

STATUTORY EXEMPTIONS UNDER THE ARIZONA SUBDIVIDED LANDS ACT

In many of our previous articles, we have discussed the effect of the Arizona Subdivided Lands Act, A.R.S. §§ 32-2181, et seq. (the “Act”), and the specific requirements of the Act, including platting, infrastructure, assured water supply, waste disposal, and public report disclosure for the benefit of purchasers of subdivided lots. We have also discussed the extent to which a single individual or entity who seeks in good faith to avoid applicability of the Act by limiting himself to creating no more than five lots (six or more lots being the traditional definition of a subdivision under the Act), may nevertheless run afoul of the Act by either intentionally or inadvertently engaging in a common promotional plan with other individuals or entities.

In this article, we highlight certain of the statutory exemptions under the Act that specifically provide that, notwithstanding that an individual or entity may qualify as a “subdivider” dealing with subdivided land, the individual may nevertheless legally avoid complying with any of the platting, infrastructure or public report requirements under certain circumstances. These exemptions are limited in many cases – sometimes they provide a potential safe harbor or “exit” to an individual or entity who has acquired a sufficient interest or number of lots within a development that the individual will be treated as a subdivider under the Act. Other times a relatively sophisticated developer may be incorrectly proceeding on the assumption that he or she fits within one of the exemptions, without a full understanding of the limited nature of the exemption. Sales or conveyances that do not fit within the exemptions will be subject to the full platting and public report process – and there is no defense based upon “good faith” or lack of knowledge of the legal requirements.

Some of the more notable exemptions, which land developers and real estate agents alike should take note of, are listed below. Some of them, as in the case of the bulk sale and quarter section exemptions, are outright and complete exemptions from any of the subdivision requirements. Others, following below, are exemptions from the public report requirements.

Bulk Sale - The sale or lease in bulk of six or more lots, parcels or fractional interests to *one buyer*, in *one transaction*. A.R.S. § 32-2181.02(A)(1). In such a case, the subdivision laws are not avoided, but merely pass on to the next purchaser in the event that purchaser does not also sell the lots or parcels in bulk.

Quarter Sections - The sale or lease of lots or parcels of one hundred sixty acres or more. A.R.S. § 32-2181.02(A)(2). Notably, this exemption applies regardless of the total number of sales. For example, a person who owns several sections of land may divide

and sell off his holdings via successive 160-acre parcels, without limit. No public report, or other subdivision requirements (e.g., plat, assured water supply) will apply.

The following additional exemptions are available, among others, which if applicable relieve the developer from having to obtain a public report from the Arizona Department of Real Estate (but may still require a plat from the county or city in which the development is located):

Commercial/Industrial lots: The sale or lease of parcels, lots, units or spaces that are zoned and restricted to commercial or industrial uses. A.R.S. § 32-2181.02(B)(1). Notably, the Department has traditionally applied this exemption to apply only where the subject property is both zoned for commercial or industrial uses, and is restricted by CC&Rs or deed restrictions to such uses.

Conveyance for construction purposes: The conveyance to a person who previously conveyed the lot to a home builder for the purpose of constructing a dwelling for the person. A.R.S. § 32-2181.02(B)(3).

Separately acquired lots: The sale or lease by a person of individual lots or parcels that were separately acquired by the person from different persons, and that were not acquired for the purpose of development *if*: (a) the lots or parcels are not located in a platted subdivision, (b) each lot or parcel bears the same legal description that it bore when the lot or parcel was acquired by the person, and (c) the seller or lessor is in compliance with all other applicable state and local government requirements. A.R.S. § 32-2181.02(B)(4).

Lastly, separate from the foregoing exemptions, the *creation* (but not necessarily subsequent sales or conveyances) of six or more lots that would otherwise constitute a subdivision will be exempt under the certain circumstances:

Division by Partition: The lots, parcels, or fractional interests are created by a valid court order or decree by operation of law or through a partition action. A.R.S. § 32-2181(E)(3). For example, father dies and leaves a 12-acre parcel to his six daughters as tenants in common. The six daughters do not want to own the parcel together, and file an action in court for a partition order, whereby each daughter is given a separate lot from the original 12-acre parcel. This results in the creation of six contiguous lots each owned by a daughter. It is not, however, subject to the Act. The six daughters may sell each of their own parcels. They are, however, best advised not to offer them jointly such that the Department of Real Estate may conclude that the subsequent sales are part of a “common promotional plan.”

36-Acre Parcels: Each lot contains 36 acres or more, including to the centerline of any contiguous dedicated roads or easements. A.R.S. § 32-2181(E)(1). However, in the event any one parcel is less than 36 acres, a “subdivision” has been created and no exemption applies. Furthermore, the creation of six or more 36-acre parcels will still require compliance with the inaptly named “Unsubdivided Lands Act,” A.R.S. § 32-2195, *et seq.*

Lots created by Foreclosure: The lots are “the result of” a foreclosure sale, deed in lieu of foreclosure, or trustee sale. A.R.S. § 32-2181(E)(2). For example, a single 10-acre parcel is subject to a series of separate trustee sales, which result in the original parcel being sold off as six or more separate smaller lots of one or two acres each. These sales do not require compliance with the Act. Notably, however, this exemption also provides that it “does not allow circumvention” of the Act, that is, that a “sham” foreclosure for the sole purpose of creating a subdivision will not be treated as exempt.

As a final comment, many of these exemptions are subject to interpretations by the Department of Real Estate based upon internal policy that may vary from the interpretations given by real estate consultants and attorneys (and judges for that matter). The Department, unlike other regulatory agencies, does not issue opinion letters or advisory statements. It can *potentially* be helpful, depending upon the current administration of the Department and its internal policies, to contact a representative at the Department’s Development Services Division to discuss whether a certain exemption may apply.