

TB

LAW

NEWSLETTER

Community Property

101

A primer on property rights
conferred by wedding vows

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ANNOUNCEMENTS

GOOD WORKS

Financial Services Sponsors Variety of Local Charitable Events and Organizations

BOYS AND GIRLS CLUB GALA

Mark S. Bosco and Tiffany & Bosco, P.A.'s Financial Services Department was again the Presenting Sponsor of The Boys and Girls Clubs of Greater Scottsdale 2015 Blue Door Ball, previously called Youth of the Year Gala and Auction, held on February 28, 2015. More than 30 Club kids compete for the honor of being named Youth of the Year, the highest honor given to a member of the Boys and Girls Clubs organization. Among the finalists selected, the Youth of the Year is announced at the conclusion of the evening. This inspiring gala showcases how the Boys and Girls Clubs help youth reach their true power of potential.



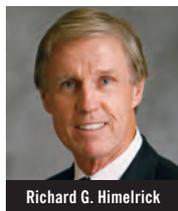
SCOTTSDALE ARTS COMMUNITY

The Financial Services Department sponsored "ARTrageous" starring Pink Martini at Scottsdale Center for the Performing Arts with all proceeds benefiting the Center. A key part of Tiffany Bosco's firm culture is to build successful, lasting partnerships with the local arts community. Investing in the arts not only improves quality of life, but also creates awareness of all the great cultural events Arizona has to offer.

TICKETS FOR VETERANS, TEACHERS, AND STUDENTS

Financial Services has also partnered with the Scottsdale Cultural Council to offer complimentary tickets to veterans, students, and teachers to a variety of events at Scottsdale Center for the Performing Arts. During last season nearly 3,000 free tickets were offered. These opportunities help provide shared art experiences for our veterans, students, and teachers that help to inspire, entertain, and educate everyone in attendance.

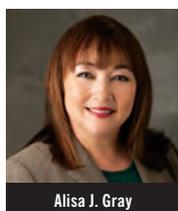
PROFESSIONAL AND PERSONAL ACHIEVEMENT



Richard G. Himelrick

RICHARD G. HIMELRICK'S article entitled "A Historical Introduction to Arizona's Securities Laws" was

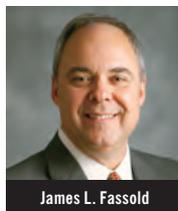
published in Volume 7 of the Arizona Summit Law Review, Summer 2014.



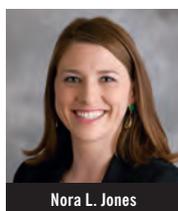
Alisa J. Gray

ALISA J. GRAY and **JAMES A. FASSOLD** gave seminars on leadership, time management, and mindfulness in January at the Arizona State Bar Leadership Institute and in March at the Arizona State Bar Spring Training for Lawyers. Both will

be presenting a program, *Grit, Grace, and Gratitude*, at the Arizona State Bar Convention in June.

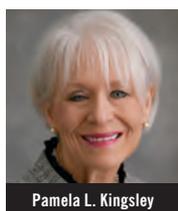


James L. Fassold



Nora L. Jones

The Ahwatukee Foothills News recognized **NORA L. JONES** as one of the Top Three Best Attorneys in Ahwatukee for 2014.



Pamela L. Kingsley

PAMELA L. KINGSLEY presented in January to the Human Resource members of SHRM of Greater Phoenix on *The NLRB in 2015 and Social Media in the Workplace*.



Aaron T. Lloyd

AARON T. LLOYD has been appointed by the Phoenix City Council to serve on the Paradise Valley Village Planning Committee.



May Lu

MAY LU has been appointed Co-General Counsel of ACLU-Arizona. She also graduated from the Arizona State Bar's

inaugural CLE Institute and is now certified to provide CLEs.

KEVIN P. NELSON authored *Arizona Real Estate Law and Arizona*



Kevin P. Nelson

Construction Law Annotated for the second consecutive year. Thomson Reuters-West

published the 2014-2015 edition of each book in November 2014.



James P. O'Sullivan

JAMES P. O'SULLIVAN and **MAY LU** presented *Is It Soup Yet? "Best Practices" Recipes for Documents Essential to M&A*

Intermediaries to a sold-out audience, with a waiting list, in Austin, Texas at the M&A Source Conference. The presentation will be reprised at the upcoming M&A Source Spring Conference in Atlantic City, New Jersey. Jim also co-chaired a State Bar program entitled *Protecting Your Practice: Ethically Dealing with the Impaired Lawyer*.

MIKE E. TIFFANY, along with his daughter and two of his sons, successfully completed an Alcatraz Swim in San Francisco Bay. Approximately



Michael E. Tiffany

800 competitors swam from the infamous prison on Alcatraz Island back to the City's mainland. The 1.5 mile distance

was closer to two miles as a result of the changing currents. Mike expects that some of his grandchildren will participate next year.

ANNOUNCEMENTS



Tiffany & Bosco Continues Phoenix Open Tradition

Tiffany & Bosco, P.A. continued its proud tradition of participating in the “Greatest Show on Grass.” The Thunderbirds once again hosted this renowned event at the TPC Scottsdale. The Tournament, known as the Waste Management Phoenix Open, was held from January 29 through February 1, 2015. The Phoenix Open began in 1932, making it one of the five oldest Tournaments on the PGA Tour.

This annual event always brings the largest crowds on the PGA Tour and this year was no exception. Despite inclement weather, the Tournament still produced some of

the biggest crowds for the PGA Tour. At the 2015 event, Brooks Koepka won by a single stroke to win the over \$1.1 million purse.

A major focus of this popular event is the charitable fundraising for Thunderbirds Charities, an affiliate of The Thunderbirds. Once again, Tiffany & Bosco underwrote a two-story Skybox on the 18th hole for its clients and friends to enjoy the event. With its contribution, Tiffany & Bosco helped make the 2015 Waste Management Phoenix Open another successful year for the Tournament. Tiffany & Bosco is honored to be a long-time supporter of this event and Thunderbird Charities.

FIRM NEWS

Firm Shareholders Recognized as Leading Attorneys

Super Lawyers®, a listing of outstanding attorneys who have attained a high degree of peer recognition and professional achievement, selected the following shareholders for 2015: **Brett M. Hager** (Aviation and Aerospace), **David L. Case** (Estate Planning & Probate), **Richard G. Himelrick** (Securities Litigation), **Christopher A. LaVoy** (Business Litigation), **Leonard J. Mark** (Family Law), and **Robert A. Royal** (Business Litigation).

Shareholders and Associates Recognized as “Rising Stars”

Super Lawyers® recognizes and selects outstanding attorneys with a high degree of peer recognition and professional achievement. In 2015, **Lance R. Broberg** (Business Litigation), **Darren T. Case** (Estate Planning & Probate), **J. James Christian** (Securities Litigation), and **May Lu** (Mergers & Acquisitions) were selected as “Rising Stars,” which consists of attorneys who are 40 years old or younger or have practiced 10 or fewer years.

TB Welcomes Chief Operating Officer to Firm

Late last Spring, **KEVIN J. NEWELL** joined Tiffany & Bosco, P.A. as its Chief Operating Officer just in time to help add our California office and move our Phoenix office. Kevin started his career as a professional musician in the United States Air Force. After completing his six-year military commitment, he worked full time as a computer programmer at CompuServe while enrolled full time at The Ohio State University in Columbus, Ohio. Kevin majored in Business Management and Marketing and completed his two Bachelor Degrees.



Kevin J. Newell

Kevin started his legal career as a Legal Administrator for a law firm in Columbus, Ohio. After moving to Arizona, he continued his legal career as the Executive Director of a small law firm in Phoenix. While a full time administrator for a private law firm, he joined the United States Army Reserves and served in the Judge Advocate General Corp, JAG unit, for the 75th Legal Service Organization based out of Northern California. Kevin is also a member of the Local and National Association of Legal Administrators.

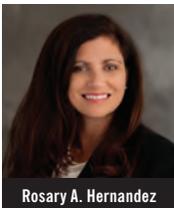
NEW FACES & POSITIONS

SHAREHOLDERS



Darren T. Case

DARREN T. CASE was promoted to Shareholder at Tiffany & Bosco, P.A. in October 2014. Darren focuses his practice in the areas of tax and estate planning attorney. Darren assists families and individuals in a broad range of planning techniques, including traditional wills and revocable trusts, along with more sophisticated estate, gift, GST, and income tax planning strategies. Darren is also experienced in the areas of probate and trust administration and litigation.



Rosary A. Hernandez

ROSARY A. HERNANDEZ joined the firm as a Shareholder in November 2014. Rosary represents clients in litigation and arbitration throughout Arizona, with significant experience in California and Texas. Rosary's areas of concentration include commercial and business litigation, professional liability defense, construction law, and tort defense, including tortious interference and related claims. Rosary is a frequent speaker at professional conferences and seminars on the subjects of construction litigation, ethical considerations involving tripartite relationships, as well as the importance of diversity in firm culture and the practice of law. Rosary, a first generation Cuban American, completed her undergraduate studies at the University of Texas (Austin) (1990) and her Juris Doctor at the University of Notre Dame Law School (1993).



David L. Rose

DAVID L. ROSE joined Tiffany & Bosco, P.A. as a shareholder in October 2014. David has been actively engaged in trial and appellate practice for over twenty-three years with an emphasis on high conflict and complex family law matters including appeals. David's practice deals with all aspects of family relationships including divorce, child custody and legal decision making, valuation and division of community property, spousal support, actions involving domestic violence, orders of protection, and international custody matters. David is rated AV-Preeminent® by Martindale-Hubbell®, Certified as a Specialist in Family Law by the Arizona Board of Legal Specialization, a sustaining member of Arizona's Finest Lawyers®, and a Southwest *SuperLawyer*.®



Gregory E. Williams

GREGORY E. WILLIAMS joined the firm as a shareholder in November 2014. Greg is an experienced attorney who focuses his practice on commercial disputes, construction litigation, and catastrophic personal injury. A native of Arizona, Greg graduated from the Arizona State University College of Law in 1997 and in 1993 earned his Master of Business Administration from Arizona State University with a specialty in finance. Prior to joining the firm, Greg was a partner in a national law firm and worked at the international accounting firm of Deloitte & Touche, LLP. In 2012, Greg was named as one of Arizona's *Super Lawyers*®. He is licensed to practice in both state and federal courts, and is on the Board of Directors of the Disability to Mobility Foundation.

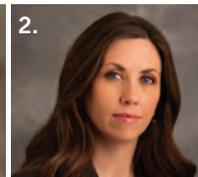
ASSOCIATES

1. TIMOTHY C. BODE joined the firm in August 2014. Tim graduated from the University of Arizona in 2011, *magna cum laude*, with a degree in Government and Public Policy and a minor in History. He received his Juris Doctor from Loyola University Chicago School of Law, *magna cum laude*, in 2014. Tim's practice focuses on civil and commercial litigation, including contract, real property, and intra-company disputes. Tim is licensed to practice in the Arizona state and federal courts.

2. DAWN M. GINGERICH joined the firm in December 2014. Dawn represents individuals and businesses in a variety of matters including insurance coverage and bad faith litigation, commercial and business litigation, construction law and general liability and tort defense. Prior to entering private practice, Dawn was a civilian attorney with the U.S. Navy specializing in government contracts and environmental law. She received her B.S. from Indiana University in 1993 and her MBA and Juris Doctor from Arizona State University in 1997.



1.



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3. CARLOTTA L. TURMAN joined the firm in December 2014. Carlotta is an experienced trial and appellate attorney and handles civil and commercial litigation matters in state and federal courts. Previously, she practiced in the areas of professional liability defense, real estate and commercial litigation, construction law, broker defense, and business and real estate transactions. Before practicing in the private sector, Carlotta was an Assistant Attorney General and defended the Department of Corrections against inmate liability lawsuits including 42 U.S.C. § 1983 civil rights claims. Carlotta is an Arizona native

and received her Bachelor of Science degree in criminal justice from Grand Canyon University. She obtained her Juris Doctor from the University of Minnesota Law School in 2002.

4. ASHLEY N. ZIMMERMAN joined the firm in January 2015. Ashley concentrates her practice in complex commercial litigation with an emphasis in business litigation, professional liability, construction law, catastrophic and personal injury, general liability, and real estate issues. Ashley is licensed in all Arizona state and federal courts, with experience in arbitration proceedings administered through the American Arbitration Association. Ashley received a Bachelor of Arts in Broadcast Journalism, and minors in Spanish and Business Law from the University of Southern California in 2009. She received her Juris Doctor from the University of Arizona in 2013, where she earned honors in legal writing, served as Articles Editor for the Arizona Journal of Environmental Law & Policy, and clerked for The Hon. David C. Bury of The United States District Court, District of Arizona.

LEGAL REVIEW

Community Property 101

A primer on property rights conferred by vows

By DAVID L. ROSE

It is common knowledge that Arizona is a community property state. What does that mean? It means a lot.

To stay-at-home spouses, community property law provides a source of security in the event of a divorce because all the assets, except gifts or inheritances, accumulated during the marriage are divided equally.

To working spouses, community property law means that not all the money they earn and assets they acquire are theirs alone to keep.

To a soon-to-be-married business owner, community property law can mean an increase in the value of the business that may be divided up.

To an unmarried couple living together, community property law provides no benefit at all.

To a creditor, community property law controls whom and how it can sue and whether both spouses have an obligation to pay the money back under a loan guarantee.

WHOSE PROPERTY IS IT?

The general presumption is that property acquired by either spouse during the marriage is the community property of both. This means that the stay-at-home spouse is protected and



the income earned by the working spouse belongs to both. Spouses have equal management and control of their community property and, except in certain circumstances (such as a loan guaranty or transactions involving real property), have equal power to bind the community to debts and contractual obligations.

Unlike community property, separate property includes all property owned by a spouse before marriage or that which is acquired by that spouse during the marriage by gift or through an inheritance. The owner of separate property can manage it as the owner chooses, and the property generally will remain the separate property of that spouse. However, if the property increases in value as the result of community labor, then that increase may be part of the community if it is ever divided. This is a very important proposition for a business owner who gets married and conversely for the spouse of the business owner. A premarital agreement can clarify these rights.

From a creditor's perspective, these distinctions are particularly important. For instance, a spouse's separate property is generally not available to

satisfy the separate debts or obligations of the other spouse. However, community property may be available to satisfy some premarital separate debts of a spouse but only to the extent of the value of that spouse's contribution to the community property, which would have been that spouse's separate property if single.

An unmarried couple living together has no community property rights at all. For example, while each unmarried parent may have rights to property or assets owned jointly, the stay-at-home parent will have no claim to any of the retirement or other benefits that the working parent has earned.

The key to understanding how community property law affects you is discussing your goals and expectations with competent counsel before entering into any contract — even a contract of marriage.

GET ANSWERS

The Family Law attorneys at Tiffany & Bosco are available to answer your questions regarding community property law. See the directory at the back of this newsletter or go online to tblaw.com.

LEGAL REVIEW

Managing Risk Through Careful Construction

Effective risk management and contract drafting best defense against frivolous construction defect claims

By ROSARY A. HERNANDEZ

As the local economy turns around, real estate development and construction are experiencing growth and appreciable gains. With construction ramping up, homebuilders and contractors are facing an increasing number of claims of allegedly “defective” construction. Oftentimes, these claims are based on scant evidence of alleged technical code violations, “corroborated” by California experts. Regardless of how meritorious or frivolous the claims are, the construction industry and the builders who operate within it are forced to bear the brunt and cost of these claims. While good construction practices alone will not eliminate the potential of a lawsuit or the cost of defending it, intentionally managing risks through precise construction documents is a good beginning. With careful drafting, Arizona law affords contractors specific opportunities to protect themselves.

The first step for any construction company is to recognize the risks and determine the company’s risk management strategy. All the critical documents should consistently reflect this plan. Each contract should account for the precise amount of risk the company is willing to bear. In many instances, the various

documents that provide the builder a risk management plan are inconsistent and, as a result, potentially unenforceable. For example, if the company is interested in repairing a construction problem on a structure it has built, the contracts must provide the mechanisms to make the repairs. More specifically, the purchase contracts and the Conditions, Covenants and Restrictions (CC&Rs) should explicitly provide the right to repair, or the company may not have a meaningful chance to repair any alleged deficiency.

Although Arizona law provides some protections and an opportunity to receive notice of the claims before a lawsuit is filed, Arizona’s Purchaser Dwelling Act (PDA), A.R.S. § 12-1361 *et seq.*, only allows the builder the right to inspect and make a repair offer, but does not provide an enforceable right to enter the premises and make a repair. Until legislative action changes the PDA, precise and intentional drafting of the construction documents is the only remedy. Through careful drafting, companies can obtain the right to perform repairs, eliminating unnecessary costs while providing homeowners with the houses they intend to purchase.

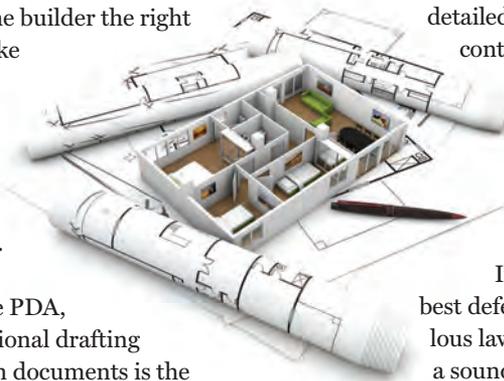
Another critical construction document is the subcontractor agreement, which establishes the obligations be-

tween the builder and its tradesman and delineates who will be responsible for “indemnity” or sharing in the potential damages and expenses. To be effective, these indemnity and defense provisions must set forth the scope and extent of the contracting parties’ respective obligations. What will trigger the obligation and what will be covered? As a starting point, these provisions must address what obligations exist if the various parties are alleged to be at fault for the condition. If a subcontractor’s work is implicated, the subcontractor’s company should defend the scope of work it performed and the claims the builder is facing due to that work. How these risks are managed must be unequivocally

detailed in the underlying contractual documents, and all parties should understand and meaningfully evaluate the costs and potential risks.

In summary, the best defense against frivolous lawsuits is to develop a sound and thoughtful risk management policy

that is consistently and intentionally carried through all the construction documents. Such documents will allow the parties to more accurately anticipate their respective risks, financially prepare to allocate their true costs, and accurately assess profits and losses.



COMPLEX COMMERCIAL REAL ESTATE CONTRACTS

By MICHAEL E. TIFFANY

The days of easy commercial real estate transactions ended with the market crash in the late 80s. Since then, the sources of capital, such as investment bankers, REITs, and pension funds, have exerted much more control over the acquisition, financing, development, and operation of the projects. Significant deals have generally been difficult to negotiate, document, hold together, and close. This greater complex-

ity in the transactions has extended to the documents generated for, created by, and exchanged between the developers and capital sources.

The funds for the projects often come from three sources. Developers are expected to have “some skin in the game.” The capital source provides additional funds, which is usually the bulk of the equity. The rest, if any, comes from lenders, such as banks or affiliates of the source of capital.

LEGAL REVIEW

Arizona Entity Restructuring Act: The Basics

By MAY LU

Prior to January 1, 2015, the ability to restructure a business entity depended on the type of entity, the type of restructuring, and the domicile of the entity. For example, if a limited liability company (LLC) formed in Wyoming wanted to become an Arizona LLC, it had to first form a new Arizona LLC and then merge the Wyoming LLC into the newly formed Arizona LLC.

Effective January 1, 2015, the Arizona Entity Restructuring Act (“AERA”), A.R.S. § 29-2201, *et seq.*, streamlined the restructuring process. Now, a Wyoming LLC can change its state of formation to Arizona and keep its original formation date by submitting a Statement of Domestication to the Arizona Corporation Commission for filing and an Application for Certificate of Transfer with the Wyoming Secretary of State.

Under AERA, any type of business entity, whether formed in Arizona or another domicile, can be involved in any type of restructuring as long as the laws of the other domicile, if any, permit it. The term “entity” is broadly defined in A.R.S. § 29-2101(17) to include all types of entities, including corporations, LLCs, partnerships, individuals, trusts, and government entities. The five types of restructuring recognized under AERA are:

- > Merger: Two or more entities become one entity;
- > Interest Exchange: One entity



acquires all of the ownership interests of another entity;

- > Conversion: Change one type of entity into another type of entity;
- > Domestication: Change the domicile of an entity; and
- > Division: Split one entity into two or more entities.

Prior to AERA, Arizona law did not allow a division for any type of entity. In addition, a business entity can combine the different types of restructuring such that a foreign corporation can convert and domesticate into an Arizona LLC.

The process for a business entity to approve the restructuring remains the same as before AERA — the business entity must follow its governing documents and the laws of the state of formation for this entity. *See* A.R.S. § 29-2103. For instance, an Arizona corporation wanting to complete a

merger with any other entity will still need to obtain an affirmative vote of a majority of its shareholders under Arizona’s default rules and comply with the dissenters’ rights statutes.

Therefore, a careful review of the state statutes governing the types of business entities involved is necessary to determine if AERA can be utilized to restructure an entity. If AERA is applicable, the next stage of analysis is to identify the procedures to follow and the documents to submit for filing to comply with AERA.

GET ANSWERS

Please contact Tiffany & Bosco if you need assistance or have any questions regarding business solutions, including restructuring. See the directory at the back of this newsletter or go online to tblaw.com.

Except for smaller transactions, the organization and contract documents are complex and the due diligence is expensive and involved. With the exception of speculators, the investors, developers, and institutional sources of capital seek to avoid risks other than those associated with the market. They want assurances that they will receive all of the needed entitlements with enough time to accomplish them. The lenders also require this.

By dividing contracts for complex real estate transactions into a series of sub-transactions, experienced real estate attorneys can fashion the many elements of the contracts into less complicated, and often simple, provisions. The challenge is to understand fully the business agreement of the parties before the document preparation begins.

Although an experienced real estate attorney will have a library of forms

from which to draw, the source of capital may mandate the form of documents, probably from similar transactions. Even when the attorneys start with a form, the “one contract fits all” approach will not work. Forms must be tailored to the specific transaction. Not only are experienced real estate attorneys more likely to produce better agreements, they can make the process easier, quicker, and less expensive.



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Established in 1967, Tiffany & Bosco, P.A. provides legal services to the business community, representing domestic and foreign clients on a local, national, and international basis. Tiffany & Bosco, P.A. is the Arizona law firm member of MSI, a worldwide network of independent legal and accounting firms, and a member of the USFN, and the FNMA and FHLMC designated counsel programs.

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This newsletter is published as a service to clients and friends. It is intended to give general information only and not to provide advice on specific legal issues. For information, change of address, or copies, please contact our Editors, Pamela L. Kingsley or Robert A. Royal at (602) 255-6000. ©2015 Tiffany & Bosco, P.A.

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