



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

Ted Wright

February 14, 1978

The Honorable John Hays
State Representative
Arizona House of Representatives
Phoenix, Arizona 85007

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Re: 78-28 (R77-281)

Dear Representative Hays:

You have requested an opinion as to whether incorporation by a community relieves the developer of the property of the responsibility for constructing roads and streets to promised specifications. Unless the developer's obligation to construct roads and streets was expressly conditioned on an agreement by the lot buyers not to incorporate, or unless there exists some other contingency not set forth in your opinion request, the fact of incorporation does not affect the developer's liability.

A developer's duty, if any, to construct improvements can be based on his contracts with lot buyers, his representations to lot buyers, or statements made by the developer in his application filed with the Arizona Real Estate Department. Lot buyers' remedies for a contractor's failure to perform such a duty vary with the nature of the source of that duty, and range from common law remedies for breach of contract, negligent misrepresentation or fraud, to the statutory cause of action provided by A.R.S. §32-2183.03. However, in each situation, the developer's obligation is totally independent of the lot buyers' act of incorporating and forming a municipality.

Very truly yours,

BRUCE E. BABBITT
Attorney General

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