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SOUTHERN ARIZONA'S REAL
ESTATE LAW FIRM

Welcome to the MMGM Newsletter

Be thankful that you don't already have everything you desire.

If you did, what would there be to look forward to?

**Be thankful when you don't know something,
for it gives you the opportunity to learn.**

Be thankful for the difficult times.

During those times you grow.

**Be thankful for your limitations,
because they give you opportunities for improvement.**

**Be thankful for each new challenge,
because it will build your strength and character.**

Be thankful for your mistakes.

They will teach you valuable lessons.

**Be thankful when you're tired and weary,
because it means you've made a difference.**

It's easy to be thankful for the good things.

A life of rich fulfillment comes to those

who are also thankful for the setbacks.

Gratitude can turn a negative into a positive.

**Find a way to be thankful for your troubles,
and they can become your blessings.**

A Penny Saved, A Pound of Litigation

By Heidi Rib Brent, Esq.

Some people think that they can save REALTOR® fees as well as attorneys' fees by completing the sale of their house themselves with forms obtained online. What they save in fees initially on the attempted sale likely will be exceeded by the resulting dispute! In one such case, the parties did not understand each other's wording and it was interpreted as an attempt at fraud. The "buyer" moved in and began extensive remodeling before the sale the seller signed any

documents and the "buyer" now faces an eviction proceeding, as the sale was never consummated. We strongly suggest using professional REALTORS® for the sale of property, who can guide buyers and sellers through the process.



[Monroe McDonough Goldschmidt & Molla](#)

[Tucson Association of REALTORS®](#)

[National Association of REALTORS®](#)

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

[Green Valley Association of REALTORS®](#)

[Southeast Arizona Association of REALTORS®](#)

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

Fair Housing Act and HOAs

By Carolyn B. Goldschmidt, Esq.



Federal and State Fair Housing laws mandate equal access and opportunity in housing, and these laws apply to homeowners associations (HOAs). In general, the Americans with Disabilities Act (ADA) does not apply to HOAs because they typically are not places of public accommodation. Rather, HOAs govern and/or own private property that is used and enjoyed by residents and their guests. The ADA requirements for improvements that are accessible to disabled persons are imbedded in current Pima County building codes. However, communities that were built before the applicable provisions of the building code went into effect are exempt from having to meet ADA standards in their common areas. If major renovation is undertaken in a clubhouse, for example, the ADA standards would have to be followed in conjunction with other applicable building codes.

In Arizona, the Fair Housing Act is designed to protect against discrimination in the sale or rental of a dwelling, or in providing services or facilities in connection with the sale or rental on the basis of age (age-restricted communities that meet the requirements for an exemption under the Fair Housing Acts may discriminate on the basis of age), race, religion, national origin, gender, disability, or familial status [A.R.S. §41-1491.14]. A reader of this newsletter has recently encountered difficulty in representing a potential buyer, who is in a wheelchair. The buyer's housing needs would be best met by living in a condominium or townhouse. The REALTOR® located several dwelling units that might have been suitable for the buyer; however, the common area sidewalks did not afford acceptable access. The concerned REALTOR® is wondering whether an HOA is required to make or allow needed adaptations.

The obligations of an HOA to disabled persons are to make reasonable accommodation and to allow reasonable modification. Thus, an HOA needs to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling [§3604(f)(3)(B) of the Federal Fair Housing Act, Title 42 of the United States Code]. Examples of reasonable accommodations are: the use of a motorized scooter in an area where motorized vehicles generally are not allowed; the keeping of an assistive pet or an emotional support pet when an HOA has a "no pet" restriction; assignment of a parking space near a resident's dwelling unit to accommodate his limited mobility; allowing parking of a disabled person's vehicle in an area where parking or parking of the particular type of vehicle is prohibited.

A reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. Reasonable modifications may include structural changes to exteriors of dwellings and to common and public use areas. Under the Fair Housing Act, the HOA must allow the modification, but the unit owner or resident is responsible for paying the cost of the modification. Thus, a resident must be allowed to install a ramp outside his building in a common area; however, the resident must pay the expense of installation and must get approval from the Association before the modification is made. The request cannot be denied, however, unless there is some aspect of the request that is not reasonable.

In some cases, an HOA may be willing to bear the expense and follow the procedure required by the local municipality to install a curb cut for handicap access in common areas. Therefore, if a disabled person needs a reasonable modification that may benefit others in the community, the person should request the HOA Board to undertake the work at the Association's response.

Other issues that arise under the Fair Housing Act are: (1) What kinds of information may an HOA request from a resident with a disability in support of a requested reasonable modification or accommodation? (2) Who qualifies as a person with a disability under the Act? (3) If an HOA's CC&Rs prohibit the operation of a business, can an owner operate an elder care home or other type of group home in the community? (4) In an age restricted community, does an age restriction violation have to be allowed if the underage person is rendering care to a disabled occupant of the dwelling unit?

Further information about compliance with the Fair Housing Act can be found on the website of the Southwest Fair Housing Council <http://www.swfhc.com>, a local organization that provides information and assistance for housing issues that pertains to the Fair Housing Act.

The Ever-Present Fiduciary Duty

By Michael J. Monroe, Esq.



Recently an Ohio appellate court reinstated a lawsuit involving an interesting claim of a potential breach of fiduciary duty by an agent.

The agent represented potential purchasers (“Fords”) in locating a home. In fact the Fords liked a particular property so well they revisited the premises and started measuring it for placement of their furniture. The agent’s husband, also an agent, assisted his wife working with the Fords. The husband allegedly informed the Fords that they would be getting a ‘steal’ of a deal.

Several days after submitting an offer the purchasers learned that their agents had worked with another buyer and assisted that buyer in making an offer on July 21st on the property. The following day the Fords made an offer on the property. The husband told the Fords that he had told a friend of his about the interest the Fords had in the particular property and the friends immediately submitted an offer through the husband and ahead of the Fords.

The seller approved and accepted the initial offer, not the Fords. The Fords decided to file a lawsuit and allege that the agent husband conduct amounted to a breach of fiduciary duty by sharing confidential information with another third-party perspective purchaser. The Fords also claimed that the husband had failed to pursue their offer vigorously but rather assisted the other party purchasing the property. The lawsuit was dismissed by the trial court. Fords appealed.

The appellate court in Ohio, after evaluating the claims, found that the Fords had stated a proper claim for breach of fiduciary duty. The court noted that the complaint properly alleged that the husband agent shared confidential information with a third party which act, if it occurred, could constitute a breach of fiduciary duty. More importantly the court found that it is possibly that the act of writing two offers for the same property may constitute a breach of fiduciary duty.

The court noted that it is not impermissible for an agent to represent multiple parties who may be interested in the same property. But, the court noted that what is not clear is whether that permitted an agent to write multiple offers for the same property.

The appellate court sent the case back to the trial court for further consideration of the issues. It is always a delicate situation for an agent in a fiduciary relationship with a client. A fiduciary duty is the highest duty known at law. An agent must always bear in mind that (s)he must honor that duty at all times. Here, we don’t know where the Ohio court will go in deciding this case but in the interim you can be certain the Ford’s agents are not sleeping so well at night waiting for a final verdict in this matter.

Who's in Charge?

By Karl Macomber, Esq.



In *Desarrollo v. Kader*, Division Two of the Court of Appeals, last spring upheld a Judgment entered by Judge James Soto in Santa Cruz County Superior Court in favor of a landlord on a commercial lease of a building in Mexico. Kadar argued the amendment to the lease provided that Arizona law would apply, it did not dictate that the parties were consenting to the jurisdiction of the Courts of Arizona to

govern any litigation between them. Nevertheless, the Court of Appeals found that the fact that Kader had signed both the lease and a separate guarantee and the fact that Kader had consented to the assignment of the lease to Bank One, indicated that it was bound by the change in jurisdiction. The Court of Appeals went through the facts pointing out that everything pointed

to all parties acknowledging the change in jurisdiction and would not let Kader off the hook because the change was not also replicated in every single one of the documents Kader had signed.

The facts are: (1) The property is in Mexico and the original lease indicated that the laws of Mexico and the courts of Mexico would be the forum for the resolution of any controversies; and (2) The building was financed with a loan funded by Bank One of Arizona who insisted upon an amendment to the lease stating that the laws of Arizona and its courts would have jurisdiction. Bank One also took an assignment of the lease as additional security for its loan. The tenant defaults. The question becomes, is Kader a guarantor of the lease by the tenant, subject to the amendment to the lease?

MARK YOUR CALENDAR—Tucson November Events

2-30—[Arizona Wildcats Hockey vs. ASU](#)

2-25—[Red Barn Theatre—The Unsinkable Molly Brown](#)

2-4 [26th Tucson Celtic Festival & Scottish Highland Games](#)

2-18—[Beowulf Alley Theatre—Glengarry Glen Ross](#)

4—[23rd Annual All Souls Procession](#)

8-15—[2012 Loft Film Festival](#)

8—[Oro Valley Concert Series—Real Tears](#)

8-11—[2012 FinnFest USA](#)

10—[GABA Bicycle Swap Meet](#)

10 & 11—[1st Inaugural AZ Science & Astronomy Expo](#)

10—[Hot Air Balloon Glow and Festival](#)

10 & 11—[Arizona Opera—Romeo & Juliette](#)

15-19—[Coyote Classic All-Breed Dog Show](#)

16-18—[Tucson Museum of Art—Holiday Artisan's Market](#)

17—[El Tour de Tucson](#)

17—[Meteor Mania at Kitt Peak](#)

18—[Scrooge—Gaslight Theatre](#)

23 & 24—[Holiday Nights at Tohono Chul](#)

20-25—[Broadway in Tucson—Anything Goes](#)

21-25—[Cirque du Soleil—Dralion](#)

22—[Thanksgiving Cross-Country Classic](#)

23-25—[Old Tucson Heritage & Harvest Fest](#)

Dec. 1—[Santa Fly-In at Pima Air & Space Museum](#)

Dec 1—[8th Annual Tucson Tamal & Heritage Festival](#)

HAPPY THANKSGIVING



ARIZONA FASCINATING FACTS

Clark Gable and Carole Lombard, two of the most prominent movie stars of Hollywood's Golden Age, were married on March 18, 1939 in Kingman, Arizona.



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

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