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SOUTHERN ARIZONA'S REAL
ESTATE LAW FIRM

Welcome to the MMGM Newsletter

The state's most popular natural wonders include the Grand Canyon, Havasu Canyon, Grand Canyon Caves, Lake Powell/Rainbow Bridge, Petrified Forest/Painted Desert, Monument Valley, Sunset Crater, Meteor Crater, Sedona Oak Creek Canyon, Salt River Canyon, Superstition Mountains, Picacho Peak State Park, Saguaro National Park, Chiricahua National Monument, and the Colorado River.

Another Adventure with Dodd-Frank! TILA-RESPA Integrated Disclosure Rule By Heidi Rib Brent, Esq.

For more than 30 years, TILA and RESPA have each required lenders to provide a specific form to consumers applying for a mortgage loan, and each had different forms of disclosure for consumers at or before closing. The TILA and RESPA forms have long been acknowledged as inconsistent in language and overlapping in content. The Dodd-Frank Act required integration of those forms.

The new forms have gone through the rule making process and have now been approved. The Loan Estimate, disclosing estimated costs, features and risks of the loan, is required no later than the third business day after submission of a loan application. The Closing Disclosure, disclosing

final costs of the loan, is required at least three business days before closing.

The required use of these forms applies to consumer loans made by creditors who issue more than five loans per year. It does not apply to home equity lines of credit, reverse mortgages, or mobile homes.

The new forms are ready and their use is required as of August 1, 2015.

However, the use of the old forms is required until then and the new forms will not be accepted before then.



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[Santa Cruz County Board of REALTORS®](#)

CAN YOU SUE YOUR SUBCONTRACTOR?

By Michael J. Monroe, Esq.



Here is a scenario. You hire a general contractor to build your dream house. You move in and are all ready to enjoy chocolate bon bons and drink your margarita while you float on your air mattress in the pool. Unfortunately, your vision is rudely interrupted with the reality that the plumbing work in your newly constructed home was installed in a defective manner causing a very damaging flood destroying carpets, walls and your wallet. So, let's sue the *&^%# plumber – right? Well, not so fast. But, you want to sue the plumber for breach of the implied warranty of workmanship and habitability. He did you wrong. Such a claim is based on a breach of contract for not doing the job correctly. So, shouldn't you have a right to sue the plumber for the shoddy workmanship? “No”, said the Court of Appeals.

In November 2013 the Arizona Court of Appeals, Division Two, located in Tucson came down with a decision [Yanni v Tucker] that would preclude such a suit. The case was decided utilizing the concept of ‘privity’. Privity can be defined as being a legally recognized relationship between two, or more, parties such as between two persons or entities who have entered into a contract together. In our example above, you hired a general contractor who was responsible for the oversight of all of the construction of your house. Your contractor hired a licensed plumber to do the plumbing. The law recognizes that there is ‘privity’ between you and your general contractor since you directly contracted with the general contractor. But there is not privity between you and the plumber since the contractor, and not you, entered into a separate contract with the plumber to which you, the home owner, were not a party.

In the case of Yanni v Tucker Plumbing those were essentially the facts. The homeowner, Yanni, sued the plumber. The trial court dismissed the plumber and the homeowner appealed. The Court of Appeals agreed with the trial judge and threw out Yanni's claim against the plumber. The rationale of the Court was that there was a lack of contractual privity between the homeowner and the plumber. The claim was for a breach of implied warranty (a contractual claim) of fitness and habitability. The court indicated that the homeowner could have sued the general contractor for the faulty work since the general is responsible for the work of the subcontractors she or he hires and there is privity between those parties. Then, the general contractor can sue the plumber to be reimbursed for the damages paid since there is contractual privity between the general contractor and the plumber. As you can see the existence (or non- existence) of privity is an important concept in contract law.

There can be a very practical problem with this determination by the Court of Appeals. What if the general contractor has no funds or assets for the homeowner to collect from? Worse yet, what if the general contractor goes bankrupt? One solution for the homeowner in such a situation would be to pursue collection of the homeowner's damages from the Arizona Registrar of Contractors monetary recovery fund that reimburses persons who are damaged by contractors provided certain criteria have first been met. However, since, even if the criteria is met to receive damages from the recovery fund there is a monetary limitation on how much the homeowner might be able to collect by making a claim on the Arizona Registrar of Contractor's recovery fund. Thus, that may not be a perfect solution.

The Court of Appeals noted that Arizona Courts have made a few exceptions concerning the privity rule. One exception the courts carved out is that a subsequent homebuyer, despite lacking contractual privity with the general contractor, can sue the homebuilder for breach of implied warranty of fitness.

It is counterintuitive that a homeowner cannot sue the party which actually performed the faulty workmanship. But now you know – that's the law.

COMMUNICATING WITH YOUR INSURANCE CARRIER WHEN A CLAIM ARISES *By Michael Shupe, Esq.*



A couple of months ago I offered some tips and techniques to anticipate, defuse, and resolve common complaints and disputes that may arise in your community, before frustration turns to litigation. I received several follow-up comments and questions from many of you who read that article about what happens when even the best attempts at resolution fail. So, I decided to offer “Part II: So you need to make a claim?”

One of the important elements of effective dispute resolution is communication; however, even when a dispute cannot be resolved initially, communication remains essential, particularly with your insurance carrier. Associations are obligated to notify their insurance carriers about claims, even potential claims, that may trigger coverage under the Association’s policy. Failure to do so could jeopardize coverage or at least impact the defense of the claim by the insurer. Below is a short list of common themes to look out for when a claim against the Association could arise:

- * Non-compliance with procedural requirements imposed by law or the governing documents
“may” versus “shall”
- * Failure to enforce or overzealous enforcement of covenants, restrictions and rules
“selective” or “arbitrary and capricious” enforcement
- * Improper use of Association funds
- * Embezzlement
- * Board members actions (non-actions)
- * Discrimination
- * Failure to supervise or report known issues

The key is to find out about and understand potential claims as soon as possible, and to get your Association’s legal counsel involved to assist with an initial evaluation of the circumstances, and contact with your insurance carrier. It is necessary to document information like the date or time period when an event occurred, and the details about the claims and history of the dispute. As you may also notice, each of the issues above could implicate different policies – general liability for property damage (GL) or directors’ and officers’ liability (D&O). “D&O” claims can often arise from a multitude of different circumstances, even when there is also a “GL” claim involved, so particular attention should be paid to scenarios where the Board has communicated, considered, or decided to act or not to act. As circumstances change over time, regular updates should also be provided to the insurer.

Finally, if a covered claim results in litigation, the insurer will select an attorney who will serve in a limited capacity to represent and defend the Association in court. Many times this may be a different attorney or law firm than the one the Association may otherwise use for general counsel; nevertheless, it is possible to request that the Association’s general counsel also act as defense counsel. Even if the attorney is retained by the insurer to defend, the lawyer’s ultimate duty is to the Association, not the insurance company paying for the defense. The attorney should communicate between the Association and the insurer to keep both up-to-speed on the status of the case. Many insurance contracts give the insurer the exclusive right to settle a claim, which in most cases is also the most practical means of resolving a dispute effectively and efficiently; however, the attorney must keep the Association informed about all developments and possible settlement opportunities.

POTENTIAL NEW COURT FOR BUSINESS CASES IN ARIZONA

By Michael J. Monroe, Esq.



Specialty courts in Arizona and elsewhere are nothing new. At the Superior Court level in Arizona there are specific judges assigned solely to handle family law cases, criminal cases, juvenile offenses, tax matters, and probate related matters. Soon, Arizona may have a court dedicated solely to handling certain types of business related cases.

Arizona State Supreme Court Chief Justice Rebecca White Berch initiated this idea. She indicated that commercial cases often consume a lot of a court's time and can be very expensive for the court and the parties. Chief Justice Berch appointed a committee to investigate what a business court would look like and what it could accomplish in Arizona. The current vision for this court would be that it would handle cases where one business is suing another business. It is possible that the first such court would be in Phoenix and would be experimental in nature.

It was pointed out by the chairman of the new committee investigating the creation of such a court, that often businesses have mutual interests such as minimizing expenses and keeping expenses in proportion to the matters at issue as well as getting all the matters resolved both fairly and expeditiously.

The chairman of the committee pointed out that the court would be familiar with the issues surrounding discovery in business cases where often times the information requested can be massive –terabytes of data, not just file cabinets.

It was pointed out that there is certainly expense involved in creating such a court, such as hiring a judge and staff and providing facilities. However, it was also noted that the costs of such a court can be outweighed by the net benefit to the public by keeping such cases out of the regular civil system and making the process faster for all concerned.

The recommendations of the committee investigating this type of court are due to the Arizona Supreme Court in December 2014. This could be the start of a new era for business law in Arizona. It could help change the old adage that the wheels of justice grind slowly. We'll have to wait and see about that.

MARK YOUR CALENDAR—June Events

1-30—[Sky Nights at Mount Lemmon Sky Center](#)

3,5,10,12,17,19,24&26—[Dog Days of Summer](#)

6 & 20—[Movies in the Park](#)

6 & 7 0 [Weird Plant Sale](#)

7—[National Trails Day](#)

7—[Arizona Bacon Fest—Oink!](#)

7—[Summer Art Cruise](#)

8— [Party Like an Islander Luau](#)

7,14,21,& 28—[Cool Summer Nights at the Desert Museum](#)

7, 14, 21 and 28—[Summer Beer Tastings at Hotel Congress](#)

5,12,19 & 26—[CINEMA LA PLACITA: OUTDOOR FILM SERIES](#)

June 5 The 39 Steps - June 12 Notorious

June 19 Rear Window - June 26 Dial M for Murder

12-25—[Ringling Bros. Circus](#)

13-15—[Bisbee Pride Weekend](#)

13 & 27—[Friday Night Jazz](#)

17-22—[Jersey Boys](#)

29—[Gran Festival De Folklore Featuring Mariachi Vargas de Tecalitlan](#)

Father's Day Poem to a Dad and a Friend

By Trinity Pratt/Family Friend Poems

My dad is very special,
He's not just a dad but a friend;
For he knows where there is a Difference,
When one should start and the other end.

He's my dad when I need real guidance,
But if I need a pal for a while,
He's right there in each situation,
Not with just concern, but a smile.

Kids need someone like that,
To help them draw that line,
Between what is right and wrong.
Sometimes the difference is hard to define.

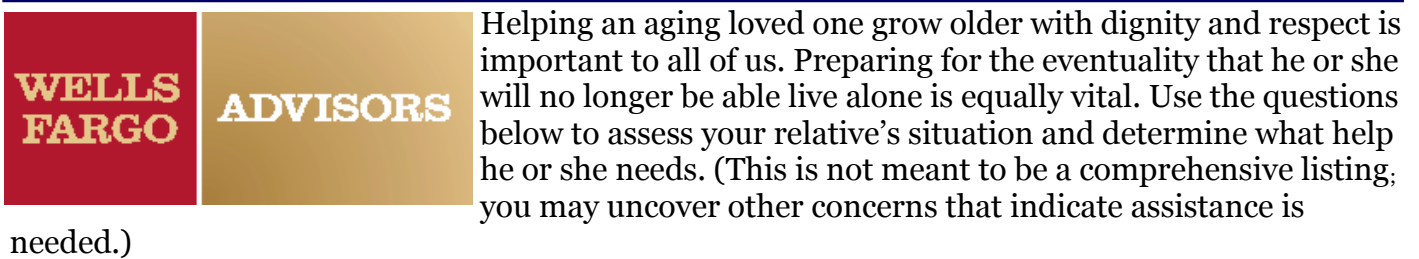
So I'd like to thank Dad for being there,
For helping me all the way.
And to all the Dads who stand by their kids,
God bless you this Father's Day.



Source: <http://www.familyfriendpoems.com/poem/special-dad#ixzz338OZmRPv>

SIGNS AN AGING LOVED ONE MAY NEED ADDITIONAL ASSISTANCE

Courtesy of Wells Fargo Advisors



Perhaps these questions will prompt a conversation early — before a crisis occurs — so you and your loved one can evaluate and prepare potential strategies that satisfy both your needs.

Overall

How well is your relative physically? Are sleeping and eating habits regular? Are medications being taken as prescribed? Is there a list of medications indicating when they should be administered?

Has the individual met with a doctor and dentist in the past 12 months for preventive care purposes, even if there have not been any specific health issues?

How is the individual's mood and mental capacity?

Is the individual continuing with social activities and regular contact with family members, friends and associates?

Are there friends, neighbors or relatives who regularly check on the individual?

Have the grooming, bathing and dressing behaviors changed? Can he or she maintain his or her personal appearance and hygiene?

How is the individual's mobility? Can he or she get up and down from a sitting position and move around the house easily? Is the individual still driving? If not, does he or she have access to public transportation, budget for cabs, or assistance from friends or neighbors for transportation?

Housing

Is the house clean and free of obstacles that could cause a fall? (Ask your Financial Advisor for a copy of our report, "Home Safety Considerations for the Elderly.")

Can the individual maintain the home's exterior and lawn or arrange for outdoor maintenance?

Is the home becoming too large for the individual? Are laundry facilities still accessible? (Difficulty climbing stairs could lead to serious injury.)

Does the individual need light, in-home care for cleaning, laundry or meal preparation? Is there a need for more extensive in-home help?

Should you consider a full-time or live-in professional caregiver?

Are you considering assisted-living or skilled-nursing facilities? (Ask your Financial Advisor for a copy of our "Nursing Home Checklist" to help evaluate your alternatives.)

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**WELLS
FARGO**

ADVISORS

Financial/legal

Is there complete and accurate documentation of personal records and legal documents (will, power of attorney, living will, trust, etc.) along with assets and liabilities? (To compile a comprehensive listing, ask your Financial Advisor for our estate planning organizer, “Your Personal Information.”)

Are bills being paid in a timely manner?

Is mail being opened and dealt with appropriately?

Are there any unusual cash disbursements – checks written or money missing that can’t be explained? (If you need help initiating conversations regarding money, ask your Financial Advisor for a copy of “Talking With Loved Ones About Money” or see familyfinancialtalk.com.)

Is the individual aware of and watchful for potential scams or schemes to defraud him or her? Is a family member or friend watching for signs of potential elder financial abuse? (Ask your Financial Advisor for a copy of our report, “Guide to Financial Protection for Older Investors.”)

Will family members or other relatives be requested or expected to provide some financial assistance for the individual’s care?

You’re not alone

You don’t have to face these issues by yourself. In addition to your Financial Advisor, you can access these and many other resources:

Your state’s veteran’s services office at va.gov/statedva.htm for veteran’s benefits, including long-term care

Local community agencies at eldercare.gov

Family Caregiver Alliance at caregiver.org

An elder law attorney at naela.org

Social Security and Medicare benefits at ssa.gov

American Society on Aging at asaging.org for a wide variety of educational and support group resources

The Administration on Aging Programs section of the U.S. Administration of Aging at aoa.gov for resources to assist with home care, community-based care, health and wellness programs, and elder-rights protection.

MEET THE STAFF

By Sally Myers, Office Administrator

Pamala Valentine

Legal Assistant/Marketing Coordinator, HOA Collections

Pamala Valentine joined Monroe, McDonough, Goldschmidt & Molla, PLLC as Legal Assistant/Marketing Coordinator, HOA Collections in 2012. Pam brings with her over twenty years of real estate, property and association management experience, as well as a strong collection background.

For over 10 years, Pam worked at Lewis Management Resources, an Associa company focused on community association management. During her tenure, Pam advanced to director of escrow and collection services where she gained experience in all aspects of community association management.



She has acquired vast knowledge on how to apply and interpret association governing documents, state statutes and Federal laws relating to planned unit developments, condominium acts, non-profit corporations, and fair debt collections. Pam continues to formulate best practices and policies relating to real estate disclosure and collection practices. Additionally, Pam has developed long-standing relationships with banks, real estate professionals, title companies, and attorneys.

Through her active involvement in the Southern Arizona Chapter of the Community Association Institute (CAI), Pam fosters her industry-wide relationships along with her overall knowledge of the HOA industry.



ARIZONA FASCINATING FACTS

Rising to a height of 12,643 feet, Mount Humphreys north of Flagstaff is the state's highest mountain.



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EXPERIENCE THE DIFFERENCE

Monroe McDonough Goldschmidt & Molla (MMGM) is a real estate and business law firm. Our attorneys and staff believe that each client must experience the difference that genuine care and concern can make. We strive to achieve the client's objectives while delivering unwavering personal service in an honest, aggressive and comprehensive manner. We refer to this as our Clients for Life program. MMGM provides outstanding counsel and unparalleled representation in the following areas of law:

- Real Estate - Personal Injury
- Business and Entity Formation
- Civil and Commercial Litigation - Construction Defect
- Contracts - Estate Planning—Probate
- Homeowner Association (HOA)
- Appeals - Arbitration and Mediation Services
- Motor Vehicle Warranty Defense
- Product Liability - Transactional
- Labor and Employment

HONEST AGGRESSIVE PROFESSIONAL

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