

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.

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

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

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

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

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

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

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

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

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

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

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

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

39. "Membership camping salesperson" means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation engaged by or on 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.

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

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

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

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

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

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

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

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

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

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

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

(m) Claims, demands, charges, receives, collects or contracts for the collection of an advance fee in connection with any employment enumerated in this section, including employment undertaken to promote the sale or lease of real property by advance fee listing, by furnishing rental information to a prospective tenant for a fee paid by the

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

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

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

(p) Acts as a business broker.

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

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

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

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

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

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

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

1 (b) All or substantially all of the shareholders of the corporation  
2 each receive a right of exclusive occupancy in a portion of the real  
3 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.

29 (iii) The leasing of agricultural lands or apartments, offices,  
30 stores, hotels, motels, pads or similar space within an apartment  
31 building, industrial building, rental recreational vehicle community,  
32 rental manufactured home community, rental mobile home park or commercial  
33 building.

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.