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SOUTHERN ARIZONA'S REAL  
ESTATE LAW FIRM

## Welcome to the MMGM Newsletter

### Paraproisdokian Sentences

Whenever I fill out an application, in the part that says "In case of an emergency, notify?" I put "DOCTOR."



### HAPPY FATHER'S DAY

*A dad is someone who holds you when you cry, scolds you when you break the rules, shines with pride when you succeed, and has faith in you even when you fail...*

### FAVORABLE SUPREME COURT RESPA RULING, *By Michael J. Monroe, Esq.*

For some time there has been a question of whether the practice of real estate brokerage firms charging a fixed amount of money as a flat administrative fee in addition to a percentage commission based on the sales price violated the Real Estate Settlement Procedures Act. There is now a U.S. Supreme Court ruling on this point which favors the real estate industry thanks to the case of Freeman v Quicken Loans, Inc., No. 10-1042 (U.S. May 24, 2012).

In 2009 in the case of Busby v JRHBW Realty a federal court found that the flat administrative brokerage fee being charged by real estate brokerage firms together with a percentage commission violated Section 8(b) of RESPA

since the flat administrative fee was not based upon or related to any specific service not already included in the percentage based commission. HUD had already established a policy statement that categorically rejected any 'unearned' fee for real estate settlement services.

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# NEW LAWS EFFECTIVE AUGUST 2, 2012

*By Carolyn B. Goldschmidt, Esq.*



HB 2357 - REAL ESTATE BROKERS EDUCATION. Increases continuing education course requirements and number of required hours from 24 to 30. Increases from \$500 to \$3,000 the maximum dollar amount a real estate broker may deposit into a trust fund account.

HB 2471 - HOAs CONFLICTING ENACTMENTS. This law revises the Arizona Condominium Act and Arizona Planned Communities Act regarding “For Sale” signs, “For Lease” signs and political signs. In 2011, four different laws enacted provisions that amended the same section of the statutes and also created some conflicts. This correcting statute provides that: (A) an association may prohibit the display of political signs earlier than 71 days before and later than 3 days after an election. (B) if the city, town or county in which the property is located does not regulate the size and number of political signs on residential property, the association shall not limit the number of political signs, except that the maximum aggregate total dimensions of all political signs shall not exceed nine square feet. (C) an association may prohibit the use of real estate signs that are not commercially produced.

SB 1062 - DISCLOSURE BY LANDLORD. A.R.S. §33-1322 currently requires landlords to inform tenants that the Arizona Residential Landlord and Tenant Act is available on the Arizona Secretary of State’s website. This law changes the location of the Act to the Department of Housing’s website.

HB 2129 - LANDLORD ACCESS. Tenant’s notice of a request for service or maintenance constitutes permission for the landlord to enter the dwelling unit. Tenant waives receipt of any separate or additional access notice.

SB 1476 - HOAs: CONSTRUCTION REVIEW & DISCLOSURE. This law amends the Arizona Condominium Act and Arizona Planned Communities Act as follows: Clarifies that an escrow agent will not be charged a fee for obtaining information from the association under the disclosure statutes. Adds A.R.S. §33-1817 to the Planned Communities Act, which states that: “An architectural committee must include at least one board member who must serve as chairperson of the committee.”

For new construction or rebuilds of the main residential structure on a lot, if the governing documents permit the association to charge a security deposit, the deposit must be deposited in a trust account. The cost of the account shall be shared equally between the association and the member. If the project is abandoned, the Board may determine the use of the deposit monies. Any interest earned on the refundable security deposit shall become part of the deposit.

The architectural committee or the board must hold a final design approval meeting before plans are approved, and the member or his/her agent must have the opportunity to attend the meeting.

The association must provide for at least two on-site formal reviews during construction for the purpose of determining compliance with the approved plans. The member or his/her agent shall be provided the opportunity to attend both formal reviews. The association must then issue a written report specifying any deficiencies, violations or unapproved variations from the approved plans.

## AN INTERESTING NEW LEGAL FACT IN ARIZONA

By Michael J. Monroe, Esq.

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In a case hot off the Arizona presses, the Arizona Supreme Court just determined that the owner of a deed of trust may ‘foreclose’ on real property without the beneficiary of the deed of trust having to show that (s)he or it owns the promissory note that the deed of trust secures.

Needless to say the title owner of the property being foreclosed made the argument that if such a result were to be authorized then at some point in the future someone could come forward and claim to be the owner of the promissory note and sue the property owner on the note. Therefore, the property owner claimed that before a trustee’s sale (foreclosure) can occur, the beneficiary of the deed of trust (the person to whom the money is owed and who has the security interest in the real property) must first present or “show” the original note before commencing foreclosure proceedings.

The Supreme Court determined that there is nothing in the Arizona non-judicial foreclosure statutes that require such a presentation of the original promissory note prior to commencement of non-judicial foreclosure proceedings (a trustee’s sale). The complaining party tried to argue that the promissory note and the deed of trust “go together” and “must be construed together”. While the court noted that those are generally true statements they nonetheless are distinct instruments the serve different purposes. The note evidences the loan and the borrower’s duty to repay. The deed of trust transfers an interest in real property, securing the repayment of the money owed under the note.

The court noted that the trustee owes the owner a fiduciary duty and could be held liable for conducting a trustee’s sale (foreclosure) when the owner is not actually in default. The court also noted that the state’s anti-deficiency helps protect against such a potential liability problems in certain instances.

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## FILING A LAWSUIT; IS IT RIGHT FOR ME?

By Jo Lynn Clapperton, Professional Paralegal

Have you ever been a party to a civil lawsuit? Many people never imagine they will find themselves in such a situation. We all deal with various disputes throughout life, though most are resolved, in one way or another, without a need to ever become involved in a lawsuit. Unfortunately, there are times that a dispute arises which leaves you with little alternative other than to proceed with legal action. Perhaps an agreement is broken or property gets damaged. In the event the parties involved cannot determine a satisfactory solution, one or more may decide to go forward with a lawsuit.

Before doing so, however, the big question is: *Is this really worth it?* Typically most lawsuits begin with one or more parties consulting with an attorney. You need to know, "Do I have a case?", "How do I force John Doe to pay me all that money he owes?", "How long will it take?", "What's this going to cost me?" All such questions are important for you to discuss with your attorney.

Likewise, your attorney will have numerous questions for you. One important question being, what is it going to take to make you "whole" again? In other words, how far are you willing to take this, how much are you willing to sacrifice and what is the bare minimum you need in order to feel satisfied at the end of the day? It is the intent of your attorney to find a reasonable resolution quickly, and help you avoid incurring too much in legal fees and costs to reach said resolution. Many times though, disputes cannot be resolved so easily. In that event, suit can be initiated.

Prior to taking this step, it is important to discuss the standard lawsuit procedure with your attorney. Many folks don't realize how taxing a lawsuit can be, both financially and emotionally. [READ MORE](#)

# MMGM IN THE COMMUNITY—Flying Can Be More Than Just Fun

By D. Rob Burris, Esq.



I have always had a dream to become a pilot. I grew up with family and friends who are pilots. I am lucky to have been included on countless flying adventures ranging from the Alaskan peninsula to

Southern Argentina. Some of my flight time was routine...some of it not so much...but all of my flying experiences have been fun!

I credit my love for flying to those experiences I had in Alaska and Central America. Flying into grass strips carved out of the dense jungle speaks for itself. You

learn quickly that flying noncommercial aircraft outside the structure of the Federal Aviation Administration defines true adventure! One can never make assumptions and must always be prepared for the completely unexpected. And for those of you who have ever been to Alaska, you know that flying is not just a hobby, it's a way of life. The vast majority of flying in Alaska is what is known as bush flying. There is little in life that compares to the adventure of bush flying. Often you are flying at low altitude through constantly changing weather over beautiful terrain. And then of course you have bush pilots... who are a breed unto themselves. I have concluded that all bush pilots are not only first rate pilots, but a little crazy! [READ MORE](#)

## MARK YOUR CALENDAR—Tucson June Events

1-30—[Arizona Water Parks \(cool off & have fun\)](#)

2-30—[Summer Saturday Evenings at the Desert Museum](#)

2 & 30—[Tequila Sunset Limited, Grape Train Escape and Dark Skies Constellation Ride](#)

2-30—[Locomotive Saturdays](#)

3-30—[Science Sundays](#)

5-26—[Dog Days of Summer](#)



7-9—[12th Annual AZ Hog Rally](#)

8-10—[4th Annual Garlic & Onion Festival](#)

8 & 9—[Business, Technology & Construction Expo](#)

23 & 24—[Music, Art, Wine & Culinary Arts Indoor Festival](#)

24—[15th Annual Dia de San Juan Fiesta](#)

24—[17th Annual Sedona Taste](#)

## GLOSSING OVER INCONVENIENT FACTS

By Karl Macomber, Esq.

BT Capital, LLC vs. TD Service Co., a decision of the Arizona Supreme Court in May of this year, is a good example of a decision which leaves as many questions unanswered as it answers because the appellate courts have carte blanche to gloss over inconvenient facts. The case involved two trustee's sales of the same property on the same day by the same Trustee. TD was the Trustee for the beneficiary of the Deed of Trust, PCF, who was owed \$32 million. The property was commercial property in Chandler. When the day came for the Trustee's Sale, June 15, 2009, TD held a sale at 12 noon at which PCF was the only bidder and who won with a bid of \$1 million. A representative of BT informed the auctioneer after the sale that it had been noticed for 2 pm, not 12 and so a second sale was held the same day at which PCF was the successful bidder at \$1,000,001.00. TD had failed to follow the instructions of BT to bid up to \$25 million, if required. After TD refused BT's tender of the purchase price the next day, BT sued and obtained a preliminary injunction. By February, 2010, the Superior Court granted judgment in favor of TD and PCF. In June, 2010 the Superior Court clarified its ruling that its February ruling was also intended to dissolve the preliminary injunction. [READ MORE](#)



# ARIZONA FASCINATING FACTS



*The negotiations for Geronimo's final surrender took place in Skeleton Canyon, near present day Douglas, Arizona, in 1886.*



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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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