

Senate Engrossed House Bill

~~real estate disclosures; water; solar~~
(now: seller disclosure; water; solar; batteries)

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

HOUSE BILL 2590

AN ACT

AMENDING SECTIONS 11-831, 32-2185.09 AND 33-422, ARIZONA REVISED STATUTES;
RELATING TO REAL ESTATE DISCLOSURES.

(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 ~~no~~ 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 ~~the issuance of~~
7 ISSUING a building or use permit for the lots, parcels or fractional
8 interests.

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

15 E. If the requirements of subsections A through D OF THIS SECTION
16 do not apply, a county may adopt ordinances and regulations pursuant to
17 this chapter for staff review of land divisions of five or fewer lots,
18 parcels or fractional interests but only to determine compliance with
19 minimum applicable county zoning requirements and legal access and may
20 grant waivers from the county zoning and legal access requirements. The
21 county may not deny approval of any land division that meets the
22 requirements of this section or ~~where~~ IF the deficiencies are noticed in
23 the deed. A county may not require a public hearing on a request to
24 divide five or fewer lots, parcels or fractional interests. If A review
25 of the request is not completed within thirty days ~~from~~ AFTER receipt of
26 the request, the land division shall be deemed approved. If ~~no~~ legal
27 access is NOT available, the legal access does not allow access by
28 emergency vehicles or the county zoning requirements are not met, the
29 access or zoning deficiencies shall be noticed in the deed. If a county
30 by ordinance requires a legal access of more than twenty-four feet roadway
31 width, the county is responsible for the improvement and maintenance of
32 the improvement. If the legal access does not allow access to the lots,
33 parcels or fractional interests by emergency vehicles, neither the county
34 nor its agents or employees are liable for damages resulting from the
35 failure of emergency vehicles to reach the lot, parcel or fractional
36 interest.

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

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

8 H. For the purposes of this section:

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

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

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

17 Sec. 2. Section 32-2185.09, Arizona Revised Statutes, is amended to
18 read:

19 32-2185.09. Civil penalties; limitation

20 A. A subdivider or agent who is subject to the jurisdiction of the
21 department, who violates this chapter or any rule adopted or order issued
22 by the commissioner or who engages in any unlawful practices defined in
23 section 44-1522 with respect to the sale or lease of subdivided lands may
24 be assessed a civil penalty by the commissioner, after a hearing, in an
25 amount not to exceed ~~one thousand dollars~~ \$2,000 for each infraction. An
26 infraction ~~which~~ THAT concerns more than one lot in a subdivision is a
27 single infraction for the purposes of this section.

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

33 C. A subdivider who sells or leases in this state any lots, parcels
34 or fractional interest in a subdivision without first obtaining a public
35 report from the commissioner except as provided in section 32-2181.01 or
36 ~~32-2182.02~~ 32-2181.02 for a lot or lots created from and after December
37 31, 2008 and on an order issued by the commissioner, ~~—~~ may be assessed a
38 civil penalty by the commissioner, after a hearing, in an amount not to
39 exceed ~~five thousand dollars~~ \$5,000 for each infraction. A proceeding for
40 the imposition of a civil penalty or suspension or revocation of a license
41 for a violation of this subsection or any rule adopted or order issued by
42 the commissioner must be commenced within five years ~~of~~ AFTER actual
43 discovery by the department or discovery that should have occurred with
44 the exercise of reasonable diligence by the department.

1 Sec. 3. Section 33-422, Arizona Revised Statutes, is amended to
2 read:

3 33-422. Land divisions; recording; disclosure affidavit

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

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

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

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

16 E. The seller shall record the executed affidavit of disclosure at
17 the same time that the deed is recorded. The county recorder is not
18 required to verify the accuracy of any statement in the affidavit of
19 disclosure. A subsequently recorded affidavit supersedes any previous
20 affidavit.

21 F. The affidavit of disclosure shall CONTAIN ALL OF THE FOLLOWING
22 DISCLOSURES, BE COMPLETED BY THE SELLER, meet the requirements of section
23 11-480 and follow substantially the following form:

24 When recorded mail to:

25 _____
26 _____
27 _____
28 _____

29 Affidavit of Disclosure
30 Pursuant to A.R.S. § 33-422

31 I, _____ (seller(s))
32 being duly sworn, hereby make this affidavit of disclosure
33 relating to the real property situated in the unincorporated
34 area of:

35 _____, County, State of Arizona, located at:
36 _____

37 and legally described as:

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

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

42 Explain: _____
43 _____
44 _____

- 1 2. There is is not physical access to the property.
2 unknown
3 Explain: _____
4 _____
5 _____
- 6 3. There is is not a statement from a licensed
7 surveyor or engineer available stating whether the property has
8 physical access that is traversable by a two-wheel drive
9 passenger motor vehicle.
- 10 4. The legal and physical access to the property is is not .
11 . . . the same.... unknown not applicable.
12 Explain: _____
13 _____
14 _____
15 *If access to the parcel is not traversable by emergency*
16 *vehicles, the county and emergency service providers may not*
17 *be held liable for any damages resulting from the inability to*
18 *traverse the access to provide needed services.*
- 19 5. The road(s) is/are publicly maintained privately
20 maintained not maintained not applicable. If
21 applicable, there is is not a recorded road
22 maintenance agreement.
23 *If the roads are not publicly maintained, it is the*
24 *responsibility of the property owner(s) to maintain the roads*
25 *and roads that are not improved to county standards and*
26 *accepted for maintenance are not the county's responsibility.*
- 27 6. A portion or all of the property is is not
28 located in a FEMA designated regulatory floodplain. If the
29 property is in a floodplain, it may be subject to floodplain
30 regulation.
- 31 7. The property is is not subject to fissures or
32 expansive soils. unknown
33 Explain: _____
34 _____
35 _____
- 36 8. The following services are currently provided to the property:
37 water sewer electric natural gas single
38 party telephone cable television services.
- 39 9. The property is is not served by a water
40 supply that requires the transportation of water to the
41 property. IF THE PROPERTY IS SERVED BY A WATER SUPPLY THAT
42 REQUIRES THE TRANSPORTATION OF WATER TO THE PROPERTY, THE
43 SELLER SHALL DISCLOSE THE NAME AND CONTACT INFORMATION OF THE
44 WATER HAULER OR WATER HAULING COMPANY THAT IS CURRENTLY
45 PROVIDING THE TRANSPORTATION SERVICES TO THE PROPERTY AND THE

1 NAME AND LOCATION OF THE WATER SUPPLY FROM WHICH THE WATER IS
2 CURRENTLY BEING TRANSPORTED.

3 WATER HAULER NAME: _____ PHONE: _____

4 WATER SUPPLY: _____ LOCATION: _____

5 10. The property is served by a private water company a
6 municipal water provider a private well a shared well
7 no well. If served by a shared well, the shared well
8 is is not a public water system, as defined by
9 the safe drinking water act (42 United States Code § 300f).

10 *Notice to buyer: If the property is served by a well, a*
11 *private water company or a municipal water provider the*
12 *Arizona department of water resources may not have made a*
13 *water supply determination. For more information about water*
14 *supply, contact the water provider.*

15 11. The property or the water used on the property is is not
16 the subject of a statement of claimant for the use of water in
17 a general adjudication of water rights. unknown.

18 *This is a lawsuit to determine the use of and relative*
19 *priority of water rights. A map of adjudicated areas is*
20 *available at the website of the department of water resources.*

21 12. The property does have does not have an on-site
22 wastewater treatment facility (i.e., standard septic or
23 alternative system to treat and dispose of wastewater).
24 unknown. If applicable: a) The property will will not
25 require installation of an on-site wastewater treatment
26 facility; b) The on-site wastewater treatment facility has
27 has not been inspected.

28 13. The property has been has not been subject to a
29 percolation test. unknown.

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

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

35 *Leasing company name: _____ Phone: _____*

36 15. THE PROPERTY DOES HAVE DOES NOT HAVE ONE OR MORE
37 BATTERY ENERGY STORAGE DEVICES THAT ARE LEASED OWNED.

38 IF THE BATTERY ENERGY STORAGE DEVICES ARE LEASED, THE SELLER
39 SHALL DISCLOSE THE NAME AND CONTACT INFORMATION OF THE LEASING
40 COMPANY.

41 LEASING COMPANY NAME: _____ PHONE: _____

42 ~~15.~~ 16. The property does does not meet the
43 minimum applicable county zoning requirements of the applicable
44 zoning designation.

1 ~~16.~~ 17. The sale of the property does does not . . . meet
2 the requirements of A.R.S. § 11-831 AND § 32-2181 regarding
3 land divisions. If those requirements are not met, the
4 property owner may not be able to obtain a building permit. IT
5 IS UNLAWFUL PURSUANT TO § 11-831, SUBSECTION F AND § 32-2181,
6 SUBSECTION D FOR A PERSON OR GROUP OF PERSONS TO ATTEMPT TO
7 AVOID THE SUBDIVISION LAWS OF THIS STATE BY ACTING IN CONCERT
8 TO DIVIDE A PARCEL OF LAND INTO SIX OR MORE LOTS OR
9 PARCELS. THE COUNTY WHERE THE LAND DIVISION OCCURRED OR THE
10 STATE REAL ESTATE DEPARTMENT MAY INVESTIGATE AND ENFORCE THE
11 PROHIBITION AGAINST ACTING IN CONCERT TO UNLAWFULLY DIVIDE A
12 PARCEL OF LAND INTO SIX OR MORE LOTS OR PARCELS. The seller or
13 property owner shall disclose each of the deficiencies to the
14 buyer.

15 Explain: _____
16 _____
17 _____

18 ~~17.~~ 18. The property is is not located in the clear zone
19 of a military airport or ancillary military facility, as
20 defined in A.R.S. § 28-8461. (Maps are available at the state
21 real estate department's website.)

22 ~~18.~~ 19. The property is is not located in the high noise
23 or accident potential zone of a military airport or ancillary
24 military facility, as defined in A.R.S. § 28-8461. (Maps are
25 available at the state real estate department's website.)

26 ~~19.~~ 20. Notice: If the property is located within the territory in
27 the vicinity of a military airport or ancillary military
28 facility, the property is required to comply with sound
29 attenuation standards as prescribed by A.R.S. § 28-8482. (Maps
30 are available at the state real estate department's website.)

31 ~~20.~~ 21. The property is is not located under military
32 restricted airspace. unknown. (Maps are available at the
33 state real estate department's website.)

34 ~~21.~~ 22. The property is is not located in a military
35 electronics range as defined in A.R.S. § 9-500.28 and § 11-818.
36 unknown. (Maps are available at the state real estate
37 department's website.)

38 ~~22.~~ 23. Use of the property is is not limited in any way
39 relating to an encumbrance of title due to a lis pendens, a
40 court order or a state real estate department order or a
41 pending legal action. If the use of the property is limited
42 due to an encumbrance of title, the seller or property owner
43 shall disclose the limitations to the buyer.

44 Explain: _____
45 _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

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.

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.