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SOUTHERN ARIZONA'S REAL  
ESTATE SPECIALIST

## Welcome to the MMGM Newsletter

Historian Nicholas Rogers, exploring the origins of Halloween, notes that while "some folklorists have detected its origins in the Roman feast of Pomona, the goddess of fruits and seeds, or in the festival of the dead called Parentalia, it is more typically linked to the Celtic festival of Samhain, whose original spelling was Samuin (pronounced *sow-an* or *sow-in*)". The name of the festival historically kept by the Gaels and Celts in the British Isles which is derived from Old Irish and means roughly "summer's end".

The word *Halloween* is first attested in the 16th century and represents a Scottish variant of the fuller *All-Hallows-Even* ("evening"), that is, the night before All Hallows Day. Although the phrase *All Hallows* is found in Old English (*ealra hālgena mæssedæg*, mass-day of all saints), *All-Hallows-Even* is itself not attested until 1556.



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### Helping Sonoran Business People for Nearly 40 Years By Richard D. Burriss, Esq. & D. Rob Burriss, Esq.

When people from Sonora come to Arizona with a good idea or an especially good product that is uniquely Mexican, they are a leg up on their competition in the US. Genuine fine Mexican products might sell better than similar American products IF the product retains its Mexican style. Producing it for less is helpful in the marketing process. However, having a fine product that cost a bit less is not enough. That Sonoran producer must learn how to market the product in the US. If the producer is not prepared to do it himself, then he must find the right person to help him. Well put together

contracts are very important. For businesses to survive and prosper the contracts must be fair to all involved: the producer, the marketing entity and the buyer. A good lawyer is essential to the ultimate success of a business. We have

been helping Sonoran business people for nearly 40 years. In the US, the American attorney does the work of both a Notario and a Mexican lawyer. This makes it very important to select the right lawyer.

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## RIGHT TO EQUITABLE SUBROGATION

By **Karl Macomber, Esq.**

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On August 2, 2011, Division One of the Court of Appeals ruled in Sourcecorp, Inc. v. Northcutt that the buyers of a home, who paid off the prior owner's mortgage as part of their purchase, were entitled to be equitably subrogated ahead of a judgment creditor of the former owner. Ordinarily, when one lender funds a re-finance of an existing mortgage, that lender's new security interest will step into the shoes of the previous lender whose debt the new lender is paying,

for purposes of determining priority of interest. Thus, a judgment lien attaching to the property after the original mortgage attaches to the property will still be behind a subsequent lender who pays off the original mortgage. However, in this case, it was a buyer, who paid cash, who claimed the right to the equitable subrogation. Sourcecorp, the judgment creditor of the Shills, the previous owners, argued that the buyers, the Northcutts, could not hold a lien against their own property and therefore should

not be considered to have stepped into the shoes of the Shills' original mortgagee.

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## WHAT CONSTITUTES GOOD FAITH EFFORT TO SATISFY THE FINANCING CONTINGENCY IN THE RESIDENTIAL RESALE REAL ESTATE PURCHASE CONTRACT

By **Michael J. Monroe, Esq.**

The question presented is what constitutes sufficient good faith effort to obtain financing to permit a buyer to satisfy the financing contingency and cancel the Arizona Association of REALTORS® Residential Resale Real Estate Purchase Contract? Section 2 at lines 55 through 58 of the AAR Residential Resale Real Estate Purchase Contract states:



“Loan Contingency: Buyer’s obligation to complete this sale is contingent upon Buyer obtaining loan approval for the loan described in the AAR Loan Status Update (“LSU”) form without Prior to Document (“PTD”) conditions no later than three (3) days prior to the COE date. If Buyer is unable to obtain loan approval without PTD conditions, Buyer shall deliver a notice of the inability to obtain loan approval without PTD conditions to Seller or Escrow Company no later than three (3) days prior to the COE Date.”

Arizona courts do not have a case decided directly on this point. However, from cases involving contingency cases one thing is very clear. That fact is that in Arizona contingency clauses impose a duty on the buyer to make a good faith effort to fulfill the contingency.

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## FIRM SPOTLIGHT—RICHARD D. BURRIS, Esq.

Of Counsel to MMG&M, has over 38 years of commercial litigation experience in both State and Federal courts. He has successfully represented private investors, including over 100 Mexican Nationals, in complex litigation against international brokerage houses and insurance companies.

Since graduating from the University of Arizona Law School in 1971, Mr. Burris has represented numerous business clients including home owner groups, contractors, developers and Mexican Producers of Agricultural and other products for distribution in the United States.

Main area of Practice:

The representation of Mexican farmers with their business interests in the U.S.A.

The representation of Mexican citizens with their personal and business investments in the U.S. and in other countries.



## MARK YOUR CALENDAR—Tucson October Events

1-31—[Nightfall at Old Tucson](#)

1-31—[Gaslight Theater—The Wizard of the Rings](#)

1-30—[Apple Annie's Fall Pumpkin Celebration](#)

1-30—[Carnival of Illusion](#)

1-30—[It's a Gas—The Bright Side of Science](#)

1-31—[Wild West Stunt Shows](#)

12, 19 & 26—[Hawk Happening](#)

13-16—[Disney on Ice Toy Story 3](#)



15—[ZOOcson Feast for the Beast](#)

22—[Art After Dark—Party Like a Rock Star](#)

8-29—[Buckelew Farm's Corn Maze](#)

14-30—[Arizona State Fair](#)

22&23—[Fall Arts in the Park](#)

23—[UA Presents Pilobolus](#)

29—[The Reserve and Grand Tasting](#)

29&30—[Marana Founders Day Festival](#)

## DO YOU QUALIFY AS OWNER-OCCUPANTS IF YOUR PROPERTY IS HELD IN A FAMILY TRUST?

By **Karl MacOmber, Esq.**



In *Williamson v. PVOrbit, Inc.* Division One of the Arizona Court of Appeals sided with an elderly couple over the interests of a vendor of custom doors. At the request of a contractor, Freedom Architectural Builders, PVOrbit, supplied custom doors to the Williamson home remodel. The Williamsons paid Freedom in full, but it eventually defaulted and quit the job, without paying PVOrbit for the custom doors. PVOrbit recorded a mechanic's lien against the house. The Williamsons sued to quash the lien and for damages against PVOrbit for recording a false claim of lien. The lien issue surrounded the fact that the Williamsons had, in 2005, deeded their home to a family trust, of which they were the trustors and the beneficiaries. ARS '33-1002 prohibits the recording of a lien against an owner-occupied dwelling unless the lienor has a contract in writing with the owner of the property.

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## ARIZONA FASCINATING FACTS

The only place in the country where mail is delivered by mule is the village of Supai, located at the bottom of the Grand Canyon. The Grand Canyon is 277 river miles (446km) long, up to 18 miles (29km) wide, and a mile (1.6km) deep.



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## 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:

Real Estate Law - Personal Injury  
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 Defense- Probate Law  
Product Liability - Transactional Law

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AGGRESSIVE  
PROFESSIONAL*

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