

REFERENCE TITLE: ~~Land subdivision; exceptions; children; grandchildren~~

State of Arizona
Senate
Fifty-third Legislature
First Regular Session
2017

SB 1456

Introduced by
Senator Allen S

AN ACT

AMENDING SECTION 32-2101, ARIZONA REVISED STATUTES; RELATING TO REAL ESTATE.

(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
10 on radio or television to induce directly or indirectly any person to
11 enter into any obligation or acquire any title or interest in lands
12 subject to this chapter including the land sales contract to be used and
13 any photographs, drawings or artist's presentations of physical conditions
14 or facilities existing or to exist on the property. Advertising does not
15 include:

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

21 (b) Communications to stockholders as follows:

22 (i) Annual reports and interim financial reports.

23 (ii) Proxy materials.

24 (iii) Registration statements.

25 (iv) Securities prospectuses.

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

27 (vi) Prospectuses.

28 (vii) Property reports.

29 (viii) Offering statements.

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

33 4. "Associate broker" means a licensed broker **WHO IS** employed by
34 another broker. Unless otherwise specifically provided, an associate
35 broker has the same license privileges as a salesperson.

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

40 6. "Blanket encumbrance" means any mortgage, any deed of trust or
41 any other encumbrance or lien securing or evidencing the payment of money
42 and affecting more than one lot or parcel of subdivided land, or an
43 agreement affecting more than one lot or parcel by which the subdivider
44 holds the subdivision under an option, contract to sell or trust

1 agreement. Blanket encumbrance does not include taxes and assessments
2 **THAT ARE** levied by public authority.

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

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

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

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

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

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

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

20 (c) A crematory, or a crematory and columbarium, for cinerary
21 interments.

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

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

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

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

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

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

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

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

43 15. "Common promotional plan" means a plan, undertaken by a person
44 or a group of persons acting in concert, to offer lots for sale or
45 lease. If the land is offered for sale by a person or group of persons

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

9 16. "Compensation" means any fee, commission, salary, money or
10 other valuable consideration for services **THAT IS** rendered or to be
11 rendered as well as the promise of consideration whether contingent or
12 not.

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

16 (a) A barrier.

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

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

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

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

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

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

36 (b) Doing business as a sole proprietor.

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

43 23. "Development" means any division, proposed division or use of
44 real property that the department has authority to regulate, including

1 subdivided and unsubdivided lands, cemeteries, condominiums, timeshares,
2 membership campgrounds and stock cooperatives.

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

5 (a) Broker entity pursuant to section 32-2125, subsection A.
6 (b) Sole proprietorship if the sole proprietor is a broker licensed
7 pursuant to this chapter.

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

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

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

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

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

34 30. "License period" means the ~~two-year~~ TWO-YEAR period beginning
35 with the date of original issue or renewal of a particular license and
36 ending on the expiration date, if any.

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

41 32. "Limited liability company licensee" means a lawfully organized
42 limited liability company that has a member or manager who is a natural
43 person and who is licensed as the designated broker pursuant to section
44 32-2125.

1 33. "Lot reservation" means an expression of interest by a
2 prospective purchaser in buying at some time in the future a subdivided or
3 unsubdivided lot, unit or parcel in this state. In all cases, a
4 subsequent affirmative action by the prospective purchaser must be taken
5 to create a contractual obligation to purchase.

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

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

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

15 (a) Sells, purchases, lists, exchanges or leases membership camping
16 contracts.

17 (b) Offers to sell, purchase, exchange or lease membership camping
18 contracts.

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

21 (d) Advertises or holds himself out as being engaged in the
22 business of selling, buying, exchanging or leasing membership camping
23 contracts or counseling or advising regarding membership camping
24 contracts.

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

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

30 37. "Membership camping contract" means an agreement **THAT IS**
31 offered or sold in this state evidencing a purchaser's right or license to
32 use the camping or outdoor recreation facilities of a membership camping
33 operator and includes a membership that provides for this use.

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

42 39. "Membership camping salesperson" means a natural person who
43 acts on the person's own behalf or through and on behalf of a professional
44 limited liability company or a professional corporation engaged by or on
45 behalf of a licensed membership camping or real estate broker, or by or on

1 behalf of a corporation, partnership or limited liability company that is
2 licensed as a membership camping or real estate broker, to perform any act
3 or participate in any transaction in a manner included in the definition
4 of membership camping broker.

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

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

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

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

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

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

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

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

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

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

1 (b) Offers to sell, exchange, purchase, rent or lease real estate,
2 businesses and business opportunities or timeshare interests.
3 (c) Negotiates or offers, attempts or agrees to negotiate the sale,
4 exchange, purchase, rental or leasing of real estate, businesses and
5 business opportunities or timeshare interests.
6 (d) Lists or offers, attempts or agrees to list real estate,
7 businesses and business opportunities or timeshare interests for sale,
8 lease or exchange.
9 (e) Auctions or offers, attempts or agrees to auction real estate,
10 businesses and business opportunities or timeshare interests.
11 (f) Buys, sells, offers to buy or sell or otherwise deals in
12 options on real estate, businesses and business opportunities or timeshare
13 interests or improvements to real estate, businesses and business
14 opportunities or timeshare interests.
15 (g) Collects or offers, attempts or agrees to collect rent for the
16 use of real estate, businesses and business opportunities or timeshare
17 interests.
18 (h) Advertises or holds himself out as being engaged in the
19 business of buying, selling, exchanging, renting or leasing real estate,
20 businesses and business opportunities or timeshare interests or counseling
21 or advising regarding real estate, businesses and business opportunities
22 or timeshare interests.
23 (i) Assists or directs in the procuring of prospects, calculated to
24 result in the sale, exchange, leasing or rental of real estate, businesses
25 and business opportunities or timeshare interests.
26 (j) Assists or directs in the negotiation of any transaction
27 calculated or intended to result in the sale, exchange, leasing or rental
28 of real estate, businesses and business opportunities or timeshare
29 interests.
30 (k) Incident to the sale of real estate, businesses and business
31 opportunities negotiates or offers, attempts or agrees to negotiate a loan
32 secured or to be secured by any mortgage or other encumbrance ~~upon~~ ON or
33 transfer of real estate, businesses and business opportunities or
34 timeshare interests subject to section 32-2155, subsection C. This
35 subdivision does not apply to mortgage brokers as defined in and subject
36 to title 6, chapter 9, article 1.
37 (l) Engages in the business of assisting or offering to assist
38 another in filing an application for the purchase or lease of, or in
39 locating or entering ~~upon~~ ON, lands owned by the state or federal
40 government.
41 (m) Claims, demands, charges, receives, collects or contracts for
42 the collection of an advance fee in connection with any employment
43 enumerated in this section, including employment undertaken to promote the
44 sale or lease of real property by advance fee listing, by furnishing
45 rental information to a prospective tenant for a fee paid by the

1 prospective tenant, by advertisement or by any other offering to sell,
2 lease, exchange or rent real property or selling kits connected
3 therewith. This shall not include the activities of any communications
4 media of general circulation or coverage not primarily engaged in the
5 advertisement of real estate or any communications media activities that
6 are specifically exempt from applicability of this article under section
7 32-2121.

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

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

16 (p) Acts as a business broker.

17 49. "Real estate sales contract" means an agreement in which one
18 party agrees to convey title to real estate to another party ~~upon~~ ON the
19 satisfaction of specified conditions set forth in the contract.

20 50. "Real estate salesperson" means a natural person who acts on
21 the person's own behalf or through and on behalf of a professional limited
22 liability company or a professional corporation engaged by or on behalf of
23 a licensed real estate broker, or by or on behalf of a limited liability
24 company, partnership or corporation that is licensed as a real estate
25 broker, to perform any act or participate in any transaction in a manner
26 included in the definition of real estate broker subject to section
27 32-2155.

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

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

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

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

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

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

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

7 55. "Subdivider" means any person who offers for sale or lease six
8 or more lots, parcels or fractional interests in a subdivision or who
9 causes land to be subdivided into a subdivision for the subdivider or for
10 others, or who undertakes to develop a subdivision, but does not include
11 **EITHER OF THE FOLLOWING:**

12 (a) A public agency or officer authorized by law to create
13 subdivisions.

14 (b) A PERSON SELLING, LEASING OR GIFTING THE PERSON'S LAND TO THE
15 PERSON'S CHILD OR GRANDCHILD.

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

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

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

23 (c) Does not include:

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

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

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

37 (v) A sale or lease of a lot, parcel or fractional interest that
38 occurs ten or more years after the sale or lease of another lot, parcel or
39 fractional interest if the other lot, parcel or fractional interest is not
40 subject to this article and is treated as an independent parcel unless,
41 ~~upon~~ ON investigation by the commissioner, there is evidence of intent to
42 subdivide.

43 (vi) THE SALE, LEASE OR GIFT OF A PERSON'S LAND TO THE PERSON'S
44 CHILD OR GRANDCHILD.

1 57. "Timeshare" or "timeshare property" means real property
2 ownership or right of occupancy in real property pursuant to article 9 of
3 this chapter. For the purposes of this chapter, a timeshare is not a
4 security unless it meets the definition of a security under section
5 44-1801.

6 58. "Trustee" means:

7 (a) A person **WHO IS** designated under section 32-2194.27 to act as a
8 trustee for an endowment-care cemetery fund.

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

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

14 60. "Unsubdivided lands":

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

22 (b) Includes any land that is **EITHER:**

23 (i) Sold **AND** that would otherwise constitute the sixth lot, parcel
24 or fractional interest if the sale occurs ten or more years after the
25 earliest of the previous five sales and if all of the sales consist of
26 property that was originally contained within the same parcel that is
27 thirty-six acres or more and less than one hundred sixty acres.

28 (ii) **SOLD, LEASED OR GIFTED AND THAT WOULD OTHERWISE CONSTITUTE THE**
29 **SIXTH LOT, PARCEL OR FRACTIONAL INTEREST IF THE SALE, LEASE OR GIFT IS BY**
30 **A PERSON TO THE PERSON'S CHILD OR GRANDCHILD.**