

REFERENCE TITLE: real estate; acting in concert

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HB 2006

Introduced by
Representative Griffin

AN ACT

AMENDING SECTIONS 11-831 AND 32-2181, 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 11-831, Arizona Revised Statutes, is amended to
3 read:

4 11-831. Review of land divisions; definitions

5 A. The board of supervisors of each county may adopt ordinances and
6 regulations pursuant to this section for staff review and approval of land
7 divisions of five or fewer lots, parcels or fractional interests, any of
8 which is ten acres or smaller in size. The county may not deny approval
9 of any land division that meets the requirements of this section. If a
10 review of the request is not completed within thirty days after receiving
11 the request, the land division is considered to be approved. At its
12 option, the board of supervisors may submit a ballot question to the
13 voters of the county to allow the voters to determine the application of
14 subsections B and C of this section to qualifying land divisions in that
15 county.

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

17 1. The lots, parcels or fractional interests each meet the minimum
18 applicable county zoning requirements of the applicable zoning
19 designation.

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

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

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

30 5. The applicant signs an affidavit or similar document under oath
31 acknowledging the following:

32 (a) The applicant is aware that it is unlawful pursuant to
33 subsection F of this section and section 32-2181, subsection D for a
34 person or group of persons to attempt to avoid these sections or the
35 subdivision laws of this state by acting in concert to divide a parcel of
36 land into six or more lots or parcels.

37 (b) The applicant is aware that the county where the land division
38 occurred or the state real estate department may investigate and enforce
39 the prohibition against acting in concert to unlawfully divide a parcel of
40 land into six or more lots or parcels.

41 C. An application to split a parcel of land that does not comply
42 with one or more of the items listed in subsection B of this section shall
43 still be approved if the applicant provides an acknowledgment that is
44 signed by the applicant and that confirms that a building or use permit
45 will not be issued by the county until the lot, parcel or fractional

1 interest has met the requirements of subsection B of this section. The
2 county may grant a variance from one or more of the items listed in
3 subsection B of this section.

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

5 1. Include the minimum statutory requirements for legal and
6 physical on-site access that must be met as a condition to issuing a
7 building or use permit for the lots, parcels or fractional interests.

8 2. Identify topographic, hydrologic or other site constraints,
9 requirements or limitations that must be addressed as conditions to the
10 eventual issuance of a building or use permit. These constraints,
11 requirements or limitations may be as noted by the applicant or through
12 county staff review, but there shall be no requirement for independent
13 studies.

14 E. If the requirements of subsections A through D of this section
15 do not apply, a county may adopt ordinances and regulations pursuant to
16 this chapter for staff review of land divisions of five or fewer lots,
17 parcels or fractional interests but only to determine compliance with
18 minimum applicable county zoning requirements and legal access and may
19 grant waivers from the county zoning and legal access requirements. The
20 county may not deny approval of any land division that meets the
21 requirements of this section or if the deficiencies are noticed in the
22 deed. A county may not require a public hearing on a request to divide
23 five or fewer lots, parcels or fractional interests. If a review of the
24 request is not completed within thirty days after receipt of the request,
25 the land division shall be deemed approved. If legal access is not
26 available, the legal access does not allow access by emergency vehicles or
27 the county zoning requirements are not met, the access or zoning
28 deficiencies shall be noticed in the deed. If a county by ordinance
29 requires a legal access of more than twenty-four feet roadway width, the
30 county is responsible for the improvement and maintenance of the
31 improvement. If the legal access does not allow access to the lots,
32 parcels or fractional interests by emergency vehicles, neither the county
33 nor its agents or employees are liable for damages resulting from the
34 failure of emergency vehicles to reach the lot, parcel or fractional
35 interest.

36 F. It is unlawful for a person or group of persons acting in
37 concert to attempt to avoid this section or the subdivision laws of this
38 state by acting in concert to divide a parcel of land into six or more
39 lots or sell or lease six or more lots by using a series of owners or
40 conveyances. Either the county where the division occurred or the state
41 real estate department pursuant to title 32, chapter 20, but not both, may
42 enforce this prohibition. ~~A familial relationship~~ ANY OF THE FOLLOWING
43 alone is not sufficient to constitute unlawful acting in concert.:

- 44 1. A FAMILIAL RELATIONSHIP.
45 2. A WELL SHARE AGREEMENT.

1 3. A ROAD MAINTENANCE AGREEMENT.

2 4. THE USE OF OR REFERRAL TO THE SAME CONTRACTOR WHO IS LICENSED
3 PURSUANT TO TITLE 32, CHAPTER 10 OR THE SAME PERSON WHO IS REGISTERED
4 PURSUANT TO TITLE 32, CHAPTER 1.

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

12 H. For the purposes of this section:

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

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

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

21 Sec. 2. Section 32-2181, Arizona Revised Statutes, is amended to
22 read:

23 32-2181. Notice to commissioner of intention to subdivide
24 lands; unlawful acting in concert; exceptions; deed
25 restrictions; definition

26 A. Before offering subdivided lands for sale or lease, the
27 subdivider shall notify the commissioner in writing of the subdivider's
28 intention. The notice shall contain:

29 1. The name and address of the owner. If the holder of any
30 ownership interest in the land is other than an individual, such as a
31 corporation, partnership or trust, THE NOTICE SHALL CONTAIN a statement
32 naming the type of legal entity and listing the interest and the extent of
33 any interest of each principal in the entity. For the purposes of this
34 section, "principal" means any person or entity having a ten ~~per cent~~
35 PERCENT or more financial interest or, if the legal entity is a trust,
36 each beneficiary of the trust holding a ten ~~per cent~~ PERCENT or more
37 beneficial interest.

38 2. The name and address of the subdivider.

39 3. The legal description and area of the land.

40 4. A true statement of the condition of the title to the land,
41 including all encumbrances on the land, and a statement of the provisions
42 agreed to by the holder of any blanket encumbrance enabling a purchaser to
43 acquire title to a lot or parcel free of the lien of the blanket
44 encumbrance on completion of all payments and performance of all of the
45 terms and provisions required to be made or performed by the purchaser

1 under the real estate sales contract by which the purchaser has acquired
2 the lot or parcel. The subdivider shall file copies of documents
3 acceptable to the department containing these provisions with the
4 commissioner before the sale of any subdivision lot or parcel subject to a
5 blanket encumbrance.

6 5. The terms and conditions on which it is intended to dispose of
7 the land, together with copies of any real estate sales contract,
8 conveyance, lease, assignment or other instrument intended to be used, and
9 any other information the owner or the owner's agent or subdivider desires
10 to present.

11 6. A map of the subdivision that has been filed in the office of
12 the county recorder in the county in which the subdivision is located.

13 7. A brief but comprehensive statement describing the land on and
14 the locality in which the subdivision is located.

15 8. A statement of the provisions that have been made for permanent
16 access and provisions, if any, for health department approved sewage and
17 solid waste collection and disposal and public utilities in the proposed
18 subdivision, including water, electricity, gas and telephone facilities.

19 9. A statement as to the location of the nearest public common and
20 high schools available for the attendance of ~~school-age~~ SCHOOL-AGE pupils
21 residing on the subdivision property.

22 10. A statement of the use or uses for which the proposed
23 subdivision will be offered.

24 11. A statement of the provisions, if any, limiting the use or
25 occupancy of the parcels in the subdivision, together with copies of any
26 restrictive covenants affecting all or part of the subdivision.

27 12. The name and business address of the principal broker selling or
28 leasing, within this state, lots or parcels in the subdivision.

29 13. A true statement of the approximate amount of indebtedness that
30 is a lien on the subdivision or any part of the subdivision and that was
31 incurred to pay for the construction of any on-site or off-site
32 improvement, or any community or recreational facility.

33 14. A true statement or reasonable estimate, if applicable, of the
34 amount of any indebtedness that has been or is proposed to be incurred by
35 an existing or proposed special district, entity, taxing area or
36 assessment district, within the boundaries of which the subdivision, or
37 any part of the subdivision, is located, and that is to pay for the
38 construction or installation of any improvement or to furnish community or
39 recreational facilities to the subdivision, and which amounts are to be
40 obtained by ad valorem tax or assessment, or by a special assessment or
41 tax ~~apart~~ ON the subdivision or any part of the subdivision.

42 15. A true statement as to the approximate amount of annual taxes,
43 special assessments or fees to be paid by the buyer for the proposed
44 annual maintenance of common facilities in the subdivision.

1 16. A statement of the provisions for easements for permanent access
2 for irrigation water where applicable.

3 17. A true statement of assurances for the completion of off-site
4 improvements, such as roads, utilities, community or recreational
5 facilities and other improvements to be included in the offering or
6 represented as being in the offering, and approval of the offering by the
7 political subdivision with authority. This statement shall include a
8 trust agreement or any other evidence of assurances for delivery of the
9 improvements and a statement of the provisions, if any, for the continued
10 maintenance of the improvements.

11 18. A true statement of the nature of any improvements to be
12 installed by the subdivider, the estimated schedule for completion and the
13 estimated costs related to the improvements that will be borne by
14 purchasers of lots in the subdivision.

15 19. A true statement of the availability of sewage disposal
16 facilities and other public utilities, including water, electricity, gas
17 and telephone facilities in the subdivision, the estimated schedule for
18 their installation, and the estimated costs related to the facilities and
19 utilities that will be borne by purchasers of lots in the subdivision.

20 20. A true statement as to whether all or any portion of the
21 subdivision is located in an open range or area in which livestock may
22 roam at large under the laws of this state and what provisions, if any,
23 have been made for ~~the~~ fencing ~~of~~ the subdivision to preclude livestock
24 from roaming within the subdivided lands.

25 21. If the subdivider is a subsidiary corporation, a true statement
26 identifying the parent corporation and any of the following in which the
27 parent or any of its subsidiaries is or has been involved within the past
28 five years:

29 (a) Any subdivision in this state.

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

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

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

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

41 (b) The subdivider.

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

43 23. A true statement as to whether all or any portion of the
44 subdivision is located in territory in the vicinity of a military airport
45 or ancillary military facility as defined in section 28-8461, in territory

1 in the vicinity of a public airport as defined in section 28-8486, on or
2 after July 1, 2001, in a high noise or accident potential zone as defined
3 in section 28-8461 or on or after July 1 of the year in which the
4 subdivision becomes located in a high noise or accident potential
5 zone. The statement required pursuant to this paragraph does not require
6 the amendment or refiling of any notice filed before July 1, 2001 or
7 before July 1 of the year in which the subdivision becomes located in a
8 high noise or accident potential zone.

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

12 (a) That the property is a conversion from multifamily rental to
13 condominiums.

14 (b) The date original construction was completed.

15 25. Other information and documents and certifications as the
16 commissioner may reasonably require, ~~provided~~ EXCEPT that the subdivider
17 shall not be required to disclose any critical infrastructure information
18 as defined in section 41-1801 or any information contained in a report
19 issued pursuant to section 41-4273.

20 B. The commissioner, on application, may grant a subdivider of lots
21 or parcels within a subdivision for which a public report was previously
22 issued by the commissioner an exemption from all or part of the
23 notification requirements of subsection A of this section. The subdivider
24 shall file a statement with the commissioner indicating the change of
25 ownership in the lots or parcels together with any material changes
26 occurring subsequent to the original approval of the subdivision within
27 which the lots or parcels are located. The statement shall further refer
28 to the original approval by the commissioner.

29 C. If the subdivision is within an active management area, as
30 defined in section 45-402, the subdivider shall accompany the notice with
31 a certificate of assured water supply issued by the director of water
32 resources along with proof that all applicable fees have been paid
33 pursuant to sections 48-3772 and 48-3774.01, unless the subdivider has
34 obtained a written commitment of water service for the subdivision from a
35 city, town or private water company designated as having an assured water
36 supply by the director of water resources pursuant to section 45-576 or is
37 exempt from the requirement pursuant to section 45-576. If the subdivider
38 has submitted a certificate of assured water supply to a city, town or
39 county ~~prior to~~ BEFORE approval of the plat by the city, town or county
40 and this has been noted on the face of the plat, the submission
41 constitutes compliance with this subsection if the subdivider provides
42 proof to the commissioner that all applicable fees have been paid pursuant
43 to sections 48-3772 and 48-3774.01.

44 D. It is unlawful for a person or group of persons acting in
45 concert to attempt to avoid this article by acting in concert to divide a

1 parcel of land or sell subdivision lots by using a series of owners or
2 conveyances or by any other method that ultimately results in the division
3 of the lands into a subdivision or the sale of subdivided land. The plan
4 or offering is subject to this article. Unlawful acting in concert
5 pursuant to this subsection with respect to the sale or lease of
6 subdivision lots requires proof that the real estate licensee or other
7 licensed professional knew or with the exercise of reasonable diligence
8 should have known that property ~~which~~ THAT the licensee listed or for
9 which the licensee acted in any capacity as agent was subdivided land
10 subject to this article. ~~A familial relationship~~ ANY OF THE FOLLOWING
11 alone is not sufficient to constitute unlawful acting in concert.:

- 12 1. A FAMILIAL RELATIONSHIP.
- 13 2. A WELL SHARE AGREEMENT.
- 14 3. A ROAD MAINTENANCE AGREEMENT.
- 15 4. THE USE OF OR REFERRAL TO THE SAME CONTRACTOR WHO IS LICENSED
16 PURSUANT TO CHAPTER 10 OF THIS TITLE OR THE SAME PERSON WHO IS REGISTERED
17 PURSUANT TO CHAPTER 1 OF THIS TITLE.

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

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

25 2. The lots, parcels or fractional interests are the result of a
26 foreclosure sale, the exercise by a trustee under a deed of trust of a
27 power of sale or the grant of a deed in lieu of foreclosure. This
28 paragraph does not allow circumvention of the requirements of this
29 article.

30 3. The lots, parcels or fractional interests are created by a valid
31 order or decree of a court pursuant to and through compliance with title
32 12, chapter 8, article 7 or by operation of law. This paragraph does not
33 allow circumvention of the requirements of this article.

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

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

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

1 7. A sale or lease of a lot, parcel or fractional interest occurs
2 ten or more years after the sale or lease of another lot, parcel or
3 fractional interest and the other lot, parcel or fractional interest is
4 not subject to this article and is treated as an independent parcel
5 unless, ~~upon~~ ON investigation by the commissioner, there is evidence of
6 intent to subdivide.

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

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

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

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

23 (c) The plat was approved pursuant to an exemption authorized by
24 section 9-463.01, subsection K, pursuant to an exemption authorized by
25 section 11-823, subsection B, paragraph 1, pursuant to an exemption
26 granted by the director of water resources under section 45-108.02 and the
27 exemption has not expired or pursuant to an exemption granted by the
28 director under section 45-108.03. If the plat was approved pursuant to an
29 authorized exemption, the state real estate commissioner shall require
30 that all promotional material and contracts for the sale of lots in the
31 subdivision adequately display the following:

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

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

42 (d) The subdivision received final plat approval from the city,
43 town or county before the requirement for an adequate water supply became
44 effective in the city, town or county, and there have been no material
45 changes to the plat since the final plat approval. If changes were made

1 to the plat after the final plat approval, the director of water resources
2 shall determine whether the changes are material pursuant to the rules
3 adopted by the director to implement section 45-108. If this subdivision
4 applies, the state real estate commissioner shall require that all
5 promotional materials and contracts for the sale of lots in the
6 subdivision adequately display the director of water resources' report or
7 the developer's brief summary of the report as approved by the
8 commissioner on the proposed water supply for the subdivision.

9 2. If the subdivision is not located in a county that has adopted
10 the provision authorized by section 11-823, subsection A or in a city or
11 town that has enacted an ordinance pursuant to section 9-463.01,
12 subsection 0, and if the director of water resources, pursuant to section
13 45-108, reports an inadequate on-site supply of water to meet the needs
14 projected by the developer or if no water is available, the state real
15 estate commissioner shall require that all promotional material and
16 contracts for the sale of lots in subdivisions approved by the
17 commissioner adequately display the director of water resources' report or
18 the developer's brief summary of the report as approved by the
19 commissioner on the proposed water supply for the subdivision.

20 G. The commissioner may require the subdivider to supplement the
21 notice of intention to subdivide lands and may require the filing of
22 periodic reports to update the information contained in the original
23 notice of intention to subdivide lands.

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

30 I. ~~Neither~~ A real estate sales contract, conveyance, lease,
31 assignment or other instrument to transfer any interest in subdivided land
32 ~~nor~~ AND any covenant or restriction affecting real property shall NOT
33 contain any provision limiting the right of any party to appear or testify
34 in support of or opposition to zoning changes, building permits or any
35 other official acts affecting real property before a governmental body or
36 official considering zoning changes, building permits or any other
37 official acts affecting real property, whether the property is located
38 within or outside of the boundaries of the subdivision. All contractual
39 provisions that conflict with this subsection are declared to be contrary
40 to public policy. ~~Nothing contained in~~ This subsection ~~shall~~ DOES NOT
41 prohibit private restrictions on the use of any real property.

42 J. Before offering subdivided lands for lease or sale, the
43 subdivider who makes any promises through any form of advertising media
44 that the subdivided lands will be exclusively a retirement community or
45 one that is limited to the residency of adults or senior citizens shall

1 include the promises in the deed restrictions affecting any interest in
2 real property within the subdivided lands.

3 K. Except as otherwise provided in this section, a subdivider ~~shall~~
4 ~~IS~~ not ~~be~~ required to disclose items that are over one mile from the
5 subdivision boundaries. The existence of foreign nations or tribal lands
6 shall also be disclosed if located within the ~~one-mile~~ ONE-MILE radius of
7 the subdivision boundaries.