

Winter
2018-19

**MONROE McDONOUGH
BRENT & MORALES, PLLC**
ATTORNEYS AT LAW

MONROE McDONOUGH BRENT & MORALES, PLLC
2500 N. Tucson Blvd., Suite 140 Tucson, Arizona 85716 ♦ 520-292-2500
www.mmbmazlaw.com

SOUTHERN ARIZONA' S REAL ESTATE LAW FIRM

Welcome to the MMB&M Newsletter

Accommodation for Service or Assistance Animals.	Page 2
Executives to be Imprisoned for Lying About 2008 Financial Crisis.....	Page 4
Fees for Adverse Possession Claim.....	Page 5
What's Happening Around Tucson!.....	Page 6

From All of us at MMB&M!

Wishing you
a Merry Christmas
and Happy New Year***

**without guarantee, warranty or other legal assurance*

***and any other holiday or festival you choose to celebrate!*





Accommodation for Service or Assistance Animals

By: Heidi Rib Brent

hbrent@mmbmazlaw.com

Property managers and agents holding open houses should be aware of the need to accommodate service and assistance animals, what they can and cannot ask and how to proceed on a moment's notice. The Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA) both require accommodation for qualified animals, but do you have to tolerate that dog peeing on your carpet?! The answer is "no;" however, be cautioned how to determine what animals to accommodate.

The ADA, affecting all public entities, has the more restrictive requirements, so evaluate those first. The ADA protects "**service animals**," which covers *only dogs* specifically trained to do work or perform tasks directly related to their person's disability. Other animals and comfort, support or therapy animals are not covered by the ADA protections. When it is not readily apparent that the dog is a service animal, you may ask only two questions:

1. Is the dog a service animal required because of a disability? and
2. What work or task has the dog been trained to perform?

You may not ask about the individual's disability or require documentation or a demonstration of the task. The animal is not required to have professional certification or wear an identifying harness or tag. However, the handler must supervise the service animal and be responsible for the dog's behavior, including toileting, shedding and any aggressive behavior. Even a service animal may be denied access if the animal is: (1) out of control, (2) not housebroken or (3) poses a direct threat to the health or safety of others that cannot be addressed by reasonable modifications. The direct threat determination must be based on the specific service animal's conduct rather than generalizations, so a pit bull service animal cannot be excluded based on fear of pit bulls.

A service animal is not a pet, so you cannot require a pet deposit or other premium and the service animal must be allowed to go anywhere a member of the public is permitted.

Even though the comfort cat does not qualify as a service animal under the ADA, the analysis is not complete. The FHA and Section 504 of the Rehabilitation Act, protect "**assistance animals**" as well. Assistance animals include *any animal* that provides assistance or performs a task to benefit a person with a disability or provides emotional support that alleviates symptoms or effects of the individual's disability. Thus support, therapy, comfort and companion animals may all be included. If it is not readily apparent the nature of the individual's disability, you may ask the

person with an animal to submit reliable documentation of their disability and the need for an assistance animal. A note from a mental health provider, confirming a disability and that the animal provides some assistance or emotional support shall suffice.

The housing provider, including landlords, property managers and real estate agents showing properties must make exceptions to “no pet” policies for assistance animals, allowing them access to anywhere the public may go unless: (1) allowing the access would pose an undue financial and administrative burden; (2) would fundamentally alter the nature of the housing provider’s services; (3) the specific animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by other reasonable accommodation; or (4); the specific animal causes substantial physical damage to the property of others that cannot be reduced or eliminated by other reasonable accommodation. The determinations of “undue burden” and “reasonable accommodation” require individual assessments and “reasonable accommodation” requires communication with the individuals impacted. Accommodating assistance animals and others with allergies may require finesse.

The analysis is different for air travel under the Air Carrier Access Act. Delta Airlines recently revised their policies to limit customers to one service or assistance animal, no service or assistance animals that are less than 4 months of age due to vaccination requirements, no service or assistance animals on flights longer than 8 hours due to elimination needs and an absolute prohibition of pit bulls. Check with individual airlines before seeking to travel with a service or assistance animal.

The National Association of REALTORS® recently reported that an Arizona agent held an open house, where a comfort dog peed on the carpet *twice*. Because the agent did not get the handler’s contact information, the homeowners sought the carpet cleaning bill from the agent. All the more reason to be sure that everyone entering your open house must sign in with contact information!

Complaints for failure to accommodate service animals may come from the U.S. Department of Justice, Civil Rights Division, Arizona Attorney General’s Office, Civil Rights Division, HUD, or offended individuals.





Congratulations to Anne

**for appointment as
Chancellor of the Diocese of Tucson!**

**She will be working directly for the Bishop
in managing the assets of the Diocese.**

Heartfelt blessings (and mazel tov)



Executives to be Imprisoned for Lying About 2008 Financial Crisis

By: Heidi Rib Brent

This December, the President and the CFO of Wilmington Trust Corp. were each sentenced to 6 years in federal prison and fined \$300,000 for their actions in 2009 and 2010 for conspiracy to defraud the US government and investors. The U.S. District Judge in Delaware called this the “worst financial crime in Delaware” in decades. The two defendants approved fraudulent financial reports, lying about real estate development losses to induce further investment. They were not convicted for the financial failure, but rather for lying to the Securities Exchange Commission, regulators and investors. By failing to reveal bad loan losses, they enticed \$287 million from investors and \$330 million from the Troubled Asset Relief Program (TARP) in 2009 and 2010. The bank was sold in 2010 at a deep discount and the victims included hundreds of bank employees’ jobs and investors’ capital and retirement savings. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 arose from such abuses by financial institutions.



Fees for Adverse Possession Claims

By: Heidi Rib Brent

When neighbors take their disputes to court, it takes time and costs a lot money in attorney's fees, to which Maricopa County neighbors Gregory Cook and Cynthia Grebe can attest.

Mr. Cook sued his neighbor Ms. Grebe, alleging adverse possession for exclusive use and maintenance of property for more than 15 years and that Ms. Grebe's failure to maintain and secure the property constituted a private nuisance. Ms. Grebe counterclaimed, alleging that the property was still hers, with counts for quiet title, conversion, unjust enrichment and trespass. The jury ruled in Ms. Grebe's favor that the property remained hers, but in Mr. Cook's favor on his private nuisance claim. Presumably Mr. Cook was granted damages for the amount he spent maintaining the property over the years, but the issue before the Court of Appeals related only to the attorney's fees.

Since Ms. Grebe prevailed against Mr. Cook on his adverse possession claim and on her own quiet title claim, by Arizona statute, A.R.S. §12-1103(B), she is entitled to attorney's fees in an amount set by the court. The other claims do not include an entitlement to attorney's fees in Arizona, where attorney's fees are granted only when specified by statute or arising out of contract.

Ms. Grebe requested \$82,726.75 in attorney's fees. In evaluating the amount for the attorney's fees award, the trial court reduced the total fees by approximately 40% to \$50,000.00 to account for the lost claims. Mr. Cook appealed, alleging that he was the prevailing party on many of the claims. The Court of Appeals held that Mr. Cook failed to meet his burden to establish the unreasonableness of the fee award, so it was upheld. The Arizona Court of Appeals ruled that the prevailing party in a quiet title action is entitled to attorney's fees regardless of whether they prevailed on the other claims filed. The other claims are relevant only to the determination of whether the amount of fees awarded is reasonable. *Cook v. Grebe*, 1 CA-CV 17-0211.





Our own Debra Hall played her banjo with members of the Desert Bluegrass Association last week at Anne's house in Winterhaven!

What's Happening Around Tucson!

Winterhaven Festival of Lights – through December 26, 2018, 6:00-10:00 pm

Lights of the World – Kino Complex – Ajo Way – through January 2, 2019

<https://tucson.lightsoftheworldus.com>

Tucson Jazz Festival – January 11-21

<http://tucsonjazzfestival.org>

Tucson, Gem, Mineral and Fossil Showcase – Tucson – January 18 through February 17

<http://www.tucsongemshows.net/coming.html>

Tucson Rodeo – La Fiesta De Los Vaqueros: Tucson Rodeo Grounds - February 16-24

<http://tucsonrodeo.com>

Arizona Renaissance Festival – Apache Junction – Sat/Sun February 9 – March 31

<https://arizona.renfestinfo.com>



Seasons Greetings!



**MONROE McDONOUGH
BRENT & MORALES, PLLC**
ATTORNEYS AT LAW

Southern Arizona's Real Estate Law Firm

Phone: (520) 292-2500

<http://www.mmbmazlaw.com/>

Select Blog to browse/search
all our newsletter articles.

The articles contained in this newsletter are of a general nature and reflect only the opinion of the author at the time it was drafted. They are not intended as definitive legal advice, and you should not act upon it without seeking independent legal counsel.