



## SUBDIVIDED OR UNSUBDIVIDED? THE IMPORTANCE OF GETTING IT RIGHT

REALTORS® throughout Arizona are familiar with the Affidavit of Disclosure as set forth in [A.R.S. § 33-422](#). However, confusion exists as to if and when a seller is obligated to convey the Affidavit and, more specifically, whether the subject property is or is not subdivided land. Fortunately, there are tools in place to assist in this regard and the below Frequently Asked Questions provide information to help REALTORS® navigate this process.

### **Q1: When is an Affidavit of Disclosure required?**

**A1:** A.R.S. § 33-422(A) provides that a seller of five or fewer parcels of land, **other than subdivided land**, in an unincorporated area of a county must 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. Simply put, a seller is required to provide an Affidavit of Disclosure in accordance with Arizona law if: (i) the seller is selling five or fewer parcels, (ii) the parcels are not subdivided land, and (iii) the parcels are located in an unincorporated area of the county.

### **Q2: When does a subdivided parcel of land become legally established?**

**A2:** The Arizona Supreme Court held in the case of *Robinson v. Lintz*, 101 Ariz. 448, 420 P.2d 923 (1966) that a subdivision lot becomes legally established when a plat containing it is recorded. The Court stated, “We find that, in the absence of any express statutory requirements, as soon as a plat is properly recorded, the lots therein become ‘legally established’ within the meaning of both the zoning ordinance and common understanding.” *Id.*

### **Q3: What is a “recorded plat”?**

**A3:** A recorded plat refers to a final plat bearing all of the certificates of approval as required by statute and any local ordinance. And, as the title suggests, the document itself is recorded with the appropriate County Recorder’s Office. While some believe that a survey map is akin to a recorded plat, that is not the case, and a recorded survey map does not establish that the subject property has in fact been legally subdivided.

**Q4: Do all properties purporting to be a subdivision actually contain legally subdivided parcels?**

**A4:** No. Simply because a piece of property is located within “ABC Subdivision” does not guarantee that a recorded plat exists.

Names and titles can be misleading and should not be exclusively relied on. Rather, it is the existence of a recorded plat that is dispositive.

**Q5: Should the “Find Development” tool on the Arizona Department of Real Estate’s website be used to conclusively determine the existence of a legal subdivision?**

**A5:** It is not uncommon for REALTORS® and members of the public to utilize the Arizona Department of Real Estate (ADRE) website in an effort to determine the existence of a subdivision, and in turn, whether an Affidavit of Disclosure is required pursuant to A.R.S. § 33-422.

However, the Department’s website understandably states that “The Arizona Department of Real Estate attempts to maintain the highest accuracy of content; yet neither the ADRE, nor any agency, officer, or employee of the ADRE, warrants the accuracy, reliability or timeliness of any information published on this system.”

Furthermore, in addressing the accuracy and thoroughness of its public database, the Department has recently explained that “ADRE keeps records only for so long, it is entirely possible that something in the early ‘90s may no longer be available.” Consequently, the ADRE public database should not be used to definitively determine the existence of a legal subdivision.

**Q6: How can someone verify whether a parcel has been legally subdivided?**

**A6:** In light of the information contained in question 5 above, the ADRE recommends that “to verify if a parcel is in a subdivided or unsubdivided area you need to go to the county recorder’s [office].” REALTORS® and the public alike have access to publicly recorded documents and some county recorders allow recorded documents to be searched for and located on-line via their website. For example, documents publicly recorded in Maricopa County can be found using the Maricopa County Recorder’s Office website at <https://recorder.maricopa.gov/recdocdata/>.

**Q7: Can title companies assist in this process?**

**A7:** It is possible that some title companies can be of assistance, and it never hurts to ask. In fact, preliminary title reports generated in conjunction with the sale of unsubdivided land in unincorporated areas may

contain a legend stating that the property appears to be subject to A.R.S. § 33-422, meaning that an Affidavit of Disclosure must be furnished by the seller.

**Q8: Regarding the Affidavit of Disclosure, what are the important timelines in the Arizona REALTORS® Residential Resale Real Estate Purchase Contract that must be adhered to?**

**A8:** The Arizona REALTORS® Residential Resale Real Estate Purchase Contract requires seller to deliver a completed Affidavit of Disclosure in the form required by law to buyer within five days after contract acceptance. Buyer can then provide notice of any Affidavit of Disclosure items disapproved within the Inspection Period or five days after receipt of the Affidavit, whichever is later. Five days after contract acceptance is typically no later than seven days before close of escrow so the aforementioned contractual provision does not run afoul of the statute.

**Q9: Is there a right of rescission associated with the conveyance of an Affidavit of Disclosure?**

**A9:** Yes. A.R.S. § 33-422(D) states, “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.” NOTE – In the case *Verma v. Stuhr*, 223 Ariz. 144, 221 P.3d 23 (App. 2009), the Arizona Court of Appeals held that the buyer’s right to rescind does not survive close of escrow.

**Q10: How is A.R.S. § 33-422 enforced?**

**A10:** There is no express penalty or enforcement mechanism contained in the statute. However, a seller could have civil liability to the buyer for failure to furnish the Affidavit of Disclosure. REALTORS®, especially those representing sellers, should therefore never guess or make assumptions as to whether the subject property constitutes subdivided land. As previously mentioned, names and titles of developments can be misleading. Individuals that simply assume a parcel is subdivided and therefore choose not to convey an Affidavit of Disclosure put themselves at risk. 📌

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