

January 2012

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SOUTHERN ARIZONA'S REAL
ESTATE LAW FIRM

Welcome to the MMGM Newsletter



Be always at war with your vices, at peace with your neighbors, and let each new year find you a better man. ~Benjamin Franklin

2012 ARIZONA LEGISLATIVE SESSION BILLS INTRODUCED AFFECTING COMMUNITY ASSOCIATIONS

By Carolyn B. Goldschmidt, Esq.

The 50th Arizona Legislature is in session and there have been a number of bills introduced that would affect homeowners associations as shown on the summary [here](#) (Public Roadways, Firearms, Foreclosed Lots or Units, Election Procedures, Escrow Agents Clarification, Pre-Lawsuit Dispute Resolution & Taping of Meetings, Process Servers, Boards of Directors, Signs: Correction of Conflicts, Rental Properties, and Leash Law).

There is still time for more bills to be introduced so we will keep you posted.



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SHOULD YOU BE CONCERNED ABOUT IRS AND FIRPTA REPORTING? By Michael J. Monroe, Esq.

At section 3i (lines 130 – 133) of the Residential resale Real Estate Purchase Contract the agreement deals with “IRS and FIRPTA Reporting”. So what does that all mean and should you be concerned about it?

CAUTION: You will get bored reading this article!!! But – you should read it anyway.

FIRPTA stands for the Foreign Investment in Real Property Tax Act of 1980. Pursuant to that federal law, if a person is a foreigner and disposes of an interest in U.S. real property,

that person is subject to FIRPTA. Actually the transaction is subject to a tax withholding. The language of the act is very broad. It provides that any ‘disposition’ of such property by a foreign person activates the withholding tax. Under the IRS Code, a ‘disposition’ includes not only a sale or exchange but it applies also to liquidations, redemptions, gifts, and transfers of such property. In certain situations, the act can even cover personal property such as the furnishing of a hotel on U.S. soil that is sold by a foreign person

or certain entities owned in whole or in part by a foreign person. [READ MORE](#)



A CASE SHOULD NOT BE DISMISSED SIMPLY BECAUSE THE TRIAL JUDGE BELIEVES THE CASE WILL BE DIFFICULT TO PROVE

By Karl MacOmber, Esq.



In *Balderas v. Countrywide Bank*, the 9th Circuit Court of Appeals reversed an Order of the trial court granting a Motion to Dismiss in favor of Countrywide. Balderas had sued Countrywide for a violation of the Truth in Lending Act, TILA. Balderas alleged in his complaint that he did not read English, that a Countrywide agent, Cazakov, had cold-called him one day and subsequently came to his house in person and refused to leave until Balderas had signed for a refinance of his mortgage. Cazakov stayed until after midnight and, according to Balderas, did not leave him with copies of any of the paperwork, including the 3-day right of rescission notice mandated by the TILA. The trial court dismissed the suit because Balderas had attached a copy of the 3-day right of rescission notice to his Complaint, satisfying the trial judge that he must have received a copy of the notice. The Court of Appeals ruled that the allegation of the Complaint, that the notice had not been left with Balderas was not contradicted by the

exhibit to the Complaint, which was only an enclosure with a letter from Countrywide. The Court of Appeals ruled that the fact that Countrywide later mailed a copy of the notice, was not proof it was delivered at the time of the execution of the documents, as was required. In addition, the Court of Appeals found that because the Complaint alleged that the document was signed by Balderas after midnight, he had an additional day to rescind and the response from Countrywide that he waited too long was not necessarily correct. This case comes down to the fact that at the outset of a case, a Court should not dismiss a case simply because the trial judge believes the case will be difficult to prove; at the outset the only question for the judge is whether or not the Complaint states a valid cause of action, not whether the facts that will eventually emerge will support the allegations of the Complaint.

MMGM IN THE COMMUNITY, By Nancy Monroe

SALVATION ARMY "ADOPT-A-FAMILY" FOR THE HOLIDAYS IS A TREAT FOR ALL INVOLVED.

When we delivered the gifts to the Family along with the many household and baby items, Mom asked if we could stay and visit with the kids a bit to let them know that there were good people here who truly cared about them. The kids were shy at first, but opened up and were quite thrilled with even the smallest gift (a rolling pin for the 15 year old to use making her tortillas, a soft blanket for the 4 year old to sleep with, a glue gun for the artistic 10 year old to use with his arts and crafts, bouncy chairs for the twin babies to keep them upright as both had colds and Mom had been holding them all night so they could breathe, a vacuum cleaner for Mom as the

twins are beginning to scoot around and she was concerned what they might find in the carpet, colorful plates which all the kids said made the food taste so much better, mattresses and pillows to get them up off the floor). Such a kind, caring and deserving family who will now have a better 2012 knowing someone cares.

This is what the family had to say:

"We are still in shock over the abundance of treasures. Thank you Sooo much. We are ever so grateful and hope you are all having a blessed holiday with your families. You have given us hope for a fresh new start, and the caring and generosity of so many has brightened our spirits.

God bless all of you and thank you from the bottom of our hearts!"

MARK YOUR CALENDAR—Tucson January Events

Jan 12-May 28—[Mars & Beyond](#)

Jan 17-Feb 5—[Ansel Adams: The View From Here](#)

Jan 19-22—[Square Dance Festival](#)

Jan 20-21—[Dillinger Days](#)

Jan 20-Dec 29—[Hacienda Del Sol Concert Series](#)

Jan 21&22—[Tucson Jewish Film Festival](#)

Jan 21-?? - [Birds of Tohono Chul Walking Tour](#)

Jan 28-Feb 12—[Gem Show](#)



Jan 28-Mar 25—[Horse Racing at Rillito Downs](#)

Jan 28—[Sonoran Desert Mt. Bicyclists Ride](#)

Jan 28&29—[Wicked Divas—TSO Pop Series](#)

Feb 1—[Garrison Keillor](#)

Feb 1-5—[HITS Arizona Winter Horse Show](#)

Feb 4-5—[Madama Butterfly](#)

Feb 18-26—[Tucson Rodeo](#)

Feb 20-26—[Accenture Match Play](#)

RECENT CASE CLARIFIES THE COURT'S INTERPRETATION OF THE ARIZONA ANTI-DEFICIENCY LAW, By Michael J. Monroe, Esq.



In December 2011 the Arizona Court of Appeals Division One (Phoenix), in the case of M&I Marshall & Ilsley Ban v Mueller, clarified the interpretation of the Arizona anti-deficiency law.

In 2005 Muellers borrowed \$444,000 from M&I bank to build a single family home on a lot they had purchased. Construction started in 2005. Months into construction Muellers discovered that the contractor was not only behind schedule but also much of the construction was defective. Muellers notified the bank of the dilemma. Eventually M&I "foreclosed" on the Muellers. At the sale the house generated less proceeds than the amount that was owed to M&I. Thus there was a deficiency. The question was whether the Muellers are liable to M&I Bank for the deficiency. Obviously, neither the Muellers nor M&I were responsible for the faulty construction.

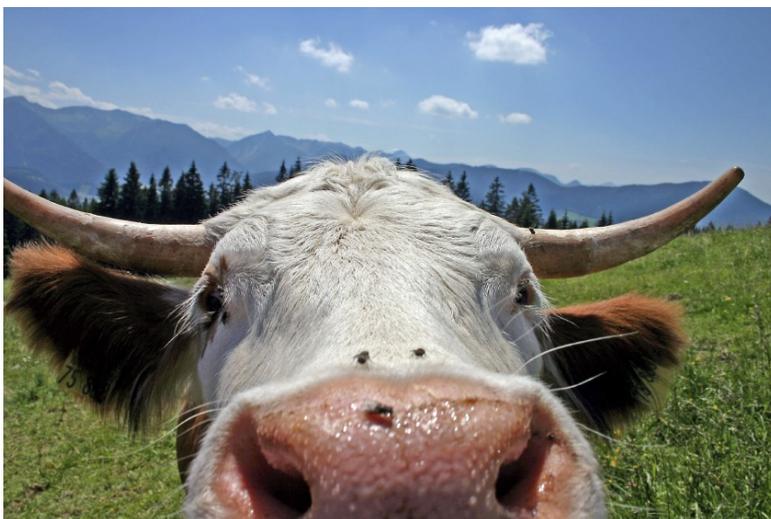
Following the public sale M&I Bank sued the Muellers for the bank's claim for a deficiency judgment.

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ARIZONA FASCINATING FACTS

The “Five C’s” of Arizona’s economy are:

Cattle
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Citrus
Cotton
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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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