



**NEW MEXICO ASSOCIATION OF REALTORS® — 2023
INFORMATION SHEET — WATER RIGHTS AND
DOMESTIC WELLS**

This form is NOT a disclosure and does NOT provide property-specific information. The general information contained herein is not an exhaustive analysis of the subject matter. Brokers are not experts in the subject matter. If you have additional questions or concerns, you are encouraged to conduct further research and to contact a subject-matter expert.

1. WATER RIGHTS:

A Property may or may not include water rights. **Title to water rights, their location and permitted use, and applicable restrictions should be independently verified by an expert employed by the Buyer (such as an engineer, hydrologist, or qualified attorney).** Water rights of record are subject to court decisions, laws, ordinances, rules, and regulations and compacts of the State of New Mexico and local governing bodies, including Ditch Associations and Conservancy Districts, and may also be subject to private contracts. Existence of water rights does not assure that water actually is or will be available or that legal or physical access to the water is available. Water rights that exist at the time of a purchase may be limited, altered or extinguished in the future as a result of court decisions, laws, ordinances, or regulations. **Title insurance does not generally cover water rights.** Buyer must complete specific legal procedures to transfer or develop water rights.

2. DOMESTIC WELLS:

If a Property is not connected to a public water system, it may use a private, shared, or community well. Domestic wells fall under the jurisdiction of the Office of the State Engineer (OSE). The following information is based on OSE requirements. **PLEASE NOTE: Additional county and/or municipal ordinances and restrictions may apply to domestic well permitting and usage. This form is NOT all inclusive of the regulations governing domestic wells. Buyer and Seller should familiarize themselves with all current state and local regulatory requirements prior to entering into a contract.**

3. DOMESTIC HOUSEHOLD USAGE:

The drilling of a domestic well and the amount and use of water permitted are subject to such additional or more restrictive limitations imposed by a court, by lawful municipal or county ordinance, or by the OSE, such as but not limited to by the OSE's orders or administrative guidelines. The maximum permitted diversion of water from a domestic well that is not subject to additional or more restrictive limitations shall be as follows. **For wells drilled on or after August 15, 2006, the maximum household usage per domestic well is one-acre-foot per year.** For wells serving a single household permitted and drilled prior to August 15, 2006, the maximum household usage per well is three-acre-feet per year. The maximum usage for wells serving multi-households is one-acre-foot per household per year with a cumulative maximum of three-acre-feet per shared well per year (regardless of the date the well was permitted and/or drilled). While not required by State regulations, some counties have ordinances that require that single-household wells be metered.

4. FINES FOR EXCEEDING MAXIMUM DIVERSION:

The owner of a well who exceeds maximum diversion shall repay (in water) twice the amount of the over-diversion during the following calendar year in a manner acceptable to the OSE.

5. WELL MUST BE PERMITTED IN CURRENT OWNER'S NAME:

In order to comply with New Mexico law, domestic wells must be permitted in the current Property owner's name. If a well is not permitted in the current owner's name, the current owner of the Property on which the well is located must retrieve warranty deeds or other instruments of conveyance from the County Clerk's Office for each transfer of the Property from the time beginning with the last owner of the domestic well as recorded with the OSE to the present. These deeds or other instruments of conveyance must be submitted to the OSE, along with change of ownership notification, in order for the well to be permitted in the current Property owner's name.

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INITIALS SIGNIFY THAT THE BUYER(S) AND/OR SELLER(S) HAS RECEIVED AND REVIEWED THIS
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6. REQUIREMENTS UPON TRANSFER:

The transfer of Property with a domestic well is subject to the regulations of the OSE which were amended effective August 15, 2006. Among other requirements, the regulations require that the OSE be notified when a domestic well changes ownership. Under New Mexico law, new owners of a Property with a domestic well must file a change of ownership notification with the OSE. The form must contain all information conforming with water rights or record filed with the OSE and must be accompanied by a copy of the warranty deed or other instrument of conveyance. The new owner must also record a copy of the "Change of Ownership" form filed with the OSE and with the County Clerk's Office of the County in which the water right is located.

7. WELL-SHARE AGREEMENTS:

A shared or community well may be subject to written "of record" or unwritten agreements governing water usage, maintenance and repair, testing, easements, periodic charges and reserves, etc. A Buyer should carefully review any such agreements with an attorney.

8. WELL SERVING MULTIPLE HOUSEHOLDS:

A well serving multiple households must be permitted in the name of the person who owns the property on which the well is located. The permit holder must place a meter on the well and must file quarterly meter readings with the OSE. The permit holder of a well serving multiple households is also required to provide notice to the OSE of the following: the number of households being served by the well; the owners' contact information for each household being served by the well; and, a Legal description of the property of record for each household being served by the well. A copy of the Well-Share Agreement may be filed to support a claim that a well is serving more than one household. A copy of the Well-Share Agreement should be filed with the County Clerk's Office in the county where the well is located.

9. DEVELOPER PERMITS:

Developers may obtain a permit that allows them to use the water from a domestic well for construction resale purposes until the home is sold. Once sold, the developer-owner must provide the Buyer with notice in writing of the requirement to file a "Change of Ownership" form for the domestic well permit with the OSE. A copy of the notice provided by the developer-owner to the Buyer must be filed with the OSE along with a copy of the deed or other instrument of conveyance for the land upon which the domestic well is located. A developer will not be issued more than five "Construction-Resale" permits at any given time.

10. FEE:

Contact the OSE for applicable fees for a permit to drill any well.

11. CANCELLATION OF PERMITS:

The OSE may cancel a domestic well permit upon failure of a permit holder to comply with any permit condition of approval or any applicable provision of the regulations; **this includes, but is not limited to, the failure to file a Change of Ownership at the time of transfer that meets the requirements set forth under New Mexico law.** The OSE may cancel a domestic well permit and proceed with enforcement action if a permit holder diverts water in excess of the authorized maximum amount and fails to repay the over-diversion in a time and manner acceptable to the OSE.

12. INSPECTIONS AND TESTING:

Well inspections can include a visual inspection; examination of the pump, other equipment, and well-house; and tests for flow and potability. **The OSE does NOT require a potability test; however local ordinances may. There is no "standard" test for potability. A Buyer must normally specify all the substances that are of concern to the Buyer.** Generally, a separate fee is charged for each test requested. Underground contamination from on or off-site conditions may affect the water quality in the future even if the water appears unaffected at the time of sale.



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The water condition and amount of the water available may vary seasonally or with the weather. Indoor and outdoor water use may be subject to restrictions that could affect a Buyer's ability to use the property as the Buyer intends. Past performance of a well is no guarantee of future performance. **Any well can go dry, and there is no guarantee that merely deepening the well or digging another well (if permitted) will result in an adequate supply of water.**

13. CONNECTION TO PUBLIC WATER SYSTEM:

If a public system becomes available, the property owner may be required to connect to that system. However, there can be no guarantee that such a system ever will become available. A Buyer should investigate these alternatives.

DISCLAIMER:

Neither the Seller nor the Broker makes any warranties concerning water rights or wells on the Property. Buyer should thoroughly investigate all issues involving water rights and/or wells, whether existing or contemplated, associated with the Property.

FOR MORE INFORMATION:

For questions or additional information, contact the New Mexico Office of the State Engineer (OSE) at (505)827-6166 or www.ose.state.nm.us.

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