action that the  
44 commissioner may have commenced pursuant to section 32-2154 or 32-2157.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43          8. Failure of the declaration for a condominium created pursuant to  
44 title 33, chapter 9, article 2 to comply with the requirements of section  
45 33-1215 or failure of the plat for the condominium to comply with the

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

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

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

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

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

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

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

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

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

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

1 H. In areas outside of active management areas, if the subdivision is  
2 located in a county that has adopted the provision authorized by section  
3 11-806.01, subsection F or in a city or town that has enacted an ordinance  
4 pursuant to section 9-463.01, subsection O, the commissioner shall deny  
5 issuance of a public report or the use of any exemption pursuant to section  
6 32-2181.02, subsection B unless one of the following applies:

7 1. The director of water resources has reported pursuant to section  
8 45-108 that the subdivision has an adequate water supply.

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

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

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

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

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

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

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

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

39           N. The court, on receipt of an application for the appointment of a  
40 receiver or for a writ of ne exeat, or both, shall examine the verified  
41 application of the commissioner and other evidence that the commissioner may  
42 present the court. If satisfied that the interests of the public require the  
43 appointment of a receiver or the issuance of a writ of ne exeat without  
44 notice, the court shall issue an order appointing the receiver or issue the  
45 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 0. 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.