

## **Arizona Administrative Code R4-28-A1211. Assurances for Completion and Maintenance of Improvements**

**A.** The applicant shall identify:

1. Whether arrangements have been made to assure the completion, delivery, and continued maintenance of the improvements listed in subsections R4-28-A1204 through R4-28-A1210; and
2. Whether the assurances to complete and deliver the improvements have been approved by the county or city, where applicable, and if so, submit a copy of the county or city approval;

**B.** An applicant shall provide one or more of the following assurances for completion:

1. A surety or completion bond from an insurance company licensed in Arizona with a rating of good or higher from a rating agency and a copy of the rating. The bond shall specify which improvements are included and shall:

- a. Be stipulated by and payable to a third party who is not the developer;
- b. Be accepted and signed by all parties;
- c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date;
- d. State when and how the third party may draw on the funds;
- e. Be in an amount 10% greater than the estimated amount to complete all improvements; and
- f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements.

2. An irrevocable letter of credit from a financial institution licensed to do business in Arizona. The irrevocable letter of credit shall specify which improvements are included and shall:

- a. Be stipulated by and payable to a third party who is not the developer;
- b. Be accepted and signed by all parties;
- c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date;
- d. State when and how the third party may draw on the funds;
- e. Be in an amount 10% greater than the estimated amount to complete all improvements;
- f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements;
- g. State that repayment is the responsibility of the developer and not of the third party; and
- h. State that the irrevocable letter of credit is noncancelable.

3. A loan commitment and agreement from a lender licensed in Arizona. The loan commitment and agreement shall specify which improvements are included and shall:

- a. Be stipulated by and payable to a third party who is not the developer;
- b. Be accepted and signed by all parties;
- c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date;
- d. State when and how the third party may draw on the funds;
- e. Be in an amount 10% greater than the estimated amount to complete all improvements;

- f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements; and
  - g. State that repayment is the responsibility of the developer and not of the third party even if the third party draws on the funds.
4. A trust or escrow account with a financial institution or escrow company licensed in Arizona. The trust or escrow account shall specify which improvements are included and shall:
- a. Be stipulated by and payable to a third party who is not the developer;
  - b. Be accepted and signed by all parties;
  - c. Include an expiration date not less than 90 Days beyond the last improvement estimated completion date;
  - d. State when and how the third party may draw on the funds;
  - e. Be in an amount 10% greater than the estimated amount to complete all improvements;
  - f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements; and
  - g. Directly pay for the improvements completed or release funds to the developer upon written verification from a registered engineer that the improvements have been completed in accordance with the plan.
5. City and county trust agreement. A municipal or county government may enter into an assurance agreement with a trustee to hold a lot conveyance until improvements are completed:
- a. The trustee is an escrow company licensed in Arizona, and
  - b. The agreement is recorded.
6. Written escrow agreement. A developer may enter into a written escrow agreement with a title insurance company or escrow company to escrow all funds and prohibit close of escrow until all improvements are complete. The agreement shall contain the following stipulations:
- a. The funds are not released nor the purchaser's deed or other relevant documents recorded until the developer's architect or engineer certifies to the Department and the escrow agent that the project is complete, ready for occupancy, and in compliance with all city and county requirements;
  - b. If the completion date is not met:
    - i. The developer will give purchasers notice that completion dates were not met and an updated completion schedule,
    - ii. A purchaser may, within 30 days of receiving the notice specified in subsection (B)(6)(b)(i), cancel and receive a full refund by sending written notice to the escrow agent,
    - iii. The public report is invalid and all sales are suspended; and
    - iv. The Department considers the public report valid if improvements are completed at a later date and the public report is complete and accurate.
7. Subdivision assurances. The municipal or county government shall prohibit occupancy and a subdivider shall not close escrow on lots sold in a subdivision until all proposed or promised subdivision improvements are complete.

- a. The subdivider shall submit an agreement or copy of the ordinance from the city or county prohibiting occupancy until all proposed or promised subdivision improvements are complete.
  - b. If improvements are completed in phases, the subdivider shall submit complete details of the phasing program, including approval of the phasing by the city or county and the completion schedule for the phases to the Department.
  - c. The subdivider shall submit a written statement that no escrow will close on any lot until all subdivision improvements are complete. If a lot is within a phase of the subdivision where all improvements are complete and can be used and maintained separately from the improvements required for the entire subdivision the escrow may be closed.
  - d. The subdivider shall submit a copy of the subdivider's purchase contract containing in large or bold print the condition that escrow will not close until the city or county issues its occupancy clearance and all subdivision improvements are complete.
  - e. Any improvement offered or promised to a purchaser that is scheduled for completion in a later phase of completion shall have its completion assured by an alternative method of assurance listed in this Section.
  - f. If the subdivider's sales include unimproved (vacant) lots, the subdivider shall deposit all earnest money into a neutral escrow depository until escrow closes.
8. Any other assurance satisfactory to the Department that is not listed in subsections (B)(1) through (B)(7).
- C.** If the construction of any improvement is completed in phases, the applicant shall provide a description of the phased schedule of completion, including the lots in each phase and estimated completion dates.