

State of Arizona  
House of Representatives  
Fiftieth Legislature  
Second Regular Session  
2012

# HOUSE BILL 2611

AN ACT

AMENDING SECTIONS 32-2181, 32-2182 AND 32-2183, ARIZONA REVISED STATUTES;  
RELATING TO SALE OF SUBDIVIDED LANDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 32-2181, Arizona Revised Statutes, is amended to  
3 read:  
4 32-2181. Notice to commissioner of intention to subdivide  
5 lands; 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.  
30 5. The terms and conditions on which it is intended to dispose of the  
31 land, together with copies of any real estate sales contract, conveyance,  
32 lease, assignment or other instrument intended to be used, and any other  
33 information the owner or the owner's agent or subdivider desires to present.  
34 6. A map of the subdivision that has been filed in the office of the  
35 county recorder in the county in which the subdivision is located.  
36 7. A brief but comprehensive statement describing the land on and the  
37 locality in which the subdivision is located.  
38 8. A statement of the provisions that have been made for permanent  
39 access and provisions, if any, for health department approved sewage and  
40 solid waste collection and disposal and public utilities in the proposed  
41 subdivision, including water, electricity, gas and telephone facilities.  
42 9. A statement as to the location of the nearest public common and  
43 high schools available for the attendance of school age pupils residing on  
44 the subdivision property.

- 1           10. A statement of the use or uses for which the proposed subdivision  
2 will be offered.
- 3           11. A statement of the provisions, if any, limiting the use or  
4 occupancy of the parcels in the subdivision, together with copies of any  
5 restrictive covenants affecting all or part of the subdivision.
- 6           12. The name and business address of the principal broker selling or  
7 leasing, within this state, lots or parcels in the subdivision.
- 8           13. A true statement of the approximate amount of indebtedness that is  
9 a lien on the subdivision or any part of the subdivision and that was  
10 incurred to pay for the construction of any on-site or off-site improvement,  
11 or any community or recreational facility.
- 12           14. A true statement or reasonable estimate, if applicable, of the  
13 amount of any indebtedness that has been or is proposed to be incurred by an  
14 existing or proposed special district, entity, taxing area or assessment  
15 district, within the boundaries of which the subdivision, or any part of the  
16 subdivision, is located, and that is to pay for the construction or  
17 installation of any improvement or to furnish community or recreational  
18 facilities to the subdivision, and which amounts are to be obtained by ad  
19 valorem tax or assessment, or by a special assessment or tax upon the  
20 subdivision or any part of the subdivision.
- 21           15. A true statement as to the approximate amount of annual taxes,  
22 special assessments or fees to be paid by the buyer for the proposed annual  
23 maintenance of common facilities in the subdivision.
- 24           16. A statement of the provisions for easements for permanent access  
25 for irrigation water where applicable.
- 26           17. A true statement of assurances for the completion of off-site  
27 improvements, such as roads, utilities, community or recreational facilities  
28 and other improvements to be included in the offering or represented as being  
29 in the offering, and approval of the offering by the political subdivision  
30 with authority. This statement shall include a trust agreement or any other  
31 evidence of assurances for delivery of the improvements and a statement of  
32 the provisions, if any, for the continued maintenance of the improvements.
- 33           18. A true statement of the nature of any improvements to be installed  
34 by the subdivider, the estimated schedule for completion and the estimated  
35 costs related to the improvements that will be borne by purchasers of lots in  
36 the subdivision.
- 37           19. A true statement of the availability of sewage disposal facilities  
38 and other public utilities, including water, electricity, gas and telephone  
39 facilities in the subdivision, the estimated schedule for their installation,  
40 and the estimated costs related to the facilities and utilities that will be  
41 borne by purchasers of lots in the subdivision.
- 42           20. A true statement as to whether all or any portion of the  
43 subdivision is located in an open range or area in which livestock may roam  
44 at large under the laws of this state and what provisions, if any, have been

1 made for the fencing of the subdivision to preclude livestock from roaming  
2 within the subdivided lands.

3 21. If the subdivider is a subsidiary corporation, a true statement  
4 identifying the parent corporation and any of the following in which the  
5 parent or any of its subsidiaries is or has been involved within the past  
6 five years:

7 (a) Any subdivision in this state.

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

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

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

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

18 (b) The subdivider.

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

20 23. A true statement as to whether all or any portion of the  
21 subdivision is located in territory in the vicinity of a military airport or  
22 ancillary military facility as defined in section 28-8461, in territory in  
23 the vicinity of a public airport as defined in section 28-8486, on or after  
24 July 1, 2001, in a high noise or accident potential zone as defined in  
25 section 28-8461 or on or after July 1 of the year in which the subdivision  
26 becomes located in a high noise or accident potential zone. The statement  
27 required pursuant to this paragraph does not require the amendment or  
28 refileing of any notice filed before July 1, 2001 or before July 1 of the year  
29 in which the subdivision becomes located in a high noise or accident  
30 potential zone.

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

34 (a) That the property is a conversion from multifamily rental to  
35 condominiums.

36 (b) The date original construction was completed.

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

42 B. The commissioner, on application, may grant a subdivider of lots or  
43 parcels within a subdivision for which a public report was previously issued  
44 by the commissioner an exemption from all or part of the notification  
45 requirements of subsection A of this section. The subdivider shall file a

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

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

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

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

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

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

43 3. The lots, parcels or fractional interests are created by a valid  
44 order or decree of a court pursuant to and through compliance with title 12,

1 chapter 8, article 7 or by operation of law. This paragraph does not allow  
2 circumvention of the requirements of this article.

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

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

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

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

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

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

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

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

34 (c) The plat was approved pursuant to an exemption authorized by  
35 section 9-463.01, subsection K, pursuant to an exemption authorized by  
36 section 11-823, subsection B, paragraph 1, pursuant to an exemption granted  
37 by the director of water resources under section 45-108.02 and the exemption  
38 has not expired or pursuant to an exemption granted by the director under  
39 section 45-108.03. If the plat was approved pursuant to an authorized  
40 exemption, the state real estate commissioner shall require that all  
41 promotional material and contracts for the sale of lots in the subdivision  
42 adequately display the following:

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

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

8 (d) The subdivision received final plat approval from the city, town  
9 or county before the requirement for an adequate water supply became  
10 effective in the city, town or county, and there have been no material  
11 changes to the plat since the final plat approval. If changes were made to  
12 the plat after the final plat approval, the director of water resources shall  
13 determine whether the changes are material pursuant to the rules adopted by  
14 the director to implement section 45-108. If this subdivision applies, the  
15 state real estate commissioner shall require that all promotional materials  
16 and contracts for the sale of lots in the subdivision adequately display the  
17 director of water resources' report or the developer's brief summary of the  
18 report as approved by the commissioner on the proposed water supply for the  
19 subdivision.

20 2. If the subdivision is not located in a county that has adopted the  
21 provision authorized by section 11-823, subsection A or in a city or town  
22 that has enacted an ordinance pursuant to section 9-463.01, subsection 0, and  
23 if the director of water resources, pursuant to section 45-108, reports an  
24 inadequate on-site supply of water to meet the needs projected by the  
25 developer or if no water is available, the state real estate commissioner  
26 shall require that all promotional material and contracts for the sale of  
27 lots in subdivisions approved by the commissioner adequately display the  
28 director of water resources' report or the developer's brief summary of the  
29 report as approved by the commissioner on the proposed water supply for the  
30 subdivision.

31 G. The commissioner may require the subdivider to supplement the  
32 notice of intention to subdivide lands and may require the filing of periodic  
33 reports to update the information contained in the original notice of  
34 intention to subdivide lands.

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

41 I. Neither a real estate sales contract, conveyance, lease, assignment  
42 or other instrument to transfer any interest in subdivided land nor any  
43 covenant or restriction affecting real property shall contain any provision  
44 limiting the right of any party to appear or testify in support of or  
45 opposition to zoning changes, building permits or any other official acts

1 affecting real property before a governmental body or official considering  
2 zoning changes, building permits or any other official acts affecting real  
3 property, whether the property is located within or outside of the boundaries  
4 of the subdivision. All contractual provisions that conflict with this  
5 subsection are declared to be contrary to public policy. Nothing contained  
6 in this subsection shall prohibit private restrictions on the use of any real  
7 property.

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

14 K. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A SUBDIVIDER SHALL  
15 NOT BE REQUIRED TO DISCLOSE ITEMS THAT ARE OVER ONE MILE FROM THE SUBDIVISION  
16 BOUNDARIES. THE EXISTENCE OF FOREIGN NATIONS OR TRIBAL LANDS SHALL ALSO BE  
17 DISCLOSED IF LOCATED WITHIN THE ONE MILE RADIUS OF THE SUBDIVISION  
18 BOUNDARIES.

19 Sec. 2. Section 32-2182, Arizona Revised Statutes, is amended to read:  
20 32-2182. Examination of subdivision by commissioner; fee; time  
21 limit to determine violation

22 A. The commissioner shall examine any subdivision offered for sale or  
23 lease and shall make public his findings. The total cost of travel and  
24 subsistence expenses incurred by the department in the examination, in  
25 addition to the initial filing fee provided for in this section, shall be  
26 borne by the subdivider on the basis of actual cost to the department. A  
27 filing fee of five hundred dollars or such lesser fee as determined by the  
28 commissioner shall accompany the written notification required in section  
29 32-2181. THE COMMISSIONER MAY ALLOW THE DEVELOPER TO OUTSOURCE AND PAY FOR  
30 THE COST OF PHYSICAL INSPECTIONS SO LONG AS THE DEPARTMENT APPROVES THE  
31 INSPECTOR AND THE INSPECTION FOR CONTENT.

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

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

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

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

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

1 would have warranted additional disclosure in the public report, the  
2 commissioner may issue a summary order as provided in section 32-2157.

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

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

8 32-2183. Subdivision public reports; denial of issuance;  
9 unlawful sales; voidable sale or lease; order  
10 prohibiting sale or lease; investigations; hearings;  
11 summary orders

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

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

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

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

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

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

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

22           4. On receipt of the notification and public report, the department  
23 shall review and issue within ten business days either a certification that  
24 the notification and public report are administratively complete or a denial  
25 letter if it appears that the application or project is not in compliance  
26 with all legal requirements, that the applicant has a background of  
27 violations of state or federal law or that the applicant or project presents  
28 an unnecessary risk of harm to the public. If the commissioner has received  
29 the notification and public report but has not issued a certification or a  
30 denial letter within ten business days pursuant to this paragraph, the  
31 notification and public report are administratively 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 11-823, subsection A 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 11-823, subsection B, paragraph 1, pursuant to an exemption granted  
19 by the director of water resources under section 45-108.02 and the exemption  
20 has not expired or pursuant to an exemption granted by the director of water  
21 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, and a certificate of administrative  
33 completeness issued pursuant to this section. Unless exempt, the sale or  
34 lease of subdivided lands prior to issuance of the public report or failure  
35 to deliver the public report to the purchaser or lessee shall render the sale  
36 or lease rescindable by the purchaser or lessee. An action by the purchaser  
37 or lessee to rescind the transaction shall be brought within three years of  
38 the date of execution of the purchase or lease agreement by the purchaser or  
39 lessee. In any rescission action, the prevailing party is entitled to  
40 reasonable attorney fees as determined by the court.

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

1           K. Any applicant objecting to the denial of a public report, within  
2 thirty days after receipt of the order of denial, may file a written request  
3 for a hearing. The commissioner shall hold the hearing within twenty days  
4 after receipt of the request for a hearing unless the party requesting the  
5 hearing has requested a postponement. If the hearing is not held within  
6 twenty days after a request for a hearing is received, plus the period of any  
7 postponement, or if a proposed decision is not rendered within forty-five  
8 days after submission, the order of denial shall be rescinded and a public  
9 report issued.

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

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

42           N. When it appears to the commissioner that a person has engaged in or  
43 is engaging in a practice declared to be unlawful by this article and that  
44 the person is concealing assets or self or has made arrangements to conceal  
45 assets or is about to leave the state, the commissioner may apply to the

1 superior court, ex parte, for an order appointing a receiver of the assets of  
2 the person or for a writ of ne exeat, or both.

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

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