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SOUTHERN ARIZONA'S REAL  
ESTATE LAW FIRM

## Welcome to the MMGM Newsletter

### Paraprosookian Sentences

We never really grow up; we only learn how to act in public.



*April Brings Hope, love, and joyful living.*

### Phantom Income for Forgiveness of Debt

By Michael J. Monroe, Esq.

It is probably no surprise to you that Uncle Sam, through the Internal Revenue Service, considers partial or total debt forgiveness to be ordinary income for income tax purposes. This debt forgiveness, or “phantom income”, arises often today in situations such as where a homeowner elects to give the lender a deed in lieu of foreclosure, or does a short sale which is accepted by the lender or there is a foreclosure of a property. The IRS requires the lender, by the end of January of the following year, to issue a 1099 to the IRS and to the homeowner.

The Mortgage Forgiveness Relief Act of 2007 was enacted by the United States Congress to provide relief to homeowners where the property involved is the taxpayer’s principal residence. That’s the good news. The troublesome news is that that law is due to expire on December 31, 2012. It is uncertain whether the expiration date of the law will be extended by Congress.

The Mortgage Forgiveness Relief Act of 2007 does not apply, say, to an investment property or a commercial

property. There are some other possible exceptions where a taxpayer might be entitled to relief under this Act such as in the case of bankruptcy or where the taxpayer is insolvent. How much tax is due on the phantom income is difficult to anticipate since the rules for application of this Act are scant. A taxpayer should seek out a highly qualified accountant to determine what or how much tax may be due on the phantom income.



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# How Arizona Courts Decide HOA Enforcement Issues

*By Carolyn B. Goldschmidt, Esq.*



Enforcement of restrictions in CC&Rs and other community rules and regulations can be a troublesome issue with which Association Boards and their Managers must grapple. Whether seemingly simple or unexpectedly complex, most enforcement issues raise the same common questions: Is there a violation, and how should the enforcement proceed? As with many things in life, and especially the law, these questions lead to still more questions. This article will look at three common questions that often arise concerning HOA enforcement issues.

## **Question 1: How can an Association begin a program of enforcement if there has been a long period of non-enforcement, or lackadaisical enforcement in the past?**

This issue arises many times upon the transition of control of the Association from the Developer to the Owners; however, it can happen anytime a newly-elected Board begins its term. A history of non-enforcement can undermine an Association's enforcement authority. Concurrently, Owners may object when existing violations that went unnoticed or unenforced for a period of time are now being pursued by the Association.

In [Heritage Heights Home Owners Association v. Esser](#), control of the Association had just transitioned to the Owners. During the past several years, the Developer had not pursued correction of violations, and the owner-controlled Board began a program of enforcement to eliminate violations already existing, and to prevent further violations. This case particularly addressed "grape stake" fences, which were prohibited in the CC&Rs, but were used on a number of lots in the subdivision. The Board adopted a policy that required replacement of all grape stake fences within the ensuing five years. Mr. Esser installed such a fence after the policy was adopted and insisted he was entitled to keep it for five years. [READ MORE](#)

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## **New Law About Anti-Deficiency Protection in Arizona**

*By Michael J. Monroe, Esq.*

On March 20, 2012 the Arizona Court of Appeals decided a case (*Helvetica v Pasquan*). This case changes the conventional thinking about how a court might deal with refinances of purchase money loans. This deals with situations where borrowers refinanced their original purchase money loan for an amount greater than the balance of the original purchase money loan and used the excess cash from the refinanced loan for purposes other than for just the refinance of the existing purchase money mortgage.

Unfortunately, the case dealt with a judicial foreclosure sale (lawsuit) rather than a trustee's sale process (non-judicial). However, it would appear that what the court decided would most likely apply as well to deeds of trust that are "foreclosed" using the non-judicial procedure.

The first issue that the court addressed is helpful to have clarified. The court clarified that a loan to a buyer of monies for the construction of single family or two-family home (as opposed to just the purchase of an existing home) can qualify for anti-deficiency protection. We generally assumed that was so but now we have authority to back up that position. The court pointed out, however, that to have such anti-deficiency protection the deed of trust would have to secure both the land and the dwelling constructed on the land and the funds, in fact, have to be used for the construction of the dwelling.

The bigger issue that was clarified (albeit in a judicial foreclosure setting) is that the anti-deficiency protection will apply to a new loan transaction that is an extension or renewal of a prior obligation concerning the land and dwelling provided the original loan was a purchase money obligation which qualified the borrower for anti-deficiency protection. [READ MORE](#)



## MMGM IN THE COMMUNITY, By Monica Derrick, Esq.



The Jim Himelic Foundation is dedicated to the fight to eradicate ALS. Monica L. Derrick is the Secretary for the Jim Himelic Foundation. Monica was born and raised in Tucson and is a childhood friend of the Himelic family. She obtained her Juris Doctor from the University of

Denver Sturm College of Law and practiced in Denver a short time before moving back to Arizona. She now lives in Tucson with her

husband, Grant, and their two children: Owen and Chloe. Monica currently practices law at Monroe, McDonough, Goldschmidt and Molla, P.L.L.C. Monica is dedicated to assisting the Himelic family in their quest to find a cure for ALS, as she fondly remembers Jim and is inspired by the work the family has done in his memory. Monica believes the Jim Himelic Foundation can become one of the most well-respected and productive charities in Tucson. The 12th Annual Jim Himelic Memorial Golf Classic is being held June 1 & 2 at the Westin La Paloma Resort & Spa. For more information on how you can help eradicate ALS, visit the Jim Himelic Foundation's website at: [www.jimhimelicfoundation.org](http://www.jimhimelicfoundation.org)

## MARK YOUR CALENDAR—Tucson April Events

5-22—[Borderlands Theater Presents "LIDLESS"](#)

7-28—[AZ Theatre Co. Presents "RED"](#)

12-15—[ASUA Spring Fling](#)

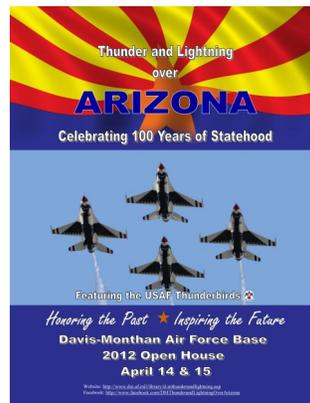
13-15—[SAHBA Spring Home & Patio Show](#)

13-15—[The Rose Tree Festival](#)

16—[Tucson Weekly's Spring Club Crawl](#)

13-29—[21st AZ International Film Festival](#)

14-15—[Air Show—Thunder & Lightning Over AZ](#)



14-15—[SE AZ Wine Growers Festival](#)

19-29—[Pima County Fair](#)

21—[Tucson Earth Day Festival](#)

21-22—[AZ Opera—Orfeo ed Euridice](#)

21-29—[National Park Week](#)

28-29—[Old Tucson Cowboy Musical Festival](#)

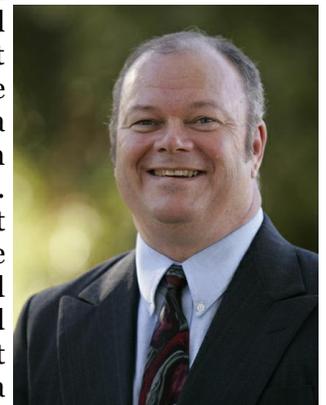
28—[Tucson Taco Festival](#)

28-29 [Cowboy Fast Draw Assoc. Championship](#)

## Options on Land Must be in Writing

*By Karl Macomber, Esq.*

In *Best v. Miranda*, an opinion issued by the Court of Appeals in Phoenix on March 15, 2012, the Court ruled in favor of Art Miranda, the owner of a parcel of property, in a lawsuit brought by Greg Best the holder of an option. The Court ruled that Best's attempt to exercise the option failed because he did not place the full purchase price into escrow, as the option required. Best had given Miranda notice of his intent to exercise the option, which Miranda ignored. The option required Best to place \$165,000 into escrow prior to 11:00 pm on March 31, 2005. The Court rejected Best's argument that the parties had an oral agreement allowing the option to be exercised by notifying Miranda of his intent to exercise the option. Such an agreement would need to be in writing as options on land purchases must be in writing to satisfy the Statute of Frauds. The Court rejected other, more spurious arguments by Best, but ultimately rejected Miranda's request for attorney fees on the grounds that Miranda's attorney had not given them a legal basis for the award. I think there was one, but it is easy to simply cite the Appellate Rule for fee award, which is only procedural and not substantive.



# ARIZONA FASCINATING FACTS

*The Litchfield Naval Air Facility (now called the Phoenix-Goodyear Airport) was the training base for the Navy Blue Angels Aerial Demonstration Team until 1968.*



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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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