

Warning to Realtors & Mortgage Lenders, Shared Water Wells Carry No Warranty of a Future Water Supply

By: Gary L. Hix R.G., CREI

Anyone who purchases a new home logically expects it to have an adequate water supply for many years. It may be that they assume this because they received a Certificate of Occupancy for their new developer built home. Or it may be that they assumed that they would always have an adequate water supply because of the wording contained in a Well Share

Agreement they received for an existing home. Both documents (C of O and WSA) carry with them an implied warranty of habitability for the unsuspecting buyer.

Despite the fancy name, a Certificate of Occupancy for a new home does not warrant the adequacy of the water supply, nor does a typical well share agreement of the kind that buyers are provided with when purchasing an existing home. Both documents might give a buyer the impression that there will always be adequate water supply available for them. Unfortunately, this is not true. There have been a number of cases recently where a shared well has failed to supply enough water by the time the last home was built, sold and occupied. This has left the homeowners, and their mortgage lenders, with a serious problem. What to do with all the homes that now have very little or no water?

The truth is that the "Assured and Adequate" water supply designations required by Arizona law for platted subdivisions greater than five lots do not apply to shared water wells serving five lots or less. Under Arizona law (ARS §32-2181 25,C-E) parcels of land are still allowed to be divided into five lots or less without proving there is an adequate water supply for the future. Subdividers - developers selling less than six lots are not required to furnish buyers a statement as to whether or not their mini development has an adequate water supply. When selling the lots or constructing the homes, mini-developers typically disavow any warranty as to the adequacy of the water supply in the original well share agreement.

As the built-out condition of the five lots or less development is approached, the last members to build their homes are finding that the system cannot support the additional demands they place on it. What worked for the first few homeowners now falls short of meeting the collective demands with the additional homes. Some shortages can be cured with building additional water system equipment like additional storage tanks and booster pumps. Some can drill their wells deeper. Others cannot because the groundwater supply simply isn't there. Their homes are now classified as "hailed water" homes and their resale value drops dramatically.

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It isn't just the buyers who suffer when a shared well runs dry. Lenders also suffer. As long as there is this exemption for splits of five lots or less, there is no warranty of a future supply of the one thing we cannot live without, water. Arizona realtors and mortgage lenders should recognize that the homes they list, sell and fund that are supplied with water from a shared water well carry no warranty of a future water supply. Some shared well systems may not have a sufficient supply of water for the life of the loans placed on the homes. Realtors and lenders are therefore cautioned not to represent to a prospective buyer of a home on a shared water well that it comes with a lifetime water supply, because it may not be there.

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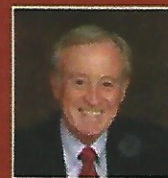
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