



# Arizona State Senate Issue Brief

August 3, 2018

## Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Nothing in the Brief should be used to draw conclusions on the legality of an issue.

## **ARIZONA'S GROUNDWATER MANAGEMENT CODE:**

### **LOT SPLITS AND SUBDIVISIONS**

An *exempt well* is a well with a maximum pumping capacity of 35 gallons per minute (gpm). Unlike wells that have a maximum pumping capacity greater than 35 gpm, exempt wells are exempt from needing a groundwater withdrawal authority, complying with the Arizona Department of Water Resources' (ADWR) well spacing rules, using a water measuring device, paying groundwater withdrawal fees and filing annual groundwater withdrawal reports.

Statute defines a *lot split* or *land division* as land in an unincorporated area of a county that has been divided into five or fewer parcels, any of which is ten acres or smaller in size. Once approved, the land divider is permitted to build and sell houses on the divided land, even though a reliable water supply might not service the land.

### **GROUNDWATER MANAGEMENT IN LOT SPLITS**

In most circumstances, a county board of supervisors (BOS) does not have the discretion to prevent a lot split from occurring. A lot split must be approved if the divider's application meets certain minimum requirements outlined in statute, without regard to water supply. Counties are permitted to adopt ordinances for staff review of lot splits, but only to determine compliance with minimum applicable county zoning requirements and legal access ([A.R.S. § 11-831](#)).

An affidavit of disclosure (affidavit) is required for all lot split sales. The affidavit must be provided to the buyer at least seven days prior to the transfer of property. The affidavit is required to disclose pertinent information regarding the property, including if the property is served by a well, municipal water provider or private water provider. In addition, the affidavit is required to disclose whether the property is served by a water supply that requires transportation to the property. The affidavit must include a statement notifying the buyer that if the property is served by an exempt well, private water company or municipal provider, ADWR may not have made a water

supply determination and advises the buyer to contact the water provider for more information. The Arizona Department of Real Estate (ADRE) is required to post information on its website advising potential buyers to investigate water supplies prior to purchasing property, as well as a link to the ADWR website which must contain definitions of related water supply terms.

### **GROUNDWATER MANAGEMENT IN SUBDIVISIONS**

A BOS is required by statute to regulate the subdivision of all lands within their corporate limits, except those regulated by municipalities. Statute defines a *subdivision* as improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into six or more lots, parcels or fractional interests. Subdivisions must be approved by the BOS, and if the subdivision is within an Active Management Area (AMA), the BOS cannot permit the subdivision unless the plat is accompanied by a certificate of assured water supply from ADWR or the subdivider has a written commitment of water service from a city or town or private water company that has an assured water supply, also known as a designated water provider ([A.R.S. 11-822](#)).

To obtain a certificate of assured water supply, a subdivider or designated water provider must meet the following criteria: 1) physical, legal and continuous availability of the water supply for 100 years; 2) sufficient quality of the water supply; 3) water use must be consistent with the AMA's management goal and plan; and 4) the applicant must demonstrate financial capability to construct any necessary water storage, treatment and delivery system.

Outside of an AMA, subdivision developers must obtain an adequacy determination from ADWR concerning the quantity and quality of water available before ADRE will allow any lot sales. If the application demonstrates that water

of sufficient quality will be physically, legally and continuously available for the next 100 years, ADWR will determine the water supply to be adequate. If the water supply is determined to be inadequate the developer may still sell lots, unless the subdivision is located in a city, town or county that has adopted an ordinance requiring an adequate water supply for new subdivisions, but the inadequate determination must be disclosed to the initial buyers in the public report approved by the ADRE and in all promotional material and must be noted on the face of the plat ([A.R.S. § 11-823](#)).

If the subdivision is located in a city, town or county that has adopted an adequate water supply ordinance, the subdivision must have an adequate water supply as determined by ADWR or a written commitment for water from a designated water provider before the city, town or county may issue final plat approval or the Real Estate Commissioner may issue a public report ([A.R.S. § 11-823](#)).

Statute allows the ADWR Director to grant an exemption to the water adequacy requirement if: 1) substantial capital investment has already been made in the subdivision prior to the adoption of the ordinance; or 2) the subdivider has demonstrated financial capability, but the physical works are not complete but will be within 20 years or the subdivision will be legally served by Colorado River water within 20 years ([A.R.S. §§ 45-108.02](#) and [45-108.03](#)). Any exemptions from an adequate water supply requirement must be noted on all promotional material and the face of the plat for the subdivision.

### **ADDITIONAL RESOURCES**

- Arizona Department of Real Estate  
<http://www.re.state.az.us/>
- Arizona Department of Water Resources  
<http://www.azwater.gov/>
- Arizona County Planning and Zoning

[Arizona Revised Statutes, Title 11, Chapter 6](#)

- Arizona Conveyances and Deeds

[Arizona Revised Statutes, Title 33, Chapter 4](#)

- The Groundwater Management Code

[Arizona Revised Statutes, Title 45, Chapter 2](#)