

Volume 3, Issue 3

March 2011

**Monroe McDonough
Goldschmidt & Molla**
Attorneys at Law

MONROE McDONOUGH GOLDSCHMIDT & MOLLA
SOUTHERN ARIZONA'S REAL
ESTATE SPECIALIST

Welcome to the MMGM Newsletter

Monroe McDonough Goldschmidt & Molla is a **unique law firm** with knowledgeable and experienced attorneys and staff who have a passion for justice and enjoy what they do. A positive, dynamic spirit and morale pervade the office. This attitude, along with extraordinary service, attention to detail, in depth legal knowledge and practical business experience insures lasting relationships between **MMG&M** and its clients.

We hope you find this newsletter thought-provoking and beneficial.



We look forward to assisting you.

TORT VERSUS CONTRACT LAW

A tort is a violation of a duty imposed on one by law. It is a violation of some duty owed plaintiff which duty does not arise by the agreement (contract) of the parties. It may be a violation of some public duty which provides a claim to the individual or by violation of some private obligation. Blackstone, a legal scholar, once characterized tort law as non-criminal wrongs not arising out of contracts.

On the other hand a contract is an agreement between two or more persons which creates an obligation to do or not do a particular thing. As you know contracts may be implied by the conduct of the parties as well as expressed.

There is a major difference between tort claims and contract claims as they relate to damages. With

contract claims, the parties are limited to the type of damages they agree upon in the agreement or to the actual (out of pocket) expenses incurred solely, directly and immediately as a direct result of the breach of contract itself. Conversely, in a tort claim the plaintiff is entitled to recover, in addition to out of pocket expenses, what are called consequential damages. Consequential damages are damages which are beyond the direct and immediate damages. They are the damag-

es which flow from or are a consequence of the wrongful act. Thus, plaintiffs try to find a potential claim in tort as opposed to, or in addition to, a breach of contract claim.

Michael J. Monroe, Esq.



[Monroe McDonough Goldschmidt & Molla](#)

[LinkedIn](#)

[Facebook](#)

[Tucson Association of REALTORS®](#)

[Green Valley Association of REALTORS®](#)

[Southeast Arizona Association of REALTORS®](#)

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

[National Association of REALTORS®](#)

[Tucson Women's Council of REALTORS®](#)

AREAS OF CONCERN IN LEASING PROPERTY

Maintenance and Repairs. We often see the requirement that the tenant maintain the premises and repair or replace what ever breaks down or wears out. This is normal in a long term triple net lease where all obligations of occupancy and use are the responsibility of the tenant, but it might not be appropriate in a short term lease. It is fair in a short-term lease to require the tenant to repair the HVAC or maintain a service contract on it, but the responsibility of a short-term tenant should not include the replacement of expensive capital improvements to the property.

Estoppel Certificates. If the landlord sells or refinances the property, the buyer or lender will normally require that the tenants sign estoppel certificates assuring that the lease is current and in good standing. There is probably a paragraph

buried in the lease that requires the tenant to sign an estoppel certificate. However, counsel for a buyer or lender seldom give any consideration to the tenant's ability to understand the legal implications of the certificate and they sometimes overreach in trying to get the tenant to give the buyer more than simple assurances that the lease is in good standing. Perhaps your lease should require a certificate no more than one page in length.

Environmental Provisions. The tenant should certainly be responsible for environmental problems caused by his operations on the property, but how does he know that the property was clean when the lease began? Had the Landlord obtained a Phase One Environmental Report assuring there were no environmental issues at that time? Probably not.

How else can the tenant segregate the conditions for which he is responsible from the conditions existing when he took over the property? It is a good idea to retain experienced counsel to review leases before they are signed instead of after the issues are discovered.

Lawrence McDonough, Esq.



DID YOU KNOW?

HOMESTEAD EXEMPTIONS

The Arizona State Legislature has proposed a bill to raise the homestead exemption from \$150,000 to \$200,000 per HB 2092, which amends A.R.S. §33-1101 relating to homestead exemptions.

<http://www.azleg.gov>



RECOVERY OF ATTORNEY FEES

The Arizona State Legislature is considering a bill to make attorney fees awardable by the Court to the prevailing party in ANY civil action, not just cases arising out of contract disputes, including, presumably car accident cases and slip and fall cases. HB 2409, which amends A.R.S. §12-341.01. <http://www.azleg.gov>

BEWARE OF THE LATEST REAL ESTATE SCAM

A buyer contacts you from a foreign country. He has identified an expensive home he wants to purchase. He says he will put a very substantial amount of cash down. You will be his agent. Enticing! He claims he is not accustomed to using escrow agents. He wants his funds placed in a trust account. He may recommend using an attorney's trust account. The buyer then sends a cashier's or certified check for a large amount of money. With the cashier's or certified check comes instructions directing you or the attorney to withdraw your commission or the full attorney's

fee (greed!) and immediately wire transfer \$100,000 of the funds to the buyer's business partner in another country. The scam is that if the wire transfer is made to the business partner that transfer will go through provided you have enough other client money in the trust account. The bank will soon inform you that the buyer's check was bogus. Now you or the attorney will be immediately liable to the other clients who had money in the trust account for the \$100,000 you sent to the alleged partner in a foreign country (the scammer). Be careful on any transaction remote-

ly resembling the above facts. Make certain that any check deposited to a trust account clears before you disburse such funds.

Michael J. Monroe, Esq.



ATTORNEY SPOTLIGHT— Lawrence McDonough

PARTNER

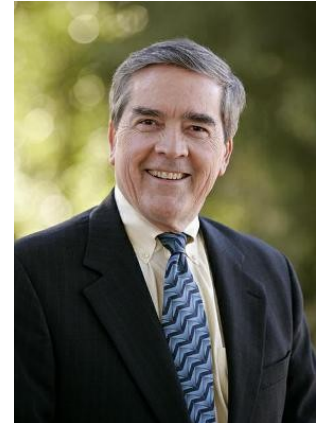
Larry McDonough earned his undergraduate degree at Wichita University and his law degree at Washburn University of Topeka, Kansas. He engaged in a general civil trial practice in the U.S. and Kansas Courts before accepting a position with Gates Learjet Corporation as General Counsel. He moved to Arizona with Learjet and was admitted to practice before the U.S. and Arizona courts.

Larry eventually resigned his position with Learjet to reenter the private practice of law. His practice is focused on corporate and business structuring and transactions, commercial and real estate transactions, commercial litigation and probate, though he has significant civil trial and appellate court experience including complex litigation.

He is admitted to the state courts of Arizona, the United States District Court for the District of Arizona, and the Ninth and Tenth Circuit Courts of Appeals. Larry is a member of the State Bar of Arizona, the Pima County Bar Association and was formerly a member of the Arizona Association of Defense Counsel and the Tucson Defense Bar.

He has served the community as a member of the Board of Directors of the Tucson Symphony Society, the Southern Arizona Division of the American Heart Association, a divisional campaign director for the United Way of Tucson, as Counsel to the largest private secondary school in Southern Arizona and as a member of the Diocesan Finance Council of the Catholic Diocese of Tucson. He served a seven year term as a member of the Arizona Supreme Court's Committee on Character and Fitness and subsequently represented that Committee in hearings before the Court.

PRACTICE AREAS:
Business Law and Entity Formation
Contracts
Estate Planning
Probate Law
Real Estate Law



MARK YOUR CALENDAR—Tucson March Events

5th—Arizona Opera—Otello

12th—Tucson Festival of Books

12th—2nd Saturdays Downtown

12th—St. Patrick's Day Parade

18th-20th—Oro Valley Arts in the Park—
Fine Art & Jazz Festival

20th—131st Railroad Silver Spike Festival (re-enactment of the Tucson arrival of the Southern Pacific Railroad on March 20, 1880)

25th-27th—Tucson Museum of Art
Spring Artisans Market

Renaissance Festival & Artisan
Marketplace— every Saturday and
Sunday until April 3, 2011
www.royalfaires.com/arizona/



SILLY LAWS

Hunting Camels is Prohibited

The US Army once experimented with camels in the Arizona desert, and eventually gave up. The remaining camels were set free, and are now protected.



MONROE McDONOUGH GOLDSCHMIDT
& MOLLA

4578 N. First Avenue, Suite 160

Tucson, AZ 85718

Phone: 520-325-2000

Fax: 520-886-3527

Experienced, Reliable,
Respected

EXPERIENCE THE DIFFERENCE

MMGM is a real estate and business law firm. The attorneys and staff at Monroe McDonough Goldschmidt & Molla 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 the law:

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

TESTIMONIALS

I have known and worked with Mike Monroe as both a colleague and working attorney for over fifteen years. My company has used his services numerous times over the years and know him to be a man of unquestionably high ethics and integrity. He is held in the highest regard in the Tucson area as well as the state for his in-depth knowledge of the legal ins and out of real estate law and regulation and his ability to work within the system while he works "outside the box".

Michael J. Harris, Long Realty Company

RECORD OF DISTINCTION

MMG&M has built its practice on the word-of-mouth recommendations of its clients and the trusted referrals from colleagues in the legal profession. Nothing is more satisfying than to hear that a client has come to **Monroe McDonough Goldschmidt & Molla** because he has heard that **"they are the best."** That is when the attorneys and staff know that they are achieving their goals, finding innovative solutions to complex legal problems while exceeding expectations for their clients.

TEAM

When a client hires **MMGM**, the client hires a team with **impressive credentials** and capabilities. Attorneys, paralegals and support personnel work together in a **collaborative effort** to obtain the best possible result for every client. Each attorney's door remains open during the day, inviting other attorneys and staff to

come in and discuss any pending matter. This brainstorming insures that all possible alternatives will be weighed and considered for each client.

PROMISE

No one likes unpleasant surprises. **MMGM** prides itself on providing fair and thorough advice at the outset of a matter, giving a **"reality check"** to the client while advancing and protecting her interests. This insures that there is a balance between the ultimate outcome and the cost and commitment necessary to bring about a successful result.

CLIENTS

MMGM's clientele consist of a multitude of **individuals** and a wide cross section of the **business community** seeking answers to both routine and complex legal issues.

MMG&M proudly represents almost 400 Home Owners Associations (HOAs) in Pima County, as well as the Tucson Association of Realtors, the Green Valley Association of Realtors, the Santa Cruz Board of Realtors and the Southeast Arizona Association of Realtors. In addition, numerous real estate companies, brokers and agents are included in Monroe McDonough Goldschmidt & Molla's roster of clients. Representative commercial clients include General Motors, Mercedes Benz-USA, Bombardier, and companies engaged in the construction, airline, new car automotive and finance-mortgage industries. Individuals seeking assistance with estate planning, probate, personal injury and arbitration and mediation services as well as Mexican citizens with business interests in the U.S. can also find answers at Monroe McDonough Goldschmidt & Molla.

If you have a question, simple or complex, call Monroe McDonough Goldschmidt & Molla. We are there when you need us.