

HB 2091 -- Redline

Engrossed to Engrossed -- land division; applicant submissions; review

Deletions ~~struck~~ · Insertions underlined

~~Senate Engrossed~~ House ~~Bill~~Engrossed land division;
review ~~(now: State of Arizona House of Representatives Fifty-seventh Legislature First Regular Session HOUSE BILL 2091 AN ACT AMENDING SECTIONS 11-321, 11-831, 32-2181 AND 33-422, ARIZONA REVISED STATUTES; assuredRELATING waterTO supply; LAND DIVISION.~~

~~certificate;~~

~~model) State of Arizona House of Representatives Fifty-seventh Legislature First Regular Session HOUSE BILL 2091 AN ACT PROVIDING FOR CERTIFICATES OF ASSURED WATER SUPPLY.~~

~~Certificate~~Section of 11-321, assuredArizona waterRevised supply; Statutes, is amended to read:
~~review; 11-321.~~

~~delayed~~Building ~~repeal~~permits; A-

~~On issuance; request of an applicant, the department of water resources shall review the merits of an application for a certificate of assured water supply and shall issue a new written determination of action if all of the following apply:~~

state preemption;

utilities;

distribution of copies;

subsequent owner;

limitation;

definition A.

Except in those cities and towns that have an ordinance relating to the issuance of building permits, the board of supervisors shall require a building permit for any construction of a building or an addition to a building exceeding a cost of \$1,000 within its jurisdiction.

The building permit shall be filed with the board of supervisors or its designated agent.

B.

The regulation of a utility provider's authority to operate and serve customers is a matter of statewide concern.

The regulation of building permits as it relates to a building permit applicant's ability to use a utility provider that is capable and authorized to provide utility service is allowed solely in accordance with subsections C and D of this section.

A building permit applicant's ability to use a utility provider that is capable and authorized to provide utility service is not subject to further regulation by a county.

C.

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

D.

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

E.

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

F.

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

G.

One copy of the building permit required by the terms of subsection A of this section shall be transmitted to the county assessor and one copy shall be transmitted to the director of the department of revenue.

The permit copy provided to the assessor and the department of revenue shall have the permit number, the issue date and the parcel number for which the permit is issued.

On the issuance of the certificate of occupancy or the certificate of completion or on the expiration or cancellation of the permit, the assessor and the department of revenue shall be notified in writing or

in electronic format of the permit number, parcel number, issue date and completion date.

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2091 H.

AT THE TIME OF APPLYING FOR A BUILDING PERMIT FOR NEW CONSTRUCTION OF A RESIDENTIAL SINGLE-FAMILY HOME, AN APPLICANT SHALL IDENTIFY ANY OWNERSHIP INTERESTS IN THE PROPERTY THAT IS THE SUBJECT OF THE PERMIT.

H.

I.

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

I.

J.

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

J.

K.

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

K.

L.

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

Sec.

2.

Section 11-831, Arizona Revised Statutes, is amended to read:

11-831.

Review of land divisions:

definitions A.

The board of supervisors of each county may adopt ordinances and regulations pursuant to this section for staff review and approval of land divisions of five or fewer lots, parcels or fractional interests, any of which is ten acres or smaller in size.

The county may not deny approval of any land division that meets the requirements of this section.

If a review of the request is not completed within thirty days after receiving the request, the land division is considered to be approved.

At its option, the board of supervisors may submit a ballot question to the voters of the county to allow the voters to determine the application of subsections B and C of this section to qualifying land divisions in that county.

B.

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

The application lots, is parcels for or a fractional certificate interests of each assured meet water the supply minimum for applicable land county located zoning in requirements of the Phoenix applicable active zoning management designation. area.

The application applicant was provides submitted a on standard preliminary title report or after other January acceptable 26, document 2021 that and demonstrates on legal or access before to August the 31, lots, 2023, parcels or fractional interests.

As The of applicant the provides effective a date statement of from this a section, licensed surveyor or engineer, or other evidence acceptable to the department county, of stating water whether resources each lot, parcel or fractional interest has not physical issued access the that applicant is traversable by a certificate two-wheel of drive assured passenger water motor supply vehicle.

The municipal applicant provider reserves for the land necessary covered and by appropriate the utility application easements has submitted to the serve department each of lot, water parcel resources or a fractional notice interest of created intent by to the serve land that division. states that:

(a) Each 2 year after H.B. the issuance of the certificate of assured water supply for the land covered by the application, the municipal provider shall calculate the total amount of excess groundwater delivered by the municipal provider during the preceding calendar year to parcels of member land contained within the land covered by the application.

(b) 2091 On 5. or before March 31 of each year after the issuance of the certificate of assured water supply for the land covered by the application, the municipal provider shall offer to assign to the

~~multi-county water conservation district that is established pursuant to title 48, chapter 22, Arizona Revised Statutes, and that operates as the central Arizona groundwater replenishment district or the central Arizona groundwater replenishment district pursuant to title 48, chapter 22, article 4, Arizona Revised Statutes, long-term storage credits accrued pursuant to Title 45, chapter 3.1, Arizona Revised Statutes, in the Phoenix active management area and held by the municipal provider.~~

~~(c) THE APPLICANT number PROVIDES of AN long-term ANSWER storage ON credits THE offered APPLICATION by TO the THE municipal FOLLOWING provider QUESTIONS: in a year shall equal twenty-five percent of the total excess groundwater calculated by the municipal provider for the preceding calendar year pursuant to subdivision (a) of this paragraph.~~

~~(d)(a) The "DO central YOU Arizona OR groundwater ANY replenishment CORPORATION district OR may LIMITED elect LIABILITY to COMPANY purchase THAT all YOU or ARE a A portion MEMBER, of MANAGER the OR long-term OWNER storage OF credits OR offered AN in INDEPENDENT a CONTRACTOR year FOR and OWN the OR municipal REPRESENT provider ANY shall PROPERTY accept THAT a IS purchase IN price THE per SAME acre TAX foot PARCEL of MAP not OR less SUBDIVISION than AS the THE average LOTS, per-acre-foot PARCELS price OR paid FRACTIONAL by INTERESTS the THAT central ARE Arizona THE groundwater SUBJECT replenishment OF district THIS for APPLICATION?" long-term (b) storage "HAVE credits YOU in OR the ANY Phoenix CORPORATION active OR management LIMITED area LIABILITY during COMPANY the THAT preceding YOU five ARE calendar A years, MEMBER, MANAGER OR OWNER OF OR AN INDEPENDENT CONTRACTOR FOR DIVIDED, SOLD OR LEASED ANY PROPERTY WITHIN THE LAST TEN YEARS THAT IS IN THE SAME TAX PARCEL MAP OR SUBDIVISION AS THE LOTS, PARCELS OR FRACTIONAL INTERESTS THAT ARE THE SUBJECT OF THIS APPLICATION?" 5.~~

~~(e) 6. The obligation to assign long-term storage credits shall continue for so long as the parcels of member land contained within the land covered by the certificate of assured water supply retain all or any portion of a parcel -- 1 -- H.B.~~

~~2001 The replenishment applicant obligations signs pursuant to affidavit section or 48-3771, similar Arizona document Revised under Statutes, oath acknowledging the following:~~

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

~~If (b) a The municipal applicant provider is enters aware into that a member service area agreement with the central county Arizona where groundwater replenishment district, the minimum land amount division of occurred excess or groundwater that the municipal state provider real is estate obligated department to may report investigate to and enforce the central prohibition Arizona against groundwater acting replenishment district in a concert year and that is subject to an unlawfully annual divide replenishment a tax parcel under of section land 48-3781, into Arizona six Revised or Statutes, more shall lots be or reduced parcels. by the long-term storage credits transferred to the central Arizona groundwater replenishment district by the municipal provider in that year pursuant to subsection A of this section.~~

~~The An central application Arizona to groundwater split replenishment a district's parcel purchase of long-term land storage that credits does that not are comply offered with by one a or municipal more provider of pursuant the to items listed in subsection A B of this section shall not still affect be approved if the annual applicant replenishment provides assessment an charged acknowledgment that is signed by the central applicant Arizona and groundwater that replenishment confirms district that against a parcels building or member use land permit contained will within not be issued by the land county covered until by the a lot, certificate parcel of or assured fractional water interest supply has issued met under the requirements of subsection B of this section.~~

~~The county may grant a variance from one or more of the items listed in subsection B of this section.~~

~~If Any an approval application of for a certificate land of division assured water supply reviewed by the department of water resources under this section was may: supported using either the 2006-2009 Salt River valley regional model or the 2006 Lower Hassayampa Sub-basin groundwater flow model, the department of water resources shall determine that the application meets the physical availability requirements for groundwater pursuant to section 45-576, Arizona Revised Statutes.~~

~~All 1. remaining requirements for a certificate of assured water supply shall remain applicable to the determination to issue the certificate of assured water supply.~~

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

~~2.~~

~~Identify topographic, hydrologic or other site constraints, requirements or limitations that must be addressed as conditions to the eventual issuance of a building or use permit.~~

~~These constraints, requirements or limitations may be as noted by the applicant or through county staff review, but there shall be no requirement for independent studies.~~

~~Within If ten the days requirements after of the subsections effective A date through D of this section, section the do department not shall apply, notify a all county applicants may that adopt meet ordinances the and criteria regulations of pursuant subsection to A, this paragraphs chapter 1, for 2 staff and review 3-of~~

~~this land section divisions of the five ability or to fewer have lots, their parcels determinations or of fractional assured interests water but supply only reviewed, to determine compliance with - 3 - H.B. 2091 minimum applicable county zoning requirements and legal access and may grant waivers from the county zoning and legal access requirements.~~

The county may not deny approval of any land division that meets the requirements of this section or if the deficiencies are noticed in the deed.

A county may not require a public hearing on a request to divide five or fewer lots, parcels or fractional interests.

If a review of the request is not completed within thirty days after receipt of the request, the land division shall be deemed approved.

If legal access is not available, the legal access does not allow access by emergency vehicles or the county zoning requirements are not met, the access or zoning deficiencies shall be noticed in the deed.

If a county by ordinance requires a legal access of more than twenty-four feet roadway width, the county is responsible for the improvement and maintenance of the improvement.

If the legal access does not allow access to the lots, parcels or fractional interests by emergency vehicles, neither the county nor its agents or employees are liable for damages resulting from the failure of emergency vehicles to reach the lot, parcel or fractional interest.

~~Applicants WHEN may APPLYING request FOR that A the LAND department DIVISION, review AN their APPLICANT pending SHALL applications DISCLOSE or ANY may OWNERSHIP resubmit INTEREST and IN request THE review PROPERTY of THAT a IS withdrawn THE application. SUBJECT OF THE LAND DIVISION APPLICATION.~~

~~AAN certificate APPLICATION of FOR assured A water LAND supply DIVISION issued SHALL pursuant INCLUDE to THE this FOLLOWING section ATTESTATION shall LANGUAGE: relate back as if issued in calendar year 2023 for the purposes of an application for designation of assured water supply under rules adopted by the department of water resources pursuant to section 45-576, Arizona Revised Statutes, for inclusion in the base supply of physically available groundwater for the municipal provider on issuance of the designation of assured water supply.~~

STATE LAW REQUIRES A SUBDIVIDER AS DEFINED IN SECTION 32-2101, ARIZONA REVISED STATUTES, TO OBTAIN A PUBLIC REPORT PURSUANT TO SECTION 32-2183, ARIZONA REVISED STATUTES, BEFORE THE SALE OR LEASE OF SIX OR MORE CONTIGUOUS PARCELS, LOTS OR FRACTIONAL INTERESTS WITHIN THE TEN-YEAR PERIOD FOLLOWING THE LAND DIVISION.

BY SUBMITTING AN APPLICATION TO DIVIDE LAND, THE APPLICANT AND ANY OWNERSHIP INTERESTS IN THE SUBJECT OF THE LAND DIVISION ATTEST TO THEIR UNDERSTANDING OF THE PUBLIC REPORT REQUIREMENTS IF INTENDING TO SELL OR LEASE SIX OR MORE CONTIGUOUS PARCELS, LOTS OR FRACTIONAL INTERESTS WITHIN A TEN-YEAR PERIOD FOLLOWING THE LAND DIVISION AND FURTHER ATTEST TO THEIR INTENT TO COMPLY WITH THE SUBDIVISION LAW OF THIS STATE, AS APPLICABLE.

IF A PUBLIC REPORT IS REQUIRED PURSUANT TO SECTION 32-2183, ARIZONA REVISED STATUTES, AND A PUBLIC REPORT IS NOT OBTAINED, THE COUNTY WHERE THE PROPERTIES ARE LOCATED OR THE STATE REAL ESTATE DEPARTMENT MAY ENFORCE THE PUBLIC REPORT REQUIREMENT AND ISSUE A CIVIL PENALTY PURSUANT TO SECTION 32-2185.09, ARIZONA REVISED STATUTES.

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2091 F.

~~This It is unlawful for a person or group of persons acting in concert to attempt to avoid this section is or repealed the from subdivision and laws after of December this 31, state 2028, by acting in concert to divide a parcel of land into six or more lots or sell or lease six or more lots by using a series of owners or conveyances.~~

~~(ENACTED Either WITHOUT the THE county EMERGENCY) where Sec. the division occurred or the state real estate department pursuant to title 32, chapter 20, but not both, may enforce this prohibition.~~

A familial relationship alone is not sufficient to constitute unlawful acting in concert.

G.

I.

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

H.

J.

For the purposes of this section:

1.

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

~~Emergency~~ "Minimum This applicable act county is zoning an requirements" ~~emergency~~ means measure the that minimum is acreage necessary and to dimensions preserve of the public resulting peace, lot, health parcel or safety fractional and interest is as operative required immediately by as the provided county's by zoning law, ordinance.

~~-3.-2-~~

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

Sec.

3.

Section 32-2181, Arizona Revised Statutes, is amended to read:

32-2181.

Notice to commissioner of intention to subdivide lands;

unlawful acting in concert;

exceptions;

deed restrictions;

definition A.

Before offering subdivided lands for sale or lease, the subdivider shall notify the commissioner in writing of the subdivider's intention.

The notice shall contain:

1.

The name and address of the owner.

If the holder of any ownership interest in the land is other than an individual, such as a corporation, partnership or trust, THE NOTICE SHALL CONTAIN a statement naming the type of legal entity and listing the interest and the extent of any interest of each principal in the entity.

For the purposes of this section, "principal" means any person or entity having a ten per cent PERCENT or more financial interest or, if the legal entity is a trust, each beneficiary of the trust holding a ten per cent PERCENT or more beneficial interest.

2.

The name and address of the subdivider.

3.

The legal description and area of the land.

4.

A true statement of the condition of the title to the land, including all encumbrances on the land, and a statement of the provisions - 5 - H.B.

2091 agreed to by the holder of any blanket encumbrance enabling a purchaser to acquire title to a lot or parcel free of the lien of the blanket encumbrance on completion of all payments and performance of all of the terms and provisions required to be made or performed by the purchaser under the real estate sales contract by which the purchaser has acquired the lot or parcel.

The subdivider shall file copies of documents acceptable to the department containing these provisions with the commissioner before the sale of any subdivision lot or parcel subject to a blanket encumbrance.

5.

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

6.

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

7.

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

8.

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

9.

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

10.

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

11.

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

12.

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

13.

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

14.

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

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2091 15.

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

16.

A statement of the provisions for easements for permanent access for irrigation water, where IF applicable.

17.

A true statement of assurances for the completion of off-site improvements, such as roads, utilities, community or recreational facilities and other improvements to be included in the offering or represented as being in the offering, and approval of the offering by the political subdivision with authority.

This statement shall include a trust agreement or any other evidence of assurances for delivery of the improvements and a statement of the provisions, if any, for the continued maintenance of the improvements.

18.

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

19.

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

20.

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

21.

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

(a) Any subdivision in this state.

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

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

22.

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

- (a) The holder of any ownership interest in the land.
 - (b) The subdivider.
 - (c) Any principal or officer in the holder or subdivider.
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2091 23.

A true statement as to whether all or any portion of the subdivision is located in territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, in territory in the vicinity of a public airport as defined in section 28-8486, on or after July 1, 2001, in a high noise or accident potential zone as defined in section 28-8461 or on or after July 1 of the year in which the subdivision becomes located in a high noise or accident potential zone.

The statement required pursuant to this paragraph does not require the amendment or refiling of any notice filed before July 1, 2001 or before July 1 of the year in which the subdivision becomes located in a high noise or accident potential zone.

24.

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

- (a) That the property is a conversion from multifamily rental to condominiums.
- (b) The date original construction was completed.

25.

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

B.

The commissioner, on application, may grant a subdivider of lots or parcels within a subdivision for which a public report was previously issued by the commissioner an exemption from all or part of the notification requirements of subsection A of this section.

The subdivider shall file a statement with the commissioner indicating the change of ownership in the lots or parcels together with any material changes occurring subsequent to the original approval of the subdivision within which the lots or parcels are located.

The statement shall further refer to the original approval by the commissioner.

C.

If the subdivision is within an active management area, as defined in section 45-402, the subdivider shall accompany the notice with a certificate of assured water supply issued by the director of water resources along with proof that all applicable fees have been paid pursuant to sections 48-3772 and 48-3774.01, unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576.

If the subdivider has submitted a certificate of assured water supply to a city, town or county prior to BEFORE approval of the plat by the city, town or county and this has been noted on the face of the plat, the submission constitutes compliance with this subsection if the subdivider provides - 8 - H.B.

2091 proof to the commissioner that all applicable fees have been paid pursuant to sections 48-3772 and 48-3774.01.

D.

It is unlawful for a person or group of persons acting in concert to attempt to avoid this article by acting in concert to divide a parcel of land or sell subdivision lots by using a series of owners or conveyances or by any other method that ultimately results in the division of the lands into a subdivision or the sale of subdivided land.

The plan or offering is subject to this article.

Unlawful acting in concert pursuant to this subsection with respect to the sale or lease of subdivision lots requires proof that the real estate licensee or other licensed professional knew or with the exercise of reasonable diligence should have known that property which THAT the licensee listed or for which the licensee acted in any capacity as agent was subdivided land subject to this article.

A familial relationship alone is not sufficient to constitute unlawful acting in concert.

E.

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

1.

Each of the lots, parcels or fractional interests represents, on a partition basis, thirty-six acres or more in area of land located in this state, including to the centerline of dedicated roads or easements,

if any, contiguous to the land in which the interests are held.

2.

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

3.

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

4.

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

5.

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

6.

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

LOTS, PARCELS OR FRACTIONAL INTERESTS IN WHICH COMPLIANCE IS NOT ESSENTIAL TO THE PUBLIC INTEREST OR FOR THE PROTECTION OF BUYERS INCLUDE THOSE THAT HAVE BEEN INCLUDED WITH A PREVIOUS - 9 - H.B.

2091 PUBLIC REPORT THAT WAS APPROVED WITHIN THE LAST TEN YEARS AND THE APPLICANT FOR AN EXEMPTION ATTESTS THAT THERE ARE NO MATERIAL CHANGES ALTERING THE FACTS OF THAT PUBLIC REPORT.

7.

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

8.

THE LOTS, PARCELS OR FRACTIONAL INTERESTS MEET ALL OF THE FOLLOWING CRITERIA:

(a) ARE OWNED BY A LICENSED FINANCIAL INSTITUTION IN THIS STATE AS A RESULT OF FORECLOSURE.

(b) ARE BEING SOLD BY THE FINANCIAL INSTITUTION OR ON BEHALF OF THE FINANCIAL INSTITUTION BY A REAL ESTATE LICENSEE WHO IS LICENSED IN THIS STATE.

(c) HAVE BEEN INCLUDED WITH A PREVIOUS PUBLIC REPORT THAT WAS APPROVED WITHIN THE LAST TEN YEARS AND NO MATERIAL CHANGES HAVE OCCURRED ALTERING THE FACTS OF THAT PUBLIC REPORT.

F.

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

1.

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

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

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

(c) The plat was approved pursuant to an exemption authorized by section 9-463.01, subsection K, pursuant to an exemption authorized by section 11-823, subsection B, paragraph 1, pursuant to an exemption granted by the director of water resources under section 45-108.02 and the exemption has not expired or pursuant to an exemption granted by the director under section 45-108.03.

If the plat was approved pursuant to an authorized exemption, the state real estate commissioner shall require that all promotional material and contracts for the sale of lots in the subdivision adequately display the following:

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2091 (i) The director of water resources' report or the developer's brief summary of the report as approved by the commissioner on the proposed water supply for the subdivision.

(ii) A statement describing the exemption under which the subdivision was approved, including the specific conditions of the exemption that were met.

If the plat was approved by the legislative body of a city or town pursuant to an exemption authorized by section 9-463.01, subsection K or by the board of supervisors of a county pursuant to an exemption authorized by section 11-823, subsection B, paragraph 1, the subdivider shall record the document required by section 33-406.

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

If changes were made to the plat after the final plat approval, the director of water resources shall determine whether the changes are material pursuant to the rules adopted by the director to implement section 45-108.

If this subdivision applies, the state real estate commissioner shall require that all promotional materials and contracts for the sale of lots in the subdivision adequately display the director of water resources' report or the developer's brief summary of the report as approved by the commissioner on the proposed water supply for the subdivision.

2.

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

G.

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

H.

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

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2091 I.

Neither A real estate sales contract, conveyance, lease, assignment or other instrument to transfer any interest in subdivided land nor AND any covenant or restriction affecting real property shall NOT contain any provision limiting the right of any party to appear or testify in support of or opposition to zoning changes, building permits or any other official acts affecting real property before a governmental body or official considering zoning changes, building permits or any other official acts affecting real property, whether the property is located within or outside of the boundaries of the subdivision.

All contractual provisions that conflict with this subsection are declared to be contrary to public policy.

Nothing contained in This subsection shall DOES NOT prohibit private restrictions on the use of any real property.

J.

Before offering subdivided lands for lease or sale, the subdivider who makes any promises through any form of advertising media that the subdivided lands will be exclusively a retirement community or one that is limited to the residency of adults or senior citizens shall include the promises in the deed restrictions affecting any interest in real property within the subdivided lands.

K.

Except as otherwise provided in this section, a subdivider shall IS not be required to disclose items that are over one mile from the subdivision boundaries.

The existence of foreign nations or tribal lands shall also be disclosed if located within the one mile ONE-MILE radius of the subdivision boundaries.

Sec.

4.

Section 33-422, Arizona Revised Statutes, is amended to read:

33-422.

Land divisions;

recording;

disclosure affidavit A.

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

B.

The affidavit must be written in twelve-point type.

C.

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

D.

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

E.

The seller shall record the executed affidavit of disclosure at the same time that the deed is recorded. The county recorder is not required to verify the accuracy of any statement in the affidavit of disclosure.

A subsequently recorded affidavit supersedes any previous affidavit.

- 12 - H.B.

2091 F.

The affidavit of disclosure shall contain all of the following disclosures, be completed by the seller, meet the requirements of section 11-480 and follow substantially the following form:

When recorded mail to:

Affidavit of Disclosure Pursuant to A.R.S.

Sec. 33-422 I, _____ (seller(s)) being duly sworn, hereby make this affidavit of disclosure relating to the real property situated in the unincorporated area of:

_____, County, State of Arizona, located at:

_____ and legally described as:

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

1.

There ? is ? is not .

legal access to the property, as defined in A.R.S.

Sec. 11-831 .

? unknown Explain:

2.

There ? is ? is not .

physical access to the property.

? unknown Explain:

3.

There ? is ? is not .

a statement from a licensed surveyor or engineer available stating whether the property has physical access that is traversable by a two-wheel drive passenger motor vehicle.

4.

The legal and physical access to the property ? is ? is not .

the same....? unknown ? not applicable.

Explain:

If access to the parcel is not traversable by emergency vehicles, the county and emergency service providers may not be held liable for

any damages resulting from the inability to traverse the access to provide needed services.

- 13 - H.B.

2091 5.

The road(s) is/are ? publicly maintained ? privately maintained ? not maintained ? not applicable.

If applicable, there ? is ? is not .

a recorded road maintenance agreement.

If the roads are not publicly maintained, it is the responsibility of the property owner(s) to maintain the roads and roads that are not improved to county standards and accepted for maintenance are not the county's responsibility.

6.

A portion or all of the property ? is ? is not .

located in a FEMA designated regulatory floodplain.

If the property is in a floodplain, it may be subject to floodplain regulation.

7.

The property ? is ? is not subject to ? fissures or ? expansive soils.

? unknown Explain:

8.

The following services are currently provided to the property:

? water ? sewer ? electric ? natural gas ? single party telephone ? cable television services.

9.

The property ? is ? is not .

served by a water supply that requires the transportation of water to the property.

If the property is served by a water supply that requires the transportation of water to the property, the seller shall disclose the name and contact information of the water hauler or water hauling company that is currently providing the transportation services to the property and the name and location of the water supply from which the water is currently being transported.

Water hauler name:

_____ Phone: _____ Water supply:

_____ Location: _____ 10.

The property is served by ? a private water company ? a municipal water provider ? a private well ? a shared well ? no well.

If served by a shared well, the shared well ? is ? is not .

a public water system, as defined by the safe drinking water act (42 United States Code Sec. 300f).

Notice to buyer:

If the property is served by a well, a private water company or a municipal water provider the Arizona department of water resources may not have made a water supply determination.

For more information about water supply, contact the water provider.

- 14 - H.B.

2091 11.

The property or the water used on the property ? is ? is not the subject of a statement of claimant for the use of water in a general adjudication of water rights.

? unknown.

This is a lawsuit to determine the use of and relative priority of water rights.

A map of adjudicated areas is available at the website of the department of water resources.

12.

The property ? does have ? does not have .

an on-site wastewater treatment facility (i.e., standard septic or alternative system to treat and dispose of wastewater).

? unknown.

If applicable:

a) The property ? will ? will not .

require installation of an on-site wastewater treatment facility;

b) The on-site wastewater treatment facility ? has ? has not been inspected.

13.

The property ? has been ? has not been .

subject to a percolation test.

? unknown.

14.

The property ? does have ? does not have one or more solar energy devices that are ? leased ? owned.

If the solar energy devices are leased, the seller shall disclose the name and contact information of the leasing company.

Leasing company name:

Phone:

15.

The property ? does have ? does not have one or more battery energy storage devices that are ? leased ? owned.

If the battery energy storage devices are leased, the seller shall disclose the name and contact information of the leasing company.

Leasing company name:

Phone:

16.

The property ? does ? does not .

meet the minimum applicable county zoning requirements of the applicable zoning designation.

17.

The sale of the property ? does ? does not .

meet the requirements of A.R.S.

Sec. 11-831 and Sec. 32-2181 regarding land divisions.

If those requirements are not met, the property owner may not be able to obtain a building permit.

It is unlawful pursuant to A.R.S.

Sec. 11-831, subsection F H and A.R.S.

Sec. 32-2181, subsection D for a person or group of persons to attempt to avoid the subdivision laws of this state by acting in concert to divide a parcel of land into six or more lots or parcels.

The county where the land division occurred or the state real estate department may investigate and enforce the prohibition against acting in concert to unlawfully divide a parcel of land into six or more lots or parcels.

The seller or property owner shall disclose each of the deficiencies to the buyer.

- 15 - H.B.

2091 Explain:

18.

The property ? is ? is not located in the clear zone of a military airport or ancillary military facility, as defined in A.R.S.

Sec. 28-8461.

(Maps are available at the state real estate department's website.) 19.

The property ? is ? is not located in the high noise or accident potential zone of a military airport or ancillary military facility, as defined in A.R.S.

Sec. 28-8461.

(Maps are available at the state real estate department's website.) 20.

Notice:

If the property is located within the territory in the vicinity of a military airport or ancillary military facility, the property is required to comply with sound attenuation standards as prescribed by A.R.S.

Sec. 28-8482.

(Maps are available at the state real estate department's website.) 21.

The property ? is ? is not located under military restricted airspace.

? unknown.

(Maps are available at the state real estate department's website.) 22.

The property ? is ? is not located in a military electronics range as defined in A.R.S.

Sec. 9-500.28 and Sec. 11-818.

? unknown.

(Maps are available at the state real estate department's website.) 23.

The property ? is ? is not located within the influence area of a military installation or range or Arizona national guard site as defined in sections A.R.S.

Sec. 9-500.50 and Sec. 11-818.01 (Maps are available at the state real estate department website.) 24.

Use of the property ? is ? is not limited in any way relating to an encumbrance of title due to a lis pendens, a court order or a state real estate department order or a pending legal action.

If the use of the property is limited due to an encumbrance of title, the seller or property owner shall disclose the limitations to the buyer.

Explain:

_____ This affidavit of disclosure supersedes
any previously recorded affidavit of disclosure.

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

- 16 - H.B.

2091 Dated this (date) _____ day of (year) by:

Seller's name (print):

_____ Signature:

_____ Seller's name (print):

_____ Signature:

_____ State of Arizona)) ss.

County of _____) Subscribed and sworn before me this (date) _____ day of (year) , by

_____.

_____ Notary public My commission expires:

(date) Buyer(s) hereby acknowledges receipt of a copy of this affidavit of disclosure this (date) day of (year) Buyer's name (print):

_____ Signature:

_____ Buyer's name (print):

_____ Signature:

_____ G.

For the purposes of this section, seller and subsequent seller do not include a trustee of a deed of trust who is selling property by a trustee's sale pursuant to chapter 6.1 of this title or any officer who is selling property by execution sale pursuant to title 12, chapter 9 and chapter 6 of this title.

If the seller is a trustee of a subdivision trust as defined in section 6-801, the disclosure affidavit required by this section shall be provided by the beneficiary of the subdivision trust.

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