

REAL ESTATE

Rainwater: The ‘Common Enemy’ of Landowners

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Arizona does not get rain very often, but when it does, the rainwater can be problematic for landowners. Arizona is a desert landscape and many of its soils are highly



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erodible. Consequently, Arizona rains and monsoon storms can cause substantial damage to property.

To mitigate these issues, many landowners modify property to divert or change the flow of water entering their property. While these improvements may seem like a common

sense solution, if landowners fail to comply with applicable laws, they may face serious legal consequences, including civil liability and daily regulatory fines. To avoid these potential consequences, landowners should be aware of relevant law governing rainwater in Arizona.

Generally, there are three types of water on land: surface water, stream water, and flood water. Surface water is water falling on and naturally spreading over lands, like rain or snow melt. Stream water is surface water that has joined a natural watercourse, like a stream or a dry wash that fills irregularly during heavy rains. Flood water is errant water that has escaped from a natural watercourse and flows over adjoining lands in no regular channel. Although flood water may make a temporary channel or follow some natural channel, that does not affect its character as flood water or make the course it follows a natural watercourse.

Under Arizona law, surface water and flood water are considered a “common

enemy” to all landowners. As a result, there is no duty to receive surface water coming from another’s land. Landowners may use embankments and other devices to protect their land from surface water without liability to adjacent landowners.

A landowner may also use ditches and other means to divert surface water into a watercourse without liability to an adjacent landowner, even if this causes the water flow to accelerate and increase. Similarly, a landowner may embank and divert flood water without liability to an adjacent landowner.

Once surface water has joined a watercourse, a landowner may not obstruct the flow of that watercourse. However, a landowner may divert or change the course of a watercourse flowing through his land, provided he returns it to its original or natural channel before it reaches the land of an adjacent owner.

There is a little-known statute, A.R.S. § 48-3613, that prohibits anyone from “diverting, retarding, or obstructing” a watercourse without first seeking authorization from the applicable county flood control district. Any party that is or

may be damaged by the diversion, retardation, or obstruction of a watercourse can bring an action for damages and obtain an award of costs and attorneys’ fees. The county may also assess financial penalties for each day the violation is not cured per A.R.S. § 48-3615(B)-(C).

Most urban Arizonans need not worry about these issues because drainage infrastructure is already in place. More often than not, these issues affect rural or agricultural properties. But as metropolitan Phoenix expands, the line between rural and urban blurs. Before making any improvements to a property that would affect the course or flow of a watercourse — even a dry wash or arroyo — landowners should consult with an attorney.



all assume that the family business can be sold post-mortem at its date-of-death value. Often times, this is not the case. The death of the owner, presumably one of the key persons involved in the business, can have a substantially negative impact on its value, and therefore, its sale price. It may take well over a year for the family business to go through a trust or probate administration process, causing fragmented ownership interests amongst beneficiaries and the business to be poorly run. This frequently leads to a so-called fire sale of the business, with buyers swooping in to purchase it for anywhere from 40-80% of its date-of-death value. It is doubtful that any tax strategy in place could offset the substantial decrease in value to the family’s wealth. This is just one of many non-tax factors to consider.

Although tax analysis is necessary for any family business succession plan, all factors need to be explored, tax or otherwise, because the business often makes up the majority of a family’s wealth. Even if a business owner is not quite ready to sell his or her business, an exit strategy needs to be implemented at some point, or the process can take much longer than anticipated when realizing the necessity of a multi-faceted analysis. The examples and tax characteristics above showcase a few of the basic considerations to explore and their potential pitfalls, but it is highly recommended that a much more thorough analysis be conducted prior to proceeding with a succession plan. This will most likely facilitate a successful result, whether during life or upon death.

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