



Ginger
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert K. Corbin

January 5, 1981

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

INTERAGENCY
The Honorable Boyd Tenney
Arizona State Senator
Senate Wing, State Capitol
Phoenix, AZ 85007

Re: I81- 007 (R80-244)

Dear Senator Tenney:

You have requested that we consider whether or not A.R.S. § 32-2185.02 grants the Real Estate Commissioner the authority to waive, partially or entirely, the permanent access requirement mandated by that section.

A.R.S. § 32-²185.02₁/ provides as follows:

No subdivided land may be sold without provision for permanent access to the land over terrain which may be traversed by conventional motor vehicle unless such provision is waived by the commissioner.

When a statute is clear and unambiguous, the plain language controls and it is not subject to interpretation. Leuck v. Superior Court, 105 Ariz. 583, 469 P.2d 68 (1970); State v. Casey, 10 Ariz.App. 516, 4670 P.2d 52 (1969). See also A.R.S. § 1-213. The statute in question, regarding permanent access to subdivided land, is clear and unambiguous, and therefore not subject to interpretation. This statute clearly grants the Commissioner waiver power.

Having decided that the Commissioner has the power to waive these requirements, we next must determine to what extent that power exists. Obviously, the Commissioner's power is not limited by any provision of A.R.S. § 32-²185.02.

1. Ariz. Atty. Gen. Op. 77-152 discussed the issue of what constitutes "permanent access" within the meaning of this statute.

The Honorable Boyd Tenney
January 5, 1981
Page 2

A review of the pertinent sections regarding the Commissioner's powers in general indicates that the only limitations on the Commissioner's waiver power are contained in A.R.S. § 32-2181.01. This statute gives the Real Estate Commissioner power to waive any of the requirements of Article 4, Chapter 20, Title 32, Arizona Revised Statutes, including A.R.S. § 32-2185.02. This general waiver statute sets forth the necessary guidelines to be observed by the Real Estate Commissioner when granting waivers, whether of the permanent access requirement or of other state subdivision requirements.

In conclusion, we believe the Real Estate Commissioner has the authority to fully waive the permanent access requirement of A.R.S. § 32-2185.02 if he makes a finding, pursuant to A.R.S. § 32-2181.01.A, that compliance with the permanent access requirement

". . . is not essential to the public interest or for the protection of buyers by reason of the special characteristics of the subdivided lands or fractional interest therein or the limited character and duration of the offer for sale, lease or financing or the special characteristics or limited number of fractional interests.

Sincerely,



BOB CORBIN
Attorney General

BC:lfc