

COMMITTEE ON COMMERCE

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2611

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 32-2181, Arizona Revised Statutes, is amended to
3 read:

4 32-2181. Notice to commissioner of intention to subdivide lands:
5 unlawful acting in concert; exceptions; deed
6 restrictions; definition

7 A. Before offering subdivided lands for sale or lease, the subdivider
8 shall notify the commissioner in writing of the subdivider's intention. The
9 notice shall contain:

10 1. The name and address of the owner. If the holder of any ownership
11 interest in the land is other than an individual, such as a corporation,
12 partnership or trust, a statement naming the type of legal entity and listing
13 the interest and the extent of any interest of each principal in the entity.
14 For the purposes of this section, "principal" means any person or entity
15 having a ten per cent or more financial interest or, if the legal entity is a
16 trust, each beneficiary of the trust holding a ten per cent or more
17 beneficial interest.

18 2. The name and address of the subdivider.

19 3. The legal description and area of the land.

20 4. A true statement of the condition of the title to the land,
21 including all encumbrances on the land, and a statement of the provisions
22 agreed to by the holder of any blanket encumbrance enabling a purchaser to
23 acquire title to a lot or parcel free of the lien of the blanket encumbrance
24 on completion of all payments and performance of all of the terms and
25 provisions required to be made or performed by the purchaser under the real
26 estate sales contract by which the purchaser has acquired the lot or parcel.
27 The subdivider shall file copies of documents acceptable to the department
28 containing these provisions with the commissioner before the sale of any
29 subdivision lot or parcel subject to a blanket encumbrance.

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

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

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

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

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

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

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

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

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

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

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

4 16. A statement of the provisions for easements for permanent access
5 for irrigation water where applicable.

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

13 18. A true statement of the nature of any improvements to be installed
14 by the subdivider, the estimated schedule for completion and the estimated
15 costs related to the improvements that will be borne by purchasers of lots in
16 the subdivision.

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

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

27 21. If the subdivider is a subsidiary corporation, a true statement
28 identifying the parent corporation and any of the following in which the
29 parent or any of its subsidiaries is or has been involved within the past
30 five years:

31 (a) Any subdivision in this state.

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

34 (c) Any subdivision, wherever located, for which registration would
35 have been required pursuant to the federal interstate land sales full

1 disclosure act but for the exemption for subdivisions whose lots are all
2 twenty acres or more in size.

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

- 6 (a) The holder of any ownership interest in the land.
- 7 (b) The subdivider.
- 8 (c) Any principal or officer in the holder or subdivider.

9 23. A true statement as to whether all or any portion of the
10 subdivision is located in territory in the vicinity of a military airport or
11 ancillary military facility as defined in section 28-8461, in territory in
12 the vicinity of a public airport as defined in section 28-8486, on or after
13 July 1, 2001, in a high noise or accident potential zone as defined in
14 section 28-8461 or on or after July 1 of the year in which the subdivision
15 becomes located in a high noise or accident potential zone. The statement
16 required pursuant to this paragraph does not require the amendment or
17 refiling of any notice filed before July 1, 2001 or before July 1 of the year
18 in which the subdivision becomes located in a high noise or accident
19 potential zone.

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

- 23 (a) That the property is a conversion from multifamily rental to
24 condominiums.
- 25 (b) The date original construction was completed.

26 25. Other information and documents and certifications as the
27 commissioner may reasonably require provided that the subdivider shall not be
28 required to disclose any critical infrastructure information as defined in
29 section 41-1801 or any information contained in a report issued pursuant to
30 section 41-4273.

31 B. The commissioner, on application, may grant a subdivider of lots or
32 parcels within a subdivision for which a public report was previously issued
33 by the commissioner an exemption from all or part of the notification
34 requirements of subsection A of this section. The subdivider shall file a
35 statement with the commissioner indicating the change of ownership in the

1 lots or parcels together with any material changes occurring subsequent to
2 the original approval of the subdivision within which the lots or parcels are
3 located. The statement shall further refer to the original approval by the
4 commissioner.

5 C. If the subdivision is within an active management area, as defined
6 in section 45-402, the subdivider shall accompany the notice with a
7 certificate of assured water supply issued by the director of water resources
8 along with proof that all applicable fees have been paid pursuant to sections
9 48-3772 and 48-3774.01, unless the subdivider has obtained a written
10 commitment of water service for the subdivision from a city, town or private
11 water company designated as having an assured water supply by the director of
12 water resources pursuant to section 45-576 or is exempt from the requirement
13 pursuant to section 45-576. If the subdivider has submitted a certificate of
14 assured water supply to a city, town or county prior to approval of the plat
15 by the city, town or county and this has been noted on the face of the plat,
16 the submission constitutes compliance with this subsection if the subdivider
17 provides proof to the commissioner that all applicable fees have been paid
18 pursuant to sections 48-3772 and 48-3774.01.

19 D. It is unlawful for a person or group of persons acting in concert
20 to attempt to avoid this article by acting in concert to divide a parcel of
21 land or sell subdivision lots by using a series of owners or conveyances or
22 by any other method that ultimately results in the division of the lands into
23 a subdivision or the sale of subdivided land. The plan or offering is
24 subject to this article. Unlawful acting in concert pursuant to this
25 subsection with respect to the sale or lease of subdivision lots requires
26 proof that the real estate licensee or other licensed professional knew or
27 with the exercise of reasonable diligence should have known that property
28 which the licensee listed or for which the licensee acted in any capacity as
29 agent was subdivided land subject to this article. A familial relationship
30 alone is not sufficient to constitute unlawful acting in concert.

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

34 1. Each of the lots, parcels or fractional interests represents, on a
35 partition basis, thirty-six acres or more in area of land located in this

1 state, including to the centerline of dedicated roads or easements, if any,
2 contiguous to the land in which the interests are held.

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

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

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

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

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

22 7. A sale or lease of a lot, parcel or fractional interest occurs ten
23 or more years after the sale or lease of another lot, parcel or fractional
24 interest and the other lot, parcel or fractional interest is not subject to
25 this article and is treated as an independent parcel unless, upon
26 investigation by the commissioner, there is evidence of intent to subdivide.

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

29 1. If the subdivision is located in a county that has adopted the
30 provision authorized by section 11-823, subsection A, or in a city or town
31 that has enacted an ordinance pursuant to section 9-463.01, subsection 0, the
32 subdivider shall accompany the notice with a report issued by the director of
33 water resources pursuant to section 45-108 stating that the subdivision has
34 an adequate water supply, unless one of the following applies:

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

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

8 (c) The plat was approved pursuant to an exemption authorized by
9 section 9-463.01, subsection K, pursuant to an exemption authorized by
10 section 11-823, subsection B, paragraph 1, pursuant to an exemption granted
11 by the director of water resources under section 45-108.02 and the exemption
12 has not expired or pursuant to an exemption granted by the director under
13 section 45-108.03. If the plat was approved pursuant to an authorized
14 exemption, the state real estate commissioner shall require that all
15 promotional material and contracts for the sale of lots in the subdivision
16 adequately display the following:

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

20 (ii) A statement describing the exemption under which the subdivision
21 was approved, including the specific conditions of the exemption that were
22 met. If the plat was approved by the legislative body of a city or town
23 pursuant to an exemption authorized by section 9-463.01, subsection K or by
24 the board of supervisors of a county pursuant to an exemption authorized by
25 section 11-823, subsection B, paragraph 1, the subdivider shall record the
26 document required by section 33-406.

27 (d) The subdivision received final plat approval from the city, town
28 or county before the requirement for an adequate water supply became
29 effective in the city, town or county, and there have been no material
30 changes to the plat since the final plat approval. If changes were made to
31 the plat after the final plat approval, the director of water resources shall
32 determine whether the changes are material pursuant to the rules adopted by
33 the director to implement section 45-108. If this subdivision applies, the
34 state real estate commissioner shall require that all promotional materials
35 and contracts for the sale of lots in the subdivision adequately display the

1 director of water resources' report or the developer's brief summary of the
2 report as approved by the commissioner on the proposed water supply for the
3 subdivision.

4 2. If the subdivision is not located in a county that has adopted the
5 provision authorized by section 11-823, subsection A or in a city or town
6 that has enacted an ordinance pursuant to section 9-463.01, subsection 0, and
7 if the director of water resources, pursuant to section 45-108, reports an
8 inadequate on-site supply of water to meet the needs projected by the
9 developer or if no water is available, the state real estate commissioner
10 shall require that all promotional material and contracts for the sale of
11 lots in subdivisions approved by the commissioner adequately display the
12 director of water resources' report or the developer's brief summary of the
13 report as approved by the commissioner on the proposed water supply for the
14 subdivision.

15 G. The commissioner may require the subdivider to supplement the
16 notice of intention to subdivide lands and may require the filing of periodic
17 reports to update the information contained in the original notice of
18 intention to subdivide lands.

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

25 I. Neither a real estate sales contract, conveyance, lease, assignment
26 or other instrument to transfer any interest in subdivided land nor any
27 covenant or restriction affecting real property shall contain any provision
28 limiting the right of any party to appear or testify in support of or
29 opposition to zoning changes, building permits or any other official acts
30 affecting real property before a governmental body or official considering
31 zoning changes, building permits or any other official acts affecting real
32 property, whether the property is located within or outside of the boundaries
33 of the subdivision. All contractual provisions that conflict with this
34 subsection are declared to be contrary to public policy. Nothing contained

1 in this subsection shall prohibit private restrictions on the use of any real
2 property.

3 J. Before offering subdivided lands for lease or sale, the subdivider
4 who makes any promises through any form of advertising media that the
5 subdivided lands will be exclusively a retirement community or one that is
6 limited to the residency of adults or senior citizens shall include the
7 promises in the deed restrictions affecting any interest in real property
8 within the subdivided lands.

9 K. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION OR AS EXPRESSLY
10 PROVIDED BY THE DEPARTMENT BY RULE WHICH SPECIFIES A DIFFERENT DISTANCE FROM
11 THE SUBDIVISION BOUNDARIES FOR WHICH DISCLOSURE OF A PARTICULAR ITEM IS
12 REQUIRED, A SUBDIVIDER SHALL NOT BE REQUIRED TO DISCLOSE ITEMS THAT ARE OVER
13 ONE MILE FROM THE SUBDIVISION BOUNDARIES OR ITEMS THAT ARE WITHIN FOREIGN
14 NATIONS OR TRIBAL LANDS OR ON PRIVATE PROPERTY TO WHICH ACCESS IS NOT GRANTED
15 TO THE GENERAL PUBLIC.

16 Sec. 2. Section 32-2182, Arizona Revised Statutes, is amended to read:

17 32-2182. Examination of subdivision by commissioner; fee; time
18 limit to determine violation

19 A. The commissioner shall examine any subdivision offered for sale or
20 lease and shall make public his findings. The total cost of travel and
21 subsistence expenses incurred by the department in the examination, in
22 addition to the initial filing fee provided for in this section, shall be
23 borne by the subdivider on the basis of actual cost to the department. A
24 filing fee of five hundred dollars or such lesser fee as determined by the
25 commissioner shall accompany the written notification required in section
26 32-2181. THE COMMISSIONER MAY CONTRACT WITH A PRIVATE ENTITY TO EXAMINE ANY
27 SUBDIVISION FOR THE PURPOSES OF THIS SECTION.

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

30 1. The commissioner has previously inspected the subdivision within
31 the past two years.

32 2. All proposed improvements were complete at the time of the previous
33 inspection.

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

4 C. The commissioner is not required to complete the inspection of the
5 subdivision site before issuing a public report. Nevertheless, if the
6 commissioner discovers anything during any subsequent inspection that would
7 have been grounds to deny issuance of the public report or anything that
8 would have warranted additional disclosure in the public report, the
9 commissioner may issue a summary order as provided in section 32-2157.

10 D. Notwithstanding any other law, the commissioner has no more than
11 five years after the date of an initial complaint or initiation of an
12 investigation by the commissioner to determine if the sale or lease violated
13 this article.

14 Sec. 3. Section 32-2183, Arizona Revised Statutes, is amended to read:

15 32-2183. Subdivision public reports; denial of issuance;
16 unlawful sales; voidable sale or lease; order
17 prohibiting sale or lease; investigations; hearings;
18 summary orders

19 A. Upon examination of a subdivision, the commissioner, unless there
20 are grounds for denial, shall issue to the subdivider a public report
21 authorizing the sale or lease in this state of the lots, parcels or
22 fractional interests within the subdivision. The report shall contain the
23 data obtained in accordance with section 32-2181 and any other information
24 which the commissioner determines is necessary to implement the purposes of
25 this article. If any of the lots, parcels or fractional interests within the
26 subdivision are located within territory in the vicinity of a military
27 airport or ancillary military facility as defined in section 28-8461, under a
28 military training route as delineated in the military training route map
29 prepared pursuant to section 37-102, under restricted air space as delineated
30 in the restricted air space map prepared pursuant to section 37-102 or
31 contained in the military electronics range as delineated in the military
32 electronics range map prepared pursuant to section 37-102, the report shall
33 include, in bold twelve point font block letters on the first page of the
34 report, the statements required pursuant to section 28-8484, subsection A,
35 section 32-2183.05 or section 32-2183.06 and, if the department has been

1 provided a map prepared pursuant to section 28-8484, subsection B or section
2 37-102, the report shall include a copy of the map. The military airport
3 report requirements do not require the amendment or reissuance of any public
4 report issued on or before December 31, 2001 or on or before December 31 of
5 the year in which the lots, parcels or fractional interests within a
6 subdivision become territory in the vicinity of a military airport or
7 ancillary military facility. The military training route report requirements
8 do not require the amendment or reissuance of any public report issued on or
9 before December 31, 2004. The restricted air space report requirements do
10 not require the amendment or reissuance of any public report issued on or
11 before December 31, 2006. The military electronics range report requirements
12 do not require the amendment or reissuance of any public report issued on or
13 before December 31, 2008. The commissioner shall require the subdivider to
14 reproduce the report, make the report available to each INITIAL prospective
15 customer and furnish each INITIAL buyer or lessee with a copy before the
16 buyer or lessee signs any offer to purchase or lease, taking a receipt
17 therefor.

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

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

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

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

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

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

5 4. On receipt of the notification and public report, the department
6 shall review and issue within ten business days either a certification that
7 the notification and public report are administratively complete or a denial
8 letter if it appears that the application or project is not in compliance
9 with all legal requirements, that the applicant has a background of
10 violations of state or federal law or that the applicant or project presents
11 an unnecessary risk of harm to the public. If the commissioner has received
12 the notification and public report but has not issued a certification or a
13 denial letter within ten business days pursuant to this paragraph, the
14 notification and public report are administratively complete.

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

18 6. Before or after the commissioner issues a certificate of
19 administrative completeness or, if applicable, after the notification and
20 public report are deemed to be administratively complete pursuant to
21 paragraph 4 of this subsection, the department may examine any public report,
22 subdivision or applicant that has applied for or received the certificate.
23 If the commissioner determines that the subdivider or subdivision is not in
24 compliance with any requirement of state law or that grounds exist under this
25 chapter to suspend, deny or revoke a public report, the commissioner may
26 commence an administrative action under section 32-2154 or 32-2157. If the
27 subdivider immediately corrects the deficiency and comes into full compliance
28 with state law, the commissioner shall vacate any action that the
29 commissioner may have commenced pursuant to section 32-2154 or 32-2157.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 G. If the subdivision is within an active management area, as defined
8 in section 45-402, the commissioner shall deny issuance of a public report or
9 the use of any exemption pursuant to section 32-2181.02, subsection B unless
10 the subdivider has been issued a certificate of assured water supply by the
11 director of water resources and has paid all applicable fees pursuant to
12 sections 48-3772 and 48-3774.01, or unless the subdivider has obtained a
13 written commitment of water service for the subdivision from a city, town or
14 private water company designated as having an assured water supply by the
15 director of water resources pursuant to section 45-576 or is exempt from the
16 requirement pursuant to section 45-576.

17 H. In areas outside of active management areas, if the subdivision is
18 located in a county that has adopted the provision authorized by section
19 11-823, subsection A or in a city or town that has enacted an ordinance
20 pursuant to section 9-463.01, subsection 0, the commissioner shall deny
21 issuance of a public report or the use of any exemption pursuant to section
22 32-2181.02, subsection B unless one of the following applies:

23 1. The director of water resources has reported pursuant to section
24 45-108 that the subdivision has an adequate water supply.

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

29 3. The plat was approved pursuant to an exemption authorized by
30 section 9-463.01, subsection K, pursuant to an exemption authorized by
31 section 11-823, subsection B, paragraph 1, pursuant to an exemption granted
32 by the director of water resources under section 45-108.02 and the exemption
33 has not expired or pursuant to an exemption granted by the director of water
34 resources under section 45-108.03.

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

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

20 J. On a print advertisement in a magazine or newspaper or on an
21 internet advertisement that advertises a specific lot or parcel of a
22 subdivider, the subdivider shall include a disclosure stating that "a public
23 report is available on the state real estate department's website".

24 K. Any applicant objecting to the denial of a public report, within
25 thirty days after receipt of the order of denial, may file a written request
26 for a hearing. The commissioner shall hold the hearing within twenty days
27 after receipt of the request for a hearing unless the party requesting the
28 hearing has requested a postponement. If the hearing is not held within
29 twenty days after a request for a hearing is received, plus the period of any
30 postponement, or if a proposed decision is not rendered within forty-five
31 days after submission, the order of denial shall be rescinded and a public
32 report issued.

33 L. On the commissioner's own motion, or when the commissioner has
34 received a complaint and has satisfactory evidence that the subdivider or the
35 subdivider's agent is violating this article or the rules of the commissioner

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

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

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

1 O. The court, on receipt of an application for the appointment of a
2 receiver or for a writ of ne exeat, or both, shall examine the verified
3 application of the commissioner and other evidence that the commissioner may
4 present the court. If satisfied that the interests of the public require the
5 appointment of a receiver or the issuance of a writ of ne exeat without
6 notice, the court shall issue an order appointing the receiver or issue the
7 writ, or both. If the court determines that the interests of the public will
8 not be harmed by the giving of notice, the court shall set a time for a
9 hearing and require notice be given as the court deems satisfactory.

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

18 Amend title to conform

and, as so amended, it do pass

JAVAN D. MESNARD
Chairman

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