

House Engrossed

~~groundwater permits; technical correction~~
(now: subdivided lands; exemption; leases; emergency)

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HOUSE BILL 2445

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 32-2101, Arizona Revised Statutes, is amended to
3 read:

4 32-2101. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Acting in concert" means evidence of collaborating to pursue a
7 concerted plan.

8 2. "Advertising" means attempting by publication, dissemination,
9 exhibition, solicitation or circulation, oral or written, or for broadcast
10 on radio or television to induce directly or indirectly any person to
11 enter into any obligation or acquire any title or interest in lands
12 subject to this chapter, including the land sales contract to be used and
13 any photographs, drawings or artist's presentations of physical conditions
14 or facilities existing or to exist on the property. Advertising does not
15 include:

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

20 (b) Communications to stockholders as follows:

21 (i) Annual reports and interim financial reports.

22 (ii) Proxy materials.

23 (iii) Registration statements.

24 (iv) Securities prospectuses.

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

26 (vi) Prospectuses.

27 (vii) Property reports.

28 (viii) Offering statements.

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

32 4. "Associate broker" means a licensed broker who is employed by
33 another broker. Unless otherwise specifically provided, an associate
34 broker has the same license privileges as a salesperson.

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

39 6. "Blanket encumbrance":

40 (a) Means either:

41 (i) Any mortgage, any deed of trust or any other encumbrance or
42 lien that secures or evidences the payment of monies and that affects more
43 than one lot or parcel of subdivided land.

1 (ii) An agreement that affects more than one lot or parcel by which
2 the subdivider holds the subdivision under an option, contract to sell or
3 trust agreement.

4 (b) Does not include taxes and assessments that are levied by
5 public authority.

6 7. "Board" means the real estate advisory board.

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

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

15 10. "Camping site" means a space that is designed and promoted for
16 the purpose of locating any trailer, tent, tent trailer, pickup camper or
17 other similar device used for camping.

18 11. "Cemetery" or "cemetery property" means any one, or a
19 combination of more than one, of the following in a place that is used, or
20 intended to be used, and dedicated for cemetery purposes:

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

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

23 (c) A crematory, or a crematory and columbarium, for cinerary
24 interments.

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

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

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

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

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

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

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

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

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

11 16. "Compensation" means any fee, commission, salary, monies or
12 other valuable consideration for services rendered or to be rendered as
13 well as the promise of consideration whether contingent or not.

14 17. "Contiguous":

15 (a) Means lots, parcels or fractional interests that share a common
16 boundary or point.

17 (b) Does not include lots, parcels or fractional interests that are
18 separated by either of the following:

19 (i) A barrier.

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

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

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

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

35 21. "Designated broker" means a natural person who is licensed as a
36 broker under this chapter and who is either:

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

39 (b) Doing business as a sole proprietor.

40 22. "Developer":

41 (a) Means a person who offers real property in a development for
42 sale, lease or use, either immediately or in the future, on the person's
43 own behalf or on behalf of another person, under this chapter.

1 (b) Does not include a person whose involvement with a development
2 is limited to listing property within the development for sale, lease or
3 use.

4 23. "Development" means any division, proposed division or use of
5 real property that the department has authority to regulate, including
6 subdivided and unsubdivided lands, cemeteries, condominiums, timeshares,
7 membership campgrounds and stock cooperatives.

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

10 (a) Broker entity pursuant to section 32-2125, subsection A.

11 (b) Sole proprietorship if the sole proprietor is a broker licensed
12 pursuant to this chapter.

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

22 26. "Improved lot or parcel" means a lot or parcel of a subdivision
23 on which there is a residential, commercial or industrial building or
24 concerning which a contract has been entered into between a subdivider and
25 a purchaser that obligates the subdivider directly, or indirectly through
26 a building contractor, to completely construct a residential, commercial
27 or industrial building on the lot or parcel within two years after the
28 date on which the contract of sale for the lot is entered into.

29 27. "Inactive license" means a license that is issued pursuant to
30 article 2 of this chapter to a licensee who is on inactive status during
31 the current license period and who is not engaged by or on behalf of a
32 broker.

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

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

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

42 31. "License period" means the two-year period beginning with the
43 date of original issue or renewal of a particular license and ending on
44 the expiration date, if any.

1 32. "Limited liability company licensee" means a lawfully organized
2 limited liability company that has a member or manager who is a natural
3 person and who is licensed as the designated broker pursuant to section
4 32-2125.

5 33. "Live classroom course" means a course or instructional segment
6 delivered in either an in-person classroom instructional format or a
7 synchronous remote instructional format that allows students to observe
8 and participate remotely in an instructional segment via livestreaming.

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

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

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

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

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

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

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

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

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

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

38 38. "Membership camping contract" means an agreement that is
39 offered or sold in this state evidencing a purchaser's right or license to
40 use the camping or outdoor recreation facilities of a membership camping
41 operator and includes a membership that provides for this use.

42 39. "Membership camping operator":

43 (a) Means an enterprise, other than one that is tax exempt under
44 section 501(c)(3) of the internal revenue code of 1986, as amended, that
45 solicits membership paid for by a fee or periodic payments and has as one

1 of its purposes camping or outdoor recreation, including the use of
2 camping sites primarily by members.

3 (b) Does not include camping or recreational trailer parks that are
4 open to the general public and that contain camping sites rented for a per
5 use fee or a mobile home park.

6 40. "Membership camping salesperson" means a natural person who
7 acts on the person's own behalf or through and on behalf of a professional
8 limited liability company or a professional corporation engaged by or on
9 behalf of a licensed membership camping or real estate broker, or by or on
10 behalf of a corporation, partnership or limited liability company that is
11 licensed as a membership camping or real estate broker, to perform any act
12 or participate in any transaction in a manner included in the definition
13 of membership camping broker.

14 41. "Online course" means prelicensure education that is a planned
15 learning experience with a geographic separation that may be synchronous
16 or asynchronous, that does not require real-time interaction between a
17 student and an instructor and that uses a platform with self-paced or
18 prerecorded lessons and materials that a student can access via the
19 internet to proceed at the student's own pace.

20 42. "Partnership licensee" means a partnership with a managing
21 general partner who is licensed as the designated broker pursuant to
22 section 32-2125.

23 43. "Permanent access", as required under article 4 of this
24 chapter, means permanent access from the subdivision to any federal, state
25 or county highway.

26 44. "Perpetual care" or "endowed care":

27 (a) Means maintaining and caring, in all places where interments
28 have been made, for the trees, shrubs, roads, streets and other
29 improvements and embellishments contained within or forming a part of the
30 cemetery.

31 (b) Does not include maintaining or repairing monuments, tombs,
32 copings or other man-made ornaments as associated with individual burial
33 spaces.

34 45. "Perpetual or endowed-care cemetery" means a cemetery in which
35 lots or other burial spaces are sold or transferred under the
36 representation that the cemetery will receive perpetual care or endowed
37 care free of further cost to the purchaser after payment of the original
38 purchase price for the lot, burial space or interment right.

39 46. "Person" means any individual, corporation, partnership or
40 company and any other form of multiple organization for carrying on
41 business, foreign or domestic.

42 47. "Private cemetery" means a cemetery or place that is not
43 licensed under article 6 of this chapter, where burials or interments of
44 human remains are made, in which sales or transfers of interment rights or

1 burial plots are not made to the public and in which not more than ten
2 interments or burials occur annually.

3 48. "Promotion" or "promotional practice" means advertising and any
4 other act, practice, device or scheme to induce directly or indirectly any
5 person to enter into any obligation or acquire any title or interest in or
6 use of real property subject to this chapter, including meetings with
7 prospective purchasers, arrangements for prospective purchasers to visit
8 real property, travel allowances and discount, exchange, refund and
9 cancellation privileges.

10 49. "Real estate" includes leasehold-interests and any estates in
11 land as defined in title 33, chapter 2, articles 1 and 2, regardless of
12 whether located in this state.

13 50. "Real estate broker" means a person, other than a salesperson,
14 who, for another and for compensation:

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

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

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

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

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

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

31 (g) Collects or offers, attempts or agrees to collect rent for the
32 use of real estate, businesses and business opportunities or timeshare
33 interests. This subdivision does not apply to a person who is not a
34 licensee, who works for a real estate broker or a real estate salesperson,
35 who collects in-person rent and related fees on behalf of the real estate
36 broker or real estate salesperson for the use of real estate as part of
37 the person's clerical duties and who provides a receipt when rent is paid.

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

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

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

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

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

14 (m) Claims, demands, charges, receives, collects or contracts to
15 collect an advance fee in connection with any employment enumerated in
16 this section, including employment undertaken to promote the sale or lease
17 of real property by advance fee listing, by furnishing rental information
18 to a prospective tenant for a fee paid by the prospective tenant, by
19 advertising or by any other offering to sell, lease, exchange or rent real
20 property or selling kits connected therewith. This does not include the
21 activities of any communications media of general circulation or coverage
22 not primarily engaged in advertising real estate or any communications
23 media activities that are specifically exempt from applicability of this
24 article under section 32-2121.

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

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

33 (p) Acts as a business broker.

34 51. "Real estate sales contract" means an agreement in which one
35 party agrees to convey title to real estate to another party on the
36 satisfaction of specified conditions set forth in the contract.

37 52. "Real estate salesperson" means a natural person who acts on
38 the person's own behalf or through and on behalf of a professional limited
39 liability company or a professional corporation engaged by or on behalf of
40 a licensed real estate broker, or by or on behalf of a limited liability
41 company, partnership or corporation that is licensed as a real estate
42 broker, to perform any act or participate in any transaction in a manner
43 included in the definition of real estate broker subject to section
44 32-2155.

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

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

11 55. "School" means a person or entity that offers a course of study
12 toward completion of the education requirements leading to licensure or
13 renewal of licensure under this chapter.

14 56. "Stock cooperative" means a corporation to which all of the
15 following apply:

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

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

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

24 57. "Subdivider":

25 (a) Means any person who offers for sale or lease six or more lots,
26 parcels or fractional interests in a subdivision or who causes land to be
27 subdivided into a subdivision for the subdivider or for others, or who
28 undertakes to develop a subdivision.

29 (b) Does not include a public agency or officer authorized by law
30 to create subdivisions.

31 58. "Subdivision" or "subdivided lands":

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

35 (b) INCLUDES:

36 (i) FOR PURPOSES OF SECTION 45-576 ONLY, SIX OR MORE DETACHED
37 SINGLE FAMILY RESIDENCES THAT ARE CONSTRUCTED OR PROPOSED TO BE
38 CONSTRUCTED FOR THE PURPOSE OF SALE OR LEASE, WHETHER IMMEDIATE OR FUTURE,
39 ON ONE OR MORE LOTS, PARCELS OR FRACTIONAL INTERESTS WITHOUT REGARD TO THE
40 ZONING CLASSIFICATION OF THE LOTS, PARCELS OR FRACTIONAL INTERESTS, AND
41 ARTICLE 4 OF THIS CHAPTER DOES NOT APPLY.

42 ~~(b)~~ (ii) ~~includes~~ A stock cooperative, lands divided or proposed
43 to be divided as part of a common promotional plan and residential
44 condominiums as defined in title 33, chapter 9.

1 (c) Does not include:

2 ~~(i) Leasehold offerings of one year or less.~~

3 ~~(iii)~~ (i) The division or proposed division of land located in this
4 state into lots or parcels each of which is or will be thirty-six acres or
5 more in area including to the centerline of dedicated roads or easements,
6 if any, contiguous to the lot or parcel.

7 ~~(iii)~~ (ii) The leasing of agricultural lands or apartments,
8 offices, stores, hotels, motels, pads or similar space within an apartment
9 building, industrial building, rental recreational vehicle community,
10 rental manufactured home community, rental mobile home park or commercial
11 building OR THE CONSTRUCTION, PROVISION OR LEASING OF RESIDENTIAL
12 STRUCTURES THAT ARE LOCATED ON AGRICULTURAL PROPERTY, THAT ARE EXEMPT FROM
13 TITLE 11, CHAPTER 6, ARTICLE 5 AS PRESCRIBED BY SECTION 11-865, SUBSECTION
14 A, PARAGRAPH 1 AND THAT ARE OFFERED FOR THE PURPOSE OF HOUSING PERSONS WHO
15 ARE AGRICULTURAL WORKERS.

16 ~~(iv)~~ (iii) The subdivision into or development of parcels, plots
17 or fractional portions within the boundaries of a cemetery that has been
18 formed and approved pursuant to this chapter.

19 ~~(v)~~ (iv) A sale or lease of a lot, parcel or fractional interest
20 that occurs ten or more years after the sale or lease of another lot,
21 parcel or fractional interest if the other lot, parcel or fractional
22 interest is not subject to this article and is treated as an independent
23 parcel unless, on investigation by the commissioner, there is evidence of
24 intent to subdivide.

25 59. "Timeshare" or "timeshare property" means real property
26 ownership or right of occupancy in real property pursuant to article 9 of
27 this chapter. For the purposes of this chapter, a timeshare is not a
28 security unless it meets the definition of a security under section
29 44-1801.

30 60. "Trustee":

31 (a) Means a person who either:

32 (i) Is designated under section 32-2194.27 to act as a trustee for
33 an endowment-care cemetery fund.

34 (ii) Holds bare legal title to real property under a subdivision
35 trust.

36 (b) Does not include a developer, subdivider, broker or salesperson
37 within this chapter.

38 61. "Unimproved lot or parcel" means a lot or parcel of a
39 subdivision that is not an improved lot or parcel.

40 62. "Unsubdivided lands":

41 (a) Means land or lands divided or proposed to be divided for the
42 purpose of sale or lease, whether immediate or future, into six or more
43 lots, parcels or fractional interests and the lots or parcels are
44 thirty-six acres or more each but less than one hundred sixty acres each,
45 or that are offered, known or advertised under a common promotional plan

1 for sale or lease, except that agricultural leases shall not be included
2 in this definition.

3 (b) Includes any land that is sold and that would otherwise
4 constitute the sixth lot, parcel or fractional interest if the sale occurs
5 ten or more years after the earliest of the previous five sales and if all
6 of the sales consist of property that was originally contained within the
7 same parcel that is thirty-six acres or more and less than one hundred
8 sixty acres.