

Senate Engrossed House Bill

land divisions; disclosure affidavit; recording

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

HOUSE BILL 2023

AN ACT

AMENDING SECTION 33-422, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2019, CHAPTER 103, SECTION 1 AND CHAPTER 131, SECTION 1; REPEALING SECTION 33-422, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2023, CHAPTER 77, SECTION 3; RELATING TO PROPERTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 33-422, Arizona Revised Statutes, as amended by
3 Laws 2019, chapter 103, section 1 and chapter 131, section 1, is amended
4 to read:

5 33-422. Land divisions; recording; disclosure affidavit

6 A. A seller of five or fewer parcels of land, other than subdivided
7 land, in an unincorporated area of a county and any subsequent seller of
8 ~~such a~~ ANY parcel THAT IS THE SUBJECT OF AN AFFIDAVIT RECORDED AS
9 PRESCRIBED BY THIS SECTION shall COMPLETE AND furnish a written affidavit
10 of disclosure to the buyer at least seven days before the transfer of the
11 property and the buyer shall acknowledge receipt of the affidavit.

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

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

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

19 E. The seller OR, ON THE REQUEST, DIRECTION OR INSTRUCTION OF THE
20 SELLER, THE ESCROW AGENT FOR THE TRANSACTION WHO IS LICENSED PURSUANT TO
21 TITLE 6, CHAPTER 7, shall record the executed affidavit of disclosure at
22 the same time that the deed is recorded. The county recorder is not
23 required to verify the accuracy of any statement in the affidavit of
24 disclosure. A subsequently recorded affidavit supersedes any previous
25 affidavit AND THE SUBSEQUENT SELLER OR, ON THE REQUEST, DIRECTION OR
26 INSTRUCTION OF THE SUBSEQUENT SELLER, THE ESCROW AGENT FOR THE SUBSEQUENT
27 TRANSACTION WHO IS LICENSED PURSUANT TO TITLE 6, CHAPTER 7, SHALL RECORD
28 THE SUBSEQUENTLY EXECUTED AFFIDAVIT PRESCRIBED BY THIS SECTION. A
29 LICENSED ESCROW AGENT WHO RECORDS AN AFFIDAVIT PURSUANT TO THIS SUBSECTION
30 IS NOT LIABLE FOR ANY INACCURATE INFORMATION IN THE AFFIDAVIT, INCLUDING
31 ANY OMISSIONS OF MATERIAL FACTS.

32 F. The affidavit of disclosure shall CONTAIN ALL OF THE FOLLOWING
33 DISCLOSURES, BE COMPLETED BY THE SELLER, meet the requirements of section
34 11-480 and follow substantially the following form:

35 When recorded mail to:

36 _____
37 _____
38 _____
39 _____

40 Affidavit of Disclosure
41 Pursuant to A.R.S. § 33-422

42 I, _____ (seller(s))
43 being duly sworn, hereby make this affidavit of disclosure

1 relating to the real property situated in the unincorporated
2 area of:

3 _____, County, State of Arizona, located at:
4 _____

5 and legally described as:

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

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

10 Explain: _____
11 _____
12 _____

13 2. There is is not physical access to the property.
14 unknown

15 Explain: _____
16 _____
17 _____

18 3. There is is not a statement from a licensed
19 surveyor or engineer available stating whether the property has
20 physical access that is traversable by a two-wheel drive
21 passenger motor vehicle.

22 4. The legal and physical access to the property is is not
23 the same.... unknown not applicable.

24 Explain: _____
25 _____
26 _____

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

31 5. The road(s) is/are publicly maintained privately
32 maintained not maintained not applicable. If
33 applicable, there is is not a recorded road
34 maintenance agreement.

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

39 6. A portion or all of the property is is not
40 located in a FEMA designated regulatory floodplain. If the
41 property is in a floodplain, it may be subject to floodplain
42 regulation.

- 1 7. The property is is not subject to fissures or
2 expansive soils. unknown
3 Explain: _____
4 _____
5 _____
- 6 8. The following services are currently provided to the property:
7 water sewer electric natural gas single
8 party telephone cable television services.
- 9 9. The property is is not served by a water
10 supply that requires the transportation of water to the
11 property. IF THE PROPERTY IS SERVED BY A WATER SUPPLY THAT
12 REQUIRES THE TRANSPORTATION OF WATER TO THE PROPERTY, THE
13 SELLER SHALL DISCLOSE THE NAME AND CONTACT INFORMATION OF THE
14 WATER HAULER OR WATER HAULING COMPANY THAT IS CURRENTLY
15 PROVIDING THE TRANSPORTATION SERVICES TO THE PROPERTY AND THE
16 NAME AND LOCATION OF THE WATER SUPPLY FROM WHICH THE WATER IS
17 CURRENTLY BEING TRANSPORTED.
18 WATER HAULER NAME: _____ PHONE: _____
19 WATER SUPPLY: _____ LOCATION: _____
- 20 10. The property is served by a private water company a
21 municipal water provider a private well a shared well
22 no well. If served by a shared well, the shared well
23 is is not a public water system, as defined by
24 the safe drinking water act (42 United States Code
25 § 300f). IF SERVED BY A PRIVATE WELL, IS IS NOT .
26 . . . REGISTERED WITH THE ARIZONA DEPARTMENT OF WATER RESOURCES
27 UNKNOWN. THE WELL DOES DOES NOT HAVE A
28 PUMP COMPLETION REPORT ON FILE WITH THE ARIZONA DEPARTMENT OF
29 WATER RESOURCES UNKNOWN. WELL REGISTRATION NUMBER: _____
30 *Notice to buyer: If the property is served by a well, a*
31 *private water company or a municipal water provider the*
32 *Arizona department of water resources may not have made a*
33 *water supply determination. WELLS REQUIRE MAINTENANCE. IT IS*
34 *THE BUYER'S RESPONSIBILITY TO INSPECT A PRIVATE WELL. DUE TO*
35 *GEOLOGIC CONDITIONS, WATER DELIVERY SYSTEMS OR WATER HAULING*
36 *MAY BE REQUIRED. TRANSPORTING WATER BY WATER HAULING IS*
37 *ACCEPTABLE. For more information about water supply, contact*
38 *the water provider.*
- 39 11. The property or the water used on the property is is not
40 the subject of a statement of claimant for the use of water in
41 a general adjudication of water rights. unknown.
42 *This is a lawsuit to determine the use of and relative*
43 *priority of water rights. A map of adjudicated areas is*
44 *available at the website of the department of water resources.*

- 1 12. The property does have does not have an on-site
2 wastewater treatment facility (i.e., standard septic or
3 alternative system to treat and dispose of wastewater).
4 unknown. If applicable: a) The property will will not
5 require installation of an on-site wastewater treatment
6 facility; b) The on-site wastewater treatment facility has
7 has not been inspected.
- 8 13. THE DATE THE ON-SITE WASTEWATER TREATMENT FACILITY WAS LAST
9 INSPECTED: (DATE) UNKNOWN.
- 10 14. IF THE ON-SITE WASTEWATER TREATMENT FACILITY IS A STANDARD
11 SEPTIC SYSTEM, THE DATE THE SEPTIC TANK WAS LAST PUMPED:
12 (DATE) UNKNOWN.
13 *NOTICE TO BUYER: SEPTIC SYSTEMS ARE LAWFUL.*
14 *CESSPOOLS ARE UNLAWFUL.*
15 *A PERSON MAY NOT USE A CESSPOOL FOR SEWAGE DISPOSAL.*
- 16 ~~13.~~ 15. The property has been has not been subject
17 to a percolation test. unknown.
- 18 ~~14.~~ 16. The property does have does not have one or more
19 solar energy devices that are leased owned.
20 ~~Notice to buyer: If the property contains solar energy~~
21 ~~devices, it is the responsibility of the buyer to verify the~~
22 ~~proper replacement and disposal method for the devices, as~~
23 ~~applicable. If the solar energy devices are leased, the~~
24 ~~seller or property owner shall disclose the name and contact~~
25 ~~information of the leasing company.~~
26 *Leasing company name: _____ Phone: _____*
- 27 17. THE PROPERTY DOES HAVE DOES NOT HAVE ONE OR MORE
28 BATTERY ENERGY STORAGE DEVICES THAT ARE LEASED OWNED.
29 *IF THE BATTERY ENERGY STORAGE DEVICES ARE LEASED, THE SELLER*
30 *SHALL DISCLOSE THE NAME AND CONTACT INFORMATION OF THE LEASING*
31 *COMPANY.*
32 *LEASING COMPANY NAME: _____ PHONE: _____*
- 33 ~~15.~~ 18. The property does does not meet the
34 minimum applicable county zoning requirements of the applicable
35 zoning designation.
- 36 ~~16.~~ 19. The sale of the property does does not . . . meet
37 the requirements of A.R.S. § 11-831 AND § 32-2181 regarding
38 land divisions. If those requirements are not met, the
39 property owner may not be able to obtain a building permit. IT
40 IS UNLAWFUL PURSUANT TO § 11-831, SUBSECTION F AND § 32-2181,
41 SUBSECTION D FOR A PERSON OR GROUP OF PERSONS TO ATTEMPT TO
42 AVOID THE SUBDIVISION LAWS OF THIS STATE BY ACTING IN CONCERT
43 TO DIVIDE A PARCEL OF LAND INTO SIX OR MORE LOTS OR
44 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.

Explain: _____

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

~~18.~~ 21. 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. § 28-8461. (Maps are available at the state real estate department's website.)

~~19.~~ 22. 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. § 28-8482. (Maps are available at the state real estate department's website.)

~~20.~~ 23. The property is is not located under military restricted airspace. unknown. (Maps are available at the state real estate department's website.)

~~21.~~ 24. The property is is not located in a military electronics range as defined in A.R.S. § 9-500.28 and § 11-818. unknown. (Maps are available at the state real estate department's website.)

~~22.~~ 25. 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: _____

26. SELLER IS A TRUSTEE IN A TRUSTEE'S SALE, A PERSON CONDUCTING AN EXECUTION SALE OR MORTGAGE FORECLOSURE OR A PERSONAL REPRESENTATIVE OF AN ESTATE AND INFORMATION IS UNKNOWN TO THAT SELLER.

THE BUYER SHOULD INVESTIGATE THESE UNKNOWN ITEMS.

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

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

4 Dated this ____ (date) ____ day of ____ (year) ____ by:

5 Seller's name (print): _____ Signature: _____

6 Seller's name (print): _____ Signature: _____

7 State of Arizona)

8) ss.

9 County of _____)

10 Subscribed and sworn before me this ____ (date) ____ day

11 of ____ (year) ____, by _____.

12 _____

13 Notary public

14 My commission expires:

15 _____ (date) _____

16 Buyer(s) hereby acknowledges receipt of a copy of this

17 affidavit of disclosure this ____ (date) ____ day

18 of ____ (year) ____

19 Buyer's name (print): _____ Signature: _____

20 Buyer's name (print): _____ Signature: _____

21

22 G. IF THE SELLER IS A TRUSTEE OF A SUBDIVISION TRUST AS DEFINED IN

23 SECTION 6-801, THE BENEFICIARY OF THE SUBDIVISION TRUST SHALL PROVIDE THE

24 DISCLOSURE AFFIDAVIT REQUIRED BY THIS SECTION.

25 ~~G.~~ H. For the purposes of this section, seller and subsequent

26 seller do not include ANY OF THE FOLLOWING:

27 1. A trustee of a deed of trust who is selling property by a

28 trustee's sale pursuant to chapter 6.1 of this title. ~~or~~

29 2. Any officer who is selling property by execution sale pursuant

30 to title 12, chapter 9 and chapter 6 of this title. ~~if the seller is a~~

31 ~~trustee of a subdivision trust as defined in section 6-801, the disclosure~~

32 ~~affidavit required by this section shall be provided by the beneficiary of~~

33 ~~the subdivision trust.~~

34 3. A PERSONAL REPRESENTATIVE ACTING ON BEHALF OF AN ESTATE THAT IS

35 SELLING THE PROPERTY.

36 Sec. 2. Repeal

37 Section 33-422, Arizona Revised Statutes, as amended by Laws 2023,

38 chapter 77, section 3, is repealed.