

State of Arizona
Senate
Fifty-first Legislature
Second Regular Session
2014

SENATE BILL 1215

AN ACT

AMENDING SECTION 32-2101, ARIZONA REVISED STATUTES; RELATING TO UNSUBDIVIDED LAND.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 32-2101, Arizona Revised Statutes, is amended to
3 read:

4 32-2101. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Acting in concert" means evidence of collaborating to pursue a
7 concerted plan.

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

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

19 (b) Communications to stockholders as follows:

20 (i) Annual reports and interim financial reports.

21 (ii) Proxy materials.

22 (iii) Registration statements.

23 (iv) Securities prospectuses.

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

25 (vi) Prospectuses.

26 (vii) Property reports.

27 (viii) Offering statements.

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

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

34 5. "Barrier" means a natural or man-made geographical feature that
35 prevents parcels of land from being practicably, reasonably and economically
36 united or reunited and that was not caused or created by the owner of the
37 parcels.

38 6. "Blanket encumbrance" means any mortgage, any deed of trust or any
39 other encumbrance or lien securing or evidencing the payment of money and
40 affecting more than one lot or parcel of subdivided land, or an agreement
41 affecting more than one lot or parcel by which the subdivider holds the
42 subdivision under an option, contract to sell or trust agreement. Blanket
43 encumbrance does not include taxes and assessments levied by public
44 authority.

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

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

5 9. "Business broker" means a real estate broker who acts as an
6 intermediary or agent between sellers or buyers, or both, in the sale or
7 purchase, or both, of businesses or business opportunities where a lease or
8 sale of real property is either a direct or incidental part of the
9 transaction.

10 10. "Camping site" means a space designed and promoted for the purpose
11 of locating any trailer, tent, tent trailer, pickup camper or other similar
12 device used for camping.

13 11. "Cemetery" or "cemetery property" means any one, or a combination
14 of more than one, of the following in a place used, or intended to be used,
15 and dedicated for cemetery purposes:

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

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

18 (c) A crematory, or a crematory and columbarium, for cinerary
19 interments.

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

22 12. "Cemetery broker" means a person other than a real estate broker or
23 real estate salesperson who, for another, for compensation:

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

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

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

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

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

40 14. "Commissioner" means the state real estate commissioner.

41 15. "Common promotional plan" means a plan, undertaken by a person or a
42 group of persons acting in concert, to offer lots for sale or lease. If the
43 land is offered for sale by a person or group of persons acting in concert,
44 and the land is contiguous or is known, designated or advertised as a common

1 unit or by a common name, the land is presumed, without regard to the number
2 of lots covered by each individual offering, as being offered for sale or
3 lease as part of a common promotional plan. Separate subdividers selling
4 lots or parcels in separately platted subdivisions within a master planned
5 community shall not be deemed to be offering their combined lots for sale or
6 lease as part of a common promotional plan.

7 16. "Compensation" means any fee, commission, salary, money or other
8 valuable consideration for services rendered or to be rendered as well as the
9 promise of consideration whether contingent or not.

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

13 (a) A barrier.

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

20 18. "Control" or "controlled" means a person who, through ownership,
21 voting rights, power of attorney, proxy, management rights, operational
22 rights or other rights, has the right to make decisions binding on an entity,
23 whether a corporation, a partnership or any other entity.

24 19. "Corporation licensee" means a lawfully organized corporation that
25 is registered with the Arizona corporation commission and that has an officer
26 licensed as the designated broker pursuant to section 32-2125.

27 20. "Department" means the state real estate department.

28 21. "Designated broker" means the natural person who is licensed as a
29 broker under this chapter and who is either:

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

32 (b) Doing business as a sole proprietor.

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

39 23. "Development" means any division, proposed division or use of real
40 property that the department has authority to regulate, including subdivided
41 and unsubdivided lands, cemeteries, condominiums, timeshares, membership
42 campgrounds and stock cooperatives.

1 24. "Employing broker" means a person who is licensed or is required to
2 be licensed as a:

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

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

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

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

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

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

28 29. "License" means the whole or part of any agency permit,
29 certificate, approval, registration, public report, charter or similar form
30 of permission required by this chapter.

31 30. "License period" means the two year period beginning with the date
32 of original issue or renewal of a particular license and ending on the
33 expiration date, if any.

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

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

42 33. "Lot reservation" means an expression of interest by a prospective
43 purchaser in buying at some time in the future a subdivided or unsubdivided
44 lot, unit or parcel in this state. In all cases, a subsequent affirmative

1 action by the prospective purchaser must be taken to create a contractual
2 obligation to purchase.

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

9 35. "Member" means a member of the real estate advisory board.

10 36. "Membership camping broker" means a person, other than a
11 salesperson, who, for compensation:

12 (a) Sells, purchases, lists, exchanges or leases membership camping
13 contracts.

14 (b) Offers to sell, purchase, exchange or lease membership camping
15 contracts.

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

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

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

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

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

30 38. "Membership camping operator" means an enterprise, other than one
31 that is tax exempt under section 501(c)(3) of the internal revenue code of
32 1986, as amended, that solicits membership paid for by a fee or periodic
33 payments and has as one of its purposes camping or outdoor recreation
34 including the use of camping sites primarily by members. Membership camping
35 operator does not include camping or recreational trailer parks that are open
36 to the general public and that contain camping sites rented for a per use fee
37 or a mobile home park.

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

1 in any transaction in a manner included in the definition of membership
2 camping broker.

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

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

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

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

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

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

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

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

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

39 (a) Sells, exchanges, purchases, rents or leases real estate,
40 businesses and business opportunities or timeshare interests.

41 (b) Offers to sell, exchange, purchase, rent or lease real estate,
42 businesses and business opportunities or timeshare interests.

1 (c) Negotiates or offers, attempts or agrees to negotiate the sale,
2 exchange, purchase, rental or leasing of real estate, businesses and business
3 opportunities or timeshare interests.

4 (d) Lists or offers, attempts or agrees to list real estate,
5 businesses and business opportunities or timeshare interests for sale, lease
6 or exchange.

7 (e) Auctions or offers, attempts or agrees to auction real estate,
8 businesses and business opportunities or timeshare interests.

9 (f) Buys, sells, offers to buy or sell or otherwise deals in options
10 on real estate, businesses and business opportunities or timeshare interests
11 or improvements to real estate, businesses and business opportunities or
12 timeshare interests.

13 (g) Collects or offers, attempts or agrees to collect rent for the use
14 of real estate, businesses and business opportunities or timeshare interests.

15 (h) Advertises or holds himself out as being engaged in the business
16 of buying, selling, exchanging, renting or leasing real estate, businesses
17 and business opportunities or timeshare interests or counseling or advising
18 regarding real estate, businesses and business opportunities or timeshare
19 interests.

20 (i) Assists or directs in the procuring of prospects, calculated to
21 result in the sale, exchange, leasing or rental of real estate, businesses
22 and business opportunities or timeshare interests.

23 (j) Assists or directs in the negotiation of any transaction
24 calculated or intended to result in the sale, exchange, leasing or rental of
25 real estate, businesses and business opportunities or timeshare interests.

26 (k) Incident to the sale of real estate, businesses and business
27 opportunities negotiates or offers, attempts or agrees to negotiate a loan
28 secured or to be secured by any mortgage or other encumbrance upon or
29 transfer of real estate, businesses and business opportunities or timeshare
30 interests subject to section 32-2155, subsection C. This subdivision does
31 not apply to mortgage brokers as defined in and subject to title 6, chapter
32 9, article 1.

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

36 (m) Claims, demands, charges, receives, collects or contracts for the
37 collection of an advance fee in connection with any employment enumerated in
38 this section, including employment undertaken to promote the sale or lease of
39 real property by advance fee listing, by furnishing rental information to a
40 prospective tenant for a fee paid by the prospective tenant, by advertisement
41 or by any other offering to sell, lease, exchange or rent real property or
42 selling kits connected therewith. This shall not include the activities of
43 any communications media of general circulation or coverage not primarily
44 engaged in the advertisement of real estate or any communications media

1 activities that are specifically exempt from applicability of this article
2 under section 32-2121.

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

7 (o) Performs any of the acts listed in subdivisions (a) through (m) of
8 this paragraph as an employee of, or in behalf of, the owner of real estate,
9 or interest in the real estate, or improvements affixed on the real estate,
10 for compensation.

11 (p) Acts as a business broker.

12 49. "Real estate sales contract" means an agreement in which one party
13 agrees to convey title to real estate to another party upon the satisfaction
14 of specified conditions set forth in the contract.

15 50. "Real estate salesperson" means a natural person who acts on the
16 person's own behalf or through and on behalf of a professional limited
17 liability company or a professional corporation engaged by or on behalf of a
18 licensed real estate broker, or by or on behalf of a limited liability
19 company, partnership or corporation that is licensed as a real estate broker,
20 to perform any act or participate in any transaction in a manner included in
21 the definition of real estate broker subject to section 32-2155.

22 51. "Sale" or "lease" includes every disposition, transfer, option or
23 offer or attempt to dispose of or transfer real property, or an interest, use
24 or estate in the real property, including the offering of the property as a
25 prize or gift if a monetary charge or consideration for whatever purpose is
26 required.

27 52. "Salesperson", when used without modification, means a natural
28 person who acts on the person's own behalf or through and on behalf of a
29 professional limited liability company or a professional corporation licensed
30 under this chapter or any person required to be licensed as a salesperson
31 under this chapter.

32 53. "School" means a person or entity that offers a course of study
33 towards completion of the education requirements leading to licensure or
34 renewal of licensure under this chapter.

35 54. "Stock cooperative" means a corporation to which all of the
36 following apply:

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

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

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

1 55. "Subdivider" means any person who offers for sale or lease six or
2 more lots, parcels or fractional interests in a subdivision or who causes
3 land to be subdivided into a subdivision for the subdivider or for others, or
4 who undertakes to develop a subdivision, but does not include a public agency
5 or officer authorized by law to create subdivisions.

6 56. "Subdivision" or "subdivided lands":

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

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

13 (c) Does not include:

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

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

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

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

26 (v) A sale or lease of a lot, parcel or fractional interest that
27 occurs ten or more years after the sale or lease of another lot, parcel or
28 fractional interest if the other lot, parcel or fractional interest is not
29 subject to this article and is treated as an independent parcel unless, upon
30 investigation by the commissioner, there is evidence of intent to subdivide.

31 57. "Timeshare" or "timeshare property" means real property ownership
32 or right of occupancy in real property pursuant to article 9 of this chapter.
33 For the purposes of this chapter, a timeshare is not a security unless it
34 meets the definition of a security under section 44-1801.

35 58. "Trustee" means:

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

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

41 59. "Unimproved lot or parcel" means a lot or parcel of a subdivision
42 that is not an improved lot or parcel.

1 60. "Unsubdivided lands":

2 (a) Means land or lands divided or proposed to be divided for the
3 purpose of sale or lease, whether immediate or future, into six or more lots,
4 parcels or fractional interests and the lots or parcels are thirty-six acres
5 or more each but less than one hundred sixty acres each, or that are offered,
6 known or advertised under a common promotional plan for sale or lease, except
7 that agricultural leases shall not be included in this definition.

8 (b) INCLUDES ANY LAND THAT IS SOLD THAT WOULD OTHERWISE CONSTITUTE THE
9 SIXTH LOT, PARCEL OR FRACTIONAL INTEREST IF THE SALE OCCURS TEN OR MORE YEARS
10 AFTER THE EARLIEST OF THE PREVIOUS FIVE SALES AND IF ALL OF THE SALES CONSIST
11 OF PROPERTY THAT WAS ORIGINALLY CONTAINED WITHIN THE SAME PARCEL THAT IS
12 THIRTY-SIX ACRES OR MORE AND LESS THAN ONE HUNDRED SIXTY ACRES.