

ARIZONA SUBDIVISION APPROVAL REQUIREMENTS

In several prior articles, we have addressed the potential application of state subdivision laws to land splits, and the various factors to consider in determining whether those laws will apply. Generally, lot “splitters” will seek to conduct their business in a manner that does not require compliance with the subdivision requirements. An issue that is addressed less often, however, is the underlying reason for the subdivision laws, and the purpose of a “public report” from the Department of Real Estate, along with related county platting requirements and water certification standards.

Arizona subdivision statutes regulate the creation, development and offering for sale or lease of subdivided lands. Various governmental entities enforce various subdivision requirements, including the Arizona Department of Real Estate, the Arizona Department of Water Resources, and the county or municipality in which the subdivision is located. *See* A.R.S.

§§ 32-2181 *et seq.* (Subdivided Lands Act); A.R.S. § 45-401 *et seq.* (Groundwater Code); A.R.S. § 11-801 *et seq.* (County Planning and Zoning statutes); A.R.S. § 9-463 *et seq.* (Municipal Subdivision Regulations).

The purpose of the subdivision laws and regulations is twofold: One, to ensure that individuals who buy lots in residential developments enjoy the benefits of adequate and safe streets, utilities and other infrastructure; two, to ensure that individuals receive full disclosure concerning the characteristics of the property they are purchasing. Arizona courts have affirmed that the subdivision laws “insure that consumers who purchase lots in residential developments are provided with adequate streets, utilities, drainage, and generally pleasant, healthy and livable surroundings.” *Transamerica Title Ins. Co. v. Cochise County*, 26 Ariz.App. 323, 327, 548 P.2d 416, 420 (1976). In addition, they “protect members of the public from being misled into purchasing land that is unusable or unsafe for residential purposes,” or that do not contain services necessary to render them safe and habitable. *Alaface v. National Inv. Co.*, 181 Ariz. 586, 596-97, 892 P.2d 1375, 1385-86 (App. 1994); *accord Siler v. Dep’t of Real Estate*, 193 Ariz. 374, 378, 972 P.2d 1010, 1014 (App. 1998); *Cochise County*, 26 Ariz.App. at 328, 548 P.2d at 421.

Subdividers are required to comply with minimum health and safety standards established for safe roads, health department approved sewage and solid waste collection and disposal, A.R.S. §§ 32-2181(A)(1-24); county or municipal platting requirements, A.R.S. § 11-801, *et seq.* and A.R.S. § 9-463 *et seq.*; and, when land is in a groundwater active management area, a certificate of assured water supply or written commitment of water service from an authorized water provider, A.R.S. § 32-2181(C). Subdividers must also apply for and obtain a public report, A.R.S. § 32-2181, which requires compliance with the foregoing requirements.

Disclosure and public report requirements are administered by the Department of Real Estate pursuant to the Subdivided Lands Act, A.R.S. § 32-2180 *et seq.*¹ Provision of safe roads, utilities and surroundings are administered by the local county or city under county and municipal statutes, A.R.S. § 11-801 *et seq.* and A.R.S. § 9-463 *et seq.* Water supply requirements are administered by the Department of Water Resources pursuant to the Groundwater Code, A.R.S. § 45-401 *et seq.* Each of the respective agencies has authority to bring legal action to enforce compliance with their statutes. *See* A.R.S. § 32-2183(I)(Department of Real Estate); 11-809(C)(county); A.R.S. §§ 45-635 & 45-636 (Department of Water Resources).

Nevertheless, despite the broad range of statutory provisions at issue, and the several state agencies involved, the various subdivision requirements “are *in pari materia* and must therefore be construed together as if they constituted one law.” *Cochise County*, 26 Ariz.App. at 328, 548 P.2d at 421. Thus, the Department of Real Estate has jurisdiction to bring actions to enforce compliance with all subdivision requirements, including those administered by counties, cities, and other state agencies. *See, e.g., Siler v. Dep’t of Real Estate*, 193 Ariz. 374, 972 P.2d 1010 (App. 1998), *rev. den.* (1999). In *Siler*, the Court of Appeals affirmed a broad remedial order by the Department of Real Estate that required a group of illegal subdividers to obtain necessary permits, improve the roads, and petition for acceptance of the roads. *Siler*, 193 Ariz. at 379, 972 P.2d at 1015. Such requirements, notably, are county platting requirements under A.R.S. § 11-806.

Even in its role of administering approval and issuance of public reports, the Department of Real Estate exercises an important “gatekeeper” function by requiring proof of compliance with county platting and infrastructure requirements, DWR water supply standards, and health department standards, prior to approval of a public report. *See* A.R.S. §§ 32-2181(A)(6),(8) & 32-2181(C).

Public Report

Prior to selling *any lot* within a subdivision, a subdivider must give notice to the Department and apply and receive a public report. A.R.S. § 32-2181(A); A.R.S. § 32-2183(F); Op.Atty.Gen. No. 65-11. The notice must include a statement of provisions for public utilities, including water, electricity, gas, telephone lines and sewage disposal. A.R.S. § 32-2181(A)(19). As well, the subdivider must provide various disclosures concerning the land, its locality, nearby schools, taxes, the nature of the improvements (including “off-site” improvements such as roads and recreational facilities) to be constructed, and the existence of restrictive covenants and the condition of title. A.R.S. § 32-2181(A)(1-24).

After examination of the subdivision, the Department may issue a public report authorizing the sale or lease of lots or parcels in the subdivision, and discloses the information obtained. A.R.S. § 32-2183; *see Alaface v. National Inv. Co.*, 181 Ariz. 586, 592, 892 P.2d 1375, 1381 (App. 1994). Upon receiving the public report, a copy thereof must be provided to

¹ *See generally* McCormack, An Appraisal of Disclosure Regulation of Subdivided Land Sales, Ariz.St.L.J. 3, p. 705 (1980); Arizona Real Estate Sales Act: A Developer’s View, 13 Ariz.B.J. 42 (1977).

potential purchasers of lots within the subdivision, and any purchase contract for property within the subdivision must be accompanied with an addendum advising the purchaser of the right to rescind under certain conditions.

Through its administrative rules, the Department requires the subdivider to provide various supporting documents and supplemental disclosures to substantiate the disclosures required under the statutes. *See* A.A.C. R4-28-A1201 *et seq.* & R4-28-B1201 *et seq.*

County Platting and Infrastructure Requirements

For subdivisions in unincorporated areas, a subdivider must submit a subdivision plat for approval by the county Board of Supervisors. The filing of a plat “legally establishes” each lot described within it. *Robinson v. Lintz*, 101 Ariz. 448, 420 P.2d 923 (1966). The county, through its subdivision regulations, conditions the granting of the plat upon various improvements to the subdivision, including roads, utilities, water, sewage, and flood control. *See* A.R.S. § 11-806.01(E). The county regulations also require the subdivider to post a bond or other assurance for the improvements to be made:

The regulation shall require the posting of performance bonds, assurances or such other security as may be appropriate and necessary to assure the installation of required street, sewer, electric and water utilities, drainage, flood control and improvements meeting established minimum standards of design and construction.

A.R.S. § 11-806.01(G). *See, e.g.*, Pima County Code §§ 18.69.010 *et seq.*; Navajo County Subdivision Regulations & Requirements, §§ 3.1 *et seq.*; Pinal County Subdivision Regulations, art. I *et seq.* A county must enact such rules and regulations in order to exercise its statutory subdivision plat approval powers. *Owens v. Glenarm Land Co.*, 24 Ariz.App. 430, 433, 539 P.2d 544, 547 (App. 1975).

The bond or assurance serves as security in case the developer fails to make the improvements or does not make them properly. It does not take the obligation to perform the work away from the developer, however, and if the county has to take over the work or correct the work because the developer is unable to do so, the county is acting for and on behalf of the developer when it does so. *See West v. Sundance Development Co.*, 169 Ariz. 579, 583-84, 821 P.2d 240, 244-45 (App. 1991).²

Water

Prior to recording of a subdivision plat, the subdivider must submit the plat to the Department of Water Resources and demonstrate the adequacy of the proposed water supply. A.R.S. § 45-108(A). Where the proposed subdivision is located within a groundwater Active

² Lot purchasers do not have standing as third-party beneficiaries under such bonds to recover damages for the subdivider’s failure to complete improvements. *See Norton v. First Federal Sav.*, 128 Ariz. 176, 624 P.2d 854 (1981).

Management Area,³ the subdivider must obtain a certificate of assured water supply, which in most cases requires a 100-year water supply. *See* A.R.S. § 45-576(A), (H). Separate from the plat requirements, a requirement for issuance of a public report by ADRE includes proof of a certificate of assured water supply or a written commitment from an authorized water provider (that has such a certificate from DWR and a CC&N from the ACC). A.R.S. § 32-2181(C).

Just as the public report ensures compliance with county subdivision requirements by requiring a subdivider to submit a copy of the recorded plat, the public report ensures compliance with water requirements by requiring the subdivider to submit a copy of the DWR's statement of water adequacy or certificate of assured water supply. *See* A.R.S. § 32-2181(C), (F). Where DWR has reported an inadequate water supply or if no water is available, all promotional materials and contracts must display the DWR report or a summary thereof. A.R.S. § 32-2181(F).

³ A groundwater active management area (AMA) is defined as a “geographical area which has been designated . . . as requiring active management of groundwater[.]” A.R.S. § 45-402(2). There are five AMAs: the Tucson, Phoenix, Prescott, Pinal and Santa Cruz AMAs.