

REFERENCE TITLE: land division; acting in concert

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1149

Introduced by
Senator Kavanagh

AN ACT

AMENDING SECTIONS 11-321, 11-831, 32-2185.09 AND 33-422, ARIZONA REVISED STATUTES; RELATING TO LAND DIVISION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 11-321, Arizona Revised Statutes, is amended to
3 read:

4 11-321. Building permits; issuance; state preemption;
5 utilities; distribution of copies; subsequent
6 owner; limitation; denial; definition

7 A. Except in those cities and towns that have an ordinance relating
8 to ~~the issuance of~~ ISSUING building permits, the board of supervisors
9 shall require a building permit for any construction of a building or an
10 addition to a building exceeding a cost of \$1,000 within its
11 jurisdiction. The building permit shall be filed with the board of
12 supervisors or its designated agent.

13 B. The regulation of a utility provider's authority to operate and
14 serve customers is a matter of statewide concern. The regulation of
15 building permits as it relates to a building permit applicant's ability to
16 use a utility provider that is capable and authorized to provide utility
17 service is allowed solely in accordance with subsections C and D of this
18 section. A building permit applicant's ability to use a utility provider
19 that is capable and authorized to provide utility service is not subject
20 to further regulation by a county.

21 C. A county may not deny a permit application based on the utility
22 provider proposed to provide utility service to the project.

23 D. A county issuing a building permit shall ensure that all
24 applicable permits and associated fees assessed on a building permit
25 applicant contain requirements and amounts that do not exceed the
26 requirements and amounts for use of other utility providers and do not
27 have the effect of restricting ~~a~~ THE permit applicant's ability to use
28 the services of a utility provider that is capable and authorized to
29 provide utility service.

30 E. The board of supervisors may not require an applicant for a
31 building permit to hold a transaction privilege tax license or business
32 license as a condition for issuing the building permit.

33 F. Where deemed of public convenience, the board of supervisors
34 shall allow the application for and the issuance of building permits by
35 mail.

36 G. One copy of the building permit required by the terms of
37 subsection A of this section shall be transmitted to the county assessor
38 and one copy shall be transmitted to the director of the department of
39 revenue. The permit copy provided to the assessor and the department of
40 revenue shall have the permit number, the issue date and the parcel number
41 for which the permit is issued. On the issuance of the certificate of
42 occupancy or the certificate of completion or on the expiration or
43 cancellation of the permit, the assessor and the department of revenue
44 shall be notified in writing or in electronic format of the permit number,
45 parcel number, issue date and completion date.

1 H. If a person has constructed a building or an addition to a
2 building without obtaining a building permit, a county shall not require a
3 subsequent owner to obtain a permit for the construction or addition done
4 by the prior owner before issuing a permit for a building addition except
5 that this section does not prohibit A COUNTY FROM enforcing an applicable
6 ordinance or code provision that affects the public health or safety.

7 I. A COUNTY MAY DENY A BUILDING PERMIT APPLICATION FOR ONE OR MORE
8 LOTS IF A CEASE AND DESIST OR OTHER SIMILAR NOTICE HAS BEEN SENT TO THE
9 APPLICANT OR APPLICANTS NOTIFYING THE APPLICANT OR APPLICANTS THAT THEY
10 ARE UNDER INVESTIGATION FOR ACTING IN CONCERT IN VIOLATION OF SECTION
11 11-831.

12 ~~J.~~ J. This section does not prohibit a county from recovering
13 reasonable costs associated with reviewing and issuing a building permit.

14 ~~K.~~ K. This section does not affect any authority of a county to
15 manage or operate a county-owned utility.

16 ~~L.~~ L. For the purposes of this section, "utility service" means
17 water, wastewater, natural gas, including propane gas, or electric service
18 provided to an end user.

19 Sec. 2. Section 11-831, Arizona Revised Statutes, is amended to
20 read:

21 11-831. Review of land divisions; penalties; definitions

22 A. The board of supervisors of each county may adopt ordinances and
23 regulations pursuant to this section for staff review and approval of land
24 divisions of five or fewer lots, parcels or fractional interests, any of
25 which is ten acres or smaller in size. The county may not deny approval
26 of any land division that meets the requirements of this section. If A
27 review of the request is not completed within thirty days after receiving
28 the request, the land division is considered to be approved. At its
29 option, the board of supervisors may submit a ballot question to the
30 voters of the county to allow the voters to determine the application of
31 subsections B and C OF THIS SECTION to qualifying land divisions in that
32 county.

33 B. An application to split a parcel of land shall be approved if:

34 1. The lots, parcels or fractional interests each meet the minimum
35 applicable county zoning requirements of the applicable zoning
36 designation.

37 2. The applicant provides a standard preliminary title report or
38 other acceptable document that demonstrates legal access to the lots,
39 parcels or fractional interests.

40 3. The applicant provides a statement from a licensed surveyor or
41 engineer, or other evidence acceptable to the county, stating whether each
42 lot, parcel or fractional interest has physical access that is traversable
43 by a two-wheel drive passenger motor vehicle.

1 4. The applicant reserves the necessary and appropriate utility
2 easements to serve each lot, parcel or fractional interest created by the
3 land division.

4 5. THE APPLICANT SIGNS AN AFFIDAVIT OR SIMILAR DOCUMENT UNDER OATH
5 ACKNOWLEDGING THE FOLLOWING:

6 (a) THE APPLICANT IS AWARE THAT IT IS UNLAWFUL FOR A PERSON OR
7 GROUP OF PERSONS TO ATTEMPT TO AVOID THIS SECTION OR THE SUBDIVISION LAWS
8 OF THIS STATE BY ACTING IN CONCERT TO DIVIDE A PARCEL OF LAND INTO SIX OR
9 MORE LOTS OR SELL OR LEASE SIX OR MORE LOTS BY USING A SERIES OF OWNERS OR
10 CONVEYANCES OR BY ANY OTHER METHOD THAT RESULTS IN THE DIVISION OF LAND
11 INTO A SUBDIVISION OR SUBDIVIDED LAND.

12 (b) THE APPLICANT IS AWARE THAT THE COUNTY WHERE THE LAND DIVISION
13 OCCURRED OR THE STATE REAL ESTATE DEPARTMENT MAY ENFORCE THIS PROHIBITION
14 AGAINST A PERSON OR GROUP OF PERSONS UNDER INVESTIGATION FOR UNLAWFUL
15 ACTING IN CONCERT BY DENYING BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY
16 OR ISSUING FINES OR A COMBINATION OF THESE PENALTIES.

17 C. An application to split a parcel of land that does not comply
18 with one or more of the items listed in subsection B OF THIS SECTION shall
19 still be approved if the applicant provides an acknowledgment that is
20 signed by the applicant and that confirms that ~~no~~ A building or use permit
21 will NOT be issued by the county until the lot, parcel or fractional
22 interest has met the requirements of subsection B OF THIS SECTION. The
23 county may grant a variance from one or more of the items listed in
24 subsection B OF THIS SECTION.

25 D. Any approval of a land division under this section may:

26 1. Include the minimum statutory requirements for legal and
27 physical on-site access that must be met as a condition to the issuance of
28 a building or use permit for the lots, parcels or fractional interests.

29 2. Identify topographic, hydrologic or other site constraints,
30 requirements or limitations that must be addressed as conditions to the
31 eventual issuance of a building or use permit. These constraints,
32 requirements or limitations may be as noted by the applicant or through
33 county staff review, but there shall be no requirement for independent
34 studies.

35 E. If the requirements of subsections A through D OF THIS SECTION
36 do not apply, a county may adopt ordinances and regulations pursuant to
37 this chapter for staff review of land divisions of five or fewer lots,
38 parcels or fractional interests but only to determine compliance with
39 minimum applicable county zoning requirements and legal access and may
40 grant waivers from the county zoning and legal access requirements. The
41 county may not deny approval of any land division that meets the
42 requirements of this section or ~~where~~ IF the deficiencies are noticed in
43 the deed. A county may not require a public hearing on a request to
44 divide five or fewer lots, parcels or fractional interests. If A review
45 of the request is not completed within thirty days ~~from~~ AFTER receipt of

1 the request, the land division shall be deemed approved. If ~~no~~ legal
2 access is NOT available, the legal access does not allow access by
3 emergency vehicles or the county zoning requirements are not met, the
4 access or zoning deficiencies shall be noticed in the deed. If a county
5 by ordinance requires a legal access of more than twenty-four feet roadway
6 width, the county is responsible for the improvement and maintenance of
7 the improvement. If the legal access does not allow access to the lots,
8 parcels or fractional interests by emergency vehicles, neither the county
9 nor its agents or employees are liable for damages resulting from the
10 failure of emergency vehicles to reach the lot, parcel or fractional
11 interest.

12 F. It is unlawful for a person or group of persons acting in
13 concert to attempt to avoid this section or the subdivision laws of this
14 state by acting in concert to divide a parcel of land into six or more
15 lots or sell or lease six or more lots by using a series of owners or
16 conveyances. Either the county where the division occurred or the state
17 real estate department pursuant to title 32, chapter 20, but not both, may
18 enforce this prohibition. A familial relationship alone is not sufficient
19 to constitute unlawful acting in concert. A COUNTY WHERE THE LAND
20 DIVISION OCCURRED OR THE STATE REAL ESTATE DEPARTMENT MAY DENY A BUILDING
21 PERMIT FOR ONE OR MORE LOTS IF A CEASE AND DESIST OR OTHER SIMILAR NOTICE
22 HAS BEEN SENT TO THE PERSON OR GROUP OF PERSONS UNDER INVESTIGATION FOR
23 ACTING IN CONCERT IN VIOLATION OF THIS SECTION.

24 G. For any subdivision that consists of ten or fewer lots, tracts
25 or parcels, each of which is of a size as prescribed by the board of
26 supervisors, the board of supervisors of each county may waive the
27 requirement to prepare, submit and receive approval of a preliminary plat
28 as a condition precedent to submitting a final plat and may waive or
29 reduce infrastructure standards or requirements except for improved
30 dust-controlled access and minimum drainage improvements.

31 H. For the purposes of this section:

32 1. "Legal access" means a public right of vehicular ingress and
33 egress between the lots, parcels or fractional interests being created.

34 2. "Minimum applicable county zoning requirements" means the
35 minimum acreage and dimensions of the resulting lot, parcel or fractional
36 interest as required by the county's zoning ordinance.

37 3. "Utility easement" means an easement of eight feet in width
38 dedicated to the general public to install, maintain and access sewer,
39 electric, gas and water utilities.

40 Sec. 3. Section 32-2185.09, Arizona Revised Statutes, is amended to
41 read:

42 32-2185.09. Civil penalties; limitation

43 A. A subdivider or agent who is subject to the jurisdiction of the
44 department, who violates this chapter or any rule adopted or order issued
45 by the commissioner or who engages in any unlawful practices defined in

1 section 44-1522 with respect to the sale or lease of subdivided lands may
2 be assessed a civil penalty by the commissioner, after a hearing, in an
3 amount not to exceed ~~one thousand dollars~~ \$1,000 for each infraction. An
4 infraction ~~which~~ THAT concerns more than one lot in a subdivision is a
5 single infraction for the purposes of this section.

6 B. A proceeding for imposition of a civil penalty or for suspension
7 or revocation of a license for a violation of this article or any rule
8 adopted or order issued by the commissioner must be commenced within five
9 years of actual discovery by the department or discovery ~~which~~ THAT should
10 have occurred with the exercise of reasonable diligence by the department.

11 C. A subdivider who sells or leases in this state any lots, parcels
12 or fractional interest in a subdivision without first obtaining a public
13 report from the commissioner except as provided in section 32-2181.01 or
14 ~~32-2182.02~~ 32-2181.02 for a lot or lots created from and after December
15 31, 2008 and on an order issued by the commissioner, may be assessed a
16 civil penalty by the commissioner, after a hearing, in an amount not to
17 exceed ~~five thousand dollars~~ \$10,000 for each infraction. A proceeding
18 for the imposition of a civil penalty or suspension or revocation of a
19 license for a violation of this subsection or any rule adopted or order
20 issued by the commissioner must be commenced within five years of actual
21 discovery by the department or discovery that should have occurred with
22 the exercise of reasonable diligence by the department.

23 Sec. 4. Section 33-422, Arizona Revised Statutes, is amended to
24 read:

25 33-422. Land divisions; recording; disclosure affidavit

26 A. A seller of five or fewer parcels of land, other than subdivided
27 land, in an unincorporated area of a county and any subsequent seller of
28 such a parcel shall furnish a written affidavit of disclosure to the buyer
29 at least seven days before the transfer of the property and the buyer
30 shall acknowledge receipt of the affidavit.

31 B. The affidavit must be written in twelve-point type.

32 C. A release or waiver of a seller's liability arising out of any
33 omission or misrepresentation contained in an affidavit of disclosure is
34 not valid or binding on the buyer.

35 D. The buyer has the right to rescind the sales transaction for a
36 period of five days after the affidavit of disclosure is furnished to the
37 buyer.

38 E. The seller shall record the executed affidavit of disclosure at
39 the same time that the deed is recorded. The county recorder is not
40 required to verify the accuracy of any statement in the affidavit of
41 disclosure. A subsequently recorded affidavit supersedes any previous
42 affidavit.

1 F. The affidavit of disclosure shall meet the requirements of
2 section 11-480 and follow substantially the following form:

3 When recorded mail to:

4 _____
5 _____
6 _____
7 _____

8 Affidavit of Disclosure
9 Pursuant to A.R.S. § 33-422

10 I, _____ (seller(s))
11 being duly sworn, hereby make this affidavit of disclosure
12 relating to the real property situated in the unincorporated
13 area of:

14 _____, County, State of Arizona, located at:

15 _____
16 and legally described as:

17 (Legal description attached hereto as exhibit "A")
18 (property).

19 1. There is is not legal access to the property,
20 as defined in A.R.S. § 11-831 unknown

21 Explain: _____
22 _____
23 _____

24 2. There is is not physical access to the property.
25 unknown

26 Explain: _____
27 _____
28 _____

29 3. There is is not a statement from a licensed
30 surveyor or engineer available stating whether the property has
31 physical access that is traversable by a two-wheel drive
32 passenger motor vehicle.

33 4. The legal and physical access to the property is is not
34 the same.... unknown not applicable.

35 Explain: _____
36 _____
37 _____

38 *If access to the parcel is not traversable by emergency*
39 *vehicles, the county and emergency service providers may not*
40 *be held liable for any damages resulting from the inability to*
41 *traverse the access to provide needed services.*

42 5. The road(s) is/are publicly maintained privately
43 maintained not maintained not applicable. If
44 applicable, there is is not a recorded road
45 maintenance agreement.

- 1 *If the roads are not publicly maintained, it is the*
2 *responsibility of the property owner(s) to maintain the roads*
3 *and roads that are not improved to county standards and*
4 *accepted for maintenance are not the county's responsibility.*
- 5 6. A portion or all of the property is is not
6 located in a FEMA designated regulatory floodplain. If the
7 property is in a floodplain, it may be subject to floodplain
8 regulation.
- 9 7. The property is is not subject to fissures or
10 expansive soils. unknown
11 Explain: _____
12 _____
13 _____
- 14 8. The following services are currently provided to the property:
15 water sewer electric natural gas single
16 party telephone cable television services.
- 17 9. The property is is not served by a water
18 supply that requires the transportation of water to the
19 property.
- 20 10. The property is served by a private water company a
21 municipal water provider a private well a shared well
22 no well. If served by a shared well, the shared well
23 is is not a public water system, as defined by
24 the safe drinking water act (42 United States Code § 300f).
25 *Notice to buyer: If the property is served by a well, a*
26 *private water company or a municipal water provider the*
27 *Arizona department of water resources may not have made a*
28 *water supply determination. For more information about water*
29 *supply, contact the water provider.*
- 30 11. The property or the water used on the property is is not
31 the subject of a statement of claimant for the use of water in
32 a general adjudication of water rights. unknown.
33 *This is a lawsuit to determine the use of and relative*
34 *priority of water rights. A map of adjudicated areas is*
35 *available at the website of the department of water resources.*
- 36 12. The property does have does not have an on-site
37 wastewater treatment facility (i.e., standard septic or
38 alternative system to treat and dispose of wastewater).
39 unknown. If applicable: a) The property will will not
40 require installation of an on-site wastewater treatment
41 facility; b) The on-site wastewater treatment facility has
42 has not been inspected.
- 43 13. The property has been has not been subject to a
44 percolation test. unknown.

- 1 14. The property does have does not have one or more solar
2 energy devices that are leased owned.
3 *Notice to buyer: If the property contains solar energy*
4 *devices, it is the responsibility of the buyer to verify the*
5 *proper replacement and disposal method for the devices, as*
6 *applicable. If the solar energy devices are leased, the*
7 *seller or property owner shall disclose the name and contact*
8 *information of the leasing company.*
9 *Leasing company name: _____ Phone: _____*
- 10 15. The property does does not meet the minimum
11 applicable county zoning requirements of the applicable zoning
12 designation.
- 13 16. The sale of the property does does not meet the
14 requirements of A.R.S. § 11-831 regarding land divisions,
15 **INCLUDING THAT THE PROPERTY IS NOT CURRENTLY SUBJECT TO AN**
16 **INVESTIGATION OR FINDING THAT THE LOT WAS DIVIDED TO AVOID THE**
17 **SUBDIVISION LAWS OF THIS STATE BY ACTING IN CONCERT TO CREATE**
18 **MORE THAN FIVE LOTS.** If those requirements are not met, the
19 property owner may not be able to obtain a building
20 permit. The seller or property owner shall disclose each of
21 the deficiencies to the buyer.
22 Explain: _____
23 _____
24 _____
- 25 17. The property is is not located in the clear zone of a
26 military airport or ancillary military facility, as defined in
27 A.R.S. § 28-8461. (Maps are available at the state real estate
28 department's website.)
- 29 18. The property is is not located in the high noise or
30 accident potential zone of a military airport or ancillary
31 military facility, as defined in A.R.S. § 28-8461. (Maps are
32 available at the state real estate department's website.)
- 33 19. Notice: If the property is located within the territory in the
34 vicinity of a military airport or ancillary military facility,
35 the property is required to comply with sound attenuation
36 standards as prescribed by A.R.S. § 28-8482. (Maps are
37 available at the state real estate department's website.)
- 38 20. The property is is not located under military restricted
39 airspace. unknown. (Maps are available at the state real
40 estate department's website.)
- 41 21. The property is is not located in a military electronics
42 range as defined in A.R.S. § 9-500.28 and § 11-818. unknown.
43 (Maps are available at the state real estate department's
44 website.)

1 22. Use of the property is is not limited in any way
2 relating to an encumbrance of title due to a lis pendens, a
3 court order or a state real estate department order or a
4 pending legal action. If the use of the property is limited
5 due to an encumbrance of title, the seller or property owner
6 shall disclose the limitations to the buyer.

7 Explain: _____
8 _____
9 _____

10
11 This affidavit of disclosure supersedes any previously
12 recorded affidavit of disclosure.

13 I certify under penalty of perjury that the information
14 contained in this affidavit is true, complete and correct
15 according to my best belief and knowledge.

16 Dated this ____ (date) ____ day of ____ (year) ____ by:
17 Seller's name (print): _____ Signature: _____
18 Seller's name (print): _____ Signature: _____
19 State of Arizona)

20) ss.
21 County of _____)

22 Subscribed and sworn before me this ____ (date) ____ day
23 of ____ (year) ____, by _____.

24 _____
25 Notary public

26 My commission expires:
27 _____ (date) _____

28 Buyer(s) hereby acknowledges receipt of a copy of this
29 affidavit of disclosure this ____ (date) ____ day
30 of ____ (year) ____

31 Buyer's name (print): _____ Signature: _____
32 Buyer's name (print): _____ Signature: _____

33 G. For the purposes of this section, seller and subsequent seller
34 do not include a trustee of a deed of trust who is selling property by a
35 trustee's sale pursuant to chapter 6.1 of this title or any officer who is
36 selling property by execution sale pursuant to title 12, chapter 9 and
37 chapter 6 of this title. If the seller is a trustee of a subdivision
38 trust as defined in section 6-801, the disclosure affidavit required by
39 this section shall be provided by the beneficiary of the subdivision
40 trust.